

(2022) 11 CAL CK 0018
In the Calcutta High Court

Case No : WPCRC No. 116 Of 2022, CPAN No. 29 Of 2022 In WPA No. 129 Of 2022

Suvendu Adhikari

APPELLANT

Vs

Manoj Malaviya, IPS And Others

RESPONDENT

Date of Decision : 07-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 215
Calcutta High Court Contempt of Courts Rules, 1975 — Rule 4, 6, 7, 9, 15, 29
Evidence Act, 1872 — Section 65B
Contempt of Courts Act, 1971 — Section 2(b)

Citation : (2022) 11 CAL CK 0018

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Rajdeep Majumder, Moyukh Mukherjee, Aishwarya Bajaj, S.N. Mookherjee, Anirban Ray, Sanjay Basu, Debasish Ghosh, Piyush Agarwal, Utsha Dasgupta

Final Decision : Dismissed

Judgement

Sabyasachi Bhattacharyya, J

1. The petitioner moved a writ petition bearing WPA No.129 of 2022, which was disposed of by this Court vide order dated January 5, 2022. It was recorded in the said order that the learned Advocate General (appearing for the State in the writ petition and the alleged contemnors in the contempt application) submitted that there was no requirement for getting any permission from the Superintendent of Police (SP) for visiting a particular area of the State. It was further submitted that the writ petition was superfluous in the sense that no separate sanction need be given to any citizen of India to visit any part of the country, unless law is violated by the said person in any manner whatsoever.

2. The order went on to record that the State was justified in so submitting that no permission was required from the SP or any other authority for the petitioner,

along with his security personnel, to visit any area within the periphery of India, including Netai village and that unless the petitioner and/or his men and agents violate the law in any manner, there cannot arise any apprehension of any resistance being put up by the authorities to the petitioner.

3. WPA No.129 of 2022 was, thus, disposed of on January 5, 2022 by observing that the petitioner and his security personnel has the right, as citizens of India, to visit not only Netai village but any other place in India, subject to legal restrictions, without violating any provision of law. If the petitioner so visits the Netai village along with his security personnel on January 7, 2022, it was observed that there would be no impediment for the petitioner and his men to do the same.

4. Subsequently, the contempt application being CPAN No.29 of 2022 was filed alleging that the respondents/alleged contemnors had deliberately and willfully violated the said order dated January 5, 2022. Being prima facie satisfied that a case of contempt had been made out, the Court issued a Rule of Contempt on January 30, 2022, thereby giving rise to WPCRC No.116 of 2022.

5. It is argued by learned counsel for the petitioner that, contrary to the assurance given by the learned Advocate General (AG) on behalf of the State, the Law Enforcement Authorities specifically prevented the petitioner from going into the said village. It was also observed in the said order dated January 30, 2022 that there was nothing on record to indicate that the police, at any point of time, asked the petitioner or permitted him at least to go alone, much less with his security personnel. It was also found that the allegation that a mob would have entered was entirely in the realm of conjecture and surmise. Since the petitioner was visibly not armed and/or did not physically threaten the alleged contemnors, it was observed that there was no occasion for the police authorities to specifically prevent the petitioner from going to the Netai village.

6. In answer to the Rule, affidavits-in-opposition have been filed individually by each of the alleged contemnors, to which affidavits-in-reply have also been filed by the petitioner.

7. A short video clip was handed over in court on the digital media of a pen-drive and a compact disc by the petitioner, a copy of which was served on the alleged contemnors. Learned counsel for the petitioner argues that it will be evident from the said video clip and from the averments made in the contempt petition that, despite being fully aware of the assurance given by the learned AG on behalf of the State, the petitioner was actively resisted by the alleged contemnors from going near the Netai village on the appointed day, that is, January 7, 2022.

8. Learned counsel submits that the purported defence of apprehended violation of law and order is misplaced and not corroborated by any material evidence.

9. It is further submitted that, contrary to the objection raised by the alleged contemnors, the Court is empowered to look into the video footage produced by

the petitioner, since the same was accompanied by a due certificate under Section 65B of the Evidence Act, which is a part of the record.

