

(2006) 01 GAU CK 0046

Gauhati High Court

Case No: Contempt Appeal No. 6 of 2003

Rajiv Bansal

APPELLANT

Vs

Marcofed Employees Union

RESPONDENT

Date of Decision: Jan. 17, 2006

Acts Referred:

- Constitution of India, 1950 - Article 226
- Contempt of Courts Act, 1971 - Section 12, 19, 2

Citation: (2006) 2 GLR 167 : (2006) 1 GLT 610

Hon'ble Judges: B. Sudershan Reddy, C.J; Biplab Kumar Sharma, J

Bench: Division Bench

Advocate: B. Bhuyan and D.K. Mishra, for the Appellant; B.C. Das, for the Respondent

Final Decision: Allowed

Judgement

B. Sudershan Reddy, C.J.

This appeal preferred u/s 19 of the Contempt of Court Act, 1971 (hereinafter for short referred to as "the Act") is directed against the order dated 4.12.2003 made in Contempt Petition No. 33(K)/2003 by a learned Single Judge of this Court whereby and whereunder the learned Judge directed the appellant herein to pay fine of Rs. 2000 (Rupees two thousand only) "for disregarding the order of this Court". The said fine amount is directed to be deposited before the Registrar of the Court and the same to be released to the Kohima High Court Bar Association, Kohima. The learned Judge, however, accepted the unconditional apology tendered by the appellant who was present in the Court.

2. Mr. D.K. Mishra, learned senior counsel appearing for the appellant in this appeal submits that the impugned order passed by the learned Single Judge suffers from incurable infirmities requiring interference of this Court in exercise of appellate jurisdiction. Learned senior counsel contended that the appellant herein did not commit any contempt whatsoever so as to be punished under the provisions of the

Act and further submitted that the order passed by the learned Judge suffers from both the procedural as well as substantial defects.

3. In order to consider as to whether the impugned order under appeal suffers from any error or infirmities requiring our interference, few relevant facts leading to filing of this appeal may have to be noted.

4. The respondent, writ petitioner M/s. Marcofed Employees" Union filed writ petition, being Writ Petition (C) No. 123(K)/2002, invoking extraordinary jurisdiction under Article 226 of the Constitution of India praying for appropriate directions as against the respondents therein, viz., (a) to pay the pending salaries to the members of the petitioner union; (b) to contribute forthwith the arrear contributions towards arrear contributions required to be made to the Provident Fund account of the members of the petitioner union.

5. This Court vide its order dated 29.7.2002 directed issuance of notice and interim directions were issued as against respondent Nos. 3, 4, 5 and 6 in the writ petition to ensure that the salaries of the members of the petitioner union for at least six months is paid within a specified time. The respondents having received a copy of the order passed by this Court, moved Misc. Case No. 85(K)/2002 through the Secretary to the Government of Nagaland, Co-operation Department and the Registrar of Cooperative Societies, Nagaland for modification of the interim order dated 29.7.2002. This Court, accordingly, vide order dated 24.9.2002 modified the interim order directing the respondent Nos. 5 and 6 in the following manner-

...the respondents 5 and 6 shall ensure the release of payment of salaries to the members of Petitioners" Union as per the direction given by this Court on 29.7.2002 in W.P(C) No. 123(K)/2002. However, in case any fund is required from the State Government, the respondents 3 and 4 shall move the State Government to make the fund available for the purpose on the request made by the respondents 5 and 6.

The application was accordingly disposed of.

6. The respondent herein filed Civil Original Contempt Petition No. 18(K)/2002 along with Civil Misc. Case No. 45(K)/2003 to implead the appellant herein as party respondent in the writ petition who was the Secretary to the Government of Nagaland, Co-operation Department. This Court vide order dated 12.3.2003 passed order impleading the appellant herein as party respondent and accordingly directed to issue notice of contempt. This order was followed by the order dated 30.5.2003 directing personal appearance of the appellant on 10.6.2003 and on 12.6.2003 the appellant personally appeared before the Court.

7. Learned Advocate General appearing for the State submitted that the State Government has directed sanction of an amount of Rs. 23,67,166 to be released and paid to the members of the petitioner union towards salaries in compliance with the interim directions issued by the Court. On such statement made by the learned

Advocate General the contempt petition was closed and the presence of the present appellant has been dispensed with. There is no dispute whatsoever that the State Government by order dated 13.6.2003 sanctioned the amount in order to comply with the interim order passed by the learned Single Judge directing payment of salaries to the members of the petitioner union.

