
(2002) 10 AHC CK 0015

In the Allahabad High Court

Case No : Civil Miscellaneous Contempt Petition No. 562 of 1995

Masih Uddin

APPELLANT

Vs

L.N. Mishra, Director Technical Education Directorate

RESPONDENT

Date of Decision : 23-10-2002

Acts Referred:

Bar Council of India Rules, 1975 — Rule 39
Contempt of Courts Act, 1971 — Section 11

Citation : (2003) 1 UPLBEC 333

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : Bashishtha Tiwari and B.L. Yadav, for the Appellant;

Final Decision : Dismissed

Judgement

S.N. Srivastava, J.—Present contempt petition has its genesis in the order dated 26.8.1994 passed in Writ Petition No. 1424 of 1994 the alleged flouting of which has been stated to be causative factor for institution of the contempt petition.

2. The background of the Institution of the contempt petition is that by means of the order dated 26.8.1994, the Principal, Government Northern Regional Institute of Printing Technology, Teliarganj, Allahabad was enjoined to consider the representation of the petitioner and pass appropriate orders within three months from the date of production of a certified copy of the order. It is alleged that the conduct of the Principal aforesaid in not honouring the order in compliance has manifested his contumacious disregard and displayed wilful disrespect to the order of this Court.

3. In the wake of filing of the contempt petition, notices were issued and in response to the notices, counter-affidavit came to be filed by the contemnor, namely L.N. Mishra,, in which it has been categorically averred that final1 orders had already been passed on 20.3.1995 on the representation of the petitioner dated 16.1.1995 thereby accepting the claim of the petitioner. Copy of the order

has also been annexed to the counter-affidavit as Annexure CA-2 to bolster up the above statements. It has also been averred in the counter-affidavit that since the order had already been observed in compliance, cause of action was rendered pointless with the passing of the order dated 20.3.1995.

4. From the perusal of the record, it is evident that the contempt petition was instituted on 31.3.1995 and if the matter is viewed from the angle of the averments made in the counter-affidavit, it would appear that the contempt petition came to be filed after the order of the Court had already been observed in compliance and by this reckoning, at the time of institution of the contempt petition, it would appear that there was no subsisting factor furnishing foundation for filling of the contempt petition. Yet another aspect unfolds itself from a glance through the record and it is that the petition was instituted through Sri Bashistha Tiwari, Advocate on 3.4.1995 who continued to represent the petitioner upto the stage of filing of the counter-affidavit by the Standing Counsel i.e. on 1.9.1995. It would appear from the perusal of the counter affidavit that it was specifically asserted that the order dated 26.8.1994 had already been honoured in compliance inasmuch as representation of the petitioner was decided and an increment of Rs. 15/- was sanctioned with retrospective effect i.e. 1.9.1979 attended with all consequential benefits and to enforce this assertion, copy of the order dated 20.3.1995 passed in compliance has been annexed. It would further transpire from the record that Sri B.L. yadav Advocate stepped into to represent the petitioner and filed application on 15.11.2000 embodying prayer to implead Smt. Uslia Biraji, Director, Technical Education, U.P., Kanpur. He appears to have stampeded into filing the aforesaid application without making inspection of the record. The application came up for consideration before the Court on 21.11.2000 on which date it was rejected by the Court on the premises that it did no display cause title so as to indicate on whose behalf it was moved or the provisions under which it was moved attended with the liberty to the petitioner to file fresh application. Another application followed on 28.11.2000 with the self same prayer to implead Smt. Usha Biraji, Director, Technical Education and on this application, the Court passed order to list it with previous papers.

5. From the above narration of facts, it crystallises that the order passed by this Court dated 26.5.1993, the alleged flouting of which had been made the basis for institution of the contempt petition, already been complied with in the fullest and the institution of contempt petition subsequent to the compliance of the order is a flagrant instance of the abuse of process of Court and Law.

6. Before proceeding further it is necessary to give a brief sketch about the Counsel who prosecuted the case on behalf of the petitioner at different stages of the case. As stated supra, Sri Bashishtha Tiwari,. Advocate was the Counsel initially engaged by the petitioner followed by Sri B.L. Yadav who was engaged on 15.11.2000. Every Advocate practicing in this Court or in any Courts of Law in the State of U.P. is hidebound by the guidelines and norms prescribed by the Bar

Council and they cannot plead ignorance as an excuse for any act verging on infringement of such norms and guidelines. He must school himself not to act in any other light except in the light of the norms and guidelines and the provisions of Rules of the Court and mandate prescribed by the Bar Council.

