

Dilip Awasthi Vs Vinay Shrivastava and Others

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: March 19, 2012

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 6 Rule 16

Constitution of India, 1950 â€” Article 21

Contempt of Courts Act, 1971 â€” Section 2(c)

Penal Code, 1860 (IPC) â€” Section 420

Citation: (2012) 2 JLJ 400 : (2012) 5 MPHT 172 : (2012) 2 MPLJ 619

Hon'ble Judges: S.K. Gangele, J; G.D. Saxena, J

Bench: Division Bench

Advocate: Ravindra Dixit, for the Appellant; Vishal Mishra, Government Advocate, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.K. Gangele, J.

This Contempt Petition has been filed by the petitioner against non-compliance of the order dated 31-7-2009, passed by

this Court in W.P. No. 2843/2008(PIL). This Court passed the following order :--

31-7-2009.

Heard Ms. Deeksha Mishra, learned counsel for the petitioner, Shri Vivek Khedkar, learned Government Advocate for the respondents -State of

Madhya Pradesh, Shri K.N. Gupta, Senior Advocate with Shri Anmol Khedkar, learned counsel for the Dean, G.R. Medical College, Gwalior

and Shri Brijesh Sharma and Shri D.P.S. Bhadoriya, learned counsel for the intervenors.

This PIL has been filed alleging a number of deficiencies in the J.A. Group of Hospitals and Kamla Raja Hospital, Gwalior which are Government

hospitals.

By order dated 13-5-2009 this Court had constituted a committee presided by Dr. (Mrs.) Shailja Sapre, to examine the deficiencies pointed out in

the PIL, inspect these two hospitals and submit a report.

The committee under a cover of its letter dated 12-6-2009 has submitted report pointing out not only the deficiencies as found by the committee

but also given solutions with regard to different deficiencies. Copies of the report be furnished to the counsel for the petitioner, respondents and

intervenor by the Registry of this Court by Tuesday (4-8-2009).

We are told by Ms. Deeksha Mishra, learned counsel for the petitioner that junior doctors of the State had been on strike against lack of proper

medical facilities in the Government hospitals in the State of Madhya Pradesh. She further stated that in the meanwhile, they have called off their

strike and they are prepared to report for duty and that suspension orders which were issued by the Authorities on account of strike of the junior

doctors have also been withdrawn.

We may remind the junior doctors of the State of Madhya Pradesh that in Pt. Parmanand Katara Vs. Union of India (UOI) and Others, Rangnath

Misra, J., as he then was, of the Supreme Court observed that there can be no second opinion that preservation of human life is of paramount

importance and that is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity

of man. In the aforesaid judgment, Rangnath Misra, J. further held that Article 21 of the Constitution casts an obligation on the State to preserve

life and a doctor at the government hospital positioned to meet this State obligation is, therefore, duty bound to extend medical assistance for

preserving life and every doctor whether at a government hospital or otherwise has the professional obligation to extend his services with due

expertise for protecting life.

Concurring with the view of Justice Rangnath Misra, G.L. Ojha, J. in his judgment in the aforesaid case has also quoted Item No. 13 of the Code

of Medical Ethics which states that a physician should respond to any request for his assistance in an emergency or whenever temperate public

opinion expects the service. Ojha, J. has also observed that the medical profession is a very respectable profession and a doctor is looked upon by

common man as the only hope when a person is hanging between life and death.

We expect that the junior doctors, in future, will perform their duties towards the society as doctors and will keep up the respectability of the

profession of doctors and not resort to strike or any other such activity which affects not only the medical service in the government hospitals, but

also the reputation of medical college.

Ms. Deeksha Mishra, learned counsel for the petitioner, however, submitted that the State has also duty to provide medical facilities to the public

and it has been ignoring its duty by not providing basic facilities in the two hospitals meant for the public particularly for the poor who cannot afford

medical treatment in the expensive private hospitals.

In Paschim Banga Khet Mazdoor Samity and others Vs. State of West Bengal and another, , the Supreme Court has held that the Constitution

envisages establishment of a welfare State at the federal level as well as the State level and in a welfare State the primary duty of the Government is

to secure the welfare of the people and that providing adequate medical facilities for the people is an essential part of the obligations undertaken by

the Government in a welfare State. The Supreme Court has further held in the aforesaid case that the Government discharges this obligation by

running hospitals and health centres which provide medical care to the person seeking to avail those facilities and Article 21 of the Constitution

imposes obligation to the State to safe guard the right to life of every person. The Supreme Court has also observed in paragraph 9 at page 2429

of the AIR :

Preservation of human life is thus of paramount importance. The Government hospitals run by the State and the Medical Officers employed therein

are duty bound to extend medical assistance for preserving human life. Failure on the part of a Government hospital to provide timely medical

treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21.

