
(2010) 05 AHC CK 0286
In the Allahabad High Court

S.M.A. Abdi and Another

APPELLANT

Vs

Private Secretaries Brotherhood and Another

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Constitution of India, 1950 — Article 136

Contempt of Courts Act, 1971 — Section 19

Citation : (2010) 4 AWC 3746

Hon'ble Judges : Amitava Lala, Acting C.J.; Shabihul Hasnain, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Amitava Lala, A.C.J.

1. This special appeal is arising out of an order passed by the learned Single Judge dated 23rd April, 2010 in a contempt proceedings, being Civil Misc. Contempt Petition No. 1774 of 2008. However, the officers, against whom the charges have been framed, have preferred this appeal and the same is supported by the State.

2. Originally, an order was passed on 29th July, 1998 by a Division Bench of this Court to give appropriate pay scale to the Private Secretaries working in the office of the U.P. State Law Officers, Allahabad/Lucknow. The said order was challenged by the State before the Supreme Court, which was also dismissed by order dated 28th of November, 2007. After about a period of six months, the contempt application was filed on 11th May, 2008, which has given rise to the order impugned in the present appeal. The State also preferred a review petition before the Supreme Court against the order dated 28th November, 2007, which was dismissed on 23rd July, 2008. Thereafter, a compliance affidavit dated 17th November, 2008 was filed annexing the Office Order dated 14th November, 2008, but the learned Single Judge, hearing contempt matters, found that it was misleading and in the teeth of the judgment of this Court and passed an order, in detail, giving further opportunity to the appellants herein to comply the

directions given the Court. Such order, according to us, is in the form of interpretation of the earlier order passed by the Division Bench of this Court. A second compliance affidavit was filed on 25th May, 2009, which was also found to be misleading in nature by the learned Single Judge taking the contempt matters. Another compliance affidavit was filed providing pay protection and bifurcating the cadre in different pay scales to the Private Secretaries of the office of the U.P. State Law Officers, Allahabad/Lucknow. However, on closure scrutiny of the order, we find that the learned Single Judge wanted to find out the import by interpretation of the order and give effect of the same in his own way. However, sitting in the contempt jurisdiction, interpretation of the original order cannot be held to be justiciable nor advisable. In any event, ultimately the Court arrived at the following conclusions:

Thus, there being a prima facie case for trial, the following charges are framed:

You Shri S.M.A. Abdi, The Principal Secretary (Law) Government of Uttar Pradesh, U.P. Secretariat, Lucknow show cause why he should not be tried and punished for willful and deliberate violation of the order and judgment of this Court dated 29.7.1998 passed in Writ Petition No. 17885 of 1996.

You are further charged for filing false and misleading affidavits of compliance in this Court applying subterfuge to overcome the orders of this Court.

You Shri Manjeet Singh, The Principal Secretary (Finance) Government of Uttar Pradesh, U.P. Secretariat, Lucknow show cause why he should not be tried and punished for willful and deliberate violation of the order and judgment of this Court dated 29.7.1998 passed in Writ Petition No. 17885 of 1996.

You are further charged for filing false and misleading affidavits of compliance in this Court applying subterfuge to overcome the orders of this Court.

Your reply should be filed on or before 11.5.2010 after serving a copy on the counsel for the applicant who may file a reply thereto before the next date fixed.

It is clarified that any observations or findings made or recorded herein above are only prima facie in nature and are subject to the replies which may be filed in response to the charges framed.

List on 14.5.2010 when both the officers shall be present in person.

3. Here, a question arose before this Court whether the special appeal from such order, which is on the basis of the prima facie view of the Court of Contempt, can be held to be maintainable under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952. To that, the learned Additional Advocate General has submitted before this Court that in *Midnapore Peoples' Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others*, similar question was considered and it was held by the Apex Court that against an order of the High Court deciding an issue or making any direction relating to the merits of the dispute between the parties, in a contempt proceedings, the intra-Court appeal can be held to be maintainable.

Relevant finding of the Supreme Court is available in sub-paragraph v. of paragraph 11 of such judgment, which is as follows:

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

The first point is answered accordingly.

4. That apart, we have come across another Supreme Court judgment reported in A.P. Verma, Principal Secretary, Medical Health and Family Welfare, U.P. and others Vs. U.P. Laboratory Technicians Association and others, wherein it has been held that an appeal will also be maintainable under Chapter VIII Rule 5 of the High Court Rules against the directions issued in the impugned order, which are regarding the merit of the claim made by the respondents in the writ petition.

5. Requirement of understanding the legal position is to examine as to whether the contempt appeal can be held to be maintainable only after passing of the final order u/s 19 of the Contempt of Courts Act or not. It is right to say that when final order is passed, then the same will be appealable, but what will happen if any judgment and order is passed by the Court, which are in the trappings of the finality during the interlocutory stage of the proceedings - whether the aggrieved persons will be debarred from preferring an appeal?

6. Upon a conjoint reading of the Supreme Court judgments, we do not find anything that there is any dearth of right to prefer an appeal in such circumstances, and therefore, according to us, the appeal is maintainable.

