

(2011) 03 AHC CK 0304
In the Allahabad High Court
Case No : Contempt No. 383 of 2011

Prabhat Chandra Jain and Others

APPELLANT

Vs

Sri Navneet Sehgal, Chairman and Another

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Constitution of India, 1950 — Article 129, 215, 246(1), 246(2)
Contempt of Courts Act, 1971 — Section 10, 12, 14, 15, 17
Limitation Act, 1963 — Section 17
Constitution of India, 1950 — Article 129, 215, 246(1), 246(2)
Contempt of Courts Act, 1971 — Section 10, 12, 14, 15, 17
Limitation Act, 1963 — Section 17
Constitution of India, 1950 — Article 129, 215, 246(1), 246(2)
Contempt of Courts Act, 1971 — Section 10, 12, 14, 15, 17
Limitation Act, 1963 — Section 17

Citation : (2011) 3 ADJ 622 : (2011) 8 RCR(Civil) 2037

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anil Kumar, J.—Heard Sri Kuldeep Pati Tripathi, learned Counsel for the applicant.

2. Factual matrix of present case as submitted by learned Counsel for the applicants are that they are working in U.P. Jal Nigam, for redressal of their grievances applicant No. 1 (Sri Prabhat Chandra Jain) had filed a Writ Petition No. 864 (SB) of 2004, disposed of by order dated 19.07.2006 after placing reliance on the judgment given by Hon"ble the Apex Court in the case of Harvindra Singh v. Chief Engineer, Karmik and Ors AIR 2005 SCW 5995, the relevant portion is as under:

We, therefore, direct that the Petitioner, for the reasons given in the judgment, shall be treated to have continued in service till the age of 60 years. Since the Petitioner has already retired, after attaining the age of 60 years, he shall be paid his post retiral dues treating him to have retired on completing the age of

60 years, with all consequential benefits.

3. Further the applicant Nos. 2 and 3 have also filed a Writ Petition No. 556 (SB) of 2004 Rajesh Nath Chaturvedi and Ors. v. State of U.P. and others, disposed of by order dated 19.07.2006 in terms to the order passed in Writ Petition No. 864 (SB) of 2004.

4. Aggrieved by the abovesaid orders, U.P. Jal Nigam approached Hon"ble the Apex Court by filing Special Leave Petition, dismissed vide order 27.08.2007, relevant portion is reproduced hereinbelow:

Counsel for the Petitioners states that the impugned orders have already been complied with. The Special Leave Petitions have, therefore, become infructuous and are dismissed as such.

5. As per the submission made by learned Counsel for the applicants in spite of the fact Hon"ble the Apex Court has dismissed the SLP against the order dated 19.07.2006 passed by the writ court, no heed has been paid, so for the said purpose representations have been made on 06.08.2009 (Annexure-5) and on 14.12.2009 (Annexur Nos. 6 and 7) but nothing has ben done till date by the Respondent (Chairman, U.P. Jal Nigam and Managing Director, U.P. Jal Nigam), so the present contempt petition filed u/s 12 of the Contempt of Courts Act, 1971 (hereinafter referred to as the Act).

6. I have heard counsel for the applicants and perused the record. Core question which is to be decided in the present case is whether the present contempt petition filed by the applicants u/s 12 of the Act for alleged violation of the orders dated 19.07.2006 passed in Writ Petition No. 864 (SB) of 2004 and Writ Petition No. 556 (SB) of 2004 is within the statutory period of limitation as provided u/s 20 of the Act.

7. In order to decide the same, it is appropriate to state certain facts and backgrounds in view of which as Section 20 of the Act has been enacted.

8. During pre-independence era the High Courts of Judicature were established by Letters Patent and were made superior Courts of record. As such they had power to attach and commit for acts amounting to contempt of their own proceedings as Contempt of Court without reference to whether the acts alleged constituted an offence under the Indian Penal Code.

9. However, there appears to be conflict between High Courts as to the jurisdiction of the High Court to punish for contempt of subordinate courts. The Madras High Court in the case of Venkata Rao, 12 I.C. 293 and the Hon"ble Bombay High Court in the case of King Emperor v. P.G. Kurkarni, AIR 1922 Bom. 52 held that they possess power to protect their subordinate courts against such contempt.

10. Further, it was also not clear as to whether the Court of Judicial Commissioners of the Central Provinces, Oudh and Sind have these general

powers either in regard to contempt of their own proceedings or of the proceedings of Courts subordinate to them. It is in these circumstances that the Contempt of Courts Act (XII of 1926) (hereinafter referred to as the "Act, 1926") was enacted. Though the statement of objects and reasons included that the Act is being enacted considering that the Court of Judicial Commissioner whether would have power of contempt or not but the Act, 1926 as enacted, in fact, did not provide anything in respect to Judicial Commissioner.

