
(2000) 09 KAR CK 0088
In the Karnataka High Court
Case No : C.C.C. (Cri.) 7 of 2000

Smt. Raziya Mahaboob Patel

APPELLANT

Vs

Sri. Rajesab Hasan and Others

RESPONDENT

Date of Decision : 08-09-2000

Acts Referred:

Citation : (2001) CriLJ 269

Hon'ble Judges : S.R. Bannurmath, J;B. Padmaraj, J

Bench : Division Bench

Advocate : N.S. Shivayogimath, for the Appellant; Ashok R. Kalyanashetty and M.R. Shailendra, for the Respondent

Judgement

B. Padmaraj, J.—Heard the arguments of the learned counsel for the complainant as well as the learned counsel for the Respondents/Accused Nos. 1 and 2 and carefully perused the case papers with their assistance. Though the matter came up or listed before the Court to hear regarding the framing of charges against the respondents/accused, with the consent of both sides, we have heard the matter for its final disposal and it is accordingly disposed of finally by this order.

2. The complainant is one Smt. Raziya Mehaboob Patel and the respondents/accused are: Sri Rajesab Hasan Dongre Janavekar and the City Municipal Council, Bijapur represented by its Commissioner and they were parties to the writ petition filed before this Court in W.P.No. 8430/99. The said writ petition came to be disposed of on 23-8-1999 with certain directions. The relevant portion of the order made by this Court in W.P. No. 8430/99 on 23-8-1999 reads as under :

4. Taking into account the facts and circumstances of the case, the second respondent shall call for fresh tenders fixing the upset price of Rs. 14,00,000/- and auction the rights to the party that tenders the highest offer, for a period that may be specified by the first respondent. The period shall not be more than three years. The upset price of Rs. 14 lakhs shall be per year. During the

pendency of calling for tenders, till auction is finalised, the third respondent shall continue to collect the fees of Sunday Bazar at Bijapur City. The rate shall be determined as per Annexure-D. If there is no better offer than Rs. 14,00,000/-, the order passed at Annexure-I shall stand revived.

The writ petition is disposed of accordingly.

3. The complainant herein was the petitioner and the respondents/Accused Nos. 1 and 2 were Respondents 2 and 3 respectively in the said writ petition filed before this Court and they were fully aware of the nature of the order passed by this Court in W.P. No. 8430/ 99 on 23-8-1999. While the matter stood thus, it is stated that the complainant Smt. Raziya, after obtaining a certified copy of the order passed by this Court in the writ petition, requested the Respondent No. 2 to call for the fresh tender as the complainant was ready to offer her bid for Rs. 14,00,000/- as has been undertaken by her before this Court in the above writ petition, but inspite of that, it is stated that the Respondent No. 2 did not call for a fresh tender and postponed the same for one reason or the other, only with a view to favour the Respondent No. 1. Ultimately the Respondent/Accused No. 2 called for the tender for collection of fee for the Sunday Bazar by publishing the notification in the Kannada-Daily on 6-3-2000, fixing the date of auction on 20-3-2000 as per Annexure-D. It is stated that on 20-3-2000, the complainant went to the office of the second respondent and found that except her, no other bidders were there to bid in the auction on 20-3-2000 at 4 O'clock in the office of the second respondent. The complainant offered her bid for Rs. 14,00,000/- for the collection of fees for Sunday Bazar commencing from 2000 to 2003. On the same day, she submitted a written representation in compliance of the order made by this Court in the writ petition that she is ready to offer Rs. 14,00,000/- and a copy of the said writ petition is filed at Annexure-F. On the same day, she gave another representation alongwith a copy of the order of this Court in the writ petition as per Annexure-G. But suddenly at about 4.30 p.m. on the same day, the Commissioner of the Respondent No. 2 City Municipal Council came out from his office and informed the complainant that they have postponed the tender. He did not however assign any reason for postponing the tender. Therefore the complainant made a representation to the second respondent to know the reasons as to why the auction was postponed. A copy of the said representation dated 20-3-2000 is filed at Annexure-H. It is stated that there were only three members at 4.30 p.m. on 20-3-2000 when the auction was about to be held by the second respondent. The Commissioner of the second respondent obtained the signatures of all the three persons including the Respondent No. 1. When the complainant gave a written representation to know the reasons why the auction was postponed, at about 5.30 p.m. the Commissioner informed that the first respondent has obtained a temporary injunction order from the Court of the Prl. Civil Judge (Jr., Division), Bijapur in O.S.No. 146/ 2000 dated 16-3-2000. The complainant insisted for a copy of the said order and accordingly the xerox copy of the said order was furnished to the complainant which is at Annexure-J. It is further stated that the first respondent

