

(2016) 03 CAL CK 0105

In the Calcutta High Court

Case No : F.M.A. No. 3095 of 2015 With C.A.N. No. 6174 of 2015

Prof. S.S. Chatterjee

APPELLANT

Vs

Taniya Bagui

RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Contempt of Courts Act, 1971 — Section 19A

Citation : (2016) 2 CalHCN 562

Hon'ble Judges : Dr. Manjula Chellur, C.J. and Joymalya Bagchi, J.

Bench : Division Bench

Advocate : Dr. Chapalesh Bandyopashyay, Mr. Mir Anuruzzamah and Ms. Anandamoyee Dutta, Advocates, for the Appellant; Mr. Kaushik Chandra Gupta, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Manjula Chellur, C.J.—;This appeal is directed under Section 19 of the Contempt of Courts Act, 1971 challenging the judgment dated 24.08.2015 passed by Learned Single Judge of this Court holding the appellant/contemnor guilty of committing contempt of Court under Section 12 sub-section 1 of the Contempt of Courts Act of 1977 and imposing a cost of Rs.2,000 to be paid by the contemnor to the respondent/writ petitioner and further directing Registrar, University of Calcutta to take steps for recovery of the said amount from the salary of the appellant/contemnor.

2. It would be just and proper to narrate the background in which the present appeal is preferred. The respondent/writ petitioner claimed reservation under category other backward classes (OBC-B). Apparently, she had secured 40% (out of best of four subjects, excluding Environmental Education) in Higher Secondary Examination. She sought admission for B.A. LL.B course, a five year course for the academic session 2014-2015 in the University of Calcutta. Admittedly, applicant had endorsed in the application form that she belongs to the category of OBC. According to her, the University ought to have made reservation for OBC

candidates in the process of admission under the provisions of the West Bengal State Higher Educational Institutions (reservation in admission) Act, 2013 (hereinafter referred to as Act of 2013) and the West Bengal State Higher Educational Institution (reservation in admission) rules, 2014 (hereinafter referred to as the rules of 2014) framed thereunder but had illegally failed to do so.

3. Admittedly, the University authorities treated the respondent/writ petitioner as a general category candidate and refused to give "Admit Card" as she did not have requisite marks of 45% in Higher Secondary Examination as stipulated for general category candidates. Aggrieved by such action of the University, the respondent/writ petitioner approached this Court in the instant writ petition, inter-alia, seeking intervention of the Court that she may be issued "Admit Card" for the aforesaid Entrance examination and a direction to the University Authorities to fill up the existing vacancy under OBC-B category for the above said five year B.A. LL.B course.

4. By order dated 27.06.2014 the learned Single Judge of this Court after hearing the parties directed as interim relief that the respondent/writ petitioner be issued with Admit Card and be allowed to appear in the Entrance examination which was to be held on 05.07.2014. It is contended by the respondent/writ petitioner, notwithstanding above said interim direction of the Court and although she was an OBC candidate, University authorities compelled her to take the Entrance examination as a general candidate which is illegal and her name appeared in the merit list of general candidates at rank No. 1346.

5. Counselling of the said candidates for admission to the above said course was fixed on and from 14th July, 2014 till 17th July, 2014. It appears, on 14th July, 2014 respondent/writ petitioner had given notice to the University authorities complaining that she was compelled to take the examination as a general candidate instead of OBC candidate. She filed CAN No.6971 of 2014 and application for appropriate order. After hearing the parties the learned Judge passed the following order:

"Mr. Bari, Learned Counsel appearing for the writ petitioner submits that the writ petitioner appeared at the test as O.B.C. candidate. However, the counselling process is going on. According to him, the writ petitioner should be allowed to take part in the counselling process, otherwise the entire proceeding would be infructuous.

Mr. Bhattacharya, learned counsel appearing for the University submits that the petitioner's claim is in O.B.C. category and he also submits that the petitioner can participate in the counselling process.

Considering the submissions made by the learned Counsel appearing for the respective parties, the concerned respondents are directed to allow the petitioner to participate her ongoing counselling process under O.B.C. category.

This order is without prejudice to the right and contention of both the parties. This would abide by the result of the writ petition.