In the aforesaid case, there was breach of the right of Hakim Sheikh guaranteed under Article 21 when he was denied treatment at the various

Government hospitals which were approached even though his condition was very serious at that time and he was in need of immediate medical

attention and the Supreme Court held that the right guaranteed to him under Article 21 of the Constitution had been denied by the officers of the

State in the hospital run by the State and that the State cannot avoid its responsibility for such denial of constitutional right of Hakim Sheikh and for

such deprivation of the guaranteed rights of Hakim Sheikh and breach of his fundamental rights under Article 21 of the Constitution of India, the

Supreme Court awarded compensation of Rs. 25,000/- in favour of Hakim Sheikh.

We caution the State Government that if government hospitals are not brought upto the required standard and medical facilities are not provided in

the government hospitals in the State of Madhya Pradesh for the people of the State, particularly the poor who cannot afford expensive private

medical facilities, this Court in appropriate cases will not hesitate to award compensation against the Government for breach of the fundamental

right to life guaranteed under Article 21 of the Constitution in favour of such person and to also direct that such compensation may be recovered

by the State from the persons found guilty of negligence of not providing required medical treatment to the person concerned.

The matter be listed on 11th of August, 2009 for further hearing. The case will not be treated as part heard.

A copy of this order will be given by the Registry to Shri S.B. Mishra, Additional Advocate General who will send the same to the Secretary,

Health and Medical Services, Government of Madhya Pradesh for information.

A Public Interest Litigation Petition was filed before this Court in regard to illegalities in G.R. Medical College, Gwalior. In the aforesaid petition, a

grievance has also been raised that the doctors should not take recourse of strike. The Division Bench of this Court passed the above quoted

order. It is clear from the order that the Division Bench has specifically issued the following directions to the effect that the doctor should not resort

to strike :--

We expect that the junior doctors, in future, will perform their duties towards the society as doctors and will keep up the respectability of the

profession of doctors and not resort to strike or any other such activity which affects not only the medical service in the government hospitals, but

also the reputation of medical college.

2. When the junior doctors threatened to go on strike, the present contempt petition was filed. This Court vide order dated 15-11-2011 directed

the junior doctors working in G.R. Medical College, Gwalior to report on duty at 10.30 a.m. by tomorrow and passed the following order:--

15-11-2011

Shri Ravindra Dixit, Advocate for the petitioner. Shri M.P.S. Raghuvanshi, Additional Advocate General for respondents No. 1 and 2/State.

Shri Mahesh Goyal, Advocate for the respondents No. 6 and 7. This Contempt petition has been filed for non-compliance of the order dated 31-

7-2009, passed by this Court in W.P. No. 2843/2008.

In the aforesaid writ petition, this Court passed the following interim order:--

Concurring with the view of Justice Rangnath Misra, G.L. Ojha, J. in his judgment in the aforesaid case has also quoted Item No. 13 of the Code

of Medical Ethics which states that a physician should respond to any request for his assistance in an emergency or whenever temperate public

opinion expects the service. Ojha, J. has also observed that the medical profession is a very respectable profession and a doctor is looked upon by

common man as the only hope when a person is hanging between life and death.

We expect that the junior doctors, in future, will perform their duties towards the society as doctors and will keep up the respectability of the

profession of doctors and not resort to strike or any other such activity which affects not only the medical service in the government hospitals, but

also the reputation of medical college.

The President of Junior Doctors' Association, who appeared before this Court on 10-5-2011 and he personally tendered undertaking that the

Junior Doctors will not call any strike for a period of three months.

It is submitted by the learned counsel for the petitioner that the junior doctors, the medical services have been put into jeopardy. It is further

submitted that on previous occasion when the junior doctors were on strike near about (sic) persons were died due to lack of medical facilities. It

is also submitted that poor persons cannot opt for private treatment because it is expensive.

This Court vide order dated 31-7-2009, quoted above, has clearly observed that the junior doctors shall not resort to strike or any other such

activity which affects the medical service and the reputation of the medical college. The junior doctors may have their genuine grievances, but in our

opinion, resort to strike by the junior doctors is totally illegal because in that event the lives of number of persons is on stray. Learned counsel for

the respondents No. 6 and 7-Junior Doctors" Association has submitted that the junior doctors have submitted resignation, hence, they are free to

leave the job.

However, in our opinion, this argument cannot be accepted because all of a sudden the doctors cannot leave the profession and they have to give

advance notice of certain period so that alternate arrangements can be made by the Government.

