

(2010) 11 JH CK 0001

Jharkhand High Court

Case No: Cont. Case (Civil) No. 393 of 2009

Prakash Saha

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Nov. 20, 2010

Acts Referred:

- Contempt of Courts Act, 1971 - Section 20

Citation: (2011) 1 LJLR 288

Hon'ble Judges: Poonam Srivastav, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Poonam Srivastav, J.

Heard Sri J.P. Jha, Sr. Advocate assisted by Sri S.P. Jha, Junior counsel for the petitioner and Junior Counsel to S.C. (Mines) on behalf of the opposite parties.

2. A writ petition (W.P.(S) No. 933 of 2002 was filed by the father of the petitioner, which was disposed of on 5th March 2002 with direction to the opposite parties to consider the case of the petitioner and decide his representation within 45 days from the date, the order is brought to his notice. It is further contended that the father of the petitioner filed presentation, which was kept pending, hence a cont. (Civil) Case No. 401 of 2003 was preferred. The said contempt was dismissed in default vide order date 25th June 2004.

3. The learned Counsel appearing for the petitioner states that since there is no provision for restoration under the Contempt Act, therefore, no restoration petition was filed. Another writ petition was filed numbered as W.P.(S) No. 519 of 2003, Sahdeo Saha & Shiva Ramjee Mishra versus State of Jharkhand and others. This writ petition was dismissed vide order dated 26th March 2003 with an observation that in case the representation was not decided in conformity with the direction given in

the previous writ petition, proper remedy available to the petitioner is to file contempt application and, therefore, second writ petition was not maintainable. Pursuant to the aforesaid order the instant contempt application has been filed in the year 2009. Show cause has been filed by the S.C. (Mines) stating therein that the representation has been decided by the Department of Science and Technology, Nepal House, Doranda, Ranchi vide order dated 27th January 2010 by the Director, Department of Science and Technology, Dr. Arun Kumar, who was working as Director at the relevant time and thus contempt, if any, stands purged.

4. Learned Sr. Counsel has emphatically stressed that since the representation was decided after a lapse of 7 (seven) years, it amounts to a gross act of contempt he has disobeyed specific directions of the Court and proceedings are liable to be drawn against him. The representation was decided very late i.e. after seven years and consequently disobedience of the order to decide representation within prescribed period makes the opposite party liable for contempt. This fact has been disputed by the counsel appearing on behalf of the opposite parties stating that since the act of contempt, if any as alleged by the petitioner stands purged, the contempt application is liable to be dismissed on this ground alone.

5. I have heard the respective counsel at length and perused the entire words. The order which is said to be violated was passed on 5th March 2002; the contempt petition preferred the year 2003 was dismissed on 25th June 2004 for want of prosecution and thereafter nothing was done for a considerable length of time.

6. The second contempt application was filed only in the year 2009. The first question that arises is that whether a second contempt application for the same act is maintainable or not. Secondly section 20 of the Contempt of Courts Act provides a period of limitation. It is settled that no notice can be issued on an application for contempt and no proceedings can be initiated, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. This matter stands settled in the case of [Hari Nandan Agrawal and Another Vs. S.N. Pandita and Others](#), which has also been approved in a catena of decisions by the Apex Court.

7. Thirdly, since this contempt application has not yet been admitted and Dr. Arun Kumar, who has decided the representation was not the person on whom copy of the order was served at any point of time; there is no assertion whatsoever by the petitioner that the order was served on the opposite party and he deliberately did not decide the representation, where by it amounts to a "willful disobedience" for non-compliance of the direction or breach of an undertaking given to the Court. This argument of the learned counsel is devoid of substance. In the case of [Anil Ratan Sarkar and Others Vs. Hirak Ghosh and Others](#), the Hon^{ble} Supreme Court has held that mere disobedience of an order of a Court may not be sufficient to amount to a civil contempt, the element of ♦willingness♦ is an indispensable requirement to bring home the charge within the Act.

8. I have considered all these aspects narrated above and have come to a conclusion that the instant contempt application is much beyond time secondly the order has already been complied with and the grievance that the representation has been decided after 7 (seven) years is absolutely without any substance, since the contempt application itself was filed in the year 2009 for an alleged disobedience of an order passed in the year 2002; previous contempt was dismissed in the year 2003; assuming the argument of the learned senior counsel to be correct that there is no provision for restoration, yet the counsel contempt application had to be filed, it ought to have been done immediately in the year 2003 itself. Instead the petitioner waited for a period of 6 years himself, therefore, if the representation was decided after 7 years, it cannot be said that the opposite party had knowledge about the order of this Court or any breach of an undertaking was committed by him and, therefore, the opposite party cannot be held liable for any act, which could amount to bring down the prestige of the Court in the eyes of general public.

9. The contempt application is listed for admission. Notices have not been issued so far, but since matter was heard at length, in my view, the contempt application is liable to be dismissed on the question of limitation itself as well as it goes without saying that the observation made above is sufficient to hold that there is no merit in the instant contempt application. No case of deliberate disobedience is made out.

10. It is, accordingly, dismissed.