
(1980) 06 CAL CK 0004
In the Calcutta High Court

M/s. Abdul Majeed Pureshi and Others	APPELLANT
Vs	
Benoy Kumar Mukherjee and Others	RESPONDENT

Date of Decision : 19-06-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144
Industrial Disputes Act, 1947 — Section 25FFF

Citation : (1980) 06 CAL CK 0004

Hon'ble Judges : Manas Nath Roy, J

Bench : Single Bench

Advocate : Mahitosh Majumdar and Asoke Kumar Ganguly, for the Appellant; Amar Nath Banerjee and Jamini Kumar Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice Manas Nath Roy

1. In this Rule, it has been alleged by the petitioners, who are either the agents or representatives of a Company of U.P. and is in the business of import and export of Dried castings, that the contemnor opposite party, in spite of due communication of an order of injunction as issued by this Court in Civil Rule No. 8760 (W) of 1979, has willfully violated the same or has not taken steps pursuant to such order, negligently. The particulars of the concerned interim order, the violation whereof, has been alleged, are mentioned hereafter.

2. It was alleged that following some unlawful activities, which were indulged in or resorted by the employees and that too without justifiable reasons or grounds, the petitioners had suffered much and as such, they had no other alternative, but to issue a notice on 21st June 1979, requiring the erring employees, not indulge in such activities, which were causing loss and prejudice to the concern, with a further request to them, to allow the smooth running of the business.

3. The above notice, according to the petitioners, produced no result or effect and as such, they on subsequent and diverse dates, made further appeals to the

employees to bring about normalcy in the business and to restore normal working conditions in the godown of the petitioners at premises No. 10, Meher Ali Lane, Calcutta-15 (hereinafter referred to as the said premises). It has been alleged that things and conditions at the said premises were going from bad to worse and the appeals as mentioned above, did not produce any result. As such, a diary, being G.D. Entry No. 2123, was lodged with the Entally Police Station, on 23rd June 1979, as the said premises was within the jurisdiction of the said Police Station. This diary was followed by the filling of other General Diaries and ultimately, a complaint u/s 144 of the Criminal Procedure code, had to be filed by the petitioners, as it was felt that those successive diaries produced no result or effect on the illegal, irregular and unauthorised activities of the employees required an order for restraining their employees Sarvashree Md. Yasin, Hanif, Sadique, Gobordhan, Moula Bux, Sardar Hanif and 14 others and their aides, agents, associates and/or collaborators from continuing with their activities as mentioned hereinbefore and further praying for a direction on the Officer-in-Charge of the Entally Police Station, to post police pickets at the gate of the said premises, so that no obstruction was created by the miscreants as mentioned above, from removing the finished goods and further more, the goods were not damaged or any act of action was taken or committed, which could be harmful to the petitioners or their officers or to any body. It appears that in that proceedings, the learned Executive Magistrate, Sealdah, directed the Officer-in-Charge concerned, to enquire and report by 2nd July, 1979, and he was further directed to see that no breach of peace took place at the said premises. It further appears that on consideration of the Police Report as made, the learned Executive Magistrate, issued notice to the opposite parties in the proceedings before him, asking them thus to show cause why proceedings u/s 144 should not be drawn up against them. The next date of hearing was fixed on 9th August, 1979.

4. On the date as mentioned above, the proceedings was adjourned to 10th September, 1979 and it is the case of the petitioners that taking advantage of the delayed disposal of the concerned proceedings, the employees concerned, not only became furious, but they continued further with their obstructive and illegal activities. In fact, they also took mischievous steps to damage the machineries and other belongings in the said premises, apart from attempting to remove some small machineries and implements therefrom. It has been stated further that on such happenings, the petitioner No. 2, Abdul Aziz, on 4th August 1979, made an application before the learned Executive Magistrate, Sealdah and he was pleased to direct the Officer-in-Charge of the Police Station as mentioned above, to report and to see that no breach of peace takes place. The said Officer was further directed to see that no unlawful acts were done by the parties concerned.

