
(2008) 08 CAL CK 0083

In the Calcutta High Court

Case No : C.C. No. 23 of 2007 and W.P. No. 2325 of 2005

Vinod Mimani

APPELLANT

Vs

Alapan Bandyopadhyay and Others

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 422

Citation : (2008) 08 CAL CK 0083

Hon'ble Judges : Jyotirmay Bhattacharya, J

Bench : Single Bench

Advocate : R.M. Chatterjee and Manisha Chatterjee, for the Appellant; Alok Kr. Ghosh, Nilanjan Chatterjee, for Contemnor Nos. 1 and 2, Amitava Das and S.K. Poddar for Contemnor No. 3, Arnab Deb Roy, for Contemnor Nos. 4 and 5 and Aniruddha Mitra, for Contemnor No. 6, for the Respondent

Judgement

Jyotirmay Bhattacharya, J.—In this Contempt Petition, the petitioner has alleged that the contemnors are guilty of contempt as they have willfully violated the solemn order dated 22nd November, 2006 passed by this Court in W.P. No. 2325 of 2005 with full knowledge of the text of the said order. Different allegations have been made against different contemnors regarding their acts of contempt. On scrutiny of the contempt petition, this Court finds that the alleged acts of contempt can be classified in three different categories.

2. So far as the alleged contemnor Nos. 1 and 2 are concerned, the petitioner has alleged that they are guilty of contempt as they have neither considered nor disposed of the petitioner's representation within the time as specified in the aforesaid order of this Hon'ble Court nor the said contemnors had taken any step against the other contemnors who continued to exhibit cinema films illegally in violation of the aforesaid order of this Hon'ble Court.

3. So far as the contemnor No. 3 is concerned, the petitioner alleged that the said contemnor not only exhibited cinema films in Krishna cinema in violation of the restraint order passed by this Hon'ble Court on 22nd November, 2006 but

also instigated various other authorities including the Municipal Authority and the other workers and employees of the said Krishna cinema to violate the order of this Hon"ble Court.

4. So far as the contemnor Nos. 4, 5 and 6 are concerned, allegation against them were made as they took active part in exhibiting the cinema films in the said cinema hall in utter disregard of the order passed by this Court on 22nd November, 2006.

5. Thus, these are the broad allegations on which this contempt application is founded.

6. In spite of notice Sri Alapan Bandopadhyay, Commissioner, Kolkata Municipal Corporation, the contemnor No. 1 has not filed any affidavit in connection with this contempt proceeding, though there are definite allegations against him for willful and deliberate violation of the order of this Hon"ble Court in this application for contempt.

7. Mr. Ghosh, learned Advocate, appearing for the alleged contemnor, however, submitted that since the Chief Manager (market, licence and amusement) was delegated with the authority to look after this part of the municipal work, the allegations regarding the alleged violation can be dealt with properly and appropriately by the Chief Manager of the said department who is contemnor No. 2 herein. Mr. Ghosh submitted that under such circumstances an affidavit has been filed by the contemnor No. 2 dealing with the allegations made against the Municipal Authority in the contempt petition. Mr. Ghosh further submits that since no rule has yet been issued by this Court, the contemnor No. 1 has chosen not to file any affidavit in this proceeding.

8. In my view, this is a desperate attempt on the part of the contemnor No. 1 to shirk his responsibility to the contemnor No. 2, which he should not have done inasmuch as, even by shirking his responsibility to the contemnor No. 2 he cannot be absolved of his liability for punishment under the Contempt of Courts" Act, if he is found guilty, inasmuch as he cannot avoid his responsibility of overall supervision of the Municipal work by virtue of his position under the Act.