10. Learned counsel for the petitioner places reliance on the finding arrived at by this Court in its order dated June 30, 2022, passed while issuing the Rule, as well as the averments made in the contempt application. It is submitted that Rule 29 of the Calcutta High Court Contempt of Courts Rules, 1975 provides that the respondent or the contemnor may file an affidavit showing cause and the petitioner may file a reply thereto within such time as may be directed by the Court. The Court may, however, in a contempt proceeding, take such evidence as considered necessary. In view of the said Rules of 1975 having been specifically complied with in the present case, it is argued that the Rule ought to be made absolute, thereby punishing the alleged contemnors for contempt of court.

11. Learned counsel for the petitioner cites *Maninderjit Singh Bitta Vs. Union of India and others*, reported at (2012) 1 SCC 273, where it was held that disobedience of Court orders by positive or active contribution or non-obedience by a passive and dormant conduct leads to the same result. Lethargy, ignorance, official delays and absence of modification can hardly be offered as any defence in an action for contempt. Whenever there are obstructions or difficulties in compliance of the directions/orders of the Court, the least that is expected of the Government Departments or its functionaries is to approach the Court for extension of time or clarifications, if called for. In the present case, it is submitted, no such clarification was sought by the alleged contemnors at any point of time.

12. Learned counsel for the petitioner next places reliance on *Subrata Roy Sahara Vs. Union of India and others*, reported at (2014) 8 SCC 470. It was held in the said judgment that the High Court is a Superior Court of record and under Article 215, shall have all powers of such a Court of record, including the power to punish contempt of itself and also to consider questions of the jurisdiction raised before it. It was also reiterated in the said judgment that it was always open to the respondent to approach the court for clarification of the order and difficulty in implementation of an order passed by the Court, howsoever grave its effect may be, is no answer for its non-implementation.

13. Next citing *Priya Gupta and another Vs. Additional Secretary, Ministry of Health and Family Welfare and others*, reported at (2013) 11 SCC 404, learned counsel contends that the provisions of the Contempt of Courts Act, 1971 do not admit any discretion for the initiation of proceedings under the Act with reference to an order being of general directions or a specific order inter se the parties. If there was a wilful disobedience, the Government Departments are not exempt from the consequences thereof and violation of the orders of Court would invite action in accordance with law.

14. Learned counsel for the petitioner also cites *Bank of Baroda Vs. Sadruddin Hasan Daya and another*, reported at (2004) 1 SCC 360. In paragraph no.12

thereof, it was observed that the willful breach of an undertaking given to a court amounts to "civil contempt" within the meaning of Section 2(b) of the Contempt of Courts Act and a breach of an undertaking given to the court makes a party liable for having committed contempt of court. It was reiterated in the judgment, following Halsbury's Laws of England, Vol. 9(1), para 482 that an undertaking given to the court in pending proceedings by a person or corporation (or by a government department or Minister of the Crown acting in his official capacity), on the faith of which the court sanctions a particular course of action or inaction, has the same force as an injunction made by the court and a breach of the undertaking is misconduct amounting to contempt.

15. The learned AG, at the outset, submits that the Rule of Contempt issued by this Court was bad in law and not in proper form. It is submitted that specific particulars of the alleged contempt by the respondents were not mentioned in the Rule or subpoena served on the respondents. It is further contended that the submission made on behalf of the State on the day of the parent order dated January 5, 2022 did not tantamount to an 'undertaking'. Moreover, there was no specific direction in the said order which could have been violated. That apart, it is submitted, by placing reliance on the affidavits-in-opposition of the alleged contemnors, that there was no act or omission of wilful or deliberate disobedience of the order of Court.

16. Inasmuch as the alleged contemnor no.1 is concerned, the said person was not present at the site of alleged violation at all and had no direct role to play, sufficient to attract the provisions of the 1971 Act.

17. The learned AG cites Dr. U.N. Bora, Ex. Chief Executive Officer and others Vs. Assam Roller Flour Mills Association and another [(2022) 1 SCC 101], in support of the proposition that vicarious liability, as a principle, cannot be applied to a case of contempt and knowledge acquires substantial importance. Merely because a subordinate official acted in disregard of an order passed by the Court, a liability cannot be fastened on a higher official in the absence of knowledge. When two views are possible, the element of wilfulness vanishes as it involves a mental element. What is required to be established is a deliberate, conscious and intentional act and the proof is to be beyond reasonable doubt since contempt proceedings are quasi-criminal in nature.

