
(1992) 08 AHC CK 0006
In the Allahabad High Court
Case No : Contempt Petition No. 455 of 1989

Lt. Col. Ashok Kumar

APPELLANT

Vs

Naresh Chandra, Secretary, Ministry of Defence and Another

RESPONDENT

Date of Decision : 18-08-1992

Acts Referred:

Citation : (1992) 4 AWC 364 Supp

Hon'ble Judges : Ravi S. Dhavan, J

Bench : Single Bench

Judgement

Ravi S. Dhavan, J.—On May 19, 1992 this Court notices that innumerable adjournments had been occasioned in this case, and ordered that the matter be listed during the first week of July for fixing the date for hearing. The matter was listed on July, 7, 1992, but adjourned to the next day again due to non-availability of counsel. On July 9, 1992 the Court passed an order that the matter should be listed for hearing on July, 24, 1992 and that the opposite parties shall be present on the day of hearing. The matter was listed for July, 24, 1992. The opposite parties were not present on that date. The proceedings record that learned Counsel for the parties submitted that the date had escaped their notice, and, they did not intimate their respective clients of the date of hearing. The submissions of learned Counsel made in concert may be a coincidence too good to be granted as taken, but as counsel had made and taken upon themselves this matter of date avoidance, the Court accepted their responsibility. The case was adjourned and fixed for hearing on the date sought and as indicated to the Court i. e. August 18, 1992. This Court is not going into the question of counsel of all the parties forgetting to intimate the date to their clients, co-incidences happen and this may be one of them. The only aspect which is relevant is that they sought an adjournment and to a date indicated by them. The date was 18 August, i. e. today. The opposite party No. 2. Brigadier P. K. Gupta (retired), is present. The opposite party No. 1, Mr. Naresh Chandra, is not present.

2. Yesterday, an application was filed on behalf of the opposite party No. 1. The

opposite party No. 1 did not file his personal affidavit supporting the facts. These are contempt proceedings. The affidavit is of one Mr. V. N. Mandloi describing himself as " the officer incharge Legal Cell, Head Quarter Allahabad, Sub Area and pairopkar of opposite party No. 1". The submission in the application is that the opposite party No. 1 after his superannuation from the post of Cabinet Secretary, Government of India has been appointed as Senior Advisor to Prime Minister of India on Ayodhya matters and there has been a lot of activity in relation to Ram Janma Bhoomi-Babri Masjid dispute. The application states that this is a sensitive issue which affects the entire country and even the Arabian countres and the situation warrants a constant watch and as Senior Advisor he has to remain in touch with different parts of the country and with different leaders belonging to different religions. The application further mentions that the situation being sensitive meetings, and parleys are required to take place at Delhi and thus, the applicant desires that his personal presence on August, 1992 be exempted. The application also states that the learned Attorney General shall also appear in this case on behalf of the applicant and as he cannot appear on the date fixed, the matter be adjourned to some other date. The prayer mentions that the personal presence of the applicant be exempted and the case be adjourned to some other date to enable the learned Attorney General to appear in this case. An objection to the application seeking adjournment to the hearing and exemption from being present at it, has also been filed by the Petitioner.

3. In so far as the learned Attorney General of India is concerned, this Court will welcome his valued addrees at the bar of this Court, but this is a matter for issues on merits. The merits are not engaging the attention of the Court on the applications under consideration. Adjournment and exemption both were taken for granted. On submission, formal orders are being sought on (a) adjournment and (b) exemption from appearing before the Court on the next date fixed. The opposite party No. 2, is, thus not in issue In this order.

4. In a matter in which merits of the issues are yet to be adjudged and an issue has been made out of non issue, the Court notices that the case has been adjourned on behalf of the opposite party No. 1, on the following dates; 30-7-1990, 18-8-1990, 11-9-1990. 13-11-1990, 14-11-1990, 19-11-1990, 21-11-1990, 26-11-1990, 6-12-1990, 7-12-1990,21-1-1991, 19-1-1991, 29-1-1991, 1-2-1991, 8-4-1991, 8-4-1991, 14-8-1991. 9-9-1991, 11-9-1991, 16-9-1991, 17-9-1991, 18-9-1991, 30-9-199, 1-10-1991, 26-2-1992, 15-4-1992, 7-7-1992, 8-7-1992. 24-7-1992 and today i.e. 18-8-1992. But it is also understood that a-contempt proceedings unless dealt with speedily, is likely to produce the gravest results as regards respect for law, since it is calculated to undermine the confidence of the public in the administration of justice -- In the matter of Tushar Kanti Ghosh AIR 1935 Cal. 19 (PB).

5. In so far as the adjournment is concerned, the Court is totally conscious that the opposite party No. 1 in his position as recent Cabinet Secretary and now advisor to the Prime Minister is occupied with certain sensitive matters in the

affairs of the State and of the Government. The Court has no hesitation in granting an adjournment as there are times when some pressing matters may engage the attention of any party seeking the adjournment from a Court. But, by now it is clear, that it is not an adjournment which is being suggested or is in issue.

