
(1982) 07 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Contempt Petition No. 184/82

Miss Anita Karnawat	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 19-07-1982

Acts Referred:

Citation : (1982) WLN 431

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Judgement

G.M. Lodha, J.—Today the contempt petition No. 184/32 and the Stay Application No. 682/82 have been argued by the learned Counsel "or the petitioner and Mr. Khan for the State of Rajasthan and the Contemner. The writ petition by Dr. Miss Anita Karnawat came up for consideration before this Court on 9-6-82. The Vacation Judge of this Court issued notice. That notice was served on the State through the Principal & Controller of the attached Hospitals, S.M.S. Medical College, Jaipur, and thereafter the case came up for the consideration for admission on 1-7-1982. No one appeared for the respondent to oppose the writ petition. Consequently, the writ was admitted after hearing petitioner's counsel. On 1-7-82 at the time of admission, this Court passed a stay order directing that provisionally admission in M S. (Department of Gynaecology in the S.M.S. Medical College, Jaipur should be given to the petitioner

2. The contempt petition was filed by the applicant Or. Miss Anita Karnawat on 12-7-82 and the same came up for consideration on 13-7-82.

3. It was noticed that inspire of service of show cause notice no one appeared to oppose the admission of the writ petition and granting of of stay order on 1-7-82. It was further noticed that the stay order was served on the Principal Shri Rameshwar Sharma on 2-7-82, but inspite of that compliance has not been made although ten days have passed. Notice of the contempt petition was, therefore, issued to Dr. Rameshwar Sharma, Principal and Controller of attached Hospitals, SMS. Medical College, Jaipur. In reply to the contempt notice, Dr.

Sharma appeared in person. On 15-7-82 argument's were heard and then it was ordered that both the contempt petition and the stay petition be decided together. On 16-7-82 both were heard again and certain points were required to be clarified.

4. A clarification was required because the respondent's contention was that there is no vacancy, and therefore, the order of this Court could not be complied with. The petitioner's case was that there was a clear vacancy on account of resignation of Dr. Nandita Biswas. Certain correspondence has been produced and affidavits have been filed by both the parties today.

5. From the above, it is apparent that no formal resignation letter has been received by the Principal, Shri Ramshwer Sharma in respect of resignation of Dr. Nandita Biswas. However, it is equally clear that Dr. Nandita Biswas has informed the Superintendent, Janana Hospital, Jaipur through the Unit Incharge that she has resigned and she is leaving Rajasthan for joining some institution in Bihar. It is common ground that since 1st July, 1982 she is not attending her Hospital studies and seemingly she has left the studies in Rajasthan.

6. Mr. Khan has submitted that the Principal acted bonafide and there was no intention of committing any contempt. According to him, the show cause notice which was undoubtedly received by the office of the Principal was not placed before him and he had no knowledge and, therefore, no arrangement could be made to contest the case at the stage of admission and granting of stay order. It was pointed out that after the receipt of the stay order, the Principal never expressed that he would not obey the order as alleged by the petitioner, but he communicated the same to the Government for necessary instructions and on account of that the order could not be complied with, more so because there was no vacancy. Mr. Khan submitted that the Principal has got greatest respect for the Court and expressed bonafied apology for any omission or commission even if it is assumed to be so, although he has not done anything showing disrespect to this Court. Mr. Khan also submitted that there are other girl doctors who are more meritorious than the petitioner and, therefore, the normal course of notifying the vacancy will have to be done if Dr. Nandita Biswas resigns. Some other objections were also raised regarding the merits of the case.

7. I have given thoughtful consideration to the entire matter and I am of the opinion that the charge of deliberate and wilful contempt is not established. It is true that the better course and the safer course for the Principal would have been to approach this Court immediately on receipt of the stay order for modification or vacation and till then to grant provisional admission. Once the stay order is passed, a party cannot be allowed to take upon himself the responsibility of deciding the validity or legality of that order. A party can certainly come to this Court and point out that the order which has been passed requires modification or vacation even though it was passed after notice.

8. The practice not to obey the order of the Court and seek instructions inter-

departmental may be good, so far as indiscipline in the departments and administration is concerned, but it certainly cannot be appreciated in the eye of rule of law. No one can be permitted to disobey the order of the court either on the ground that before complying with the order instructions were being sought from the higher officers, or advice was being taken from the members of the bar or Law Officers. I have precisely held it to be so in the case of *Dr. M.R. Goel v. Rajasthan Public Service Commission*, wherein I have said that the State functionaries cannot be permitted to avoid compliance of the stay order under the garb or even under the bonafide reason that they were taking opinion of the Law Officers or were filing the appeal and waiting for passing of some stay order. I have made it clear that if the rule of law is to be respected and majesty of law is to be respected and honoured then all concerned including the State should immediately and forthwith comply with the orders of the Court unless a stay order is obtained from a superior court or a clarification modification or vacation of the order is obtained from the same court.

9. It is expected that this principle which has been reiterated by this Court time and again would now be taken notice of by the State functionaries and such a situation would not arise in future where the officers come and say that although the order was received by them on 2-7-82, but till now they were involved in the process of taking instructions. It is true that sometimes many difficulties arise when there is no vacancy for a Government Servant or for a Medical Student, and, therefore, the respondents are placed in a most difficult and complicated situation. That may be so, but that is a point in which they should draw the attention of the court and persuade the Court to vacate or modify it. If they do not do so, and if they do not succeed in persuading the court, then they cannot become judge in their own cause and take the law in their own hands by defying the order on the grounds which have not found favour with the Court.

10. The confidence of the citizens as a whole and litigants in particular in the majesty of law and the judgments of the court can only be maintained if the State functionaries who are one of the important litigants set an example by complying the orders forthwith inspite of difficulties and inconvenience. The reason is obvious that the difficulties and inconveniences of individuals can be remedied but if confidence in majesty of law and sanctity of the orders of the Court is broken the wheels of the difficulties and inconveniences of the individuals, then the malady of lawlessness would be irremediable and I am sure that the State has got all the anxiety to ensure that the majesty of law and judgments and order of the courts are respected, honoured and obeyed immediately and forthwith. In this view of the matter, I am of the view that in this particular case though on account of lack of proof of malafides and clear proof of bonafides, I must discharge the contempt notice but with a rider that the order of this Court regarding granting provisional admission should be carried out and obeyed forthwith. In case Dr. Nandita Biswas turns and reports on duty, then of course the petitioner's admission would terminate automatically without the court. Again, if any of the more meritorious students obtain any order from any

competent court, then certainly this order be subject to that. In the absence of any such contingency, as I have mentioned above, the respondent State and the Principal should immediately grant provisional admission to the petitioner, as earlier ordered, which would be of course subject to objections which the respondent wants to take in the reply.

11. Mr. Khan at this stage pointed out that unless a direction is issued to the Secretary, Medical and Health Department, the Principal of the College would have some difficulty in complying with the order. He also pointed out that the Principal has received telegrams from more meritorious doctors and he cannot ignore their claims. I have already clarified while discharging the contempt notice that in case any order from competent court is received regarding the alleged more meritorious doctors, then the Principal can ignore the present order, so far as the difficulty of the process through the Secretary, Medical & Health Department, is concerned, it is made clear that as the State of Rajasthan is a party to this case, a copy of the order be sent to the Secretary, Medical and Health Department, State of Rajasthan, Jaipur also, so that immediate compliance can be made of this order. A copy of the order be also given to Mr. Khan Government Advocate. It is further ordered that this case should be listed for hearing on 26-7-82, provided the stay order is complied with.