18. Next citing Nand Kishore Ojha Vs. Madan Mohan Ojha [(2007) 13 SCC 349], the learned AG submits that every statement in affidavits cannot be deemed to be an 'undertaking' given by the respondent. If sufficient explanation was given by the respondent, there would not arise any civil contempt for alleged breach of undertaking given to court.

19. Learned AG next cites Union of India and others Vs. Mario Cabral [(1982) 3 SCC 349] to justify his submission that the government advocate's assurance did not amount to an undertaking or enforceable direction and the Government could not be held to be guilty of contempt on the ground of wilful breach of an

undertaking or wilful disobedience of any order or direction passed on the basis of such assurance.

20. Next placing J.R. Parashar, Advocate and others Vs. Parasant Bhushan, Advocate and others [(2001) 6 SCC 735], the learned AG reiterates the broad principles relating to the law of contempt. A civil society is founded on respect for the law, which is to be built and sustained by the conduct of the persons administering the law, to be shored up by sanctions for actual breaches of law and for actions destroying that respect. The law of contempt, it was held, is framed for the second purpose.

21. The learned Advocate General next cites a coordinate Bench judgment of this Court reported at (2013) SCC OnLine Cal 8317 [Narayan Chandra Das Vs. Anjan Ghosh and others], where it was held that the contumacious conduct complained of must be stated in the cause title and also in the prayer portion. The petition must also contain full particulars of the materials on which the petition is grounded. In such context, the learned Advocate General relies on the provisions of Rules 4, 6 and 7 of the Contempt Rules, 1975.

22. The learned AG next relies on a Division Bench judgment of this Court reported at 2009 SCC OnLine Cal 2753 (Namita Sinha Roy Vs. State of West Bengal and others) where it was observed that a contempt proceeding is a quasi-criminal proceeding and the alleged contemnor should know the specific charge levelled against him for his proper defence, if any. In another unreported Division Bench Judgment of this Court, passed by the Division Bench in CC No.66 of 2010 (Md. Kasim Vs. Gorachand Mondal and others), it was reiterated that the contumacious act and conduct should be specifically stated in the cause title, pleading and the prayer portion for issuance of a Rule.

23. The learned AG next cites a coordinate bench Judgment of this Court reported at (2209) 1 WBLR (Cal) 1011 [Shri Sheo Ram Vs. Shri Bhopinder Singh and others], where it was reiterated that in the absence of foundational fact of contemptuous conduct to identify the action of the alleged contemnor to give him an opportunity of hearing as per principles of natural justice, the contempt application was not maintainable.

24. Upon considering the propositions of law cited and argued by learned counsel for the parties, it is required to be considered at the outset whether the contempt application ought to be dismissed for lack of particulars. A bare perusal of the contempt petition and the pleadings made by the parties in the affidavits, however, clearly discloses that a prima facie case of contempt has been made out with regard to disobedience of the order dated January 5, 2022. In fact, it is clearly elucidated from the affidavits in opposition used by the alleged contemnors that they were fully aware of the allegations that they have to deal with.

25. Inasmuch as the stipulations of the relevant rules of the Calcutta High Courts Contempt of Rules, 1975 (for short, "the 1975 Rules") are concerned, the said

provisions, particularly those of Rules 4,6, 7 and 9, have been substantially complied with in the present case. The contempt application has been heard by the judge, the wilful disobedience of the order or wilful breach of undertaking given to whom comprise of the grounds of contempt, in due compliance of Rule 15 of the 1975 Rules.

26. Hence, there is no scope of doubt that the powers of a Constitutional Court of records guaranteed both under the Contempt of Courts Act, 1971 and Article 215 of the Constitution of India cannot be curtailed on the basis of mere technicalities. Since the parties have elaborately dealt with the allegations and counter allegations relevant to the alleged contumacious act, there is no scope of dismissing the contempt application as not maintainable in law and in its present form.

