

(2001) 12 BOM CK 0003

In the Bombay High Court

Case No : Contempt Petition No. 326 of 1997

Nagdevi Kamgar Sabha

APPELLANT

Vs

Hiralal Maganlal and Company and Others

RESPONDENT

Date of Decision : 13-12-2001

Acts Referred:

Contempt of Courts Act, 1971 — Section 10, 2, 20
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 48(1), 50

Citation : (2002) 2 BomCR 459 : (2002) 93 FLR 865 : (2002) 1 MhLj 834

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : Colin Gonsalves, Deepak More, A.G.P, for the Appellant; C.U. Singh, for the Respondent

Judgement

V.C. Daga, J.—The petitioner herein is a registered trade union complaining breach of the order dated 3rd August 1995 passed below Ex. C-2 by the Industrial Court at Bombay in Revision Application (ULP) No. 98/1995; whereunder the respondents therein had agreed to pay wages to the workmen from 4th August 1995 subject to the outcome of the revision. In lieu of this offer made, and accepted by Mr. Bhat, appearing for the respondents before the Industrial Court, a statement was made by the counsel appearing for the workers union that the workers shall not report for work. This Statement was taken on record by the Industrial Court. The same was also acted upon by the Court by admitting the revision petition for final hearing.

2. The petitioner Union prayed for initiating action under the Contempt of Courts Act against respondent Nos. 1 to 3 for flouting the above order of the Industrial Court emanating from the statement made on behalf of the respondents, (which ultimately culminated in the order dated 3rd August 1995). Thus the petitioner prays for action against respondent Nos. 1 to 3 ("the said respondents" for short) for having committed breach of the order dated 3rd August 1995, passed by the Industrial Court, Mumbai.

BACKGROUND FACTS

3. The complaint was filed by the petitioner Union under item 1(a), (b) to (g) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act ("MRTU and PULP Act" for short) alleging therein that the respondents were engaged in Unfair Labour Practices on and from 4th March 1992. The Complaint was filed on behalf of 5 workers viz. Shri S. Kadam, S. Kalekar and M.S. Pawar, D. Shelke and V. Shelke, who were the workers of respondent No. 1 Company who had terminated the services of these 5 workers w.e.f. 4th March 1992 without notice and/or justification and/or for any justified reasons. The complaint was tried by the Labour Court, Bombay on its own merits and came to be allowed vide judgment and order dated 5th April 1995. The respondents were directed to reinstate the five workers, the members of the complainant Union with continuity of service w.e.f. 4th March 1992 without back wages within 2 months from the date of the order.

4. The above order was the subject matter of challenge before the Industrial Court, Mumbai in the revision petition referred to hereinabove. The application for interim relief was marked as Exh. C on the record of the Industrial Court. The Industrial Court after hearing the parties to the revision petition was pleased to pass the following interim order on 3rd August 1995 :

"Heard Advocate Shri Jalota for the Applicants. The Representative Shri Bhatt is present on behalf of the respondents. He strongly objects to the said revision. Advocate Shri N.B. Jalota has no objection to give wages to the workmen from 4-8-1995, subject to the outcome of this revision, to which Shri Bhatt has no objection. He is also making statement that workers will not report for work in the circumstances and hence, I pass the following order ;

ORDER

The revision Application is admitted. The Revision Application be expeditiously heard on 24-8-1995."

5. The said respondents failed to pay wages as per the undertaking incorporated in the above order. The petitioner union, therefore, by this petition moved for initiating action under the Contempt of Courts Act and prayed for awarding punishment for having committed wilful breach of the order of the Industrial Court referred to hereinabove.

6. The petition appears to have been filed on 19th December 1996. The Rule came to be issued on 24th October 1997. In reply to the Rule, counter affidavit filed by the respondents is on record containing justification for not obeying the order of the Industrial Court, in this view of the matter, the petition was heard finally.

RIVAL CONTENTIONS

7. The learned counsel appearing for the petitioner contended that when Revision

Application No. 91 of 1995 of the respondents came up for hearing before the learned Judge of the Industrial Court, the advocate for the respondents submitted that the respondents have no objection to give wages to the workmen with effect from 4th August 1995 subject to the out-come of the revision application provided the workmen do not report for work. The submission was conceded by the advocate appearing for the petitioner union (respondent before the Industrial Court). This statement came to be recorded in the order of the Industrial Court dated 3rd August 1995. The revision petition came to be admitted for final hearing. Thus, the understanding between the parties was translated into judicial order and, ultimately, it culminated in the order of the Court dated 3rd August 1995.