filed the above suit and sought for decree of Permanent Injunction against the Respondent No. 2 restraining it from holding the auction sale of tender till expiry of the period mentioned in the order dated 11-2-1999 passed by the Government. It is stated that the Respondent No. 1 was fully aware that this Court by an order dated 23-8-1999 in W.P.No. 8430/99 directed the Respondent No. 2 to call for fresh tender fixing the upset price of Rs. 14,00,000/- and auction the rights to the party that tenders the highest offer. But suppressing this direction issued by this Court, he obtained the Temporary Injunction order from the Civil Court restraining the Respondent No. 2 from holding the auction. It is further stated that though the respondents are fully aware that this Court by an order dated 23-8-1999 in the writ petition gave a specific direction to the Respondent No. 2 to call for a fresh tender fixing the upset price of Rs. 14,00,000/- and auction the rights to the party that tenders the highest offer, they did not comply with the said direction. But the complainant in obedience to the undertaking given before this Court made several representations and offered her bid for Rs. 14,00,000/-. The Accused No. 1 who was fully aware of the direction given by this Court, suppressed the same, obtained an ad-interim order of injunction misleading the trial Court with a mala fide intention to cause injustice to the complainant. Thereby the Respondent No. 1 has disobeyed the order of this Court. The Respondent No. 1 deliberately made a false statement before the trial Court and obtained Temporary Injunction which amounts to criminal contempt. The Respondent No. 2 is also fully aware of the orders passed by this Court, but deliberately delayed taking action in the matter. It did not take any effective steps to implement the order of this Court. On the other hand the Respondent No. 2 is encouraging the illegal act of criminal contempt of Respondent No. 1. Therefore both the respondents have committed criminal contempt of this Court. It is therefore just and necessary to take action against the respondent for disobedience of the order of this Court and it is also necessary to implement the order of this Court passed in writ petition on 23-8-1999. On the basis of the above averments, the complainant Smt. Raziya has contended that the respondents/accused have committed contempt by wilful disobedience of the order of this Court.

4. After perusing the complaint petition, this Court issued notices to the respondents/accused Nos. 1 and 2 asking them to show cause why they should not be committed for contempt of Court and in response thereto, they have filed their affidavits and statement of objections.

5. In the affidavit filed by the Respondent/ Accused No. 1 Rajesab, he has pleaded as under:

2. I humbly beg to submit that I have the highest regard to the Hon''ble Court and its orders. I have not done anything intentionally to obstruct the due course of judicial proceedings and administration of justice. Filing of the suit in O.S. No. 146/2000 before the learned Prl. Civil Judge (Jr., Dn.), Bijapur, though under misconception, was nevertheless a mistake which I have realised. I

wholeheartedly and sincerely regret for the same and for what all happened. Having realised my mistakes, I immediately took steps to withdraw the suit. On my memo praying for withdrawal of the suit, the Hon''ble trial Court vide order dated 19-7-2000 was pleased to dismiss the suit as withdrawn. Copy of the order is herewith produced.

3. I tender my sincere and unconditional apology to this Hon''ble Court. I humbly pray that this Hon''ble Court to kindly pardon me.

4. I also humbly beg to submit that the direction of this Hon''ble Court in W.P. No. 8430/99 is complied with and fresh auction was held/conducted by the second respondent.

Wherefore, I humbly pray that this Hon''ble Court to kindly pardon me and drop the proceedings, in the interest of justice and equity.

6. In the statement of objections filed on behalf of the Respondent/Accused No. 2, supported by an affidavit swearing to the correctness of the statements made in the objections statement, it is pleaded as under :-

1. The complainant has filed the above Contempt of Court case stating that the first respondent and this respondent have committed disobedience to the orders of this Hon''ble Court dated 23-8-99 in writ petition No. 8430/99. As far as this respondent is concerned it is submitted that this respondent has not committed any disobedience to the orders passed by this Hon''ble Court and the Contempt Case against this respondent is liable to be dismissed.