8. Be that as it may, the respondent herein filed another contempt petition being Civil Original Contempt Petition No. 33(K)/2003, inter alia, alleging that the appellant herein and other respondents in the writ petition did not comply with the directions issued by this Court whereupon vide order dated 19.11.2003 notice was directed to be issued and the matter was fixed to be heard on 4.12.2003 and for personal appearance of the appellant. On 4.12.2003 the appellant personally appeared before the Court and tendered unconditional apology. Learned Judge having accepted the unconditional apology tendered by the appellant disposed of the contempt case in the manner referred hereinabove.

9. The short question that falls for our consideration is, whether the appellant herein committed any contempt as such. Section 2(b) of the Act says that "civil contempt" means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to court. Section 12 provides punishment for contempt of Court, which says for contempt of court punishment of simple imprisonment for a term, which may extend to six months or with fine, which may extend to rupees two thousand, or with both. It further provides that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

10. Learned Single Judge did not record any finding whatsoever that the appellant herein willfully disobeyed directions issued by the Court. All that the learned Single Judge found is evident from the impugned order that the salaries of the members of the petitioner union have not been paid and the respondents including the appellant herein "trying to shift the burden to one another. This Court is, therefore, constrained to note the behaviour of the concerned officers in taking Court's order lightly and for shifting the responsibilities to implement the court order".

11. Firstly, as is evident from the record and chronology of the orders referred to above, there is no violation of the order as such by any of the respondents, more particularly, the appellant herein. The appellant has complied with the directions issued by the Court and ensured sanction of required amount in terms of the direction of the Court, but for some administrative reasons, the salaries were not paid in spite of sanction and release of the amount by the Government of Nagaland. There is no direction issued by the learned Single Judge as such directing the appellant herein to pay salaries to the members of the petitioner union. Therefore, the finding that there is clear violation of the orders passed by this Court is clearly unsustainable. Certainly, it cannot be said that the appellant herein has willfully disobeyed the order passed by this Court. Mere non-compliance of the order passed

by this Court is not enough to attract the provisions of the Contempt of Court Act, 1971 and on that basis no person can be punished u/s 12 of the Act. The requirement in law is that there must be a clear finding of willful disobedience of the orders or directions issued by the Court and punishment can be inflicted only on coming to the conclusion that there has been willful disobedience of the order passed. There is no willful disobedience as such on the part of the appellant herein in complying with the directions issued. In fact, there is no such finding by the learned Single Judge that the appellant herein willfully disobeyed compliance of the directions issued by the Court. In the circumstances, we find it very difficult to sustain the impugned order passed by the learned Single Judge imposing a fine of Rs. 2000 on the appellant.

12. For whatever reason the appellant having appeared personally tendered unconditional apology, as there was some delay in actual payment of the amount to the members of the petitioner-union towards their salaries, it was open for the appellant to take plea that even under the directions issued by the Court he was personally not responsible for release of actual payment of salaries to the members of the petitioner union. But the appellant personally appeared and tendered unconditional apology and accordingly submitted before the Court that necessary amount has already been sanctioned and released and prayed to accept apology for the delay, if any, in actual payment of the salaries to the members of the petitioner union. The learned Single Judge, in our considered opinion, has rightly accepted the apology tendered by the appellant. There is no finding by the learned Judge that the apology tendered by the appellant herein was not an unconditional one or not a bona fide one, which could not be accepted by the Court. It is not open for the Court to punish the appellant for contempt of Court after accepting the unconditional apology tendered by the appellant herein since such apology tendered by the appellant was to the satisfaction of the Court. There were two options before the Court either to discharge the accused namely, the appellant herein, or remission of the punishment awarded, but under no circumstance the Court could have imposed fine even after accepting the unconditional apology tendered by the appellant. There is no finding by the learned Judge that the appellant herein committed contempt of court and, therefore, required to be punished, yet, the learned Judge directed the appellant to pay fine of Rs. 2000 which was directed to be deposited in the Registry to be released in favour of the Bar Association of Kohima Bench. We find it difficult to persuade ourselves to agree with the view taken by the learned Judge to impose fine upon the appellant without even holding that he committed any contempt.

13. In the circumstances, we find merit in the submission made by the learned senior counsel that the impugned order suffers from errors requiring our interference in exercise of jurisdiction u/s 19 of the Act.

14. For the aforesaid reasons, we hold that the impugned order is totally untenable and unsustainable and the same is accordingly set aside. We hold that the appellant herein did not commit any contempt whatsoever.

15. Appeal is allowed without any order as to cost.