8. The learned counsel for the petitioner further submitted that the respondents deliberately and wilfully did not pay wages as per the above order dated 3rd August 1995. He further contended that the said respondents have failed and neglected to comply with their undertaking given by them to the Industrial Court on 3rd August 1995. This has been done wilfully, intentionally, deliberately and illegally; so as to deny the legal rights to the workmen to which they were entitled in view of the above order. The petitioner union submitted that the intention of the respondents was only to deny the legitimate claims of the workmen while disobeying the above Court order.

9. The learned counsel for the petitioner further contended and tried to canvass that in view of undertaking given by the respondents, the Industrial Court did not pass any stay order. The undertaking by the aforesaid respondents was accepted. It is a clear case of express undertaking to the Court incorporated in the order. The petitioner union acted to their prejudice by accepting the representation made by the said respondents through their undertaking. The union, in view of undertaking, did not insist for the interim order of the Court. In this view of the matter, the said respondents should not be allowed to take advantage of the breach of the representation made by them to the Court and also to the petitioners. The learned counsel for the petitioner emphasizing the necessity to take drastic action against the said respondents prayed that the respondents be held guilty of Contempt of Court committed by them by refusing to pay wages listed at Exh. A on or before 4th August 1997 and also prayed for appropriate directions to close breach.

10. Per contra, Shri C.U. Singh, the learned counsel appearing for the said respondents was heard at length. He first raised a preliminary objection to the maintainability of the petition and submitted that the petition being barred by limitation is liable to be dismissed. His submission is based on the judgment of the Apex Court in the case of Omprakash Jaiswal v. D.K. Mittal 2000 (1) Mh.L.J. 333 without realising that the said Judgment is no longer a good law in view of the subsequent judgment of Supreme Court in the matter of Pallav Seth v. Custodian and Ors. 2001 (4) Mh.L.J. 1 . I expected that said respondents would make fresh submissions in the light of the judgment of Pallav Seth (supra) but

the said respondents were found reluctant to make their revised submissions in the light of the subsequent judgment of the Supreme Court. In light of the said judgment, preliminary objection will have to be considered.

11. The second contention sought to be canvassed is that the jurisdiction of this Court for punishing the person for contempt being a summary jurisdiction, it has to be exercised with great care and caution and only when necessary for proper administration of law and justice. It is thus contended that special alternative effective remedy being available to the petitioner under Sections 48(1) and 50 of the MRTU and PULP Act, the general law of contempt should not be invoked.

12. The third submission raised in defence was with respect to the understanding of the order. The submission was that the understanding of the order of the Industrial Court was that the Hel Majoor (alleged workmen) were not required to attend duty but nevertheless they would be entitled to receive full wages for this period if they ultimately succeed in the matter. It was submitted that payments were to be made subject to the final outcome of the case and on the acceptance of the said representation the learned advocate for the union agreed that the workmen would not report on duty. It was thus submitted that nevertheless if this Court is of the view that the said respondents have committed any error of interpretation, then in that event, they shall unconditionally apologise and shall pray for an opportunity to purge the contempt, if any.

13. The learned counsel for the said respondents also brought to my notice an affidavit dated 29th October 1999 and the exhibits annexed thereto, namely, order dated 29th April 1999 passed by the Industrial Court, Mumbai, whereby original order came to be modified; wherein it was observed that considering the permanent closure of the business establishment, the order of payment dated 6th July 1997 did not survive and in view of this event, no payments would be due to the employees after 6th July 1997.

14. The learned counsel appearing for the petitioner, in rejoinder, submitted that the order of which breach has been alleged was passed, on 3rd August 1995. In view of this order, the workmen were entitled to get wages at the end of every month. In his submission, nonpayment of wages at the end of each month would furnish fresh cause of action to the petitioner. He, therefore, urged that the cause of action for taking action against the respondents being continuing one their petition could not be thrown out on the ground of limitation. He further submitted that the defence raised on the basis of interpretation of Section 20 of the Contempt of Courts Act is concerned, the same is no longer available to the said respondents in view of the recent judgment of the Supreme Court in *Pallav Seth v. Custodian* (supra). Hence, in his submission, it needs outright rejection.

