
(2008) 06 CHH CK 0005
In the Chhattisgarh High Court

Manoj Kumar Devangan and Others

APPELLANT

Vs

Subroto Sahu and Others

RESPONDENT

Date of Decision : 17-06-2008

Acts Referred:

Constitution of India, 1950 — Article 215

Contempt of Courts Act, 1971 — Section 11, 12, 13, 14, 15

Citation : (2008) CriLJ 3677 : (2009) 1 MPJR 92

Hon'ble Judges : Dhirendra Mishra, J

Bench : Division Bench

Judgement

1. Heard on I.A. No. 1/2007, application for taking additional affidavit on record.

Not opposed.

The application is allowed. The affidavit is taken on record.

Also heard on preliminary objection to the maintainability of the contempt petition and objections to the framing of charges.

2. The petitioners have filed this contempt petition under Article 215 of the Constitution of India read with Sections 12 to 15 of the Contempt of Courts Act for initiating contempt proceedings against the respondents for willful violation of the ex parte order dated 19th of October, 2005 passed in W.P. No. 4943/2005.

3. Grounds of the petition are that the petitioners were appointed as daily wagers on the post of peon, chowkidar and clerk in Madhya Pradesh Adivasi and Vitt Vikas Nigam (for short, hereinafter referred to as "M.P. Nigam") in the year 1995-96. After reorganization of the State of Madhya Pradesh, Vitta and Vikas Nigam was not continued in the State of Chhattisgarh and in its place, Chhattisgarh Rajya Antyavyasayee Sahkari Avam Vikas Nigam Maryadit (C.G. Nigam) was constituted and services of the employees who opted for Chhattisgarh has been allocated/transferred to the State of Chhattisgarh and they are working under the control of C.G. Nigam. The C.G. Nigam took a decision in the month of September, 2004 to the effect that the services of the

petitioners will be terminated after completion of the contract period. The petitioners along with other persons aggrieved by the decision of the C.G. Nigam. filed W.P. No. 4943/2005 and this Court vide order dated 19th October, 2005 directed that "status quo in relation to the services of the petitioners, as it obtains today, shall be maintained by the parties till the next date of hearing" (Annexure P-1). The petitioners were on service as on 19th October, 2005. They were signing the attendance register up to the month of January, 2007. However, their services were discontinued and the C.G. Nigam stopped paying salary after getting copy of the order passed by this Court. The petitioners have not been paid salary from October, 1995 onwards despite they submitted copy of the order dated 19-10-2005 passed by this Court.

4. The Collector Rajnandgaon vide his letter dated 29-7-2006 (Annexure P-3) requested the Managing Director for compliance of the order of this Court. The petitioners also submitted their representation Annexure P-4 dated 10-10-2006 to the respondents. The Chief Executive Officer, Kabirdham with the approval of the Collector vide his letter dated 21-12-2006 (Annexure P-5) requested the respondent No. 3 to comply with the order passed by the High Court, however, the respondents have not cared to the above request/representation and refused to comply with the order of this Court.

5. The respondent Nos. 1 and 2 in their joint reply dated 10-3-2007 and respondent Nos. 3 and 4 in their joint reply dated 11-3-2007 have taken identical stand that C.G. Nigam has been constituted at the state level whereas at the district level, a society in the name of District Antyavyasayi Sahkari Vikas Samiti Maryadit has been registered. The district society is registered under the C.G. Co-operative Societies Act. The petitioner were working in the M.P. Nigam, which has not been constituted in the State of Chhattisgarh. Services of the regular, employees working in the M.P. Nigam were, allocated to the C.G. Nigam, however services of the petitioners who were contract appointees were never allocated either to the C.G. Nigam or to the district society. Their services were not continued after the time of contract i.e. 5th August 2005 after issuance of order dated 5th August, 2005, the petitioner continued till August, 2005 and the appointments of the petitioners have come to an end after 5th August, 2005 and thereafter, neither they worked nor have been paid salary. After retention and continuance of the service of the allocated employees, a separate daily register (Document 2) was opened. The petitioners have retained the register given to them in which they have put their signatures. The respondents have not violated the order passed by this Court as on the date when the interim order of status quo was passed, the petitioners were not in service. Document of Annexure P-5 was issued by an, incompetent officer/employee and it was never approved by the Collector Kabirdham. On earlier occasion also, a letter dated 21-9-2006 was concocted regarding attendance of the petitioner No. 1 showing that the same was addressed as per the orders of the Collector, however, the Collector Kabirdham vide letter dated 29th September, 2006 (Document 4) denied any knowledge about the above memo and requested the Managing Director to

initiate disciplinary proceeding against the Chief Executive Officer and concerned clerk.