11. After independence in the Constitution specific provisions were made with respect to powers of Contempt of Supreme Court and High Courts under Articles 129 and 215 of the Constitution of India. Article 215 of the Constitution makes every High Court, a Court of record having power to punish for its contempt. It reads as under:

High Courts to be Courts of record.-Every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself.

Courts of record are not defined either in the Constitution or in General Clauses Act. However, the Courts of record are those, whose acts and judicial proceedings are enrolled for a perpetual memorial testimony. Their proceedings are kept on record and are conclusive evidence of that which is recorded therein. Whether a Court is Court of record or not would depend on the fact as to whether it has jurisdiction to punish for contempt of itself or or other substantial offences. In respect to the statutory enactments, Article 246(1) of the Constitution provides that the Parliament has exclusive power to make laws in respect to such matters as are enumerated in List I in Seventh Schedule. Article 246(3) empowers the Legislature of the State to make law with respect to the subjects mentioned in List II in the Seventh Schedule subject to Article 246 (1) and (2). Article 246(2) provides that notwithstanding anything in Clause 3 Parliament and subject to Clause 1 the legislature of any State shall have power to make laws with respect to any of the matters enumerated in List III Seventh Schedule of the Constitution. In respect to Courts, Entry 77 List-I VII Schedule provides as under:

Constitution, organization, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practice before the Supreme Court.

23. Similarly, in respect to Contempt of Courts other than that of Supreme Court, entry 14 List III Schedule Seventh provides as under:

Contempt of Court, but not including contempt of the Supreme Court.

Therefore, the Constitution clearly provides for a law to be made by the Parliament or State legislature to the extent mentioned in Entry 77, List I and Entry 14 List III. The Parliament stepped in by enacting "Contempt of Court Act, 1952" (Act 33 of 1952) (hereinafter referred to as "Act, 1952") after the

commencement of Constitution and replaced the Act, 1926. The aforesaid Act was a short one and basically provided the extent of punishment which could be imposed by the High Courts in the matter of contempt. The Act, 1952 vide Section 6 thereof repealed not only Act, 1926.

12. On 1st April, 1960 a Bill was introduced in the Lok Sabha to consolidate and amend the law relating to contempt of courts. A Committee under the Chairmanship of Mr. H.N. Sanyal, Additional Solicitor-General, was set up and it was required inter alia to examine the law relating to contempt of courts and to suggest amendments therein. On the submissions of the Sanyal Committee's report the Bill was referred to a Joint Committee of the Houses of Parliament.

13. The Contempt of Courts Act, 1971 was enacted, as per the Preamble, with a view "to define and limit the powers of certain Courts in punishing Contempts of Courts and to regulate their procedure in relation thereto". It provides for action being taken in relation to civil as well as criminal contempt.

14. Sections 3 to 7 of the Contempt of Courts Act, 1971 provides for what is not to be regarded as contempt. Section 8 specifies that nothing contained in the Act shall be construed as implying that any other valid defence in any proceedings for Contempt of Court ceases to be available merely by reason of the provisions of the 1971 Act. Section 9 makes it clear that the Act will not to be implied as enlarging the scope of contempt. Section 10 contains the power of the High Court to punish contempts of subordinate Courts, while Section 12 specifies the punishment which can be imposed for Contempt of Court and other related matters. Procedure to be followed where contempt is in the face of the Supreme Court or a High Court is provided in Section 14, while cognizance of criminal contempt in other cases is dealt with by Section 15. Section 15 has to be read with Section 17 which provides for procedure after cognizance has been taken u/s 15. A decision of the High Court to punish for contempt is made appealable u/s 19 of the Act.

Sections 20 reads as follows:

Limitation for actions for contempt.-No court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

Section 20 of the Act is mandatory in the sense that if the proceedings are sought to be initiated after expiry of one year from the date the alleged contempt has been committed, it would be beyond the jurisdiction of the Court to initiate such proceedings.