6. Yesterday, the Court had indicated to counsel for opposite party No. 1 in no uncertain terms that if an adjournment is being sought with a commitment that the opposite party No. 1 will appear on the next date fixed, the adjournment may be had and the order of the Court will be as simple as "ordered as prayed". The assurance to the Court that the opposite party No. 1 will appear on the next date was avoided. Even today, the submissions are that counsel has instructions only to press for adjournment but no instruction to commit himself that the opposite party No. 1 will appear on the next date. Today, when the Court inquired from counsel for the opposite party No. 1, with what confidence he Assures the Court that the opposite party he represents will appear on the day of hearing fixed next, he submitted on two possibilities, thus; First, if the opposite party No. 1 is a gentleman he will appear and, Secondly, should he not appear, he will face the consequences.

7. The Court is being tested and asked to wait, watch and see, if there is an issue on the opposite party No. 1 appearing or not, and then the Court may consider resorting to coercive process. This is a strange argument in a contempt proceedings and that also on behalf of a person who has spent a tenure in following and implementing the law.

8. The matter before the Court now, is fundamental, respect for the Rule of Law. In this Court, or for that matter any other High Court, when it sets in motion proceedings for contempt, parties under notice are required to appear at the Bar of the Court and if exempted, the presence is excused for future proceedings unless otherwise ordered by the Court. Notices are issued to ordinary people, government officials, petty civil servants, ordinary bureaucrats, but no one questions the Court nor resists the proposition that they cannot be called to appear in person in contempt proceedings. In these proceedings to appear in person is the normality of the rule, exemption from personal appearance is the exception. Rules of all High Courts generally provide thus, for the conduct of contempt proceedings. The Rules of this Court in this context are no different. If the proceedings and its stage was misunderstood then it is for the opposite party No. 1 to comprehend it. If these proceedings are sui-generis and partakes the nature of quasi criminal proceedings then it is understood that no trial can take place in the absence of an accused and no contempt case can go into hearing on issues on merits, when the Court directs the contemnor to be present and he will not be. The Court has to be satisfied beyond reasonable doubt on both counts to render a decision that a willful contempt may not have been committed or that a willful contempt has been committed. Parties may be examined by the Court to allay doubts on issues before acquitting or convicting.

And, yet can a contemnor before a hearing proceeds, say that ,he will not be available to the Court, and that also to a Court of record ?

9. In the instant case, it is a matter of record that a mandamus was not complied with as the High Court had ordered it and also not within the stipulated period. When this Court was to frame the charges following the order of 26-5-1990 that a prima facie case of contempt is on record, the opposite parties took out a novel and ingenious plea on 24-1-1991 to tell Court, not to frame the charges as they were totally alive and clear on issues. Thus, when two educated opposite parties themselves declare that they understand the issues and are conscious on what they have to offer for their defence, the Court on their submissions put the matter into hearing. Thus the record lies awaiting hearing. What the merits are is not a subject matter of this order.

10. This will be a bad precedent and must not go unnoticed, as if encouraged it will be subversive of the Rule of Law. The Court is being asked to adjourn the date of hearing and test for itself whether the opposite party no. 1 will appear or not and thereafter proceed accordingly. This, is baiting the Court. This submission is being made by no other person but the senior most bureaucrat of the nation and a member of the coveted civil service of the nation. The civil service have and do hold the reins of administration and it is their hall-mark that they assist in upholding the rule of law. They come from an exalted pedigree, and have been called the "Founders" and the "Guardians" and the "Men who ruled India" Men who ruled India ; Phillip Woodruff, in an empire where the sun never set. They are respected as an institution, which they are and they gave respect to other working institutions now enshrined in the Constitution of the Republic of India.

11. In a contempt proceeding, such an issue of avoiding the Bar of the Court or evading the Court cannot be encouraged. It is a routine and an unoriginal order. At the time of hearing the law requires as a method, to hear a contempt proceeding in the presence of the contemnor. The sentence, fine or imprisonment is to be delivered as an indictment in the presence of the contemnor. It is his presence and an opportunity to hear him or question him which permits the Court to be persuaded to acquit. There is a stage when a contemnor must appear before the Court ; the exemption is only understood to mean that, unless otherwise ordered by the Court, he will attend Court in person. The opposite party No. 1 has not appeared before the Court at all. These are interlocutory orders which do not affect the merits of the case and proceedings are not to be interrupted or their continuity broken by putting a cog in the wheel and disrupting the course of the proceedings by putting impediments in such interlocutory orders which require the presence of the contemnor at any stage of the proceedings. Even appeals against such orders were discouraged. This is settled law and procedure at the High Courts of the nation following Supreme Court decisions. High Courts as superior courts of record under the Constitution were left to devise their own procedures while setting in motion and hearing

contempt proceedings. Until final judgment procedures were held to be interlocutory proceedings; the Supreme Court declined to interfere. S.P. Wahi and Another Vs. Surendra Singh, . Ram Piara v. High Court of Punjab & Haryana, 1984 CrLJ 1311 (DB). Courts of its own motion 1979 CriLJ NOC 165 (P & H) (FB). The corollary to this is that contempt proceedings should continue, without delay, and result in judgment. From there on, the judicial system provides its redressal avenues.