7. So far as the merit is concerned, the learned Senior Counsel appearing for the complainants (respondents herein), has urged before us that repeated Government Orders were issued to frustrate the grievance of the Private Secretaries of the office of the U.P. State Law Officers, Allahabad/Lucknow, to which the learned Additional Advocate General has contended before us that the appellants have already complied with the order and since the Private Secretaries are the staff of his own office, it is his duty to protect their interest. The learned Additional Advocate General has also relied upon an Office Memorandum/Government Order, being dated 29th July, 2009 and said that this Order has been issued by the appellant No. 1, being the Principal Secretary and, therefore, the same is the latest Government Order superseding the earlier Office Memorandums/Government Orders to protect the interest of the Private Secretaries as per the orders of the Court in the writ petition as well as in the contempt application. However, the learned Senior Counsel appearing for the complainants has stated that there is no indication with regard to any consequential benefit, to which both the learned Additional Advocate General and the learned Chief Standing Counsel have given an undertaking before this Court

that the same will be done in compliance with the direction of this Court and further said that consequential benefit is automatic upon enhancement of the pay scale pursuant to the orders of this Court and as per the Government Order dated 29th July, 2009. The learned Additional Advocate General further said that on 30th July, 2009, an order was passed by the Contempt Court upon considering the Government Order dated 29th July, 2009, which has not been taken into account by the learned Judge taking contempt matters at the time of passing the impugned order and charges were framed against the appellants. However, the learned Senior Counsel appearing on behalf of the complainants has accepted the statement and undertakings given by the learned Additional Advocate General as also the learned Chief Standing Counsel, but contended that the officers, who failed to discharge their responsibilities and are responsible for committing gross contempt of the order of the Court by their willful disobedience, should not be exonerated. Though after making the complaint, the matter is between the Court and the contemnor, but the learned Senior Counsel was a little enthusiastic to cite certain judgments to come to an appropriate conclusion in this respect. He has handed a set of following judgments before this Court, on which reliance has been placed:

In *State of Bihar and others Vs. Subhash Singh*, wherein the Supreme Court affirmed the judgment of the High Court in a contempt matter, by which a cost of Rs. 5000/- against the erring official was imposed for wilful disobedience of the order of the High Court.

In *E.T. Sunup Vs. C.A.N.S.S. Employees Association and Another*, wherein it was held that It has become a tendency of the government officers to somehow or the other circumvent the orders of court and try to take recourse to one justification or other. This shows complete lack of grace in accepting the orders of the Court. This tendency of undermining the Court's order cannot be countenanced. This Court time and again has emphasized that in a democracy the role of the Court cannot be subservient to administrative fiat. The executive and legislature have to work within the constitutional framework and the judiciary has been given the role of watchdog to keep the legislature and executive within check. However, in the said case, considering the tenure of service of the officer concerned etc., a fine of Rs. 5000/- was imposed.

In 2001 (2) ACR 1255 (SC) wherein the Supreme Court has held that it is only the pain and fear of being punished for contempt that seems to have persuaded the erring persons to take action and comply with the direction of the Supreme Court. In that case, a cost of Rs. 5,000/- was imposed.

In *Abhijit Tea Company Pvt. Ltd. Vs. Terai Tea Co. (P) Ltd. and Others*, it was held that no one should be left in lurking doubt that by manoeuvre or otherwise one would get over non- implementation of the order of the Court and was successful in its avoidance or seem to be defeated. The arm of the Court is long enough to reach injustice wherever it is found, which should be dealt with appropriately.

In *Maruti Udyog Limited Vs. Mahinder C. Mehta and Others*, it has been held that the facts and circumstances of the case are such that the contemnors should be held guilty and be punished with appropriate punishments.

In *U.P. Resi. Emp. Co-op. House B. Society and Others Vs. New Okhla Indus. Deve. Authority and Another*, wherein a false affidavit was filed to mislead the Court and with a view to see that the Court does not pass any order, adverse to what Noida Authority is contending, therefore, a show cause notice was issued by the Supreme Court.

In *Mulkh Raj Vs. State of Punjab*, wherein it was held that the apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace apology is of penitence. If apology is offered at a time when the contemnor finds that the Court is going to impose punishment, it ceases to be an apology and it becomes an act of a cringing coward.

In *T.M.A. Pai Foundation and others, etc. Vs. State of Karnataka and others*, the Supreme Court rejected the unconditional apology as tendered by the five officers and held such persons guilty of contempt of Court and a copy of order was made part of the Annual Confidential Reports/Record of service of each of the officers.

8. Possibly, the learned Senior Counsel has referred the aforesaid cases to establish that there is no mistake on the part of the learned Single Judge in passing the impugned order to come to an appropriate conclusion.

9. We are of the view that power to pass an order by the Court of Contempt is discretionary power which can be passed considering facts and circumstances of each case. In this case admittedly compliance is there but the complainant has insisted for consequential benefit, to which an undertaking has been given. In case violation of such undertaking is there, Court can consider the cause of passing stringent order.

10. Against the aforesaid background, the learned Additional Advocate General and the learned Chief Standing Counsel both have contended before us that there is no willful disobedience on the part of the either of the officers (appellants). They are innocent victim of the circumstances. Whenever any order was passed, they tried to comply, but when new Rules were framed, they have no other alternative but to proceed in accordance with the same. They are the victims of the interpretation of the order of the Court, which cannot be treated to be willful disobedience on their part. However, taking into account the fact that the first appellant is going to retire soon, possibly in this month, and the second appellant has a long career and he has only followed the direction of the first appellant, we are of the view that for the fitness of things, they can be exonerated but they are cautioned under this order to be more careful in future as against the orders of the Court. However, this order, which is passed directing them to be more careful in future, is advisory in nature and shall not be treated to be part and parcel of their confidential remarks, but they are warned that no

leniency will be shown in future.

11. The undertaking given before this Court will be complied with within two months from the date of communication of this order.

12. The appeal is disposed of with the above directions and observations, however, without passing any order as to costs.

13. I agree.