15. Alternatively, he submitted that at any rate this Court can always take cognizance of the breach of the order committed during the period of one year preceding the date of presentation of the petition in view of the fact that at the

end of every month nonpayment of wages gives rise to a fresh cause of action. In this view of the matter, he urged that, at any rate, considering the date of filing of this petition as 19th December 1996, the respondents were bound to comply with their undertaking at least from the month of December 1995. He further urged that once the petition is presented to this Court, then, in that event the petition would not lose its sanctity merely because it was treated as a petition filed on the criminal appellate jurisdiction of this Court. He submitted that various divisions or sections of the office of any Court are, basically, made to meet administrative exigency or to facilitate better office working; so as to achieve administrative efficiency and to implement the system of administration of justice effectively. Therefore, in his submission, nobody much less the said respondents can be allowed to take advantage of the mere fact that the petition was presented on criminal appellate side of this Court. He further pointed out that the action was initiated against the said respondents under the provisions of the Contempt of Courts Act, right in the month of December 1996, and since then the petition is pending for final adjudication. He, therefore, urged that it would not be a proper exercise of discretion to direct the petitioner to approach alternate forum to ventilate its grievances. He sought to place reliance on the judgment of the Apex Court in *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, in support of his submission.

THE ISSUE

16. The substantive issue on the pleadings as between the parties is as under:

"Whether respondent Nos. 1 to 3 are guilty of Contempt of Court?"

CONSIDERATION AND FINDINGS

17. Having heard the parties at length and having perused the record and proceedings, it is clear that the express understanding between the parties, based on the representation made by the said respondents to the Court, has been incorporated in the order dated 3rd August 1995. Now, turning to the contention canvassed by the parties, so far as the breach of the order is concerned, the contention is that the order passed by the Industrial Court, based on the representation, made by the said respondents, has not been complied with. The short question, which now needs consideration is as to whether breach of the said order has been committed by the said respondents and whether it would amount to contempt under the provisions of the Contempt of Courts Act, in the light of various defences raised by the said respondents. In other words, whether the said respondents are guilty of Contempt of Court.

18. The circumstances in this case for the reasons recorded hereinafter leave no manner of doubt that the said respondents have committed breach of the order dated 3rd August 1995. Having said so, let me record my reasons for the same. Before advertng to record reasons, it would be necessary to consider the submissions made by the learned counsel appearing for the respondents. So far as first submission advanced by the learned counsel for the said respondents

based on the interpretation of Section 20 of the Contempt of Courts Act is concerned, it is needless, to mention that entire basis of the submission advanced in this behalf is no longer available in view of the recent judgment of the Supreme Court in the case of Pallav Seth (supra). In this view of the matter, I am of the opinion that this Court can take cognizance of the breach of the order committed during the period of one year preceding the date of presentation of this petition. Hence this petition is very much maintainable in the eye of law. At any rate, non-payment of wages at the end of every month would furnish fresh cause of action to the petitioner union to initiate action for breach of the order. The cognizance of the act constituting breach of the order during the period preceding one year before the date of presentation of the petition and for the breaches subsequent thereto can always be considered under the provisions of Contempt of Courts Act. On the canvass of this view of the legal position, the submission made by the learned counsel for respondent Nos. 1 to 3 in this behalf holds no water.

19. So far as next submission made with respect to availability of an alternate remedy u/s 48(1) and 50 of the MRTU and PULP Act for enforcing order made by the subordinate Court is concerned, one thing must be understood in clear terms that the jurisdiction of the High Court to initiate contempt proceedings in an appropriate case u/s 10 cannot be said to be ousted only because, the order is capable of being enforced by some other mode. The submission is that, it is a well settled law that when there are special and general law provisions, the special law prevails over the general law and, when special procedure and special provisions are contained u/s 48(1) and 50 for taking action for disobedience of the order of the court, the general law of Contempt of Court cannot be invoked. In support of this submission, reliance was placed on the single Judge bench judgment in the case of Mohammad Salam Anamul Haque Vs. S.A. Azmi and Others, .

