
(2000) 03 CAL CK 0045

In the Calcutta High Court

Case No : Special Jurisdiction (Contempt) W.P. No. 14693 (W) of 1998 C.P.A.N.
191 of 1999

North Calcutta Co-operative Labour Contract Construction
Society Limited and Others

APPELLANT

Vs

Shri R. Tewari

RESPONDENT

Date of Decision : 10-03-2000

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2000) 2 CALLT 329

Hon'ble Judges : Altamas Kabir, J

Bench : Single Bench

Advocate : Mr. Ashoke De and Mr. B.M. Goswami, for the Appellant; Mr. Rathin Das and Mr. Uttar Mazumdar, for the Respondent

Judgement

A. Kabir, J.—This contempt application arises out of the order dated 10th September, 1998, passed by me on the writ application filed by the petitioners herein disposing of the same with certain directions for absorption of the writ petitioners in Group-D posts under the respondents.

2. When the contempt application was moved, It had been submitted on behalf of the alleged contemnors/opposite parties that an appeal had been preferred by the respondents against the aforesaid order, together with an application u/s 5 of the Limitation Act for condonation of the delay in filing the appeal. Since then, the application for condonation of delay has been allowed, and an application for stay of the order appeal against is pending decision.

3. Appearing on behalf of the alleged contemnors/opposite parties, Mr. Rathin Das took a preliminary objection as to whether the contempt proceedings should be continued with during the pendency of the appeal and the stay application filed therein. Mr. Das urged that in the instant case the very purpose of filing the appeal would be rendered meaningless and the appeal and the stay application would become infructuous. If the writ petitioners were allowed to enforce the

order appealed against before the stay application could be heard out.

4. Mr. Das, however, submitted that in the given circumstances It would be for the Court to decide as to whether or not the contempt proceedings should be continued before the stay application in the appeal was heard. Mr. Das also urged that during the pendency of the contempt proceedings the alleged contemnors/ opposite parties have already taken up the preliminary task of scrutinising the names submitted by the petitioner No. 1.

5. In support of his submission Mr. Das. firstly referred to the decision of the Hon"ble Supreme Court in the case of Modern Food Industries (India) Ltd. and Anr. v. Sachidanand Dass and Anr., 1995 Supp.(4) SCC 465 , herein in similar circumstances the Hon"ble Supreme Court held as follows:--

"Before the High Court, appellants urged that before any contempt proceedings could be initiated, it was necessary and appropriate for the Division Bench to examine the prayer for stay, or else, the appeal Itself might become infructuous. This did not commend itself to the High Court which sought to proceed with the contempt first. We are afraid, the course adopted by the High Court does not commend itself as proper. It without considering the prayer for stay, obedience to the single Judge"s order was insisted upon at the pain of committal for contempt, the appellants may find, as has now happened, the very purpose of appeal and the prayer for Interlocutory stay infructuous. It is true that a mere filing of an appeal and an application for stay do not by themselves absolve the appellants from obeying the order under appeal and that any compliance with the learned single Judge"s order would be subject to the final result of the appeal. But then the changes brought about in the interregnum in obedience of the order under appeal might themselves be a cause and source of prejudice, wherever the order whose disobedience is complained about is appealed against and stay of its operations is pending before the Court, U will be appropriate to take up for consideration the prayer for stay either earlier or at lease simultaneously with the complaint for contempt. To keep the prayer for stay stand-by and to Insist upon proceeding with the complaint for contempt might in many conceivable cases, as here, cause serious prejudice. This is the view taken in State of J&K v. Mohd. Yaqoob Khan."

6. As will appear from the above extract from the aforesaid Judgment, the Division Bench relied on an earlier decision of a three-Judges Division Bench of the Hon"ble Supreme Court in the case of State of J & K v. Mohd. Yaqoob Khan, reported in 1993 (4) SCC 167, wherein also It was observed that 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 of the stay matter, the other case should have been taken up.

