

(2016) 09 CHH CK 0022
In the Chhattisgarh High Court
Case No : Contempt Case (C) No.479 of 2012

Pal Singh Chawla

APPELLANT

Vs

T.A. Kirmani

RESPONDENT

Date of Decision : 28-09-2016

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 10, Section 12

Citation : (2017) 1 CGLJ 253

Hon'ble Judges : Shri Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Mr. Ashish Shrivastava and Mr. Soumya Rai, Advocates, for the Petitioner; Mr. Kishore Bhaduri and Mr. N. Naha Roy, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Shri Sanjay K. Agrawal, J.—This contempt petition has been preferred under Article 215 of the Constitution of India read with Sections 10 and 12 of the Contempt of Courts Act, 1971 for non-compliance of the order dated 17-9-2012 passed in W.P.(C)No.1778 of 2010 (Pal Singh Chawla v. Hindustan Petroleum Corporation Limited and others).

2. Mr. Ashish Shrivastava, learned counsel appearing for the petitioner, would submit that the order passed by the writ Court dated 17-9-2012 by which the orders dated 27-7-2009, 17-2-2010 and 18-3-2010 were quashed and the respondent Hindustan Petroleum Corporation Limited (HPCL) was directed to restore the retail outlet at Fingeshwar to the petitioner herein forthwith, has not been complied with in letter and spirit.

3. Mr. Kishore Bhaduri, learned counsel appearing for the respondent/contemnor, would submit that against the order dated 17-9-2012 passed in W.P. (C)No.1778/2010, a writ appeal was preferred by HPCL being W.A.No.1139/2012 in which the writ appeal Court has held that the show cause notice dated 2-6-

2009 has not been quashed, termination of dealership will go on and HPCL should proceed further after getting the sample retested. He would further submit that notices were issued to the petitioner for retesting of sample but he did not turn-up and thereafter, proceeding/testing has been concluded and the petitioner's dealership has been terminated by the order dated 9-9-2013 which has not been assailed even in a writ petition and that has become final as such, the order complained of has been complied with in its letter and spirit.

4. Mr. Ashish Shrivastava, in additional submission, would submit that the order passed in the writ petition dated 17-9-2012 was though clarified by the writ appeal Court on 3-1-2013, but ultimately, the order of termination of dealership of the petitioner's retail outlet was made on 9-9-2013 and therefore from 3-1-2013 to 9-9-2013, the retail outlet should have been restored by HPCL and that is the clear non-compliance of the order passed by this Court.

5. In reply to this, Mr. Bhaduri would submit that though the Court has directed to handover the retail outlet to the petitioner, but the agreement entered into with the private respondent was not quashed by the writ court. He would further submit that the Division Bench in writ appeal has clearly held that the show cause notice dated 2-6-2009 for failure of Motor Spirit Sample has not been quashed and therefore, proceeding has started from that stage. He would also rely upon Annexure R-6 i.e. the Random Inspection Report to demonstrate that if any of the tests fail to meet the specification, sales and supplies of all products should be suspended. He would also bring additional facts to the notice of the Court that the writ appeal Court has clearly held that proceeding has to commence from show cause notice stage meaning thereby that as per the random inspection report dated 30-3-2009, once the sample fails, sales and supplies of all products shall stand suspended and therefore, HPCL has taken possible view flowing from the order of the writ appeal Court and as such, the retail outlet was not restored to the petitioner particularly, when the agreement already entered with the private respondent is continuing and submits that the contempt proceeding be dropped.

6. I have heard learned counsel for the parties, considered their rival contentions cautiously and perused the records thoroughly.

7. In order to decide the plea raised for punishing the respondent for committing contempt of the order passed by the Court, it would be appropriate to notice para 20 of the order passed by the writ Court in the writ petition which states as under :-

"20. In view of the above and for the reasons stated herein above, the impugned orders dated 27.07.2009 (Annexure P/1) and 17.02.2010 (Annexure P/2) and the order dated 18.03.2010 (Annexure P/3) are quashed. The respondent-Corporation is directed to restore the RO at Fingeshwar, Raipur to the petitioner, forthwith. The respondent No.3 may be granted RO at the original place from where he has been shifted."

8. A careful perusal of the aforesaid order would show that the order dated 27-7-2009 by which the petitioner's request for retesting of sample was refused, the order dated 17-2-2010 by which dealership agreement between the petitioner and the HPCL was terminated and the order dated 18-3-2010 by which letter of intent was issued to the private respondent, were quashed and HPCL was directed to restore the retail outlet to the petitioner at Fingeshwar. A writ appeal was filed by HPCL against the said order in which the Division Bench of this Court has passed following order :-

"10. It is not necessary to deal with the submissions raised by counsel for the Appellants.

11. The Single Judge has merely quashed the orders dated 27.7.2009 and 17.2.2010 by which, the Corporation had declined the request to send the sample for re-testing and terminated the dealership. However, the Show Cause Notice dated 2.6.2009 has not been quashed. The result of the order of the Single Judge is that the proceeding for termination of the dealership will go on and the Corporation should proceed further after getting the sample re-tested.

12. At the time of checking, three samples were taken. One sample was already tested at the retail outlet. It is admitted by the Corporation that it has two samples with them. It is always opened to them to send the samples for re-testing and proceed further in accordance with law."