5. It has been stated that even in spite of the aforesaid proceedings as duly initiated and conducted, the employees concerned did not refrain from continuing with their illegal and unauthorised activities and since because of such acts or

action, the petitioners sufferings continued and they were at perpetual loss, so they had no other alternative, but to issue a notice of closure on 26th July, 1979. The next of the said notice would be material for the case, as arguments were advanced and submissions made on the contents or terms of the same. As such, the terms of the said notice are quoted hereinbefore: -

The Management of Messrs. Abdul Majeed Pureshi of 10, Meher Ali Lane, Calcutta - 15, is sorry to bring to the notice of all concerned that commencing from 12 noon of 21.6.79 the workmen of the undertaking situated at the above premises started obstructing the dispatch of finished goods from the Godown and directly involved themselves in indulging in various unlawful and unjust activities till this date. The Management of the undertaking have tried in every possible manner to persuade the workmen to refrain from such unlawful activities but without any avail. By notices dated 21.6.79, 23.6.79 and 19.7.79 the Management of the undertaking required the workmen to resist from their unlawful activities and to restore normalcy in running of the business but it is regretted that good sense has not prevailed upon the workmen and they are continuing their activities in obstructing dispatch of finished goods from the Godown, indulging in acts of indiscipline detrimental to the interest and business of the concern. As a result of such unjust and unlawful activities on the part of the workmen the concern's trade and business in Calcutta zone has come to total collapse involving heavy financial loss. The finished goods are damaged beyond repairs.

Under the circumstances narrated above and due to continued obstructions in dispatch of finished goods on the part of the workmen in defiance to all just and reasonable orders of the management of the undertaking, it has become possible to run the works and the circumstances have gone beyond control of the Management.

The management having exhausted all possible avenues by way of persuasion and advice given from time to time through various notices and personal contact and discussion with the workmen, is left with no other alternative but to close down the undertaking situated at 10, Meher Ali Lane, Calcutta-15 with effect from 27th July, 1979. In consequences of closure of the undertaking the services of all workmen stand terminated with effect from the date of closure mentioned hereinabove. The workmen will be paid compensation as provided u/s 25 FFF of the Industrial Disputes Act, 1947.

The workers unauthorisedly and unlawfully staying inside the works are hereby required to vacate the premises of the undertaking forthwith.

6. It has been stated that after the issue of the above notice, the petitioners attempted to approach and enter the said premises, but they were prevented in such attempts by the employees concerned. The petitioners intended to enter the said premises for inspection of the finished goods lying therein and also to have a look on the other materials therein. It has been alleged that the employees concerned, not only thwarted the attempt of the petitioners to enter the said

premises for the purposes as aforesaid, but they also took a violent attitude and not only hurled filthy languages, but also attempted to assault and manhandle them with lath is and iron rods. On such illegal and irregular activities, another diary was lodged by or at the instance, of the said petitioners, with the Officer-in-Charge of the Entally Police Station, with a further prayer and request to him, to take necessary steps to maintain peace and normalcy in and around the said premises, and by requiring the employee as mentioned in the petition, not to indulge in or continuing with their illegal, irregular and unlawful activities. It is the case of the said petitioners that this time also, they failed to get due justice in their case from the said Officer-in-Charge and inspite of the subsistence of the orders as mentioned hereinbefore, they failed to get any help and assistance, from the police authorities. It has been alleged further that for such non-action or inaction, the said petitioners have suffered much not only financially, but their business activities were also seriously prejudiced and as such, they had to move and obtain Civil Rule No. 8760 (w) of 1979, on 22nd August 1979, in which an interim order of injunction was obtained, directing the Respondent Nos. 1, 2 and 3 therein, to see that "the Respondent Nos. 4-9, who were workmen do not come within 50 yards of premises No. 10 Maher Ali Lane, Calcutta-15 and create any obstruction so far as the egress from and ingress to the said premises was concerned." The contemnor opposite party in this Rule, was Respondent No. 3 in the said rule. The said interim order was communicated to all concerned including the contemnor opposite party herein, by a letter dated 23rd August 1979, from the learned Advocate for the said petitioners. The communication and receipt of the said letter has been admitted by Mr. Banerjee, appearing for the contemnor opposite party.

7. It is the claim and contentions of the petitioners that even in spite of such and due communication of the order as referred to hereinbefore, the contemnor opposite party, failed, refused and neglected to take any or appropriate steps in the matter, as a result thereof, the employees concerned, continued with their unlawful and unauthorised occupation of and entry into the said premises, apart from using the same and the belongings therein. To avoid any further mischief"s and for the purpose of restraining the employees concerned in their attempt to continue with such unlawful and irregular activities, it has been stated that the petitioners had repeated and series of communications with the contemnor opposite party herein, with a specific request to comply with the terms of the interim order and as made by this Court. But they were of no effect or result.