12. The application which seeks adjournment filed a day before the date of hearing seeks an adjournment and exemption of presence on the date of hearing. The submissions have been made by a "pairokar" through a serving officer of the Army. The application in no uncertain terms refers to rank and status of the opposite party no. 1 as a recently, superannuated Cabinet Secretary and now Special Advisor to the Prime Minister of India. The submissions of his counsel also remind the Court who the opposite party is. The opposite party has elected not to file his affidavit in making his request to the Court Whatever it may be. He has done it through an agent. These are contempt proceedings and before the Court there can be no rank nor status. The opposite party has not committed himself by his personal affidavit and submits through an agent.

13. It will be a bad precedent if this Court were to ignore this situation as presented to this Court or the tendency to belittle an institution which functions under the Constitution. Everyday, courts of record in India, which the High Court is issue notice and set in motion contempt proceedings requiring parties under notice to appear in person. Such summons go to ordinary persons who face an allegation of contemptuous conduct. They appear and seek exemption. No one seeks it without appearing. Then contemptors seek adjournments and exemption from personal presence by filing their affidavit, but not through deputies. The Court cannot have one standard when it summons undistinguished persons in contempt proceedings and another yard-stick for distinguished persons. The Rule of law is the same for all and it recognises no status.

14. The Court has virtually been told that should the opposite party not confirm to the orders of the Court by not appearing on the day of hearing, in that case the Court may consider and resort to coercive process to ensure his presence. This Court is dismayed that such a submission could ever be made and what is worse, on behalf of a seasoned, experienced civil servant who has held key positions as a Defence Secretary, Home Secretary and lately Cabinet Secretary to the federal government. The argument of counsel of opposite party no. 1 itself will encourage a bad example when any civil servant could be put under summons and not appear.

15. The Court cannot know the intentions of this party as neither counsel for opposite party no. 1 nor any affidavit of opposite party no. 1 inspires confidence or faith in the Court that while an adjournment of the hearing, fixed for today is sought, the opposite party will be present on the next date of hearing. The application seeks adjournment and exemption from appearing ; no assurance to

appear on the adjourned day of hearing is given. The affidavit is likewise and is also not of the opposite party no. 1 but his agent and there is no commitment in it that the opposite party no. 1 will attend the hearing. It will not be appropriate for the Court to examine the person swearing the affidavit, a serving army officer, on behalf of the contemnor, opposite party no. 1 for the simple reason that being an army officer he is under directions to say what he must have been told and he dare not say more than what he was required to say. The Additional Standing counsel, Central Government, virtually appears by sufferance as the affidavit of the army officer claims he is deputising for the opposite party no. 1 who happens to be an official of the Government of India. This affidavit is only an appendage to the application (seeking adjournment and exemption from appearing). To pursue the application, another counsel appears the one engaged by the opposite party no. 1. The functions of the Additional Standing Counsel, Central Government are limited to appending the affidavit to the application. With such being the state of the record, there is no statement of responsibility nor faith or confidence given by the opposite party no. 1 that while he seeks an adjournment of hearing he will be present on the next date to which the case may be adjourned.

16. The hearing cannot proceed in the absence of the contemnor. The case, thus, must be adjourned as the opposite party has occasioned it and desires it so, as stated in the affidavit on his behalf. The Court asked counsel for opposite party no. 1 to indicate the next date; September 14, 1992 has been chosen. Opposite party no. 2 present in the Court has taken note of the date and stated he will be present on the next date. Costs on today's adjournment, not for fault of the Petitioner or the opposite party no. 2, this Court shall determine at the time of hearing.

17. Let the opposite party no. 1 have the adjournment he seeks, to that extent his application has succeeded. But, on the day of hearing he must be present. As the Court has not been given faith or confidence that opposite party no. 1 will appear on the adjourned date of hearing, let him have an opportunity to indicate by his personal affidavit, sent to the Registrar, High Court during the fortnight, of his commitment to appear in the Court on the date of hearing i. e. September 14, 1992 to which date the case has been adjourned. This affidavit must reach the Registrar, on or before September 1, 1992, failing which let bailable warrants be issued to secure the attendance of the opposite party no. 1 Mr. Naresh Chandra, at the Bar of this Court on September 14, 1992. A personal bond of the opposite party no. 1 without sureties will suffice.

18. Registrar to report to the Court on the receipt or the non-receipt of the affidavit.

19. List for hearing on September, 14, 1992.