

(2010) 06 OHC CK 0004

In the Orissa High Court

Case No : Original Criminal Miscellaneous No. 7 of 2001

Smt. Bharati Ray

APPELLANT

Vs

Mr. E. Abraham

RESPONDENT

Date of Decision : 24-06-2010

Acts Referred:

Contempt of Courts Act, 1971 — Section 12, 2

Citation : (2010) 110 CLT 450 : (2011) 1 Crimes 653 : (2010) 2 OLR 709

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—This Original Criminal Mise. Case has been filed invoking the Jurisdiction u/s 12 of the Contempt of Courts Act, 1971 praying to initiate a proceeding of contempt against the Opp. Party & holding guilty of criminal contempt for violating the direction dated 21.12.2000 issued by this Court in OJC No. 6555 of 2000 and also to award exemplary punishment, apart from seeking other ancilliary reliefs.

2. The Petitioner was working as a Senior Programme Manager in the department of Centre for Development Research & Training, in short, "CENDERET" of Xavier Institute of Management, Bhubaneswar. She had approached this Court in OJC No. 6555 of 2000 with a prayer to probe into the allegations of sexual harassment caused to her by Mr. D.N. Rao, Coordinator through an independent agency and also prayed for protection of her fundamental rights during the working hours in the said institute.

3. After hearing Learned Counsel for the parties, the said writ application was disposed of by Judgment dated 21.12.2000 with the following directions:

Opp. Parties 1 and 2 shall constitute a Complaints Committee in terms of the guidelines issued by the Apex Court, i.e., it must be headed by a woman and not less than half of its members should be women. Either a non-Government

organization or a body familiar with the issue of sexual harassment should be a member of the said Committee. This Committee shall be constituted within a period of one month from the date of communication of this order. The complaint of the Petitioner shall be examined by the Committee and not by any individual member of the Committee and the Petitioner shall be given an opportunity of hearing and adduce evidence/materials before the Committee in support of her allegations. The Complaints Committee shall include the inquiry within a period of 2 months from the date of its constitution and submit its report. The Institute shall amend the Rules/Regulations relating to conduct & discipline and provide for appropriate penalties in such rules against the offenders in terms of the guidelines issued by the Apex Court within a period of three months from the date of communication of this order. If the Complaints Committee finds the allegations made by the Petitioner to be correct, then action should be taken against the offender in terms of clauses 4 & 5 of the guidelines issued by the Apex Court. Till completion of the enquiry by the Complaints Committee, the Petitioner shall not be disbursed from her present place of posting.

(emphasis supplied)

4. It is alleged that during pendency of the aforesaid writ application by interim Order Dated 29.9.2000 this Court had also directed that the Petitioner shall report to the Director of the Institution instead of the then Coordinator of CENDERET as because the allegations of sexual harassment was against the Coordinator. The said order was extended time and, again.

5. According to the Petitioner on the date of Judgment, i.e., on 21st December, 2000, she was working under the direct authority of Mr. E. Abraham, S.J., the Opposite Party, as Senior Programme Manager of CENDERET and as per the Judgment, status quo with regard to the Petitioner had to be maintained until the completion of the enquiry by the Complaints Committee. The grievance of the Petitioner is that in spite of the specific direction issued by this Court, with an avowed oblique motive of harassing the Petitioner, the Opp. Party in gross violation of the directions issued in the Judgment, by Order Dated 3.1.2001 directed the Petitioner to report at Regional Research Centre, Bhubaneswar, which is a sister body of Xavier Institute of Management. The said Order Dated 3.1.2001, it is stated, was served upon the Petitioner on 10.1.2001. The Petitioner is further aggrieved by the fact that she was directed to report before Mr. G. Ravichander, Coordinator, who happens to be her junior. It is alleged that the order has been passed not only in gross violation of the High Court's direction, but also to harass the Petitioner. The Petitioner on receipt of the order on 10.1.2001 submitted a representation, bringing to the notice of the authorities that in consonance with the direction issued by this Court, status quo with regard to her place of posting has to be maintained and she should not be directed to report before her junior. It is stated that on the date when the Judgment was delivered, the Petitioner was holding the post of Senior Programme Manager in the office of Centre for Development Research and

Training at Xavier Institute of Management and in view of the specific order, she should not be disturbed from the said place of posting. The said action, it is stated, is in clear violation of the direction issued by this Court in its Judgment dated 21.12.2000 and is meant not only to cause harassment and to humiliate the Petitioner, but also create disadvantage for the Petitioner so that she shall not be able to lead proper evidence at the time of enquiry. The action of the Opp. Party, it is submitted, clearly reveals that he had scant regard to the rule of law and as he has deliberately violated the direction issued by this Court, it is a fit case where he should be punished under the Contempt of Courts Act.