27. Moreover, as rightly argued by the petitioner, the court may, in a contempt proceeding, take such evidence as may be considered necessary, including affidavits filed by the parties. Copies of the pleadings were exchanged between the parties, along with the video footage, for the consideration of which ample time was granted to the alleged contemnors. As such, there cannot be said to be any legal bar in considering the contents of the video footage, which have been sufficiently dealt with and sought to be explained away in the affidavits-in-opposition of the contemnors.

28. There are certain aspects of the present case which are required to be considered for the purpose of ascertaining whether the contempt Rule should be made absolute or not.

29. In the parent order dated January 5, 2022, the writ petition bearing WPA No.129 of 2022 was disposed of by accepting the submission of the learned Advocate General. It was submitted on behalf of the State that there was no requirement for getting any permission from the Superintendent of Police or any other authority for visiting a particular part of the State, on the basis of which it was observed by court that the petitioner and his security personnel have the right as citizens of India to visit not only the Netai village but any other place in India, subject to legal restrictions, without violating any provision of law. Although no specific direction for police help was given, it was observed that if the petitioner so visits the Netai village, along with his security personnel, on January 7, 2022, there is no impediment for the petitioner and his mend to do the same.

30. A prima facie consideration of the submission made by the learned AG, although may not arguably tantamount to an 'undertaking' before the court, the entire premise of the order disposing of the writ petition was such submission and the consequential stand taken by the State.

31. Such assurance, thus, can very well be deemed to be in the nature of an undertaking, wilful and deliberate violation of which, if any, on behalf of the functionaries of the State would add up to c a contumacious action.

32. The alleged contemnor no.1, as is evident from the pleadings, was not present on the spot, nor could his direct involvement be shown in any manner in respect of the alleged violation and disobedience of the order of this Court.

33. As such, following the principle laid down by the Supreme Court in Dr. U.N. Bora (*supra*), the alleged contemnor no.1 could not be incriminated for deliberate and wilful violation of the order-in-question. Inasmuch as the other alleged contemnors are concerned, it is palpable from their affidavits that at least two of them were present at the locale where the petitioner was prevented from going on to the Netai village.

34. It is clearly seen from the short video clipping which has been produced by the petitioner in court, that the petitioner repeatedly wanted to go to the spot apparently for paying homage to "martyrs" but the alleged contemnors present at the locale apparently resisted him from doing so. The defence taken by the alleged contemnors that the petitioner was asked to wait is not borne out at least by the said video footage.

35. Upon an examination of the explanation given by the alleged contemnors, it is seen that they have stated in unison that the various approach roads to the Netai village had already been filled up at the relevant time by masses, who were also attempting to visit the spot in Netai village and raising slogans, for which the petitioner was prevented at Jhitka, which is situated around 8 km. from Netai, from going on to Netai. The time of visit of the petitioner at the said location, that is, Jhitka has been stated to be around 3.30 pm, which would take the Netai visit of the petitioner, if he was allowed, to about 4.00 pm.

36. It is brought out from the pleadings that a huge number of people had converged in the area at the relevant time, belonging mostly to the ruling party AITC (All India Trinamool Congress) and the main opposition in the state, that is, the BJP (Bharatiya Janata Party). Several such supporters, according to the information of the alleged contemnors, had begun mobilizing from various parts of Jhargram, Paschim and Purba Medinipore districts and were flocking different approach roads to the Netai village, which are evidently narrow, which would create an imminent law and order situation if such a huge crowd was permitted to assemble there along with their vehicles.

37. The map of the locale, as annexed to the affidavits-in-opposition of the alleged contemnors, along with the photographs extracted inter alia from the video footage and otherwise, all go on to show that the petitioner had not gone alone with a few security personnel for his personal protection but was accompanied by a huge assembly of supporters, who were vociferous at times, even as per the video footage produced by the petitioner.

38. The alleged contemnors were entrusted with the task of maintaining law and order and, based on the materials produced before this court, it is not baseless to apprehend that if the petitioner was permitted to go to Netai, he might not have gone alone or only with his security personnel, as permitted vide order

dated January 5, 2022 by the Court.