8. As a consequence of the above, it has been claimed that the employees concerned continued with their illegal and unauthorised stay inside the said premises and their use of the properties of the said petitioners. Such acts, it has been claimed, continued even in spite of the restraint order that they should not be allowed to come within 50 yards of the said premises. This, according to the said petitioners, was possible because of the intentional default, neglect and inaction of the contemnor opposite party, as he willfully and intentionally, did not take steps to have the order made by this Court executed and rather, as be,

because of such acts and actions, made the said order ineffective and furthermore, as the said officer did not take any effective steps to have the concerned order implemented. Apart from those as mentioned above, the said petitioners have given other particulars of the violations, alleged to have been committed by the employees concerned and it has been stated that on such violations or happenings, the contemnor opposite party was duly informed, intimated and communicated, as he was the Officer-in-Charge, who was responsible for carrying out the orders of this Court. But, he failed, refused and neglected to take the necessary steps or actions. The above are the ground and the basis of this application for contempt.

9. The contemnor opposite party has filed his return to the Rule by his affidavit-in-opposition dated 21st January, 1980. Before justifying his conduct or the actions, he has offered unconditional apology and has stated that he has highest regard, as a responsible Government official, for the orders as made by this Court and he was or is not guilty of the charges of contempt as alleged. As mentioned above, he has accepted the communication of the order as made by this Court, and has also accepted the position regarding the diaries and other communications as lodged or made by the said petitioners. He has also stated that on receiving the initial diary, the officer concerned, viz. Shri N. L. Chakraborty, who recorded the same advised the said petitioners to take recourse to proceedings in a Court. It has been stated that the said Shri Chakraborty, made a report in the concerned Section 144 proceedings on necessary enquiry, on the basis whereof, the opposite parties therein, were asked to show cause and that proceedings is still pending. It has further been stated that the petitioners are staying in a room inside the said premises, so also the few workmen, since a long time, and that too with the permission of their employer and those workmen cook their food and sleep inside the said premises during night. It has further been stated that there is a godown in the said premises, located in a room, which was found to be under lock and key. It has also been stated that at the time of declaring the closure on 26th July, 1979, the said petitioners did not remove the employees, who were so occupying the said premises or were inside the same. It has been stated that even after the closure, the said petitioners are staying inside the said premises and their ingress to and egress from the same, was never interfered with or obstructed. It has been claimed and contended that there was or is no question of any breach of the peace or any chance of damages to the goods and machineries placed inside the said premises.

10. It has been categorically stated by the deponent that on receipt of information's or diaries, he has duly taken all and necessary steps in the light of the restraint order as made by this Court. But, he has admitted that the portion of the order directing him not to allow the workmen concerned, to come within 50 yards of the said premises, was not and in fact could not be given effect to or carried out, as they were peacefully living inside the said premise. The deponent has further pleaded that for the purpose of carrying out the order as made by

the Court, necessary posting of three officers and 20 constable round the clock, would be necessary and since the Entally Police Station, is a very problematic Police Station, from the view point of administration and as such number of officers and force were or are not available there, so it was really impossible for him to provide for sufficient police force. The deponent has also stated that the complaints lodged by the said petitioners, after the issue of the restraint order and the Rules, have been promptly and without any delay, enquired into by Sub-Inspector, M. M. Khan.

11. In order to find a contemnor opposite party guilty of the charges as alleged and to punish him for that, the offences as charged or as alleged, must be established beyond any reasonable doubt and no one can be punished if there is any doubt or difficulty for him, who is required to obey and carry out the orders as made, to follow or comply with the same. It must also be established that the person concerned, in spite of due communication of intimation and information of the order, has not obeyed the same willfully, or his conduct is negligent and intentional. So far this case is concerned, there was or has been no difficulty about the due communication of the order and in fact such communication is admitted. So, the question thus would be, whether the contemnor opposite party flouted the order of restraint by his inaction, in not keeping the employees in question 50 yards away from the said premises or he willfully and negligently allowed them to stay inside the same and also acted illegally and unauthorisedly, in not allowing the said petitioners ingress to and egress from the said premises.

12. Mr. Amar Nath Banerjee, appearing for the contemnor opposite party, on a reference to the pleadings in the writ petition and the notice of closure as quoted hereinbefore, contended that the facts as disclosed, to establish that the employees concerned, were already inside the said premises or occupying the same, prior to the issue of the order in the main Rule, as otherwise there could not have been a demand on them, to leave the said premises or to vacate the same by the said petitioners. It was contended that the terms of the notice of closure as referred to hereinbefore, meant and established that the employees were there or were occupying the said premises. As such, Mr. Banerjee contended, there could not be any case for contempt for not throwing out the employees concerned as the restraint order in question was not for that and the same was only for not allowing the employees concerned to come within 50 yards of the said premises and since there was no question of throwing out the employees, who were there in possession, there could not also be any contempt as alleged, for violating or for not carrying out the order as made by this Court. It was contended by Mr. Banerjee that certainly is a proceedings of the present nature, the Court, by the order as made, did not mean to evict the employees, who were already occupying the disputed premises and such mandatory order was not possible or permissible and intended.

