

(1998) 10 P&H CK 0011

High Court Of Punjab And Haryana At Chandigarh

Case No: C.O.C.P. No. 960 of 1996

S. Gurdial Singh

APPELLANT

Vs

S. Bharpur Singh

RESPONDENT

Date of Decision: Oct. 19, 1998

Citation: (1999) 121 PLR 301 : (1999) 2 RCR(Civil) 387

Hon'ble Judges: Swatanter Kumar, J

Bench: Single Bench

Advocate: I.K. Mehta and Virender Sharma, for the Appellant; J.S. Khehar and J.S. Sehti, for the Respondent

Judgement

Swatanter Kumar, J.

The history speaks that law by its very need is progressive. It must change to the need of the society while remaining in conformity with the statute. The pronouncement by the Court itself sometimes result necessary change in law by Legislature. Inevitable consequence of this changing law in the modern times brings the existing law being uncertain, undefined and unsatisfactory. The law relating to contempt is no exceptions. The contempt civil or criminal initially was spelt in certain scattered provisions of the Criminal Procedure Code, Indian Penal Code, CPC and Contempt of Courts Act, 1926. In order to bring it within ambit of more specification, the Contempt of Courts Act, 1926 was amended by Act No. 12 of 1937. The Courts still, while deciding the question arising under these various enactments, had to rely upon precedents and were called upon to refer to other laws. When it was felt necessary, the Legal Proceedings Ordinance, 1948 was promulgated which ultimately was repealed while coming into force of the Contempt of Courts Act, 1971 which attained the assent of the President of India on 24th December, 1971. This Act with some amendments here and there has been in existence till date. As per the statement of objects and reasons allowing to this special enactment indicate that the amendment was based on comprehensive examination of law and problems relating to the contempt of Courts in the light of the position prevailing in our own

country and various foreign countries. There is no doubt that the jurisdiction vested in the Court under the provisions of the Contempt of Courts Act touches upon the fundamental right of a citizen in regard to liberty and secondly the right to freedom of expression. Both these protections have been considered of paramount value in all legal system where basic rule of law is to prevail various provisions relating to offence of Contempt of Courts act rather to act as linch pin.

2. In view of the above legislative history and wider ranged expectation of normal prudent person from the implementation of the provisions of the Contempt of Courts Act the present case proposes to give a new dimension to this law of widespread connotation, whether the individual's conduct in not adhering to the high expected standards of behavior and such conduct being not in conformity with the observations of the Court of competent jurisdiction would constitute offence punishable under the provisions of this act. In order to examine this question, it is necessary to refer to the relevant facts of this case. Petitioner Gurdial Singh, IGP (retired) was the Vice President of Sikh Educational Society at Chandigarh. This case is that Devinderjit Singh Sidhu had filed a writ petition before this Court being Civil Writ Petition No. 16085 of 1993 titled Devinderjit Singh Sidhu v. Shri Guru Gobind Singh College and Ors.. This writ petition was dismissed by the Division Bench and gave the definite finding against the respondent No. 2 Devinderjit Singh and observed as under-

"From what has been stated above, we have no hesitation in concluding that the Selection Committee had not recommended Mrs. Jasveen Bawa at No.1 and that after the recommendations had been signed by the members of the Selection Committee, the same were tampered with by the Principal who interpolated the name of Mrs. Jasveen Bawa at No.1 obviously with a view to give her appointment instead of the selected candidate. It is most unfortunate that a person no other than a Principal of an institution should have indulged in this kind of an act which is unbecoming of any teacher much less the Head of such an institution. His conduct cannot but be deprecated. A person like him has no place in any institution much less a Selection Committee where he can play havoc with the careers of those seeking employment. His association with selection Committee is bound to bring a bad name and loss of confidence in such Committees. In our opinion, the University was justified in withholding its approval to the appointment of Mrs. Jasveen Bawa as Lecturer in the subject of Botany. Civil Writ Petition No. 4284 of 1994 filed by her has, therefore, to be dismissed. As regards the claim of Devinderjit Singh in other writ petition, he too is not entitled to any relief as he was not eligible for the post in question. As is clear from the advertisement, the essential requirement was that the candidate should have cleared the eligibility test for lecturers conducted by the UGC/CSIR or similar test accredited by UGC. On a pointed query from the court, learned counsel appearing for Devinderjit Singh had to concede that the petitioner did not possess this qualification and was, therefore, ineligible."