In this view of the matter, looking to the seriousness of the grievance, it is directed that the junior doctors working in G.R. Medical College,

Gwalior shall report on duty by tomorrow at 10.30 a.m. irrespective of the fact that they have submitted their resignation and if they failed to obey

this order, the District Administration is directed to arrest the junior doctors and send them to jail upto the next date of hearing.

The case be listed on 17th November, 2011.

A typed copy of the order be provided to the learned Additional Advocate General, who may inform the State Government for necessary action.

A typed copy of this order be also provided to learned counsel for the petitioner.

A copy of this order be also provided to the learned counsel for the respondents No. 6 and 7-Junior Doctors" Association, who may

communicate the same to the junior doctors.

We expect that the junior doctors shall take the order in right perspective looking to the question of life and death of patients.

3. In spite of that, junior doctors went on strike. Then this Court on 22-11-2011, passed an order directing the President of Junior Doctors"

Association, Dr. Vivek Kankane as to why he should not be punished and a proper punishment be not awarded against him for willful violation of

the order of this Court. Dr. Vivek Kankane submitted his affidavit on 16-1-2012 in pursuance to the order of this Court. He deposed that on 17-

11-2011, the junior doctors were not on strike, however, they had been protesting without effecting the regular working. He admitted the fact that

the junior doctors and he himself were arrested on 17-11-2011 and thereafter he was released along with other doctors on 20-11-2011 and

resumed their jobs. He further stated that the Junior Doctors Association, Gwalior informed the M.P. Junior Doctors Association that they would

not go on strike and would continue to work in the interest of patients.

4. The petitioner filed an application mentioning the fact that near about 27 persons died in JAH Group of Hospitals, Gwalior when the junior

doctors were on strike. The Dean, G.R. Medical College Gwalior in her affidavit deposed that the junior doctors were on strike from 19-8-2010

to 26-8-2010. Thereafter the junior doctors were again on strike and this Court on 15-11-2011 directed the junior doctors to join the duties. In

spite of that the junior doctors did not join their duties and resorted to strike; Mr. Kankane, who is the President of Junior Doctors Association

was arrested and he was in prison from 17-11-2011 to 20-11-2011.

5. Hon"ble the Supreme Court in the case of Balram Singh Vs. Bhikam Chand Jain and Others, has held as under in regard to award of

punishment for contempt of Court:--

7. We must take serious view of the conduct of the contemnors in committing a breach of the undertaking in view of the growing tendency to trifle

with the Court's orders based on undertakings with impunity. Learned counsel for the contemnors strenuously contended that there was no

undertaking given that the contemnors would stop forthwith the manufacture and sale of their "Balram Septic Tank" which they have got patented

under their name, and all that they had assured was that they would delete forthwith the caption or legend "Design invented by Shri Bhikam Chand

Jain" and this, according to him, had been done. He further contended that the respondent Balram Singh was only entitled to manufacture and sell

"Shanker Septic Tank" under which his design was patented. The contemnors along with their counter-affidavit have filed a trade notice issued by

the respondent bearing out their assertion that the septic tank patented by the respondent was under the name "Shanker Septic Tank". They have

also filed an affidavit dated June 20, 1919 together with an annexure by one Dev Shri Prasad, Designs and Trade Mark Consultant, making a

declaration on their behalf that the contemnors were the exclusive owners, inventors and adopters of the trade description "Balram Septic Tank"

and that no one had any right to make use of or deal with the said trade description, as also an extract from the register of copyrights dated

February 3, 1981 showing that the trade description "Balram Septic Tank" has been registered with the Copyright Office in the name of the said

firm. The annexure to the affidavit showed a design of "Balram Septic Tank" which more or less corresponds with the patented design of "Shanker

Septic Tank" of the respondent. The contemnors have also filed a copy of an application dated March 19, 1982 showing that they have made an

application before the Registrar of Trade Marks, Bombay, claiming that they have been manufacturing and selling their septic tank under the trade

description "Balram Septic Tank" continuously since September 5, 1973.

8. All this is of no avail and does not exonerate the contemnors nor relieve them of the undertaking. We refrain from expressing any opinion on the

question whether there is infringement of any patent or trade mark or whether the ingredients Of an offence punishable u/s 420 of the Indian Penal

Code, 1860 are made out. Nor should we be taken to have expressed a view upon the question whether the contemnors have any right to the user

of the trade description "Balram Septic Tank" or to manufacture and sell their product under that description. These are not the questions before

us. The only question is whether the breach of the said undertaking amounts to contempt. To go beyond that might come into the field of discussion

of the merits of the case. It is true that the contemnors have deleted the caption or legend "Design invented by "Shri Bhikam Chand Jain" from the

advertisements, brochures etc. issued by them, but instead they have prominently printed the photograph of Bhikam Chand Jain, partner of the said

firm. Prima facie a reading of the advertisement etc. issued by the contemnors is bound to mislead the public. Faced with this situation, learned

counsel for the contemnors in sheer desperation, offered that the contemnors would drop the trade description "Balram Septic Tank". As a last

resort, he contended that even if they are committed for contempt, they should be sentenced to pay a fine. It would be a travesty of justice if the

Court were to allow such gross contempt of Court to go unpunished, without an adequate sentence and we find no mitigating circumstances

whatever not to pass a sentence of imprisonment. We accordingly commit the contemnors for contempt of Court and sentence each of them to

undergo simple imprisonment for a period of three months and to pay a fine of Rs. 1,000 or in default, to undergo simple imprisonment for a further

period of one month.