In amplification of the said fact, this respondent submits as follows :

2. This respondent respectfully submits that it is a fact that the petitioner had filed writ petition No. 8430/99 before this Hon''ble Court. This Hon''ble Court by order dated 23-8-99 disposed of the writ petition directing this respondent to call for fresh tenders fixing the upset price of Rs. 14 lakhs and auction the rights to the party that tenders the highest offer and that the upset price of Rs. 14 lakhs shall be per year.

3. Further, it was made clear that if there was no better offer than Rs. 14 lakhs, the order passed at Annexure-L shall stand revived. Pursuant to the said order passed by this Hon''ble Court, this respondent took steps to issue notification dated 3-3-2000 calling for fresh tenders as per the directions of this Hon''ble Court fixing the date of tender on 20-3-2000. A copy of the said notification dated 3-3-2000 is produced as Annexure-R1.

4. Thereafter, the first respondent herein brought ex parte injunction against this respondent not to take any further action pursuant to the said notification dated 3-3-2000, from the Prl. Civil Judge (Jr., Dn.,) Bijapur in O.S.No. 146/2000. Immediately thereafter, this respondent filed objections and also an I.A. bringing to the notice of the Hon''ble Civil Judge the orders passed by this Hon''ble Court and it is only after this respondent pointed out that the first respondent has

suppressed the orders of this Hon''ble Court, the Hon''ble Civil Judge taking serious view of the same, the first respondent withdrew the O.S. No. 146/2000 on 19-7-2000.

5. After the withdrawal of the said suit filed by the first respondent, this respondent took immediate steps to issue another notification dated 26-7-2000, a copy of which is produced as Annexure-R2, inviting tenders as directed by this Hon''ble Court and fixing the upset price of Rs. 14 lakhs.

6. Pursuant to this notification, only the first respondent had offered the tender and the complainant did not offer any tender and hence as per the decision of this Hon''ble Court Annexure-L to the writ petition had to be restored and the tender continued in the name of the first respondent.

7. Thus it is clear that this respondent has taken diligent action and has complied with the orders of this Hon''ble Court in true spirit and has not committed contempt of the orders of this Hon''ble Court and has not disobeyed the orders passed by this Hon''ble Court.

Wherefore, it is respectfully prayed that this Hon''ble Court may be pleased to :

DISMISS the above Contempt of Court Case, as far as this respondent is concerned, in the interest of justice and equity.

7. From the above narration of facts, it is evident that though the order was passed by this Court on 23-8-1999, the respondent/ Accused No. 2 took steps to call for fresh tenders only on 3-3-2000, fixing the date of tender on 20-3-2000. During this period, the respondent/Accused No. 1 seems to have rushed to the Civil Court and obtained an adinterim order of injunction restraining the respondent/Accused No. 2 from holding the auction of Sunday Bazar collection offers on 20-3-2000. Subsequently on 19-7-2000, the respondent/Accused No. 1 seems to have filed a memo stating that he is not interested to prosecute the suit and consequently the suit of the plaintiff came to be dismissed as not pressed on 19-7-2000.

8. Learned counsel for the complainant has contended before us that the acts and conduct on the part of the Respondents/ Accused Nos. 1 and 2 in not calling for the tenders immediately after the order made by this Court and postponing the matter till 3-3-2000 and even after issuing the notification, fixing the date of tender on 20-3-2000, the filing of the suit and obtaining an ad-interim order of injunction is nothing but a collusive act on the part of both the respondents to defy the order made by this Court and hence it cannot but be termed to be motivated and thus has to be dealt with utmost seriousness as otherwise it would not be possible for any Court to administer the justice in the true sense of the term and to the satisfaction of those who approach the Courts with a firm hope that justice will be done. He therefore contended that anyone who resorts to such tactics to defy the orders of this Court will be liable for contempt as it amounts to interference with the administration of justice. He has placed reliance

upon the following decisions :

1. T.M.A. Pai Foundation and others, etc. Vs. State of Karnataka and others, .
2. The High Court of Karnataka Vs. Prof. P.N. Shetty,
3. Special Land Acquisition Officer Vs. Puttaiah and others, .

9. As against this, the learned counsel for the respondent/Accused No. 1 has contended that in the matter under consideration, there is no plea of justification of the act done by him and the Respondent/Accused No. 1, without any reservation whatsoever pleaded unconditional apology before this Court and hence the Act committed, by the Accused No. 1 may be condoned that the notice issued against him may be discharged. According to the learned counsel for the Accused No. 1, when the respondent/Accused No. 1 has tendered his unconditional apology at the earliest, it deserves consideration by this Court.