Mr. Bhattacharya as well as learned Advocate on record for the petitioner is directed to communicate this order to the University authority as well as to the Secretary, Department of Law and the concerned respondents are to act on the basis of such communication without waiting for any certified copy or plain copy of this order."

6. Supported by such order, the respondent/writ petitioner presented herself for counselling at the University on 17.07.2014. Its further alleged that the appellant/contemnor did not allow her to participate in the counselling on the ground that she failed to secure minimum qualifying marks and such fact was even endorsed on her "Admit Card".

7. Based on such allegations, instant contempt proceedings were initiated against the appellant/contemnor in which proceedings the contemnor appeared in person and denied that he had not wilfully and deliberately violated the order. He filed an affidavit in opposition wherein he contended that on 16.07.2014 learned Advocate appearing for the University without proper instruction had submitted before the Court that the counselling process was going on, though in fact such counselling process for reserved candidate was concluded as early as 14.07.2014. It was further contended that holding counselling for the petitioner in OBC category was not possible as there was no reservation in such category in view of the fact that adequate permission for increase of intake capacity under Section 5 of the Act of 2013 had not been granted by the appropriate authority, namely, Bar Council of India. Accordingly, implementation of the order was an impossibility was the stand taken. The appellant/contemnor also categorically denied that the endorsement on the "Admit Card" was in his hand writing.

8. Learned Single Judge after hearing the parties arrived at a finding that in spite of the order directing the University authorities to permit the respondent/writ petitioner to participate in the ongoing counselling process under OBC category was communicated to the appellant, the same was not intentionally carried out by him without justifiable cause and therefore the appellant was guilty of contempt of Court. Consequential order as to cost was also imposed.

9. Dr. Bandhopadhyay learned Counsel arguing for the appellant/contemnor submitted that learned Judge failed to consider the submission of the appellant that implementation of the order was an impossibility as the counselling process for reserved candidate had already concluded on 14.07.2014. Therefore, learned Counsel appearing for the University being unaware of such fact had incorrectly submitted, therefore the process of the counselling for the respondent/writ petitioner in such category did not arise at all. He strenuously submits that in order to effect reservation in OBC category under Section 3 of the Act of 2013 increase of intake capacity was required to be done under Section 5 of the Act after obtaining necessary permission from Bar Council of India. As on that date

no such permission had been granted and therefore implementing the interim direction of the Court was an impossibility. The appellant/contemnor had categorically denied making the endorsement in his own hand on the "Admit Card" and in the face of such denial it was incumbent upon the respondent/writ petitioner to prove the same which she failed to do so. Therefore, they seek setting aside the impugned judgment.

10. Mr. Gupta learned advocate appearing for respondent/writ petitioner contended that counselling process was, in fact, in progress on 17.07.2014. Direction of the Court was to permit the petitioner to participate in the counselling process as OBC candidate. Such permission was without prejudice to the rights and contentions of the parties. Accordingly, refusal to permit the writ petitioner to participate in the counselling as she did not have minimum qualification marks as a general candidate or otherwise was contumacious violation of such direction and the impugned order ought to be interfered with.

11. From the aforesaid discussion, it appears that qualifying marks was fixed of 45% for general candidates and 40% for reserved category candidates, that Schedule Cast/Schedule Tribe/Physically Handicapped category candidate for seeking admission to LL.B course in the academic session of 2014-15.

12. Apparently, no reservation for OBC candidate had been made by the University in the admission process. Writ petitioner who is an OBC candidate, moved the writ petition seeking participation in the admission process as OBC candidate in view of the provisions of the Act of 2013 and the rules framed thereunder. It was contended by the petitioner in the said writ petition that such reservation shall apply from academic session of 2014-15 in view of Section 6 of the said Act, whereas the University authorities refused such claim. Further they claim that no such reservation was possible prior to mandatory increase of seats under Section 5 of the Act after obtaining permission from the appropriate authority, Bar Council of India.

13. Such issue is to be gone into by the Court at the time of final hearing of the writ petition. However, in order to protect the interest of the writ petitioner and to prevent such issue from being rendered mere academic, the Court by order dated 16.7.2014 permitted the petitioner to participate in the entrance examination conducted by the University for such admission.