39. The video footage itself is not convincing proof that an act of contempt was committed by the alleged contemnors. Although the same showed the police authorities to resist the petitioner from moving on to Netai, such resistance has been sufficiently justified by the impending situation in the area at the relevant point of time. It is seen from the representations given by the petitioner and his agents, which are also part of the records, having been annexed to the pleadings, that the petitioner had previously sought to reach Netai between 2 pm and 3 pm but was still about 8 km. away even around 3.30 pm.

40. Although the petitioner is justified in arguing that the prior ongoing assembly of the ruling party, by itself, could not be sufficient justification to prevent the petitioner from going to the locale, the legality of such assembly and/or the happening of such event have not been specifically controverted by the petitioner.

41. It is anybody's guess that there might have been a serious law and order breach if the petitioner, along with his supporters, had approached the said village in their vehicle or otherwise, which might have inflamed a fallout which would be more severe than could be contained by the Law Enforcement Personnel.

42. It is not clear from the video footage itself that it was a representation of the entire incident that happened at the locale where the petitioner was resisted but merely projects a portion thereof, in which the petitioner consciously and repeatedly reiterates his request to go on to Netai village. Such statements, without doubt, were made for the camera as supporting material for the contempt application. There is no video footage of the entire scenario in and around the said area at relevant juncture, nor any comprehensive or cogent denial of the developments allegedly occurring then in the vicinity.

43. The several reports and documents produced by the alleged contemnors reveal that are sufficient materials on record to corroborate the legitimate apprehension of a clash between the warring political parties and consequently breach of peace in the event the petitioner was let in. Such developments at the ground level, in the least, create a doubt as to whether the resistance by the alleged contemnors to the petitioner going over to Netai was entirely unjustified.

44. To tantamount to contempt of court, the alleged disobedience has to be wilful and deliberate. However, an element of doubt is introduced in the instant case in view of the ongoing developments which might have led to a riotous conflagration, to prevent which the action to the alleged contemnors might have been necessary.

45. As is well-settled and laid down in the judgments cited on behalf of the alleged contemnors, the benefit of any doubt which might crop up with regard to the allegation of deliberate disobedience has to go in favour of the alleged contemnor.

46. Censure for contempt by fine or imprisonment or otherwise is an extreme measure to protect the dignity of the Court.

47. However, in the present case, the element of doubt, which has been successfully created by the alleged contemnors, defeats the purpose of taking such an extreme measure. Since the attending materials and circumstances fail to clinch beyond reasonable doubt that the alleged action/omission of the alleged contemnors was wilful and deliberate and not a legitimate act of the police authorities within their powers to enforce the law and order situation, it would not be in consonance with the principles laid down in the several judgments cited by the alleged contemnors to make the contempt Rule absolute.

48. Since sufficient explanation has been furnished by the alleged contemnors to create a doubt in the mind of court as records the wilful violation of the order of court, the Rule cannot succeed.

49. That apart, the learned AG is somewhat justified in arguing that no specific undertaking was given by him at the relevant juncture that is on January 5, 2022, which has been violated. There is a further element of doubt as to whether the submission of the learned AG was one of law to the effect that no permission was required by any citizen for visiting a particular area of the state or whether the same was a specific undertaking sufficient to fix liability of contempt for its 'violation'.

50. Undoubtedly, the court accepted such submission and observed that the petitioner was free to visit the Netai village on January 7, 2022 with his security personnel, the events on the relevant date, as borne out by the materials on record, cast a bona fide doubt as to whether there was violation of any undertaking as such on the part of the Law Enforcement Authorities. Moreover, the expression "subject to legal restrictions" qualified the permission to the petitioner to visit the said locale and there is sufficient material to justify the claim of the alleged contemnors that there would be a flagrant violation of the law and order situation in the event the petitioner was allowed to go through, which might have prompted the respondents to prevent him from doing so, as it would create a risk of inciting the highly volatile situation in Netai village.

51. It is required to consider the judgments cited by the parties in the backdrop of the present case. The proposition laid out in *Maninderjit Singh Bitta* (supra) is well-settled and there cannot be any quarrel with the same. The cardinal principle enunciated therein is that the disobedience of a court order may be passive and dormant as well as active, to attract contempt. However, in the present case, in view of there being no deliberate disobedience as such, the said principle does not help the petitioner.