10. Learned counsel for the respondent/ Accused No. 2, on the other hand, has contended that the Respondent/Accused No. 2 has taken diligent action and has complied with the orders of this Court in true spirit and has not committed contempt of the order of this Court and has not disobeyed the orders of this Court and hence he prayed for dismissal of the complaint in so far as the Respondent No. 2 is concerned.

11. Now it is not in dispute that both the Respondent/Accused Nos. 1 and 2 were fully aware of the nature and scope of the order passed by this Court in W.P. 8430/99, directing the Respondent No. 2 to call for fresh tenders and auction the rights to the party that tenders the highest offer. The said order came to be passed by this Court on 23-8-1999, and yet the second respondent/Accused No. 2 did not take any effective steps in this regard till 3-3-2000. This is very clear from the statement made in Paragraph-3 of the statement of objections filed on behalf of the Respondent No. 2, wherein it is stated that pursuant to the order made by this Court, the Respondent No. 2 took steps to issue notification dated 3-3-2000 calling for fresh tenders as per the direction of this Court, fixing the date of tender on 20-3-2000. That means though the order was passed on 23-8-1999, the Respondent No. 2 could think of taking effective steps only on 3-3-2000. In this context, it is pertinent to note that the specific allegations made against the Respondent No. 2 in the complaint petition filed by the complainant is that the complainant after obtaining the certified copy of the order passed by this Court requested the Respondent No. 2 to call for fresh tenders as the complainant is ready to offer her bid for Rs. 14,00,000/- as per the undertaking given by her before this Court in the above said writ petition, but inspite of that, the Respondent No. 2 did not call for the fresh tender and postponed the same for one reason or the other reason only with a view to favour the Respondent No. 1. This allegation or statement of fact made by the complainant has not been refuted or controverted by any of the respondents/accused muchless by the Respondent No. 2. If one were to have a close look at the order made by this Court in the writ petition, it is obvious that any delay in

calling for fresh tenders as directed by this Court would be advantageous to the first respondent/Accused No. 1 and will be prejudiced to the interest of the complainant. This is because the order further says that during the pendency of calling for fresh tender till auction is finalised, the respondent/Accused No. 1, who was Respondent No. 3 in the writ petition, shall continue to collect the fee of Sunday Bazar at Bijapur City. Obviously for this reason, none of the respondents was either eager or anxious to comply with the directions of this Court. In this backdrop, the specific allegation made by the complainant in paragraph-8 of the complaint against the respondents/accused, will assume importance. It is thus clear from the said statement of facts made in paragraph-8 of the complaint that inspite of the requests made by the complainant to the Respondent No. 2 to comply with the directions issued by this Court in the writ petition, the Respondent/ Accused No. 2 did not call for fresh tenders and postponed the same for one reason or the other, only with a view to favour the respondent/Accused No. 1. It is thus clear from the facts and circumstances of this case that the respondent/Accused No. 2 was fully aware of the nature and scope of the order passed by this Court on 23-8-1999 and yet with a view to help the Accused No. 1 did not immediately call for the fresh tenders as directed by this Court inspite of the requests made by the complainant and it is only for the first time on 3-3-2000 it could think of complying with the directions of this Court. Therefore the respondent/Accused No. 2 deliberately delayed the matter only to help the respondent/ Accused No. 1. Therefore in our view the respondent/Accused No. 2 was fully aware of the nature and scope of the order made by this Court on 23-8-1999 directing it to call for fresh tenders and yet with a view to help the respondent/Accused No. 1, did not take any effective steps in the matter till 3-3-2000 and thereby the respondent/Accused No. 2 flouted the order made by this Court. The facts established clearly indicate the intention of the respondent/Accused No. 2 and therefore the complainant was right in saying that the respondent/Accused No. 2 while behaving in that manner has interfered with the judicial proceedings and administration of justice. In so far as the respondent/Accused No. 1 is concerned, it is very clear that he flouted the order of this Court by filing a suit and obtaining an ad-interim order of injunction in his favour by suppressing the material facts from the trial Court. Incidentally we may also observe that though the respondent/Accused No. 2 has stated in paragraph-4 of its statement of objections that it had filed the objections and also an interim application bringing to the notice of the learned Civil Judge, the order passed by this Court and that it is only after it pointed out that the first respondent has suppressed the orders of this Court, since the learned Civil Judge has taken serious view of the same, the first respondent withdrew the suit on 19-7-2000, but the copy of the order sheet of the trial Court filed before us does not indicate that it is at the instance of respondent/Accused No. 2, the suit came to be withdrawn. On the other hand it would appear that the respondent/Accused No. 1, perceiving the consequences of filing of such a suit and obtaining an ad-interim order of injunction in the face of the contempt proceedings initiated against him and the other respondent, thought of proponing the suit and got the