3. After pronouncement of this judgment, a general body meeting of the said society was held. The Society is running some educational institutions at Chandigarh and other places. Bharpur Singh was nominated as Secretary by the President and he so became Principal of Guru Gobind College, Sector 26, Chandigarh. It was selection of one of the unselected candidates by the selection committee as a result of some manipulation done by Shri Bharpur Singh, that the above said writ petition was filed. Bharpur Singh was relieved of his post. Again extra ordinary meeting of the society was held on 14th July, 1994. Notices were issued to all the concerned, in this meeting again Bharpur Singh was elected as Secretary while Jathedar G.S. Tohra was elected as President and Gurdev Singh was elected as Vice President of the Sikh Educational Society. The petitioner, who was the Vice President of the Society then filed a writ petition in this Court challenging the appointment of Bharpur Singh in Civil Writ Petition No. 12840 of 1995 titled S. Gurdial Singh, IGP (Retd.) v. Union Territory Administration and Ors.. This writ petition was finally disposed of by Hon"ble Single Judge of this Court who after considering the merits of the case observed as under:

"In view of my foregoing discussions, I do not find any ground in the challenge either to the meeting held on 14.7.1995 or to the election of the office bearers of the Society held at that meeting. When there is a duly elected body to manage the affairs of the Society, this court cannot appoint any other person to administer the affairs of the Society. It is in the wisdom of the members of the Society to elect on its own office bearers who will serve the interest of the institution. It is entirely left to the wisdom of the members of the Society to form its own managing committee. It is not for this court to interfere with the functioning of the members of the general body of the society. They must have their own say unless it is palpably wrong or illegal. Before parting with this case, I would like to observe that it is necessary for the members of the Society to consider whether Shri Bharpur Singh could be continued as a member of the Society in the light of the observations and criticism made by this Court in Civil Writ Petition No. 16805 of 1993. While o deciding the said writ petition this Court observed as follows :-

"From what has been stated above, we have no hesitation in concluding that the Selection Committee had not recommended Mrs. Jasveen Bawa at No.1 and that after the recommendations had been signed by the members of the Selection Committee, the same were tampered with by the Principal who interpolated the name of Mrs. Jasveen Bawa at No.1 obviously with a view to give her appointment instead of the selected candidate. It is most unfortunate that a person no other than a Principal of an institution should have indulged in this kind of an act which is unbecoming of any teacher much less the Head of such an institution. His conduct cannot but be depreciated. A person like him has no place in any institution much less a Selection Committee where he can play havoc with the careers of those seeking employment. His association with Selection Committee is bound to bring a bad name and loss of confidence in such Committee."

This aspect of the matter has not been considered by the general body at its meeting on 14.7.1995. There is nothing on record to show that all the members of the general body of the society are aware of the observations of this Court when they elected the 7th respondent as Secretary of the Society. It is, therefore, necessary to give a direction to the President of the Sikh Educational Society Shri G.S. Tohra to convene a meeting of the general body within two months positively from today and to consider the desirability of continuing the 7th respondent Shri Bharpur Singh as member of the society in the light of the criticism made by this Court as extracted above in the Civil Writ Petition No. 16085 of 1983 and if it so thinks fit to pass a resolution under Clause-C of Rule 6 of the Rules of the Constitution of the Society."

4. While the learned counsel for the contemner respondent contended that the respondent has not disobeyed any order or direction of the Court intentionally or otherwise and as such the contempt petition itself is not maintainable, the learned counsel appearing for the petitioner to fortify his arguments submitted that a Division Bench of this Court while passing the order dated 21.9.1997 could have directed the prosecution of the respondent. However, the Court did not direct so but the observation of the Bench is an implicit direction to the respondent not to hold the post of Secretary. Reference has been made by the learned counsel for the petitioner to the case of [Spencer and Company Ltd. and Another Vs. Vishwadarshan Distributors Pvt. Ltd. and Others](#) . Relying upon this judgment it is contended that request by this Court has to be treated as a direction and violation of such observations and request by a Court would tantamount to violation of the order of the Court.

5. Whether the Division Bench could or should have directed the prosecution of the respondent is not a question for consideration in this contempt petition. Neither this Court would have jurisdiction to go into such a question nor settled canons of judicial propriety would permit such deliberation by this Court. The observations of the Hon"ble Supreme Court of India in the case of (1997) 116 (2) PLR 388 (SC) , thus, would be of no help to the petitioner before this Court. The well accepted and known kind of contempt which are comprehended under the provisions of the Contempt of Courts Act and all such legislations including the pronouncements till date accept only civil and/or criminal contempt which further is sub-divided into disobedience of the orders or directions of the Court. An act or deed of a party which interferes with the due process of law, due course of any judicial proceedings, due course of justice and tends to lower the majesty and dignity of administration of justice by Courts. While considering the case of contemner falling under these Clauses, still the Court could look into whether the act was intentional and was intended to undermine the judicial process. The onus of proving violation is to be discharged with definite proof. The proceedings under the Act are of serious consequences and vests a contemner or a respondent with civil consequences extended up to award of punishment in a given case.