14. Pursuant such order, petitioner was permitted to appear in the examination albeit as a general candidate and her name also appeared in the merit list. Thereafter, the Court again directed the University to permit her to participate in the counselling process as an OBC candidate without prejudice to the rights and contentions of the parties. The defence taken by the appellant in his affidavit-in-opposition is that the order was impossible to be complied with as the counselling process in other reserved categories, namely, SSC/SST/PH candidates had already concluded on 14.07.2014. But however, the lawyer for the University erroneously communicated that the counselling process was still

going on.

15. According to us, such stand is wholly inconsistent with the endorsement made on the Admit Card of the writ petitioner by the University authorities when she presented herself for counselling as OBC candidate on 17.07.2014, that is she does not have requisite qualification marks of 45% required for LLB examination and hence her application will not be entertained.

16. No doubt in the affidavit-in-opposition, the appellant has categorically denied having made such endorsement and had put the writ petitioner to strict proof of the same.

17. On the other hand, in paragraph 8 of the affidavit the appellant contended, when the letter communicated the order dated 16.07.2014 was placed before him, he had given a note that the counselling and admission for the course for reserved category had been completed on 14.07.2014 and advocate had defended the writ petitioner after completion of the counselling. Unfortunately, no such note was placed before the Court to substantiate such defense. Be that as it may, such plea as ventilated in the affidavit is wholly without substance. The Court had directed the University to allow the writ petitioner to participate in the counselling as OBC candidate and not as a candidate in other reserved categories like SC, ST, and PH category for which counselling for admission was claimed to have been completed on 14.07.2014. According to us, completion of counselling for other reserved categories could not have come the way of holding counselling for the writ petitioner in the OBC category as directed by the Court as the counselling process as a whole had admittedly not concluded and all seats were not filled up till that date.

18. With regard to the endorsement on the "Admit Card" of the candidate that she did not possess requisite qualifying marks for admission or the plea that no reservation in OBC category was possible without increase of total Intake capacity are issues which go into the merits of the order and could be raised during hearing of the petition itself but did not definitely justify the action of the appellant in avoiding the compliance of the order.

19. Especially when the direction for counselling as OBC category candidate had been passed without prejudice to the rights of the parties and the aforesaid issues could have been agitated at the time of final hearing of the writ petition notwithstanding compliance of the said order we fail to understand the stand taken by the appellant. A party cannot sit in judgment over the correctness or justification of a judicial direction or order but must comply with the same even if he/she believes the order to be wrong or unjustified till it is set aside. To permit a party to the contrary would be nothing but to prevent the sanctity of judicial process and the majesty of rule of law itself. Admittedly, no appeal filed. Similarly no review or recalling application was taken out against the order and it is trite law that the Court in contempt jurisdiction cannot go into the correctness of the order which is alleged to be violated. Accordingly, we opine that the

aforesaid defenses are wholly without merits and are liable to be rejected.

20. From the above discussion, it is clear the appellant/contemnor who was fully aware of the order and resorted to various methods to avoid implementing the same to the prejudice of the writ petitioner thereby to render the writ petition infructuous. If the appellant felt the order was illegal which had been passed on incorrect submissions, it was open to him to seek appropriate relief in the form of appeal, or review etc. against such order. Instead of choosing such course of action, he refused to comply with the order and is presently setting up the aforesaid pleas which are wholly untenable in contempt jurisdiction. Such state of affairs make it evident that conduct of the appellant is not at all bona fide and accordingly we are of the view that the learned Single Judge had rightly held that the appellant had wilfully and deliberately violated the order passed by the Court and was guilty of contempt. With regard to the imposition of cost it has been argued that there is no jurisdiction in the Court to impose cost in contempt proceeding. Power to impose cost is inherent in the Court, particularly in the High Court while exercising its plenary jurisdiction under Article 215 of the Constitution of India. On that score also the order cannot be faulted. The appellant ought to consider himself lucky that in addition to cost, fine or other penalty was not impose on him by the learned Single Judge by way of punishment. In the light of aforesaid reasons, the appeal is dismissed and the judgment and order of the learned Single Judge is upheld.

21. Joymalya Bagchi, J.—I agree.