6. After receiving notice, a show cause has been filed by the Opp. Party denying all the allegations. According to the Opp. Party, the direction issued by this Court has not been violated rather it has been obeyed in letter and spirit. The Opp. Party admits that on the date when the Judgment was pronounced by this Court, the Petitioner was holding the post of Senior Programme Manager of CENDERET and she was posted at Bhubaneswar. At the relevant time, the renovation work of the Institute was under progress and the place (room) where the Petitioner was working, was shifted to the main administrative building. Thus, it cannot be said that there was any disturbance in the posting of the Petitioner. In fact, the Petitioner continued to hold the same post, which she was holding on the date of pronouncement of the Judgment. The allegation that the Petitioner was directed to report before her junior is stoutly denied,

7. Mr. N.C. Panigrahi, Learned Senior Advocate appearing for the Petitioner relying upon several Judgments submitted that the Opp. Party in order to harass the Petitioner deliberately disobeyed the orders passed by this Court. Further in order to humiliate her, he directed that she should report before her junior. The said action according to Mr. Panigrahi is contemptuous and would reveal that the Opp. Party deliberately violated the orders passed by this Court.

8. Mr. B. Routray, Learned Sr. Advocate appearing for the contemnor, on the other hand, repudiating the stand taken in the show cause, submitted, rather humbly, that the Opp. Party is a very responsible officer, he is a law abiding citizen and has full respect to the orders passed by this Court. It is submitted, that status quo with regard to the post which the Petitioner was holding on the date of Judgment has not been disturbed and she has been allowed to continue in the same post, but then, her working place was changed to the main administrative building to avoid further mishaps. The said decision was taken in usual course of business and without any malice. Mr. Routray further submitted that the Opposite Party had absolutely no malafide intention either to harass the Petitioner or to humiliate her. In the alternative, Mr. Routray submitted that the Opposite Party also tenders unqualified apology in the event this Court finds that he has committed any error in his decision.

9. To appreciate the inter se submission, it would be prudent to note the direction issued by this Court. In the last line of the Judgment this Court observed:

Till completion of the enquiry by the Complaints Committee the Petitioner shall not be disturbed from her present place of posting.

According to Mr. Panigrahi, directing the Petitioner to report at the main administrative building amounts to disturbance of the place of posting. On the other hand, according to Mr. Routray, posting of the Petitioner is against the post of Senior Programme Manager under CENDERET at Bhubaneswar, but on administrative ground the location of the place (room) was shifted to the main administrative building and thus, no illegality whatsoever has been committed.

10. After hearing Learned Counsel for the parties, this Court finds that the controversy is with regard to the interpretation of the words "place of posting". According to Mr. Panigrahi, the "place of posting" means, the place where the Petitioner was functioning. But then according to Mr. Routray, "place of posting" means the post which was held by the Petitioner at the relevant time in the institution. In the case in hand, admittedly, the Petitioner was holding the post of Senior Programme Manager in CENDERET at Xavier Institute of Management, Bhubaneswar. The said posting or place, i.e., Xavier Institute of Management has not been changed. But then, the location of the place where the Petitioner was earlier discharging her duties was shifted to the main administrative building. Thus, according to Mr. Routray, no infirmity or illegality has been committed. Law is well settled that in the event two interpretations are possible and the action of the contemnor pertains to one such interpretation, then the act or acts cannot be ascribed to be otherwise contemptuous in nature. It is no more *res integra* that mere disobedience of an order may not be sufficient to constitute contempt within the meaning of Section 2(b) of the Contempt of Courts Act. The element of willingness or disobedience is an indispensable requirement to bring home the charge within the meaning of the Act.

11. In view of the aforesaid facts and circumstances and requirement of law, this Court is of the view that the Opp. Party has not committed any illegality or irregularity. Accordingly, the contempt petition fails and is dismissed.