20. The other shade of the same submission was further advanced by the learned counsel for the said respondents that the weapon of contempt should not be used for execution of decree or implementation of the order for which alternate remedy is provided in law. Discretion is given to the Court for maintenance of the Court's dignity. He further contended that, if no steps were taken by the petitioner to execute the order in accordance with the procedure prescribed by law, the petitioner should not be encouraged to invoke contempt jurisdiction of this Court. In this view of the submission reliance was placed on the judgment of the Apex court in the case of R.N. Dey and Others Vs. Bhagyabati Pramanik and Others, . The submission is that this Court should refuse to exercise its contempt jurisdiction on the face of availability of alternate remedy.

21. It is no doubt true that where an effective remedy is provided by the Statute for enforcing the order and the petitioner does not avail of that remedy and rushes to the High Court, the High Court would certainly be justified without

there being any thing else than mere disobedience of the order in declining to entertain the contempt petition. It is thus clear that the existence of remedy for enforcing the order made by the subordinate Court, as also the question : whether the petitioner has availed of that remedy is a relevant question for consideration at the time when the Court is called upon to form an opinion that a prima facie case for initiating proceedings for contempt is made out and that the respondents or the alleged contemnors should be called upon to show cause why they should not be punished. Once having entertained the petition and called upon the said respondents to show cause why they should not be punished, and having kept the petition pending for more than 4 years, it would not be a proper exercise of discretion to drive the petitioner union to exhaust alternate remedy unless the facts involved warrant recording of evidence and investigation which is difficult in the summary jurisdiction provided under the Contempt of Courts Act. If this court has chosen to exercise discretion to entertain a contempt petition, it would not be proper on the part of this Court at the time of final hearing, after 4 years, to ask the petitioners to go to alternate forum. If this Court had not entertained this petition, the petitioner could have moved the Industrial Court u/s 48 or any other provision of the MRTU and PULP Act and by this time the report or intimation would have been before this Court to deal with the matter. In this view of the matter, it would not be proper for this court to dismiss this petition on this count, that too after having entertained and heard it on merits. The ultimate jurisdiction to punish for Contempt of Industrial Court u/s 48 lies with the High Court.

22. The next submission made and contention advanced with regard to the understanding of the order dated 3rd August 1995 needs consideration. The contention raised in this behalf is nothing but a dishonest plea raised by respondent Nos. 1 to 3. The statement was made by the employer, during the course of hearing of the application, wherein union was seeking interim relief, knowing full well the consequences thereof. The purpose of statement in the nature of undertaking was to seek workable arrangement with the assistance of the Industrial Court. The intention was to keep the workers away from the business establishment during the pendency of the litigation. The purpose of undertaking was to prevent them from reporting on duty pending disposal of the revision petition. The respondents (employer) for their own purpose treated this order as an order providing them an interim respite. In this backdrop, it is too much to accept the contention on behalf of the employer that the workers were entitled to receive their full wages subject to the final outcome of the revision petition. Had it been so, then in that case, in natural course the workers would have received their wages. The order dated 3rd August 1995 was not necessary. The workers would have been free to report on duty in pursuance of the order of the Labour Court and the employer could have been under obligation to obey it. In order to stall implementation of the order of the Labour Court the interim order dated 3rd August 1995 was obtained by the employer. Thus the defence sought to be put in service is absolutely false, untenable and unjustifiable. I am

not at all satisfied with the bona fides of pleas put forward by the said respondents. The attitude of the said respondents is reprehensible to say the least. In the whole backdrop only one meaning of the order is possible i.e. the said respondents had no objection to pay wages to the workmen w.e.f. 4th August 1995 subject to the condition that the workers would not report for work. This undertaking on behalf of the said respondents to pay the wages to those workmen came to be recorded in the order dated 3rd August 1995. It is a clear case of express undertaking to the Court incorporated in the order. The same has been translated and given effect to by implementing the same.

