

(1986) 07 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : Criminal M.P. No. 81 of 1986 in Criminal Writ Petition No. 9 of 1986

State of H. P.

APPELLANT

Vs

Gopal Singh

RESPONDENT

Date of Decision : 17-07-1986

Acts Referred:

Citation : (1986) 15 ILR HP 501

Hon'ble Judges : P.D. Desai, C.J;R.S. Thakur, J

Bench : Division Bench

Advocate : P.N. Nag, General, for the Appellant; M.G. Chitkara, for the Respondent

Judgement

P.D. Desai, C.J.—The Court finds that the ground which has been advanced in support of this application (for extension of time), namely, that feeling aggrieved by the judgment rendered on October 3, 1985, in Criminal Writ Petition No. 20 of 1985, the State Government has moved the Supreme Court of India and has applied for a stay of the operation of the said judgment (which has still not been obtained) and that the case file remained with the counsel in-charge of the said matter till May, 1986 and that, therefore, the premature release case ? inadvertently could not receive due and timely attention?, not only fails to carry conviction but is also, prima facie, violative of the principles laid down in the decision of this Court in Hans Raj Dhir v. State of H.P. and Ors. ILR 1984 HP 383.

2. In paragraphs 9, 13 and 14 of the decision in Hans Raj Dhir's case (supra), this Court has made the following pertinent observations:

9. Before parting with the matter, we regard it to be expedient to observe that an impression has been left on our minds that the concerned authorities failed to reinstate and to pay arrears of salary to the petitioner soon after the decision of the learned single Judge, even though at the material time no stay order was operative, as they appeared to be entertaining the belief that since a Letters Patent Appeal was preferred, the matter had once again become sub-judice and

that, therefore, there was no legal obligation to grant the benefits accruing due to the petitioner pursuant to the decision of the learned single Judge. This belief, which appears to have been entertained by the concerned authorities, is wholly unwarranted. Once a case is decided, it is the boundent duty of the State and its subordinates to implement, with the utmost expedition, the said decision. In a Government which is ruled by law, there must be complete awareness to carry out faithfully and honestly the decisions rendered by courts of law after effective adjudication. Then only will private individuals, organisations and institutions learn to respect the decisions of courts. In absence of such attitude on the part of all concerned, chaotic conditions might arise and the functions assigned to the courts of law under the Constitution might be rendered a futile exercise. It requires to be emphasised, in this connection, that mere preferment of an appeal does not automatically operate as a stay of the decision under appeal and that till an application for stay is moved and granted by the appellate court, or, in the alternative, the Court which rendered the decision is moved and grants an interim stay of the decision pending the preferment of an appeal and grant of stay by the appellate court, the decision continues to be operative. Indeed, non-compliance with the decision on the mere ground that an appeal is contemplated to be preferred or is actually preferred, and that, therefore, the matter is sub-judice, may amount to contempt of Court punishable under the Contempt of Courts Act, 1971. The decision of the Supreme Court in *Shri Baradakanta Mishra Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixit*, places the matter beyond dispute, doubt or debate as regards this aspect.

13. In view of the foregoing, it appears to be expedient in the interest of justice to direct the State Government to bring the aforesaid legal position to the notice of all subordinates and to impress upon them the imperative need to implement the decisions rendered by the courts of law with the utmost expedition, unless, an appeal is preferred against such a decision and an application for stay is moved and granted by the appellate court, or, in the alternative, the Court which rendered the decision is moved and grants an interim stay of decision pending the preferment of an appeal and grant of stay by the appellate Court.

14. Let a copy of this judgment be forwarded to the Chief Secretary of the State Government under the signature of the Registrar and seal of this Court for appropriate action.

(underlining supplied)

3. The Court regrets to observe that inspite of the clear declaration of law in these terms and inspite of the said decision having been brought to the notice of the Chief Secretary with a direction for appropriate action, the State Government has neglected in the present case to act in conformity with the law so declared although the case concerns the liberty of a citizen. Mere expression of regrets for ?the unintentional lapse? does not absolve the State Government from the liability of being proceeded against in contempt. The Court would like to observe, in this connection, that the decision of the question whether there has been a

wilful disobedience to a judicial order makes relevant the state of mind of the contemner. In cases where there is an admitted default in carrying out the orders of the Court, one has only to consider whether such disregard was accidental or bona fide or whether it was intentional or it arose out of gross neglect or reckless disregard of the orders of the Court even after the pointed attention of the authority was drawn to the true legal position. An authority cannot be said to be acting honestly when its attention is drawn to the true legal position and it still acts in reckless disregard of consequences. Reckless disregard of consequences and mala fides stand equal, where the actual state of mind of the actor is relevant. If, therefore, the authority, which is acquainted with the true legal position, fails to implement the judicial order in letter and spirit in reckless disregard of the consequences, the conclusion as to wilful disregard can justly be drawn.

4. In view of the decision in Hans Raj Dhir's case, which is known and presumed to be known to the State Government, the default on the part of the State Government, in the present case, to implement the writ would appear to justify, prima facie, the invocation of the contempt powers in order to uphold the majesty of law and the dignity and authority of the Court. The Court, however, desists from resorting to the said course trusting that the executive organ of the State will not allow such a lapse to be repeated and cautioning that a repetition of such default may call for a strict view being taken.

5. The application for extension of time to implement the order is granted but on the condition that no further extension will be applied for or granted.

6. Let a copy of this order be forwarded to the Chief Secretary and the Home Secretary to the State Government for information and appropriate action. The Chief Secretary will once again issue appropriate directions to all the Administrative Secretaries and Heads of Departments bringing to their notice the observations hereinabove made as also the decision in Hans Raj Dhir's case.

7. Dasti copy on usual terms.