
(2005) 02 OHC CK 0037
In the Orissa High Court
Case No : CONTC No. 294 of 2003

Shri Nilachal Tandi and Others	Vs	APPELLANT
Tapan Kumar Banerjee and Others		RESPONDENT

Date of Decision : 28-02-2005

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 15, 20
Limitation Act, 1963 — Section 5

Citation : (2005) 1 OLR 565

Hon'ble Judges : P.K. Mohanty, J;J.P. Mishra, J

Bench : Division Bench

Advocate : J.M. Mohanty, M. Pani, D. Samal, K.C. Mishra and D.P. Mohanty, for the Appellant; S.D. Das, H.S. Satpathy, B.K. Sinha, D.R. Bhokta, D.R. Sundar Ray, D. Mohanty, H.K. Jena and T. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Mishra, J.—The petitioners have filed this contempt application on 7.4.2003 with the allegation of violation of the order of this Court dated 11.8.1998 passed in O.J.C. No. 15454 of 1997.

2. This is how the contempt application is before us. One Dipak Panda and 61 others filed O.J.C. No. 15454 of 1997 challenging the process of selection of appointment of Group-D post in the Indian Ordnance Factory, Badmal for the post of Danger Building Workers. The process of selection was challenged therein alleging appointment of some candidates by producing false residential certificates and misrepresenting the authorities. The operative portion of the said order dated 11.8.1998 is as follows :

"Considering all the aspects of the case and considering the submissions of the learned lawyers of the respective parties, we are of the considered view that generally speaking the selection process does not suffer from any infirmity. If there were fraud and misrepresentation practised by the candidates by obtaining

false residential certificates to obtain the employment, their cases should be considered by the appropriate authority in accordance with law. Opportunity is given to the petitioners to point out the names of the selected candidates individually who are admittedly outsiders and who are alleged to have obtained employment by producing false residential certificates, suppression of facts of misrepresentation and the Collector along with the General Manager of the Ordnance Factory will jointly make enquiry as to such allegations made by the writ petitioners within a reasonable time and after giving opportunity to the persons concerned take effective steps and their appointment should be deemed to be cancelled and necessary consequence will follow."

3. As the order was not complied with by the opp.parties O.J.C. No. 8775 of 2000 was filed by the present petitioners (8 in number) for implementing the order dated 11.8.1998 passed in O.J.C. No. 15454 of 1997, this Court refused to entertain the second writ application, observing therein that it is open to the petitioner to file an appropriate application for contempt. The order was passed on 5.2.2003. It is only thereafter the present contempt application has been filed on 7.4.2003.

4. On receipt of the notice the opp.parties Nos. 1, 2 and 3 filed their reply to show cause denying the allegations in toto. The allegation of non-compliance of the order was totally denied and it has been contended that Shri Pravat Kumar Rout was appointed only after the order of the Collector though he along with 13 others were denied appointment for the cancellation of their residential certificates as per Annexure-4. The sum total of the show cause reply filed by all the opp.parties is that the Judgment of this Court (Annexure-2) was received by them on 9.10.1998 and they filed a review application bearing No. 163 of 1998 of the aforesaid judgment which is subjudice. The direction of this Court was not complied with by the petitioners and they did not submit any individual name out of the selection list as per the direction of this Court to enable them to commence a joint enquiry by the General Manager and the local Collector. Shri Pravat Kumar Sahu was appointed only after receipt of the order of the Collector dated 26.2.1999 (Annexure-A) wherein his residential certificate was found to be genuine as he is a resident of Saintala. It is further averred by the opp.parties in their show cause reply that the present application is barred by limitation u/s 20 of the Contempt of Courts Act, 1971 as the same has been filed after lapse of more than four years from the date of receipt of the order by the opp.parties (9.10.1998) placing reliance in Om Prakash Jaiswal Vs. D.K. Mittal and Another [OVERRULED], .

5. Learned counsel for the petitioners has contended to punish the Contemnor for violation of the Court's order. On the other hand, learned counsel appearing for the opp.parties contends that absolutely there is no violation of the order of the Court because of the failure of the petitioners to supply the individual names of the persons who got employment by producing false residential certificate in order to facilitate the opp.parties to commence a joint enquiry. It is next

contended by him that the application is barred by limitation u/s 20 of the Contempt of Courts Act, 1971 having been filed about four years after the receipt of the order of this Court by the opp.parties.

6. Even though the petitioners Nos. 2, 6 and 8 were not the petitioners in the main writ application (O.J.C. No. 15454 of 1997), the other petitioners can certainly approach this Court for proceeding under the Contempt of Courts Act. The order passed In the main writ application quoted above can be divided in three parts :

(i) After finding the selection process from any infirmities, this Court ordered "if there were fraud and misrepresentation practised by the candidates by obtaining false residential certificates to obtain employment, their cases should be considered by the appropriate authority in accordance with law";

(ii) opportunity is given to the petitioners to point out the names of the selected candidates individually who are admittedly outsiders and who have obtained employment by producing false residential certificates, suppression of facts or misrepresentation and the Collector along with the General Manager of the Ordnance factory will jointly make enquiry of the allegations made by the petitioners within a reasonable time; and

(iii) after giving an opportunity to those persons effective steps are to be taken and their appointments should be deemed to be cancelled and necessary consequence to follow.

