
(2001) 12 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : C.O.C.P. No. 171 of 2001

Rajesh Kumar

APPELLANT

Vs

Jaswant Singh Marwaha

RESPONDENT

Date of Decision : 20-12-2001

Acts Referred:

Citation : (2002) 2 RCR(Criminal) 218

Hon'ble Judges : Bakhshish Kaur, J

Advocate : Mr. Vinod Sharma, Advocate. Mr. P.K. Dutt, Advocate., Advocates for appearing Parties

Judgement

Bakhshish Kaur, J.

1. This is a petition under Sections 10 and 12 of the Contempt of Courts Act read with Article 215 of the Constitution of India.

2. Bhagat Singhpetitioner is a cent per cent handicapped person. He was allotted space at the Railway Platform Beas for running a PCO/STD booth under the scheme of rehabilitation for physically handicapped/educated unemployed. He had been complying with the terms and conditions besides making payment of rent. He had invested Rs. 2 lakhs for setting up a Public Call Office (hereinafter referred to as `PCO").

3. In the garb of making fresh allotment, tender was issued inviting fresh applications from educated unemployed persons. Though the existing PCOs were not to be affected, still the railway authorities refused to allow the PCO/STD booth holders to run the PCOs on the plea that the new policy has been framed. The action of the respondents in not permitting the petitioner to continue with his PCO was challenged by the petitioner by way of filing Civil Writ Petition No. 504 of 2001. While issuing notice of motion for January 29, 2001, the petitioner was permitted to continue the facility for running telephone booth at the existing site.

4. That although the service of notice was effected upon the respondent, but the

case was not taken up on 29th January, 2001 and it was adjourned to March 14, 2001. Thus, respondent No. 2 on the instructions of respondent No. 1 closed the PCO of the petitioner. Counsel for the petitioner sent a telegram on 1st February, 2001 to respondent No. 2 requesting him to allow the petitioner to open the PCO booth immediately. Respondent No. 2 had refused to honour or comply with the request made by the petitioner to allow him to operate the booth. Even the fax message sent by his counsel was not taken note of. In this way, the respondents have committed contempt of Court by intentionally flouting the order dated January 29, 2001.

5. The respondent Nos. 1 and 2 in their joint reply, have at the very outset, in their preliminary submissions, offered unconditional apology for action, if any on their part has resulted into breach of orders of the Court. The deponents hold the orders of this Court in high esteem. It is averred that since 8th February, 2001, the petitioner is running the PCO. On 29th January, 2001, neither respondent No. 1 nor any of the officials had stopped the operation of the PCO. In fact, contract in favour of the petitioner had expired on 22.12.2000. Petitioner as well as other persons operating the PCOs were informed that after formulation of new policy for allotment of PCO booths by the Railway on all India basis, existing contracts shall not be renewed. Thus, the PCO which the petitioner had been operating was voluntarily closed by him from 23rd December, 2000. Some of the persons whose contracts for running the PCO booths had expired and were not renewed due to implementation of new policy, challenged the same by filing CWP No. 18507 of 2000 titled as 'Lal Chand & others v. Union of India & Others'. While issuing notice of motion on 3.1.2001 for 29.1.2001 in the writ petition filed by the petitioner, he was allowed to continue facility for running telephone booth at the existing site. The order of this Court was immediately complied with and petitioner was permitted to operate the PCO till 29.1.2001. It is averred that since the railway authorities could not inform their counsel in time to appear in the Court on 29.1.2001, they were not aware of the orders passed by this Court on that date. The petitioner had also not submitted any letter intimating the orders passed by this Court on 29.1.2001.

6. On merits, it is also pleaded, inter alia, that the contract of the petitioner was not renewed under the new policy framed by the railways on all India basis. Accordingly the petitioner and other persons similarly situated were informed about the new policy.

7. I have heard Shri Vinod Sharma, learned counsel for the petitioner and Shri P.K. Dutt, learned counsel for the respondents.

8. The respondents have admitted that they had received a telegram on 1.2.2001 issued from Beas itself at 10.40 A.M., in the name of Shri Vinod Sharma, Advocate and respondent No. 2 had immediately referred the matter to Senior Divisional Commercial Manger, Ferozepur. On 2.2.2001, they received fax from Shri Vinod Sharma, Advocate, that they stay order was in operation. The letter was processed by the office of respondent No. 1 on 2.2.2001 itself which

was Friday. It is also stated that respondent No. 1 approached the office of its counsel Shri P.K. Dutt, Advocate at Chandigarh to know about the orders passed in this matter on 29.1.2001. On 6th February, 2001, information was received back from the office of the counsel that stay order in favour of the petitioner should be given effect to till further orders and on 7.2.2001 respondent No. 1 had passed the order directing the officials to allow the petitioner to operate the PCO till further orders.