13. Mr. Majumder, appearing in support of the Rule, very severely and that too rightly, criticised the manner in which the affidavit-in-opposition has been

affirmed by the contemnor opposite party. The deponent has affirmed all the statements in the affidavit, excepting those made in paragraph 13 and 14 as true to his knowledge, which was perhaps not correct and at least the statements which were based on the enquiries and reports of Sarbashree N. L. Chakraborty and M. M. Khan, could not be true to his knowledge. That apart, the affirmation of the statements by the said deponent that the employees concerned were occupying the said premises, which has been stated to be true to his knowledge, has been contended by Mr. Majumder, as, cannot be true to his knowledge, since he himself was not the enquiring officer, cannot be said to be without substance. Last of all, the defence, that since the concerned Police Station was a problematic one and there was paucity of force and officers, for which the order could not be complied with, cannot be accepted. If this was the real defence, the contemnor opposite party, should have approached this Court earlier and informed the same about such difficulties and got the interim order as made, modified, moulded or clarified. Unfortunately, no such step was taken by him and for such non-action or inaction, he in my view, has acted in a most indiscreet way and manner. Such defence, without the steps as mentioned hereinbefore, was violently negligent and careless and the same, should not be, in the facts and circumstances of this case, allowed either to be put forward as a defence in this contempt proceedings or considered.

14. It is true that by such interim order as made in this case no mandatory order to throw out the occupant employees, who were already there, was either made or such order was or is possible and an interim order made in a proceeding as concerned or like the one under consideration, cannot be brought into aid to throw out or evict the occupants of the said premises, yet I am of the considered view that the contemnor opposite party, did not act in a bonafides manner, in not bringing such facts as mentioned hereinbefore, to the notice of the Court and his defence as mentioned in paragraph 11 of the opposition viz. paucity of the staff or force, which stood in his way to carry out the order of the Court, cannot be accepted and such defence appears to be as not bonafides, for the circumstances as mentioned hereinbefore and also because of the fact that there was no legal evidence available or tendered in this proceeding, that the officer concerned brought such difficulties to the knowledge and notice of his superiors. The paucity of staff or force cannot be accepted as a bonafides defence, for not carrying out the order of the Court.

15. In view of the above, thus, when the employees concerned were already inside the said premises, the order as made, cannot be construed to mean that they should have been thrown out of the same, more particularly when, there was also no evidence or statement in this proceeding, that they were not staying inside. Mr. Majumder, of course contended that it cannot be a case that the employees concerned did not come out the said premises for all these days and since the passing of the order in question on 22nd August, 1979 and it was stated that as such, when they come out of the said premises, the contemnor opposite party, should not have allowed them to come within 50 yards of the said

premises, as directed. The statements that the employees concerned were not staying within the said premises for all these days and they had come out of the same, appear to be substantial. But, since such mandatory order to throw them out of the said premises, when they were inside the same, was not passed and as mentioned above, such order could not be passed, the arguments as advanced do not appeal to me. Thus, the contemnor opposite party, cannot be held guilty or responsible for such acts as alleged, viz. for allowing the employees concerned to come within 50 yards of the said premises.

16. On the basis as above, and the interim order as made, the contemnor opposite party, cannot also be held responsible or liable for the other acts of mischief, use and waste, as complained of by the said petitioners.

17. So, we shall have to consider now, if there has been any violation of the order as made and as alleged, viz. that the contemnor opposite party was guilty of not giving due protections to the petitioners, in the matter of their ingress to and egress from the said premises. As mentioned above, the contemnor opposite party has mentioned that the two petitioners are staying in a room inside the said premises and if that is true, there cannot be a case for contempt, because unless they have the facilities of going in or coming out of the said premises, how they could be staying there. The fact that the petitioners stay in the said premises, is also admitted. Thus, the charges as levelled on this ground also appear to me to be baseless.

18. So, after hearing the learned Advocates and in view of the above, I exonerate the contemnor opposite party, of the charges of contempt as alleged, now. But, I have it on record that the affidavit as filed by him, as a responsible Government official, is far from being satisfactory and in fact the same is irresponsible, so also his statements for not being able to carry out the orders out the Court, for paucity of staff or force.

19. Even though I exonerate the contemnor opposite party and discharge the Rule as such, I have it on record, that he must take necessary steps and see that there is no obstruction created by the employees in the matter of ingress to and egress from the said premises by the said petitioners or any one of them and the employees concerned are not allowed to handle and use the properties of the Company, as are lying within the said premises and for that, if necessary, he should post constant police guards at the said premises.

The Rule is thus discharged for the reasons as above. There will be no order as to costs.

Contempt application disposed of.