So the first part/duty is cast on the petitioner to supply the individual names who have obtained employment by producing false certificates or misrepresenting the authorities. No averment has been made anywhere in the entire contempt application that they had supplied those names to the authorities (opp.parties) to facilitate them to initiate a joint enquiry. The petitioners kept silent till 2000 and filed writ application O.J.C.No. 8775 of 2000 before this Court seeking implementation of the order passed in the main writ petition which was denied under Annexure-5 on 5.2.2003. The opp.party No. 1 has contended in last sub-paragraph to paragraph-3 of his show cause reply explaining the appointment of Pravat Kumar Sahu though his appointment was cancelled along with 13 others. The same is quoted below:

"The copy of the judgment vide Annexure-2 was received on 9.10.98. Being directed by the Head of the Department, a review application numbered as Civil Review No. 163/ 98 was filed to review the aforesaid judgment of the Hon"ble Court which is pending for disposal. It is humbly stated that petitioners did not submit any individual name out of the selection list as per the direction of the Hon"ble Court and therefore there was no scope for joint enquiry by the General Manager along with the local Collector. It is alleged in the contempt petition in Para-5 that appointment has-been issued in favour of one Pravat Kumar Rout out of 14 candidates whose residential certificates have been cancelled by the Collector vide Annexure-4. It is humbly stated that subsequently Collector,

Bolangir in M.C. No. 29/ 98 after due verification held that the residential certificates issued in favour of Pravat Kumar Rout vide RMC No. 27/ 244./94 by Addl. Tahasildar, Titlagarh on 18.04.94 is valid and said Pravat Kumar Rout is a resident of Saintala. The Collector also directed, in his order, Employment Officer, Bolangir/Junior Employment Officer/Titlagarh to make necessary amendments, registration card on application of the O.P. (Pravat Kumar Rout). On receipt of this order vide Annexure-A (to this show cause) the concerned individual Pravat Kumar Rout's name was cleared for issue of appointment letter. In view of this, it is humbly submitted" that I have not violated the direction of the Hon"ble Court by giving fresh appointment to Pravat Kumar Rout".

So, non-supply for the individual names of the candidates for obtaining appointment by misrepresentation resulted in not initiating joint enquiry by the opp.parties and there was no impediment to appoint someone (Pravat Kumar Rout) who was found to be a resident of Saintala by the order of the Collector after enquiry under Rule 7 of the O.M.C. Rules 1984 in Misc. Case No. 29 of 1998. Therefore, the opp.parties cannot be said to have violated the orders of this Court.

7. Adverting to the limitation, we would like to quote Section 20 of the Contempt of Courts Act, 1971 which is as follows :

"20. Limitation for actions for contempt :

No Court shall initiate any proceedings of 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."

Reliance has been placed by the learned counsel for the opp.parties in Om Prakash Jaiswal Vs. D.K. Mittal and Another [OVERRULED], . In the said case, two Judges of the apex Court -ruled the date of initiation of contempt proceeding to be the date on which the Court applied its mind and issued notice to the contemnor. In the said decision it was also said that Section 5 of the Limitation Act has got no application to the contempt proceeding. Later on a Larger Bench consisting of three Judges of the apex Court in Pallav Sheth Vs. Custodian and Others, held that proper construction to be placed on Section 20 must be that action must be initiated either by filing an application or by the Court issuing notice suo moto within a period of one year from the date on which the contempt is alleged to have been committed. Relevant paragraphs 42 & 44 are quoted below :

"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 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 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 recognized by the Constitution.

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44. Action for contempt is divisible into two categories, namely, that initiated suo motu by the Court and that initiated 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."

8. In view of the above decision, limitation of one year shall be computed from the date on which the contempt is alleged to have been committed till the filing of contempt application.

9. In this case, the order dated 11.8.98 passed in O.J.C. No. 15454 of 1997 was received by the opp.parties on 9.10.1998 and the petitioners did not comply the order of this Court by submitting the individual names of the persons who committed misrepresentation for getting employment. The petitioners woke up from the slumber and filed the writ application in the year 2000 asking this Court to implement the order which was refused vide Annexure-5. Thereafter, also the petitioners did not come to the Court immediately, but filed the present application on 7.4.2003, i.e., more than four years from the date of receipt of the order of this Court by the opp.parties. Therefore, the present contempt application is hopelessly barred by limitation u/s 20 of the Contempt of Courts Act, 1971.

In the result, we dismiss the contempt application.

P.K. Mohanty, J.

10. I agree.