23. At this juncture it will further be clear that the Industrial Court vide its subsequent order dated 29th April 1999 had also given sufficient indication to the said respondents with regard to their liability and obligation to make payment of wages for the period prior to 6th July 1997. The order dated 29th April 1999 specifically records the submission made by the learned counsel appearing for the revisional petitioners (present respondents) that they had surrendered shop premises on 6th July 1997, which was in their possession on tenancy basis. The same having been occupied by the purchaser Mrs. Yasmin Sofayya Kapadia, their liability to make payment from 6th July 1997 did not survive. The submission advanced in this behalf before the Industrial Court was pregnant with the understanding that the respondents were liable to make payment of wages for the period prior to 6th July 1997 i.e. from the date of previous order of the Industrial Court dated 3rd August 1995. This submission made by the said respondents was accepted by the Industrial Court. The liability to pay wages was restricted to 6th July 1997. Had there been an understanding of the employer that the wages were to be paid to the workers after the final out-come of the revision petition, it was not necessary to seek any subsequent order like one obtained in the present case, an order dated 29th April 1999. Therefore, there is no justification to contend that respondent Nos. 1 to 3 were entertaining some misunderstanding with regard to the order dated 3rd August 1995. The said respondents in order to show their bona fide could have made payments at least after the order dated 29th April 1999. Had the payment been made, the defence could have assumed some importance. In this view of the matter, I have no manner of doubt that their defence is per se contradictory. The respondent Nos. 1 to 3 could not be under bona fide belief that the workers were not required to attend duty but nevertheless they would be entitled to receive full wages if they, ultimately, succeed in the matter, especially, when the workers were successful before the Labour Court and were entitled to be reinstated, It is therefore apparent from the facts narrated that the said respondents have violated undertaking given to the Court. I am clearly of the opinion that they have committed breach of the order and undertaking given to the Court and thereby committed an act punishable under the provisions of Contempt of Courts Act and are liable to be punished. Before parting with this case I may refer to Halsbury's Laws of England - Fourth Edition, vol. 9 page 44 (para-75). The observation is made :

"An undertaking given to the Court by a person or corporation in pending proceedings, on the faith of which the Court sanctions a particular course of action or inaction, has the same force as an injunction made by the Court and a breach of the undertaking is misconduct amounting to contempt."

The attitude of the respondents is of deliberate defiance, wilful neglect knowing it to be well that the plea taken is false, dishonest and untrustworthy. This Court has no option except to convict respondent Nos. 2 and 3 and sentence them imprisonment in civil jail and impose fine.

24. Now coming to the question of sentence, in *Dhananjay Sharma v. State of Haryana* it was said that: (SCC p. 777, para 38).

"The stream of justice has to be kept clear and pure and anyone selling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice."

25. It is apparent from the facts narrated hereinabove that all the three respondents namely respondent Nos. 1 to 3 have polluted the stream of justice. The respondents have continued with the contumacious conduct with impunity even after the order of the Industrial Court dated 29th April 1999 which had given sufficient indication and had put the respondents on notice that their liability to make payment was from the date of order dated 3rd August 1995 till 8th July 1997. The undertaking given to the Court was breached with full knowledge that the stand taken by them was absolutely untenable. In this view of the matter, it is not a case wherein the apology should be accepted from the respondents who have committed breach of undertaking in spite of availability of legal brain to assist and guide them. I have therefore no hesitation in sentencing the respondents, namely, respondent Nos. 2 and 3 to imprisonment in addition to fine. Both the respondents shall undergo simple imprisonment for 3 days in addition to paying fine of Rs. 5,000/- each, including respondent No. 1. Fine is to be paid within two weeks from the date of this judgment. In default the respondent Nos. 2 and 3 shall further undergo civil imprisonment for one month. The respondents are also called upon to purge contempt within two weeks from the date of this order.

The petition is allowed. Rule is made absolute in terms of the above order, the petitioner union shall also be entitled to costs of this petition quantified in the sum of Rs. 2,500/- which the respondents shall pay along with the fine imposed herein.

26. At this stage, the learned counsel for the respondents prayed for stay of effect and operation of this judgment for four weeks; so as to enable the contemnors to exercise their right of statutory appeal.

Heard the learned counsel for the respondents. None for the respondent union.

Considering the reasonableness of the request made, the effect and operation of

this judgment is stayed for a period of four weeks, subject to deposit in this Court, within one week from today, the amount of fine imposed and cost awarded by this Court. The deposit of fine and cost shall be without prejudice to the rights of the contemnors.

Issuance of certified copy is expedited.