suit dismissed as not pressed by filing a memo to the effect that he is not interested to prosecute the suit. There also, he did not repent for what he had done, but simply stated that he is not interested in prosecuting the suit. It can be stated even at the cost of repetition that this Court passed the order in the presence of both the Respondent Nos. 1 and 2 on 23-8-1999 directing the second respondent to call for fresh tenders fixing the upset price of Rs. 14,00,000/- and auction the rights to the party that tenders the highest offer for a period that may be specified by the first respondent, but yet the respondent No. 2 did not call for the fresh tenders till 3-3-2000 and that too after certain requests made by the complainant in that regard and this delay in taking effective steps to implement the order of this Court was made only with a view to help the respondent/Accused No. 1 and thereby enabled the respondent No. 1 to file the suit and obtain an ad-interim order of injunction by suppressing the material facts before the trial Court and as expected by the Respondent No. 2, the Respondent No. 1 filed the suit before the Civil Court on 16-3-2000 and obtained an ad-interim order of injunction forestalling even the belated auction taken by the Respondent No. 2 and when the complainant initiated contempt proceedings against the respondents before this Court on 7-4-2000, the Respondent No. 2 did not do anything in the matter, but the Respondent No. 1 coolly filed a memo before the trial Court stating that he does not wish to prosecute the suit further and got it dismissed as not pressed on 19-7-2000. Therefore having gone through the entire materials on record, we are of the clear view that both the Respondents/Accused Nos. 1 and 2 intentionally and knowingly flouted the order made by this Court on 23-8-1999 and have thereby interfered with the course of justice. Therefore they are both liable to be convicted under the Contempt of Courts Act. The above said acts and conduct of the respondents are most reprehensible and has the tendency to interfere with the administration of justice and undermines the dignity of the Court and the majesty of law. From the manner in which the respondents have behaved and conducted themselves subsequent to the order made by this Court, a deliberate, motivated and calculated attempt to impair the administration of justice is discernible. It is most reprehensible for the respondents to act in the manner in which they acted. No system of justice can tolerate such behaviour and conduct on the part of the respondents; In the established facts and circumstances of the case, the respondents have committed gross criminal contempt and we hold them guilty as such. The apology tendered by the respondent/ Accused No. 1 does not appear to us to be at all bonafide and genuine in view of the attitude exhibited by him in filing the suit, obtaining an interim order in his favour and then getting it dismissed as not pressed by filing a memo after coming to know of filing of this contempt petition and seems to have been made only to escape the punishment. The respondents do not appear to be repentant at all. We therefore do not accept the apology and the explanation offered by the Respondents 1 and 2. The provisions of Contempt of Courts Act puts an obligation on the Court to assess the situation itself as regard the factum of any interference with the course of justice or due process of law. The learned counsel

appearing for the Respondent No. 1 made a frantic bid to contend that the suit has been filed without realising the consequence of the same and either under some misguidance or misconception. We are however not impressed with the submission and thus unable to record our concurrence therewith. It is not a mere filing of the suit by the Respondent No. 1, but it appears that both the respondents have acted in collusion with each other to defy the order obtained by the complainant in her favour in the writ petition. This practice of defying the orders of the Court should be deprecated and we do hereby record the same. The acts and conduct of both the respondents are rather serious in nature and thereby they rendered themselves guilty of contempt of this Court as noticed herein above by us. This Court in our view would be failing in its duties if the matter in question is not dealt with in a manner proper and effective for maintenance of the majesty of the Courts as otherwise law Courts would lose their efficacy to the litigant public. It is in this perspective that we do feel it expedient to record that mere tendering of an unconditional apology or an explanation to this Court would not exonerate the respondents/contemnors in the contextual facts, but having regard to the nature of the act of contempt, we do deem it fit to impose a fine of Rs. 2,000/- each so as to subserve the ends of justice against the respondents/contemnors, in default of payment of fine, each of them will suffer Simple Imprisonment for one month. The fine be realised within a period of four weeks from the date of this order and shall be paid to the Legal Services Authority of this Court. The Contempt Petition is disposed of accordingly. No order as to costs.