7. Mr. Das submitted that having regard to the said views expressed by the Hon"ble Supreme Court, the contempt proceedings were liable to be adjourned till the stay application and the appeal were heard and disposed of.

8. Appearing for the writ petitioners and opposing the prayer for adjournment of the contempt proceedings, Mr. Jayanta Mitra learned Advocate, submitted that It had been observed by the Hon'ble Supreme Court in the Modern Food Industries case (supra) that the mere filing of an appeal and an application for stay do not by themselves absolve the appellants from obeying the order under appeal and that any compliance with the order of the learned single Judge would be subject to the final result of the appeal. Mr. Mitra urged that no absolute proposition had been laid down that in all cases where an appeal and a connected application for stay were pending, proceedings for contempt in respect of the order appealed against could not be continued till the disposal thereof.

9. Mr. Mitra also referred to the decision of a learned single Judge of this Court in the case of Sri Kanti Tarafdar v. Sri S.K. Chaudhary. Collector of Customs (Preventive) W.B., reported in 1995 (1) CHN 269, wherein relying upon the decision in the Modern Food Industries case (supra) the learned single Judge observed that the Trial Judge should not ordinarily stay the hearing of the application for contempt merely because an application for stay is pending before the appeal Court, unless the alleged contemnors can satisfy the Court that the contempt application is pressed with such urgency so as to defeat the right of appeal and also of applying for stay before the appeal Court.

10. Mr. Mitra submitted that the writ petitioners had not proceeded in hot haste to implement the directions given in the writ proceedings and that about one and a half years have elapsed since the passing of the final order in the writ petition. Mr. Mitra urged that ample opportunities have been given to the contemnors/opposite parties to have the stay application in the appeal heard but it had allowed the proceedings before the appeal Court to drag on indefinitely, probably in view of the decision taken by the Railway Authorities to Implement the directions in the writ proceedings as will appear from the letter dated 17th November. 1999. addressed by the Chief Personnel Officer Eastern Railway. Calcutta, to the Divisional Railway Manager, Eastern Railway.

11. Mr. Mitra lastly referred to and relied on the decision of a Two-Judges Division Bench of the Hon'ble Supreme Court in the case of Dr. H. Phunindre Singh and Others Vs. K.K. Sethi and Another, , wherein a view different from that in the Modern Food Industries case was expressed in the following terms :--

"Heard learned counsel for the parties. In our view, in the facts of the case, particularly when the order passed by the learned single Judge of the High Court was not stayed by the Division Bench, the contempt petition should have been disposed of on merits instead of adjourning the same till disposal of the appeal, so that question of deliberate violation of the subsisting order of the Court is considered and enforceability of the Court's order is not permitted to be diluted. In the facts of the case, we find that the contempt petition should be disposed of within a period of three months from the date of the communication of this order and we order accordingly. It is further directed that before disposal of the contempt petition, the pending appeal should not be taken up for hearing. The

appeal is accordingly disposed of."

12. Mr. Mitra urged that having regard to the above view expressed by the Hon''ble Supreme Court, the contempt application was required to be disposed of before the pending appeal or the application for stay made therein were taken up for hearing.

13. I have carefully considered the views expressed by the Hon''ble Supreme Court and this Court in the several decisions cited on behalf of the parties and the ratio of the said decisions appears to be that the Court, whose order is in contempt, should adjourn the hearing of the contempt application to enable the Appeal Court to hear out the stay application filed in the appeal.

14. If an appeal stands to be rendered infructuous because of the contempt application being proceeded with, it would only be just and fair to adjourn the contempt proceedings till at least the stay application in the appeal is heard out. If any stay is granted on such application, nothing further, remains to be said. If no stay or interim order is passed on such application the same would be a pointer to the Court where the contempt proceeding is pending to exercise its discretion in the matter of continuing with or postponing the hearing of the contempt application.

15. In such circumstances, let the contempt proceedings remain stayed till the stay application is considered by the Appeal Court.

16. Contempt proceeding stayed