9. A careful perusal of the order of the writ appeal Court would show that it has been held that the show cause notice dated 2-6-2009 has not been quashed and therefore, the proceeding for termination would go on and the Corporation should proceed further after getting the sample retested. It is the stand of HPCL in this petition that despite notices for retesting, the petitioner failed to turn-up and therefore the proceeding concluded. It is also the stand of HPCL, the contemnor, that by virtue of holding that the show cause notice has not been quashed by the writ appeal Court, sales and supplies of all products stand suspended on random inspection report on failure of tests and that is the possible view that has been taken by HPCL.

10. The order of the writ Court was passed on 17-9-2012 against which writ appeal with an application for grant of stay was preferred by the HPCL before the Division Bench on 5-11-2012 and the same was decided on 3-1-2013. Since writ appeal questioning the order of the learned Single Judge was pending from 5-11-2012 to 3-1-2013, no case for contempt will be made out in that period as the substantive writ appeal along with application for interim relief was pending consideration before the writ appeal Court, which was finally decided by order dated 3-1-2013 explaining the order/modifying the order of the writ Court.

11. In the matter of Modern Food Industries (India) Ltd. and another v. Sachidanand Dass and another 1995 Supp (4) SCC 465 relying upon the earlier decision in the matter of State of J & K v. Mohd. Yaqoob Khan (1992) 4 SCC 167 the Supreme Court has held that initiation of contempt proceedings for non-

compliance of the order of the writ court during pendency of appeal and application for staying operation of the order complained of is not proper and held as under :-

"4. ... Wherever the order whose disobedience is complained about is appealed against and stay of its operation is pending before the Court, it will be appropriate to take up for consideration the prayer for stay either earlier or at least 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* (supra).

5. In the present case, under the threat of proceedings of contempt, the appellants had to comply with the order of the learned Single Judge notwithstanding the pendency of their appeal and the application for stay. The petitioners are confronted with a position where their stay application is virtually rendered infructuous by the steps they had to take on threat of contempt.

6. ... It will be appropriate for the High Court to take up and dispose of the application for stay without reference to the developments in the interregnum, namely, that the respondent had to obey the order of the learned Single Judge under pain of proceedings of contempt. Depending upon the outcome of the appellants' application for stay, the further question whether or not the reinstatement should be reversed would arise."

12. In view of the above stated legal provision, no contempt can be said to be made out for non-compliance of the order till the writ appeal was decided by the writ appeal Court on 3-1-2013.

13. So far as non-compliance of the order of the writ Court from 3-1-2013 to 9-9-2013 i.e. the date of termination of dealership is concerned, fact remains that the writ appeal Court has explained the order of the writ court as stated above and granted liberty to the HPCL to proceed further from the stage of show cause notice after getting the sample retested. As per the stand of the HPCL, once the show cause notice has not been quashed as per the random inspection report upon the failure of test, sales and supplies of all products shall remain suspended. Therefore, the HPCL is justified in not restoring the retail outlet to the petitioner, whereas, according to the petitioner, the HPCL ought to have restored the retail outlet to the petitioner during that period, as there was no impediment in enforcing the order of the writ court restoring the retail outlet as the writ appeal Court has not finally interfered with the order of the writ Court.

14. It is well settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. (See *Sushila Raje Holkar v. Anil Kak* (Retd.) AIR 2008

(Supp-2) SC 1837 : (2008 AIR SCW 3587) and Three Cheers Entertainment Pvt. Ltd. & Ors. v. C.E.S.C. Ltd. AIR 2009 SC 735 : (2008 AIR SCW 7951).

15. It is also well settled that if an order is capable of more than one interpretation giving rise to variety of consequences, noncompliance of the same cannot be held to be wilful disobedience of the order so as to make out a case of contempt enabling the serious consequence including imposition of punishment. (See Dinesh Kumar Gupta v. United India Insurance Company Limited and others (2010) 12 SCC 770.)

16. In Dinesh Kumar Gupta (supra), Their Lordships of the Supreme Court while dealing with the general principles in civil contempt especially nature and scope of Section 2(b) of the Contempt of Courts Act, 1971 have held thus,

"17. ... In our considered opinion, the answer clearly has to be in the negative in view of the well-settled legal position reflected in a catena of decisions of this Court that contempt of a civil nature can be held to have been made out only if there has been a wilful disobedience of the order and even though there may be disobedience, yet if the same does not reflect that it has been a conscious and wilful disobedience, a case for contempt cannot be held to have been made out. In fact, if an order is capable of more than one interpretation giving rise to variety of consequences, non-compliance with the same cannot be held to be wilful disobedience of the order so as to make out a case of contempt entailing the serious consequence including imposition of punishment. However, when the courts are confronted with a question as to whether a given situation could be treated to be a case of wilful disobedience, or a case of lame excuse, in order to subvert its compliance, howsoever articulate it may be, will obviously depend on the facts and circumstances of a particular case; but while deciding so, it would not be legally correct to be too speculative based on assumption as the Contempt of Courts Act, 1971 clearly postulates and emphasises that the ingredient of wilful disobedience must be there before any one can be hauled up for the charge of contempt of a civil nature."

17. In light of the legal position enunciated by the Supreme Court, if the facts of the case are examined, it appears that the order of the writ Court directing restoration of retail outlet to the petitioner was explained/modified by the writ appeal Court to some extent and the HPCL thereafter, following the order of the writ appeal Court proceeded further and thereafter, terminated the dealership of the petitioner on 9-9-2013. Therefore, following the law laid down by the Supreme Court in Dinesh Kumar Gupta (supra), it cannot be held that the respondent has wilfully disobeyed the order of the writ Court directing restoration of retail outlet between 3-1-2013 and 9-9-2013.

18. Consequently, the contempt case is closed and the rule issued is hereby discharged. No order to cost(s).