9. JUDGMENT dated January 15, 2001 passed in Civil Writ Petition No. 504 of 2001 reads as under :

"Notice of motion for 29.1.2001. Till then, the petitioner shall be allowed to continue the facility for running telephone booth at existing site."

10. Once the petitioner was allowed to continued the facility for running telephone booth at the existing site till the next date i.e. 29.1.2001, whether by simply adjourning the case from 29.1.2001 to another date it would amount to vacation of the stay order issued on 15.1.2001 ? Certainly not. It is wellsettled once the interim order is issued, the same remains in force till it is specifically vacated or modified. Assuming that the respondents were not aware of the order passed on 29.1.2001 regarding the stay order issued on 15.1.2001, in the absence of any specific information that the stay order dated 15.1.2001 has been vacated or modified, there was no reason that they should not have given effect to the stay order till further orders. The authorities have taken the stand that they were not clear about the status of the stay order after 29.1.2001 nor the petitioner was clear about the same. If that was the case, then what was the idea of sending telegram through his counsel asking the authorities to permit the petitioner to operate the PCO. Then again there should not have been any doubt in their mind when the petitioner's counsel had taken the trouble of sending letter by way of fax. The contents of the fax message by Shri Vinod Sharma, counsel for the petitioner are reproduced as under :

"To,

Divisional Railway Manager, Northern Railway, Ferozepur, Shri N. Kedari, Station Superintendent, Beas District Amritsar :

In violation of stay order passed by the Hon"ble High Court in CWP No. 504 of 2001, PCO booth at Beas Station closed by Station Superintendent. The case fixed for 14.3.2001. Open the booth otherwise shall move contempt proceedings against you at your risk and costs.

Sd/ Vinod Sharma, Advocate,

Counsel for Rajesh Kumar."

11. It appears that the respondents have ignored the telegram as well as the fax message by counsel for the petitioner and preferred to rely upon the advice of their counsel, Shri P.K. Dutt.

12. It is, therefore, clear that the respondents did not allow the petitioner to operate the PCO from 29.1.2001 till 7.2.2001, which amounts to wilful and intentional violation of the stay order dated 15.1.2001.

13. The Contempt of Courts Act, 1971, as observed by the Hon"ble Supreme Court in *Murray & Co. v. Ashok Kumar Tewatia and others*, 2000(1) RCR(CrL.) 729 (SC) : 2001 RSJ 22 , has been engrafted in the statute book for the purpose of bringing confidence in people in general for the due and proper administration of justice in the country. Under para 10 at page 24, it has been further observed as under :

".....The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law since the image of such a majesty in the minds of the people cannot be led to be distorted. The respect and authority commanded by the Courts of Law are the greatest guarantee to an ordinary citizen and the entire democratic fabric of the society will crumble if the respect for the judiciary is undermined. It is true that the judiciary will be judged by the people for what the judiciary does, but in the event of any indulgence which even remotely be termed to affect the majesty of law, the society is bound to lose confidence and faith in the judiciary and the law courts thus, would forfeit the trust and confidence of the people in general."

14. In the given case in hand, it is abundantly clear and established that the respondents have deliberately not permitted the petitioner to operate the PCO. In the absence of any specific order vacating or modifying the stay order, the stay order was required to be given effect to till further orders, Despite the intimations sent to them by the petitioner and his counsel on 1st and 2nd February, 2001 respectively, the respondents did not permit the petitioner to operate the PCO.

15. Thus, having the consequence of whole issue and the facts brought on record, I am of the considered view that the respondents have intentionally and wilfully flouted the order passed by this Court and thus, rendered themselves guilty under Contempt of Courts Act. Considering the nature of contempt and the tendering of unconditional apology by them, and that they have purged the contempt inasmuch as they allowed the petitioner to operate the PCO with effect from 7th February, 2001 onwards, I deem it fit to impose only the penalty of fine of Rs. 1000/ on each contemnor namely Shri Jaswant Singh Marwaha, Divisional Railway Manager, Ferozepur Division, Ferozepur and Shri N. Kedare, Station Superintendent, Railway Station Beas, district Amritsar. In default of payment of fine, they will suffer simple imprisonment for 15 days.

16. The order shall become operational after the expiry of three months period. The time is allowed to the respondent to enable them to avail the remedy, if so advised, available to them.