
(1998) 11 CAL CK 0013
In the Calcutta High Court

Case No : Special Jurisdiction (Contempt) C.R. No. 5177 (W) of 1998

Tapan Kumar Dasgupta

APPELLANT

Vs

Indra Narayan Patra

RESPONDENT

Date of Decision : 23-11-1998

Acts Referred:

Citation : (1999) 1 CALLT 503

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Advocate : Mr. S. Bhattacharya, for the Appellant; Mr. AJil Kumar Panja, Mr. Rabindra Nath Das and Mr. Durga Prosad Dutta, for the Respondent

Judgement

K. J. Sengupta, J.—This is an application for contempt of court alleging inspite of notice and knowledge of the Order passed by me on 6th August, 1997 in the writ petition being No. 12599(W) of 1997 the respondents and each of them violated the said order. It is further alleged in the petition that by a letter dated 6th August, 1997 an interim order of status quo passed by me was communicated to the respondents and each of them herein. It is further alleged in violation of the order of status quo the respondents and each of them have counted the votes and published the result and held Annual General Meeting.

2. The respondents and each of them after the rule was served upon them have duly filed separate affidavit-in-opposition. The defence and/or answer in dealing with the allegations made in the Contempt Petition are identically same. The sum and substance of the defence taken by the respondents and each of them amongst other are as follows:--

(i) None of the respondent has received the alleged communication being letter dated 6th August, 1997 addressed by Mr. Sukumar Bhattacharya, Advocate was neither served nor received. The envelope which they received, did not contain any letter of communication dated 6th August, 1997 conveying the text of the order passed by me on 6th August, 1997, nor any copy of the order. They

received the copies of the writ petition only.

(ii) Immediately after receipt of the said envelope containing the copies of the writ petition the respondent No.1, viz., "Sri Ratanlal Barat wrote a letter dated 11th August, 1997 to Mr. Sukumar Bhattacharya, the learned Advocate for the petitioner contending and recording that they did not receive any communication nor any copy of the order excepting the copies of the writ petition. By the said letter dated 11th August, 1997 Shree Barat the Chairman asked the learned lawyer Mr. Sukumar Bhattacharya to let him know whether the said writ petition was filed in the Hon"ble High Court or not.

(iii) The order of status quo was granted with regard to election of delegates and holding of Annual General Meeting. It will appear from the writ petition itself, as well as, the records that the election of delegates of the concerned Society had already been held on 3rd and 4th May, 1997 and the Annual General Meeting was held on 5th July, 1997. So, the order which was passed on 6th August, 1997 was obtained upon suppression of the aforesaid fact and the order of status quo was of no effect.

(iv) in any event, there was a dispute before the Co-operative Tribunal involving the very same subject matter between the friendly group of the writ petitioner and the respondents herein. On 8th August, 1997 the learned Tribunal passed an order asking the respondents to proceed with the follow up action of the Annual General Meeting. Accordingly, on 12th August, 1997 the result was published. So, there was no violation of the order of this court. Furthermore, even if there was any violation by any stretch of the imagination then the respondents and each of them did not have any knowledge of passing of the aforesaid order.

3. It has been further alleged that the petitioner herein has initiated this contempt proceeding having found himself unsuccessful before the Tribunal as a pressure tactics in abuse of the process of the court. Such conduct of the petitioner would be apparent from the fact that even the same very learned lawyer who was conducting hearing of the writ petition, on 8th August, 1997 appeared before the Co-operative Tribunal and did not made any whisper about the passing of order of status quo by this court and kept the said order under secret waiting for the favourable result and/or decision of the Tribunal. Having found unsuccessful in Installing the said Annual General Meeting the petitioner herein has now resorted to this proceeding alleging contempt.