9. Be that as it may, even in the absence of any affidavit from the alleged contemnor No. 1, this Court is required to consider as to whether the said contemnor has at all violated the order of this Court and/or he is, in any way, responsible for the alleged violation due to his inaction in this regard. For ascertaining the correctness of the allegations regarding acts of contempt against the contemnor Nos. 1 and 2, this Court considers it fit to set out the text of the direction which was passed by this Court upon the said contemnors. Accordingly, the direction which was passed by this Court in the said order upon the said contemnors are set out hereunder:

Since this Court held that exhibition of any cinematography and/or running of the cinema business in the said cinema hall without any valid permission from the

competent authority under the West Bengal Cinema (Regulation of Public Exhibition) Rules, 1956 cannot be allowed, the Municipal Authority was directed to consider the grievance of the petitioner as contained in his Advocate's letter dated 22nd September, 2005 annexed to the writ petition and to dispose of the same by passing a reasoned order after giving a reasonable opportunity of hearing to the petitioner as well as the other interested party in connection therewith. The concerned authority was directed to take a decision on the petitioner's said representation positively within four weeks from the date of communication of the said order. The Municipal Authority was also directed to take immediate steps for implementation of its order which will be passed on the said representation of the petitioner.

10. Though Mr. Ghosh submitted that the order passed by this Court on 22nd November, 2006 was not communicated to the alleged contemnors, this Court does not find much substance in such submission as the Municipal Authority was a party in the said writ proceeding and the order dated 22nd November, 2006 was passed in the presence of the Municipal Authority who was represented by Mr. Ghosh in the writ petition. That apart, though the petitioner claimed that he communicated the said order of this Court to the alleged contemnors there is no definite denial regarding non-service of such notice. The alleged contemnors also have not denied categorically that they did not have the knowledge of the said order. As such, this Court cannot believe that the said order was not within their knowledge until they obtained the certified copy of the order from this Court.

11. From the affidavit filed by the contemnor No. 2 this Court finds that there was some delay in complying with the order of this Court by the said contemnor. By the order dated 22nd November, 2006 the said contemnor was directed to consider the petitioner's grievances as contained in his advocate's letter dated 22nd September, 2005 within four weeks from the date of communication of the said order. Such consideration was, in fact, made by the Municipal Authority, who by his order dated 7th February, 2007 held that in view of the order passed by the Commissioner of Police, Kolkata, demand of amusement fees u/s 422 of the Kolkata Municipal Corporation Act for the period 2006-2007 cannot be renewed. Accordingly, direction was issued upon the senior amusement officer. The Licence Officer (H.Q.) was also directed not to issue any licence renewal demand notice for 2007-2008 for the said premises.

12. Thus, though this Court finds that the order passed by this Court on 22nd November, 2006 was complied with by the said contemnor but still then there was some delay in compliance of the said order of this Court. The reasons for the delay has also been explained by the said contemnor in his affidavit. The said contemnor stated in his affidavit that since the determination of the petitioner's grievances by the Municipal Authority was dependent upon the decision of the Police Commissioner who was also directed to dispose of the application for renewal of permanent cinema licence submitted by the respondent No. 15 within a specified time, the said contemnor waited until the ultimate decision was taken

by the Police Commissioner on the said application for renewal of the respondent No. 15. It was further stated by the said contemnor that the Police Commissioner took the ultimate decision on the said respondent's application for renewal on 16th January, 2007 and the said decision was communicated to the Municipal Authority on 6th February, 2007. Immediately thereafter on the next following date i.e. on 7th February, 2007, the Municipal Authority took the ultimate decision on the aforesaid grievance of the petitioner.

13. Considering the chain of such incidents, this Court holds that there was no willful and/or deliberate violation of the order of this Hon'ble Court on the part of the alleged contemnor No. 2. Accordingly, this Court cannot hold that the said contemnor Nos. 1 and 2 are guilty of the acts of contempt which were complained of against them, in this contempt petition.

14. Let me now consider as to how far the contemnor No. 3 is guilty of the acts of contempt as complained of against him in the contempt petition.

15. The said contemnor wrote a letter to various Government and statutory authorities including the contemnor Nos. 1 and 2 and the Commissioner of Police requesting them not to take any step in terms of the order passed by this Court on 22nd November, 2006 till the disposal of the appeal which was allegedly filed by the said contemnor against the aforesaid order passed by this Court on the said writ petition. The said contemnor, thus, instigated the said authorities to violate the order of this Court by issuing the said letter. Such act on the part of the contemnor No. 3 is no doubt contemptuous and as such, he is guilty of contempt.