15. Further, Section 20 of the Contempt of Courts Act provides that no court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. Section 20 of the Contempt of Courts Act came

for consideration before the Apex Court in Om Prakash Jaiswal Vs. D.K. Mittal and Another [OVERRULED], In the aforesaid case, the order of the Court was passed on 19.12.1986 on an undertaking. The contempt was alleged to have been committed on 11.1.1987. The application for initiating proceedings u/s 12 of the Contempt of Courts Act was filed soon thereafter, and on 15.1.1987, the High Court issued a show cause notice to the opposite party as to why contempt proceedings should not be initiated. On 6.1.1988 a notice was directed to be issued why the opposite party be not punished for disobeying the order dated 19.12.1986. The High Court subsequently came to the conclusion that issuing of a show cause notice did not amount the initiation of proceedings and, therefore, the bar enacted by Section 20 of the Act was attracted and the application was liable to be rejected. The Apex Court in the said judgment laid down that filing of an application or petition for initiating proceedings for contempt or a mere receipt of such reference by the Court does not amount to initiation of the proceedings by Court. It held that it is only when the Court has formed 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, only then the Court can be said to have initiated proceedings for contempt. "

16. Thereafter, the Hon"ble three judges bench of the Hon"ble the Supreme Court in the case of Pallav Sheth Vs. Custodian and Others, , it has been held as under:

42. The decision in Om Prakash Jaiswal case to the effect that initiation of proceedings u/s 20 can only be said to have occurred when the court formed the prima facie opinion that contempt has been committed and issued notice to the contemner to show cause why it should not be punished, is taking too narrow a view of Section 20 which does not seem to be warranted and is not only going to cause hardship but would perpetrate injustice. A provision like Section 20 has to be interpreted having regard to the realities of the situation. For instance, in a case where a contempt of a subordinate court is committed, a report is prepared whether on an application to court or otherwise, and reference made by the subordinate court to the High Court. It is only thereafter that a High Court can take further action u/s 15. In the process, more often than not, a period of one year elapses. If the interpretation of Section 20 put in Om Prakash Jaiswal case is correct, it would mean that notwithstanding both the subordinate court and the High Court being prima facie satisfied that contempt has been committed the High Court would become powerless to take any action. On the other hand, if the filing of an application before the subordinate court or the High Court, making of a reference by a subordinate court on its own motion or the filing of an application before an Advocate General for permission to initiate contempt proceedings is regarded as initiation by the court for the purposes of Section 20, then such an interpretation would not impinge on or stultify the power of the High Court to punish for contempt which power, dehors the Contempt of Courts Act, 1971 is enshrined in Article 215 of the Constitution. Such an interpretation

of Section 20 would harmonise that section with the powers of the courts to punish for contempt which is recognised by the Constitution". "44. Action for contempt is divisible into two categories, namely, that initiated suo motu by the court and that instituted otherwise than on the court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the court itself which must initiate by issuing a notice, in the other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed.

Before a Division Bench of this Court, in a Special Appeal No. 1080 of 2006, Bali Ram v. Chief Engineer, Irrigation Department, Gorakhpur and others, the matter in respect to the period of limitation u/s 20 of the Act has engaged the attention of the court and facts in the special appeal in brief are that the Appellant filed a writ petition bearing No. 43587 of 1998 praying a direction for engagement as muster roll employee in pursuance of a Circular dated 29.2.1996 on the ground that his father, who was working as a muster roll employee, died after putting ten years service as a muster roll employee. The said writ petition was allowed by this Court on 18.5.2004. An application u/s 12 of the Contempt of Courts Act, being Contempt Application No. 870 of 2005 was filed by the Appellant on 17.3.2005. The Court entertained the contempt application on 21.3.2005 and asked the applicant to file a supplementary affidavit. Subsequently, the contempt application came for hearing on 1.8.2006; the same has been rejected as barred by time. Thereafter, in the Special Appeal No. 1080 of 2006, Bali Ram v. Chief Engineer, Irrigation Department, Gorakhpur and others filed after taking into consideration the law laid down by the Apex Court in the case of Pallav Sheth (Supra), held as under:

In the present case, the contempt application was filed on 17.3.2005, that is within a period of one year from the final judgment of the Court dated 18.5.2004. The contempt was alleged to have been committed by the Respondents subsequent to 18.5.2004; hence the application of the applicant-Appellant was not hit by Section 20 of the Act. In view of the law laid down in Pallav Sheth (supra), we allow this appeal and set aside the impugned judgment and order dated 1.8.2006, and remit the matter back for a fresh consideration by the appropriate bench.

17. In the case of Islamuddin v. Sri Umesh Chandra Tiwari and another (2009) 3 UPLBEC 2722 and in the said matter two questions which were answered are as under:

(i). Whether the decision in Pallav Sheth Vs. Custodian and Others, can be construed so as to apply all the principles enshrined in the provisions of the Indian Limitation Act (except Section 17 thereof) and as to whether the same can be made applicable to proceedings to be initiated u/s 12 of the Contempt of

Courts Act, 1971.