4. Mr. Sukumar Bhattacharya, the learned Advocate appearing for the writ petitioner, submits that the order passed by me on 6th August, 1997 does not relate to holding of Annual General Meeting and election of delegates only but it also applies to the follow up action of the delegates' election and Annual General Meeting. Mr. Bhattacharya submits that even on 12th August, 1997 when the result was published some of the Directors drew attention of the Manager of the Co-operative Bank about the passing of the order of status quo. Mr. Bhattacharya submits that communication of the order of status quo is not the material but the

knowledge of passing of the order. In the event If it is proved that respondents had knowledge through other sources about the passing of the order of status quo then it is sufficient to charge the respondents and each of them for committing contempt as admittedly they took step by counting votes and publication of result of the Annual General Meeting.

5. When Mr. Bhattacharya was asked as to whether his letter dated 6th August, 1997 has been despatched by him and/or his clerk he was fair and candid enough to say that his letter dated 6th August, 1997 containing the intimation of passing of the order dated 6th August, 1997 together with the copies of the writ petition was handed over to his client being the petitioner herein and who undertook to serve by Registered Post. So he cannot specifically say whether his letter dated 6th August, 1997 was inserted in the envelope along with the copies of the writ petition or not. Mr. Bhattacharya in his usual fairness further admits that the letter dated 11th August, 1997 written by Ratanlal Barat, Chairman, Bankura Town Cooperative Ltd., being the respondent No. 2 was received by him but no reply was given by him.

6. Mr. Ajit Kumar Panja. Senior Advocate, appearing with Mr. R.N. Das and Mr. Durga Prosad Dutta, Advocates submits that it would appear from the fact that my aforesaid order dated 5th August, 1997 was not served nor communicated as on 12th August, 1997. The allegations made in the contempt petition is based on service of my order dated 6th August, 1997, by and under letter dated 6th August, 1997, Mr. Panja drew my attention to my order dated 6th August, 1997 whereby I directed the writ petitioner to serve copy of the order and copies of the writ petition but copy of the order was not served, only copies of the writ petition was served. So, the writ petitioner himself did not carry out order of this court. He submits further that even after receipt of the letter of the Chairman, Co-operative Bank being the respondent No. 2 no reply was given thereto. Even on 8th August, 1997 the learned lawyer Mr. Sukumar Bhattacharya did not divulge at the time of hearing of the same dispute before the learned Tribunal about the passing of order dated 6th August, 1997. This conductor the petitioner is a mala fide. The petitioner obtained order on 6th August, 1997 upon suppression of the fact that the election of delegates and Annual General Meeting had already been held and that is why on a subsequent date i.e., on 11th September, 1997 the Hon'ble Mr. Justice Altamas Kabir was pleased to modify and clarify my earlier order dated 6th August, 1997 to the effect that election of delegates and the Annual General Meeting and the election of the office bearers on such meeting, will abide by the result of the writ application. In that order dated 11th September, 1997 Itself it is recorded that the Annual General Meeting and the election of delegates had already been held prior to the passing of the interim order dated 6th August, 1997, the question of continuing the Interim order does not arise. No appeal has been preferred from the said order dated 11th September, 1997. Long after passing of the aforesaid order the present contempt application has been taken out on or about 16th January, 1998.

7. I have heard the learned lawyers of the respective parties. On the first day of the hearing of this matter, i.e., on 23rd June, 1998 I asked Mr. Bhattacharya whether Mr. Bhattacharya's client wants to prove the service of my order dated 6th August, 1997 by and under the letter dated 6th August, 1997 addressed by Mr. Sukumar Bhattacharya by witness action or not. as it was the specific case of the respondents and each of them the said letter dated 6th August, 1997 conveying my order was not Inserted in the envelope. Mr. Bhattacharya upon instruction from his client's brother who was standing behind him in court room at the time of hearing and who had authority to give instruction, admitted that it would not be possible to prove such factum of service and/or despatch of the letter dated 6th August, 1997 though it has been specifically averred in the petition and that was verified in the affidavit as true to his knowledge, that the letter dated 6th August, 1997 was despatched along with the copies of the writ petition.