6. The respondents No. 1 and 2 in their additional return as also in their short preliminary objection to the maintainability of the contempt petition, have prayed for dropping the contempt proceeding and discharging the respondents on the ground that:--(a) the instant petition has been filed by 4 petitioners, however affidavit in support of the petition has only been filed by petitioner No. 1 Manoj Kumar Devangan and other petitioners have not filed any affidavit. The Contempt of Court (Proceeding) Rules, 2005 (for short, hereinafter referred to as "the Rules of 2005") provides that every petition for taking action under the Act shall be supported by an affidavit. The petitioners No. 3 and 4 have claimed that they were working at Rajnandgaon and Raipur whereas petitioner No. 1 Manoj Kumar Devangan claims that he was working at Kawardha. In these circumstances, in the absence of affidavit of other petitioners, the petition is not maintainable. The affidavit filed by the petitioner No. 1 is not in accordance with law; (b) The petition does not specify the date or dates on which the contempt is alleged to have been committed, which is necessary as per the Rules of 2005; (c) The grievances of the petitioners is that the respondents are not paying their salary from October, 2005 onwards. Section 20 of the Contempt of Courts Act provides that no Court shall initiate any proceeding for contempt either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. Since the contempt has been alleged to have been committed by not paying salary of October, 2005, the petition filed on 19-3-2007 is apparently barred by Section 20 of the Contempt of Courts Act.

7. In reply to the above objections, the petitioners have submitted that the High Court of CG (Contempt of. Courts Proceedings) Rule of 2003 does not mandate that the affidavit of each of the petitioners is required when there are more than one petitioners. It has been further submitted that after filing of the reply by the respondents, the petitioners have obtained document of Annexure P-8 under the Right to Information Act, which clearly shows that the charge of Adivasi Vitt Avam Vikas Nigam, Kabirdham and Antyavyavasayi Vikas Samiti, Kabirdham is with the petitioner No. 1 from 5-5-2000 till 20-12-2006 and the petitioner No. 1 was paid alary for the month of September, 2005 on 30th December, 2005.

8. I have heard learned Counsel for the parties. I have perused the contempt petition, the returns filed on behalf of the respondents as also the preliminary objection filed by the respondents and the reply to the preliminary objection filed by the petitioners.

9. High Court of Chhattisgarh has framed rules under the Contempt of Courts Act, 1971 known as High Court of Chhattisgarh (Contempt of Court Proceedings) Rules, 2007 (for short, hereinafter referred to as the Rule of 2007). Rule 349(1) of the Rules of 2007 mandates that every petition, motion or reference made under Rule 348 shall contain in precise language the statement setting forth the

facts constituting the contempt of which the person/charged is alleged to be guilty and shall specify the date or date on which the contempt is alleged to have been committed. Sub-rule (3) of the above Rule requires that every petition for taking action under the Act, shall be supported by an affidavit and shall comply with the provisions of the rules relating to filing procedure, documents, and affidavits provided in these Rules. Section 20 of the Contempt of Courts Act, 1971 provides for limitation for actions for contempt, which is reproduced as under:

20. Limitation for actions for contempt:-- No Court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

10. This petition has been filed by 4 persons who were petitioners in W.P. No. 4943/2005, in which the order of Annexure P-1 was passed in their favour and it was directed that "purely as an interim measure, it is directed that the status quo in relation to the services of the petitioners, as it obtains today, shall be maintained by the parties, till the next date of hearing." The petitioners No. 1 and 2 claim that they were working as employee of Antyavyavasayi Sahkari Vitta Avam Vikas Nigam Maryadit, Kabirdham whereas petitioners No. 3 and 4 claim that they were working at Rajnandgaon and Raipur, however except the petitioner No. 1, none of other petitioners have filed affidavit in support of the contempt petition. The petitioners have stated in the petition that they were in service as on 19-10-2005 and were signing the attendance register up to January, 2007. After getting order passed by this Court, the respondents stopped salary of the petitioners and they were discontinued from the service. The petition does not specify the date or dates on which, contempt is alleged to have been committed, though it is stated that they were not paid salary from the month of October, 2005.

11. In the matter of High Court of Judicature at Allahabad through its Registrar Vs. Raj Kishore and others, , vires of the rules framed by the High Court on its administrative side by exercising its rule making power u/s 23 of the Act or under its general rulemaking power flowing from relevant constitution scheme, was challenged and it was held to be valid and legal and not inconsistent with Article 215 of the Constitution of India.

12. In the matter of J.A. Goraswa and Another Vs. D.I.G. of Police and Another, , a Division Bench of Gujarat High Court, considering the fact that the contempt petition did not disclose material facts necessary for proper determination of the case, it was not in accordance with the rules, which is provided to regulate the procedure for enforcing the right of the parties, it was not supported with the properly constituted affidavit and the same was filed in a routine and very casual manner and there was a delay in filing the application, the petition was rejected and the contemnors were discharged.

13. In the matter of Dr. L.P. Misra Vs. State of U.P., , the Hon''ble Supreme Court considering that the order was passed in a contempt proceeding without following the provisions contained in Allhabad High Court Rules, 1952 particularly Rules 7 and 8, held that while passing the impugned order, the Court had not followed the procedure prescribed by law, in these circumstances, the order was set aside and the matter was remitted to the High Court for fresh adjudication.