(ii). Whether the High Court in exercise of its powers for initiating contempt of its Court or the contempt of its subordinate court or Tribunal, as the case may be, has the power to condone and waive the delay in initiation of contempt proceedings u/s 12 of the Courts Act.

18. And the said questions were answered by the Division Bench in the case of Islamuddin (Supra), we, therefore, answer both the questions referred by the Hon"ble Single Judge in negative and hold that for the purpose of Section 20 of Act 1971, the Act 1963 and its provisions (except-Section 17) have no application whatsoever. The law laid down by the Apex Court in Pallav Sheth (supra) does not make Section 5 of Act 1963 applicable and would not confer power upon the Court to condone or waive delay where proceedings of contempt are sought to be initiated under Act 1971 after one year from the date when the contempt is alleged to have been committed.

19. From the above said facts and law, the position which emerged out is that the Section 20 of the Contempt Act that to restrain the Court from initiating any proceedings for contempt either on its own motion or otherwise after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. The mandate is that the Court would have no jurisdiction whatsoever to initiate proceedings under Act 1971 if the period as prescribed therein has expired. The period of one year would commence on the date when the contempt that is defiance or disobedience of the Court's order alleged to have been committed.

20. Therefore, the date of commencement is the deliberate disobedience or defiance of the Court's order by the alleged contemnor. This complaint that the alleged contemnor has disobeyed or defied deliberately order of the Court can be brought to the notice of the Court either by the informant or the Court can take cognizance on its own motion when such fact comes to its notice suo-motu or otherwise.

21. If the defiance or disobedience remains hidden for a longer time, in our view that would not make the period u/s 20 to commence since defiance or disobedience is directly connected with the knowledge of such defiance to the informant or the Court as the case may be and therefore, we have to apply Section 20 in a manner that it may be functional and workable in a reasonable and appropriate manner meaning thereby it is not the mere date of defiance or disobedience but the date on which such defiance or disobedience comes to the notice of the informant or the Court as the case may be. If the application therefore is filed within one year from the date when such defiance or disobedience come to the notice of the informant or the cognizance is taken by the Court on its own motion within one year from the date this fact is brought to its notice that the alleged contemnor has defied or disobeyed deliberately an order of the Court, the proceedings would not be barred by Section 20 of Act

1971.

22. Now applying to the above said principle which has been laid down by the Apex Court as well as by this Court in respect to the limitation in regard to filing of contempt petition u/s 12 of the Contempt of Courts Act. In the instant case, whether the same is within the period of limitation or not?

23. For the said purpose, as per the admitted facts of the present case, the contempt petition has been filed for alleged violation of the order dated 19.07.2006 passed in Writ Petition 864 (SB) of 2004 against which the SLP filed before Hon'ble the Supreme Court, dismissed on 17.08.2007. In order to explain the limitation in filing the present contempt petition the averments which have been made by the applicants are in paragraph No. 17 of the petition filed in support of the contempt petition is as under:

"17. That the cause of action arose when the aforesaid dues were not paid to the Petitioners and subsequently on 6.8.2009 and 11.10.2010 when the Petitioners made the representation and on 25.01.2011 when the Petitioners came to know about the compliance affidavit filed by opposite parties and is continuously recurring since then and due to false statement given by the opposite parties in the Hon'ble the Supreme Court the Petitioners could not approach this Hon'ble Court earlier."

24. On the basis of the fact, it is submitted by learned Counsel for the applicant that the present contempt petition is within the statutory period of limitation as provided u/s 12 of the Contempt of Courts Act, 1971.

25. The submission as made by learned Counsel for the applicant in this regard is wholly misconceived and incorrect as the contempt petition has been filed for the alleged violation of the order dated 19.07.2006 passed in Writ Petition No. 864 (SB) of 2004 against which the SLP has been dismissed on 17.08.2007 on the ground that after the Petitioner has given representation, last one was given by them on 07.02.2011 and when no heed has been paid in that regard the present contempt petition has been filed is unsustainable because the pendency or discrepancy give a cause of limitation for filing the contempt petition u/s 12 of the Act and in the instant case the same will be from the date of dismissal of the SLP i.e. on 17.08.2007 when the SLP was dismissed filed by the Respondents against the order dated 19.07.2006 in Writ Petition No. 864 (SB) of 2004.

26. Accordingly, the present contempt petition is liable to be dismissed on the ground of limitation.

27. For the foregoing reasons, I am of the considered opinion that the present contempt petition filed by the Petitioner u/s 12 of the Contempt of Courts Act is barred by the period of limitation as provided u/s 20 of the Act. Accordingly, the same is liable to be dismissed on the said ground. For the foregoing reasons, the contempt petition is dismissed. No order as to costs.