7. Before I come to grips with the facts on record, Rule 39, Part VI, Chapter II, Section II (12) of the Bar Council of India Rules and Section IV may be usefully excerpted below :

"Section II-Duty of the Client:

13. An Advocate shall not ordinarily withdraw from engagements once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client. Upon his withdrawal from a case, he shall refund such part of the fee as has not been earned.

Section IV-Duty of Colleagues :

39. An Advocate shall not enter appearance in any case in which there is already a vakalatnama or memo of appearance filed by an Advocate engaged for a party except with his consent; in case such consent is not produced he shall apply to the Court stating reasons why the said consent should not be produced and he shall appear only after obtaining the permission of the Court."

Here in the instant case, it transpires from the record that Sri Bashistha Tiwari was the Counsel initially engaged to draft and file the present contempt petition and his Vakalatnama as Counsel endures till date and was never withdrawn. Subsequently, Sri B.L. Yadav was engaged on 15.11.2000. From the record, it transpires that no consent-a pre-requisite-was obtained from Sri Tiwari by Sri B.L. Yadav before filing his appointment in the matter in terms of the Bar Council of India Rules aforestated. There is nothing on record to show that Sri Bashistha Tiwari had withdrawn himself from the case and he was still continuing as Counsel when the case was reserved for judgment. Sri B.L. Yadav representing the petitioner was present and when he was posed this question, he could not assign any reason for filing contempt petition qua the fact that the order which had been made the basis for institution of the contempt petition, had already been complied with before the institution of the contempt petition in this Court, except the muted response. "Every Advocate who is enrolled as an Advocate is found to abide by the Rules of Bar Council of India as stated supra. Sri B.L. Yadav, Advocate, ostensibly, did not assign any reason as to why he did not obtain any consent from the previous Counsel or as a quid pro quo, he did not seek approbation of the Court for appearance in terms of Rule 39 of the Bar Council of India Rules." It brooks no dispute that no Advocate can file an appearance or Vakalatnama without consent of the previous Advocate in case he is engaged subsequently by the litigant for any reason whatsoever. In case, the previous Counsel withholds his consent he can resort to the alternative of seeking permission from the Court for appearance in the case. In the present case, no consent was obtained. Sri B.L. Yadav sought permission of the Court to

argue the case. Since the Court needed his assistance in the absence of Sri Bashishtha Tiwari, he was permitted to argue the case. It may be usefully observed here that an Advocate is not a phoenix like mysterious entity, but a useful pillar of the society and one of his duties consists of Counselling, advocacy, improving his profession, the Court and the law, leadership in moulding public opinion and the unselfish holding of public office are the essential functions of a lawyer. Every lawyer owes some of his time to the upbuilding of the profession to which he belongs and indeed this obligation is one of the great things which distinguishes this profession from a business. I hope and trust that the Advocates who appeared on behalf of the petitioner would observe in letter and spirit the norms/guidelines furnished by the Bar Council.

8. Reverting to facts of the case, it is not clear from the materials on record that order dated 20.3.95 was actually communicated to the petitioner and if communicated, on what date. In the Rejoinder Affidavit, the petitioner has simply averred that all his claims were not cleared off. The averments do not constitute ingredients for the present contempt petition. The order, which furnished foundation for institution of the present contempt petition, simply contained directions for decision of the representation and the cause of action was confined to compliance with the aforesaid direction and indisputably, representation having been decided the cause of action no longer subsists. If the petitioner was aggrieved, the appropriate forum for the same would have been to seek his remedy elsewhere in the forum available to him. As stated supra, and as it has not been repudiated, the order which furnished foundation for institution of the contempt petition, had already been complied with on 20.3.1995 there was no reasonable justification for institution of the contempt petition on 3.4.1995 and hence it renders itself liable to be dismissed. Since the petitioner stands superannuated from the service, I forbear from initiating any action against him.

9. As a result, of the foregoing discussion, the contempt petition is dismissed.