14. In the matter of Pallav Sheth Vs. Custodian and Others, , while dealing with the scope and applicability of Section 20 of the Contempt of Courts Act, in para 44 of the judgment, it has been held thus:

Action for contempt is divisible into two categories, namely, that initiated suo motu by the Court and that instituted otherwise than on the Court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the Court itself which must initiate by issuing a notice, in the other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the Court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed.

15. In the matter of State of Jammu & Kashmir Vs. Mohd. Yaqoob Khan and Others, , it has been observed thus:

So long the stay matter in the writ petition was not finally disposed of, the further proceeding in the contempt case was itself misconceived and no orders therein should have been passed. The scope of a contempt proceeding is very different from that of the pending main case yet to be heard and disposed of (in future). Besides, the respondents in a pending case are at a disadvantage if they are called upon to meet the merits of the claim in a contempt proceeding at the risk of being punished. It is, therefore, not right to suggest that it should be assumed that the initial order of stay got confirmed by the subsequent orders passed in the contempt matter.

The High Court should have first taken up the stay matter without any threat to the respondents in the writ case of being punished for contempt. Only after disposing it of, the other case should have been taken up. The respondents before the High Court were raising a serious objection disputing the claim of the writ petitioner. Therefore, an order in the nature of mandatory direction could not have been justified unless the Court was in a position to consider the objections and record a finding, prima facie in nature, in favour of the writ petitioner. Besides challenging the claim on merits, the respondent was entitled to raise a plea of non-maintainability of a writ application filed for the purpose of executing a decree.

16. In the matter of Prithawi Nath Ram Vs. State of Jharkhand and Others, , the appellant filed contempt proceedings under Sections 11 and 15 of the Contempt of Courts Act read with Article 215 of the Constitution of India for alleged non-

compliance with the directions given by learned single Judge of the Patna High Court. Learned single Judge of the Patna High Court proceeded to examine the correctness of the order and after in-depth analysis, came to the conclusion that directions of the impugned order could not have been given and accordingly held that there was no scope for taking any action for contempt. Hon''ble Supreme Court, in these circumstances, set aside the order passed by learned single Judge and remitted the matter to the High Court for fresh consideration with an observation that if any interim order is subsequently vacated or relief refused to a party in the main proceeding, it cannot be suggested to justify disobedience of such interim order by the other party and while dealing with an application for contempt, Court cannot traverse beyond the order, non-compliance with which is alleged. It cannot test correctness or otherwise of the order or give additional direction or delete any direction.

17. From perusal of the record, it is evident that the contempt petition has been filed by 4 petitioners for alleged violation of the order dated 19-10-2005, however it is supported with affidavit of only petitioner No. 1, therefore, pleading in relation to the petitioners No. 2 to 4 in the contempt petition is not supported by any individual affidavit in accordance with the rules. Apart from absence of the affidavit of petitioners No. 2 to 4, the contempt petition does not mention the date or dates on which contempt was committed. The submission in this regard in para 6 is ambiguous, wherein it is stated that they were not paid any salary from October, 2005 onwards and they were continued up to the month of January, 2007 as they were signing the attendance register and put their signatures and to substantiate this submission, copy of the attendance register Annexure P-2 has been filed. The respondents in their reply to the petition have stated that the services of the petitioners came to an end on 31st August, 2005, thereafter they did not work and they were not paid any salary. It has been further averred that the copy of the attendance register submitted by the petitioners is not in use by the society as a separate daily attendance register has been opened with effect from September, 2005. The petitioners have retained the old attendance register. Documents 3 and 4 have been filed to show that on the earlier occasion also, a concocted letter was got prepared by the petitioners from the employee of Kabirdham district showing that the same has approval of the Collector who subsequently denied according any approval for such communication. It has been further averred that the note sheet of Annexure P-6 was prepared under the supervision of G.P. Tamrakar who is accused in two criminal cases and who handed over the note sheet to the petitioners and appropriate departmental proceeding is contemplated against said G.P. Tamrakar. The petitioners Have also fined document of Annexure P-9 to demonstrate that the petitioners 1 and 2 were paid salary of September, 2005 on 30-10-2005, however this document does not bear the signature of Branch Manager nor it mentions mode of payment.

18. Taking into consideration the overall view of the facts of the case, in the light of the principles of law laid down in the aforesaid judgment and the fact that the

contempt petition is not in accordance with the Rules of 2007 and it is not supported with the affidavit of all the petitioners, and is bereft of the particulars necessary for filing contempt proceeding, as per the Rules of 2007 and further considering the explanation offered by the respondents, in the considered opinion of this Court, it would not be proper to continue with the contempt proceedings in the facts and circumstances of the case and the contempt proceedings are dropped.

The petitioners are at liberty to avail all the remedies which are available to them in accordance with law.