16. Though the said contemnor initially filed an affidavit to justify his conduct but ultimately he filed an affidavit for withdrawal of the earlier affidavit. In the subsequent affidavit he admitted his offence and tendered unqualified apology for the acts of contempt he committed by issuing the said letter.

17. Considering the said affidavit, this Court has no hesitation to hold that the contemnor No. 3 is guilty of contempt and as such, he should not be left unpunished.

18. Considering the age of the said contemnor who is aged about 78 years old and further considering that he has expressed his repentance for the act of contempt committed by him, this Court instead of punishing him with imprisonment, which he actually deserves, punish him with fine assessed at Rs. 2,000/- which the contemnor is directed to deposit with the Registrar, Original Side of this Court within two weeks from date and in default of such deposit, he will have to undergo simple imprisonment for a term of a week.

19. Let me now consider the allegations made against the contemnor Nos. 4 and 5 regarding their acts of alleged violation as complained of in this contempt petition. The said contemnors in their respective affidavits admitted that exhibition of films continued in the said cinema house till 1st February, 2007.

They have also stated in their respective affidavits that exhibition of films was stopped with effect from 2nd February, 2007 after the Commissioner of Police declined to renew their licence. The said contemnors further stated that they were all poor workers having no other source of earning and as such, they continued to exhibit films till 1st February, 2007 only for the survival of the members of their family.

20. When this Court held that exhibition of film in the said cinema cannot be allowed even for a day without valid licence, the said contemnors ought not to have exhibited cinema films in the said cinema house without any license till 1st February, 2007 in violation of the order of this Hon''ble Court. This desperate attitude on the part of the said contemnors cannot be ignored so lightly merely on the plea of their poor financial condition particularly when they have not produced any material to support such claim of poverty. Nothing has been produced before this Court by the said contemnors to demonstrate their actual financial condition at the relevant time. This Court also does not find any substance in such submission of the said contemnors as they merrily stopped exhibiting cinema films by ignoring their alleged poverty, with effect from 2nd February, 2007 when the Commissioner of Police declined to renew the license for exhibition of cinema films in the said cinema hall.

21. Accordingly, this Court holds that the said contemnors are guilty of contempt as they have violated the order of this Court intentionally and deliberately with full knowledge of the text of this order.

22. As such, they cannot be left unpunished. This Court, thus, imposes punishment upon the said contemnor Nos. 4 and 5 with fine assessed at Rs. 1,000/- to be deposited by each of them with the Registrar, Original Side of this Court within two weeks from date and in default of such deposit, they will have to undergo simple imprisonment for a term of one week.

23. So far as the contemnor No. 6 is concerned, the said contemnor stated in his affidavit that he was neither a party to the writ proceeding nor the order passed by this Court on 22nd November, 2006 was communicated to him. He, thus, claimed his ignorance about the order passed by this Court on 22nd November, 2006.

24. There is nothing on record to show that the order which was passed by this Court on 22nd November, 2006 was communicated to him. As such, even though this Court finds that he had participation of some kind in the process of exhibition of cinema films in the said cinema house till 1st February, 2007 which tantamounts to violation of the order of this Court, but, still then, this Court cannot hold him guilty under the Contempt of Courts Act, as there is nothing on record to show that he committed such offence with knowledge of the order of this Hon''ble Court. Accordingly, this Court cannot hold that the contemnor No. 6 as guilty of contempt.

25. The application for contempt, thus, stands disposed of with the above

direction accordingly.

26. Let this matter appear in the list on 12.9.2008 for ascertaining compliance of this order.

27. Urgent xerox certified copy of this order, if applied for, be given to the parties, as expeditiously as possible.

28. Let a signed copy of the operative part of this order be given to the contemnor Nos. 3, 4 and 5 on usual undertaking. Let the said contemnors including the Registrar, Original Side act upon the signed copy of the operative part of this order.