52. In *Subrata Roy Sahara* (supra), the Supreme Court held that the alleged contemnor ought to seek clarification from the court before-hand if compliance of the order is not possible for some reason. However, in the present case, there was no scope of seeking any prior clarification as such, since the situation

compelling the law Enforcement Authorities to stop the petitioner away from Netai village flared up on the day of occurrence itself.

53. In paragraph 20 of the said citation, in fact, the Supreme Court also lays down that the contempt jurisdiction, which comprises "the Jury, the Judge and the hangman", should be exercised sparingly and with caution. Such interference happens only when the authority of the Court is imperilled by the concerned act of parties. However, no such deliberate threat to the authority of the court was issued by the alleged contemnors by their action on the relevant date.

54. In *Priya Gupta (supra)*, it was held that even when the directions given in an order are general in nature, contempt lies. In the present case, however, there was no 'direction' as such directing on alleged contemnors to grant police help or escort the petitioner to Netai. In any event, since there is scope of ambiguity as to whether the statement of the learned AG was a submission of law which was accepted by court or an undertaking given to court, the benefit of doubt has to go in favour of the alleged contemnors inasmuch as the allegation of wilful and deliberate disobedience is concerned. The explanation furnished by the alleged contemnors are worthy of acceptance and, hence, the occasion to punish the alleged contemnors does not arise.

55. In *Bank of Baroda (supra)*, again, it was alleged that the wilful breach of an undertaking amounts to contempt. By the same logic on which the ratio of *Priya Gupta (supra)* is not attracted here, in view of the scope of different possible interpretations of the submission of the learned AG, it cannot be categorically said that there was a wilful breach of undertaking in the strict sense.

56. Inasmuch as the citations relied on by the learned AG are concerned, as rightly laid down in *Dr. U.N. Bora (supra)*, there cannot be any vicarious/constructive liability for contempt. In any event, two of the alleged contemnors were not present at the locale and, as such, the respondent no.1, being a superior officer, cannot automatically be liable for the actions taken on the field by the other alleged contemnors.

57. In *Nand Kishore Ojha (supra)*, the State of Bihar was willing to implement the undertaking, in view of which no contempt Rule was issued. Such proposition, however, does not have any applicability to the present case since the alleged contemnors deny any wilful disobedience at all.

58. In *Mario Cabral's case (supra)*, the Government Advocate was recorded to have tendered an advice without having the authority to make binding commitment for his client. Although the position of the learned AG vis-à-vis the State is on a higher footing in law than any other government counsel in view of the several powers conferred on the learned AG in law, the submission of the learned AG to the effect that the petitioner was free to go anywhere was qualified by the rider that such act of the petitioner ought not to violate any law. Although, ipso facto, the petitioner's travel to the Netai village was not a violation of law, the direct apprehension of a law and order predicament would sufficiently

entitle the Law Enforcement Authorities to prevent such act on the spot.

59. The principle laid down in J.R. Parasar (supra) does not apply to the present case, since in the said case, benefit of doubt was given to the second respondent therein on the ground of fair criticism, which is not the case of any of the parties to the instant application.

60. In the learned Single Judge decisions of this Court rendered in Narayan Chandra Das (supra) and Namita Sinha Roy (supra), the court had hauled up the petitioner for non-disclosure of full particulars in the contempt application and non-identification of the particular contemptuous conduct alleged. Such observations were returned in the fact of the said case. In the present case, however, the contempt application as well as the other pleadings of the parties sufficiently brought out the scope of the alleged contumacious act.

61. It is fairly evident from the affidavits-in-opposition of the alleged contemnors that they were very well aware of the alleged acts of contempt.

62. In Md. Kasim (Supra) the Division Bench of this Court reiterated the same principle, which is not attracted here in view of the reasons as indicated above. In the instant case, substantial disclosure was made in the pleadings and the parties had come to court with ample knowledge of the exact allegations and counter allegations between themselves.

63. In such view of the matter, the contempt application fails. Accordingly, WPCRC No.116 of 2022 is discharged, dismissing the contempt application bearing CPAN No.29 of 2022. Further personal appearance of the alleged contemnors is hereby dispensed with.

64. There will be no order as to costs.

65. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.