8. In view of this admission and submission of Mr. Bhattacharya I have no option but to enquire into this allegation on the basis of the affidavits and other documents annexed thereto. The aforesaid non-service and/or non-receipt of the said letter dated 6th August, 1997 has been specifically pleaded in the affidavit-in-opposition and such averment and/or pleading have not been denied and disputed. Moreover, the letter dated 11th August, 1997 was only sent by the respondent No.2 and the same was admittedly received by Mr. Sukumar Bhattacharya. No reply was admittedly given thereto. So, I hold that the petitioner did not Insert and/or despatch deliberately the letter of Sree Bhattacharya dated 6th August, 1997 containing my order. I directed the writ petitioner to serve the copy of the order dated 6th August, 1997 and it was Incumbent upon him to carry of such order. Instead he failed to communicate the order, I further hold that the respondents and each of them did not have any knowledge of passing of my order dated 6th August, 1997.

9. The nature of the order passed by me on 6th August, 1997 is set out here under:--

"..... Let this matter appear in the List as a Listed Motion fortnight

..... before the appropriate Bench.

In the mean time, status quo shall continue as on today with regard to holding of Annual General Meeting.

There will be no Annual General Meeting nor any election of delegates. This interim order will continue for a period of three weeks from the date or until further order whichever is earlier. The writ petitioner is directed to serve copy of the writ application with all annexures, as well as, the copy of the order upon the respondents and file affidavit of service within a week from date. In default of filling such affidavit of service, the Instant order stands vacated. Liberty is granted to the learned Advocate for the petitioner to take the gist of this order for communication."

10. When the order was passed by me on 6th August, 1997 the Annual General Meeting and the election of delegates had already been held. Upon reading of my order as aforesaid more than one Interpretation is possible. The respondents though having derivative knowledge, having interpreted the said order bonafide in their own way that the order of status quo confined to holding of Annual General Meeting and election of delegates and this order of status quo did not extend to the subsequent stage following Annual General Meeting and election of delegates acted and proceeded. It is settled law that when an order is capable of being Interpreted in two ways and the parties having interpreted bonafide in their own way act, they cannot be held to be guilty of committing contempt This view of mine is based on the principle laid down by a judgment of apex court reported in The State of Bihar Vs. Rani Sonabati Kumari, .

11. On the aforesaid facts and in the circumstances the cases relied on and cited by Mr. Bhattacharya are not at all applicable and the same are miles away from the controversy and points Involved herein.

12. It appears to me that the writ petitioner applicant wanted this process of contempt as a tool for creating pressure upon the respondents and deliberately dtd not Intimate this order of status quo though they had opportunity to communicate not only on 6th August, 1997 but also on 8th August. 1997 when the same very learned lawyer appeared before the Cooperative Tribunal. Moreover, this act of contempt was committed on 12th August. 1997 whereas the present contempt application has been taken out on 16th January, 1998 and even after order of modification was passed on 11th September, 1997.

13. It is surprising in between 6th August, 1997 and 11th September, 1997 there was no whisper nor any allegation of committing contempt by the respondents and each of them. The power and Jurisdiction of contempt is an extraordinary power and if any litigant comes with an oblique motive and with an intention to sue as a tool of pressure upon adversary the court shall curb such attempt of an over jealous litigant with heavy hand. I have no doubt in my mind that the petitioner has approached this court with an oblique motive and to utilize this extraordinary Jurisdiction as a measure and/or tool to create undue pressure upon the respondents. I hold the respondents and each of them are innocent and the contempt application falls. The rule issued by me stands discharged. The petitioner shall pay costs to each of the respondents at the rate of 20 (twenty) G. Ms. This costs is Imposed as this is a thoroughly mala fide application as an exemplary method so that the petitioner in future does not resort to this frivolous litigation.

14. Contempt application failed