6. It is conceded before me by the learned counsel appearing for the parties that there is no violation per se of any order or direction of the Court. As such the present case is not one where the Court is concerned in these provisions with the violation of a direction and order of the Court intentional or otherwise. The basic case that falls for determination is whether there are grounds for this Court to come to the conclusion that the respondent by contesting the election for the post of secretary in face of the observations of the Division Bench has interfered with the due course of justice or has undermined the dignity of administration of justice and law. Certainly the expressions "due course of justice" used in the section are of wide import and are not limited to any particular judicial proceedings if an act of a party undermines the prestige of the Court or scandalises the judicial system it would in all probability amount to substantially interfering with the due course of justice. Substantial interference with the due course of justice carries the basic foundation to an actionable violation under the provisions of the Contempt of Court Act. At this stage it may be relevant to refer to the observations of Rankin C.J. in the case of *Ananta Lal Singh v. A.H. Watson* AIR 1931 Cal 257 261 as under :-

"I agree however that the court's jurisdiction in contempt is not to be invoked unless there is real prejudice which can be regarded as a substantial interference with the due course of justice. It is not every theoretical tendency that will attract the action of the court in its very special jurisdiction. The purpose of the court's action is a practical purpose and it is reasonably clear on the authorities that this court will not exercise its jurisdiction upon a mere question of propriety where the tendency of the article to do harm is slight and the character and circumstances of the comment is otherwise such that it can properly be ignored. This is no new law."

7. From the above narrated facts it is clear that there is no violation of any specific order direction or mandate issued by the Court. The Hon"ble Division Bench while dealing with the matter in controversy in its discretion made certain observations but permitted that matter to rest there. Subsequent proceedings have not brought on record anything which could be termed as a violation of the order of the Court.

8. The only act attributable to the respondent contemner is getting elected as a Secretary in face of the clear condemnation of his conduct by the Hon"ble Division Bench of this Court. Once it is not an apparent civil or criminal contempt, the other field where such contempts could possibly be covered, is interference with the due process of law or judicial process and undermining a majesty of law. Even to satisfy the cases covered under this Clause it is imperative for the Court to come to a definite conclusion that the conduct of the contemner is such which directly or indirectly interferes with the administration of justice or due process of law or amounts to undermining the majesty of law. There is no act directly attributed to the petitioner which has been stated on record to satisfy the basic ingredients. All the contemner has done is that he participated in the election and got elected as Secretary of the Sikh Education Society in the meeting held on 14.7.1995. it is

conceded case that he was elected in the general body meeting. It is also conceded that earlier he was relieved of his position as Secretary of the Society by the former President vide communication dated 25.5.1995 after the pronouncement of the order of Division Bench on 21.9.1994.

9. The proceedings under the Contempt of Court Act are *sul generis* and must be invoked on definite and certain basis. The consequences are obviously penal against the contemner. Therefore, it cannot be based upon inferences or conjectures. Moral or professional standards to be maintained in a particular set of society could hardly constitute a valid and substantive ground for invoking the penal provisions of the Contempt of Courts Act. What was expressed by the Division Bench was a pious hope stated in relation to maintenance of social standards of conduct in such institutions, but this could not be termed either as an order or a mandate which could stand violated by the re-election of the respondent as Secretary of the Society. It was for the general body of the Society to elect or not to elect the respondent as Secretary in face of his previous conduct keeping in view of the observations of the Hon'ble Division Bench. But, once he is re-elected by such body of people, unconnected with the previous election, it would, however, be very doubtful if the respondents in this petition could be said to have interfered with the majesty of law or with due process of law.

10. Maintaining the majesty of law is the linch pin to the wheel of administration of justice, but fine distinctions resulting in such punitive action must be understood in their correct perspective. Such cases are *curio*, but every trivial fall in social standards in the given background of a judicial decision cannot be suggested to rigours of penal statutes like the Contempt of Courts Act. Credo of Court for implementation of its decision must be understood in its pervasive scope but must not expand to transgress the prescribed limit of law so as to result in interference or obstruction in amicable implementation of originally recognisable rights of public at large arising from a statute or otherwise.

11. The facts of the present case do not constitute a complete or sufficient ground to hold that the respondent is liable to be proceeded against under the provisions of the Contempt of Courts Act for violating the orders of the Court or interfering with the due process of law or administration of justice. Though the respondent herein is entitled to the benefit of technicalities of law, but still his conduct cannot be appreciated in law. A citizen who enjoys benefits of law is expected to exercise self restraint and restriction to up-hold the dignity of law. Thus, I would leave the matter at that. Consequently, this contempt petition is accordingly disposed of.