6. Hon"ble the Supreme Court in the case of Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, , has held as

under :--

7. Section 2(c) of the Contempt of Courts Act defines Criminal contempt as follows:

(c) "Criminal Contempt" means the publication (whether by words, spoken or written, or any signs, or by visible representations, or otherwise) of

any matter or the doing of any other act whatsoever which

(i) Scandalises or tends to scandalise, or lowers or tends to lower the authority of any Court; or

(ii) Prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding, or

(iii) Interferes or tends to interfere with or obstructs or tends to obstruct, the administration of justice in any other manner.

While we are conscious that every abuse of the process of the Court may not necessarily amount to Contempt of Court abuse of the process of

the Court calculated to hamper the due course of a Judicial proceeding or the orderly administration of justice we must say, is a Contempt of

Court. It may be that certain minor abuses of the process of the Court may be suitably dealt with as between the parties, by striking out pleadings

under the provisions of Order 6, Rule 16 or in some other manner. But, on the other hand, it may be necessary to punish as a contempt, a course

of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the

action and affects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital

stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties

perishing. The Court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to

commit for Contempt of Court, not in order to protect the dignity of the Court against insult or injury as the expression ""Contempt of Court"" may

seem to suggest, but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced,

obstructed or interfered with. ""It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage"", per Frank

Furter, J. in *Offutt vs. U.S.* (1954) 348 US 11.

The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope"", per Judge, Curtis-

Raleigh quoted in *Jenison vs. Baker* (1972) 1 All ER 997 at p. 1006.

8. In Halsbury's Laws of England, (4th Edn., Vol. 9, paragraph 38), there is a brief discussion of when abuse of the process of the Court may be

a punishable contempt. It is said :

38. Abuse of process in general. The Court has power to punish as contempt any misuse of the Court's process. Thus the forging or altering of

Court documents and other deceits of like kind are punishable as serious contempts. Similarly, deceiving the Court or the Court's officers by

deliberately suppressing a fact, or giving false facts, may be a punishable contempt. Certain acts of a lesser nature may also constitute an abuse of

process as, for instance, initiating or carrying on proceedings which are wanting in bona fides or which are frivolous, vexatious, or oppressive. In

such cases the Court has extensive alternative powers to prevent an abuse of its process by striking out or staying proceedings or by prohibiting

the taking of further proceedings without leave. Where the Court, by exercising its statutory powers, its powers under rules of Court, or its inherent

jurisdiction, can give an adequate remedy, it will not in general punish the abuse as a contempt of Court. On the other hand, where an irregularity

or misuse of process amounts to an offence against justice, extending its influence beyond the parties to the action, it may be punished as a

contempt.

7. Hon^{ble} the Supreme Court in the case of Debabrata Bandopadhyay and others vs. The State of West Bengal and another, reported in AIR

1969 SC 189, has held as under :--

9. A question whether there is contempt of Court or not is a serious one. The Court is both the accuser as well as the judge of the accusation. It

behoves the Court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from

inveterate practices in Courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the

contemner must be punished. It must be realised that our system of Courts often result in delay of one kind or another. The remedy for it is reform

and punishment departmentally. Punishment under the law of Contempt is called for when the lapse is, deliberate and in disregard of one's duty

and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be

encouraged.

8. From the facts of the case, it is clear that contemner Dr. Vivek Kankane willfully flouted the orders of this Court and went on strike and as

submitted by the petitioner number of persons were died during the strike period and number of operations could not be performed. It is also a

fact that the poor persons could not afford medical facilities of private doctors because they do not have money for the aforesaid purpose and only

hope to the poor persons is a Government hospital. The life of patient is in the hands of doctors and if the doctors refused to treat the patients or

resort to strike, then they do it willingly with intention to cause danger to the life of the patient. The life and death of a patient is in the hands of the

doctor and it is the duty of the doctor to provide medical care to a patient. Going on strike in mass amounts to putting the person, who is admitted

in the hospital, into peril of death. If the doctor be permitted to take such type of recourse then certainly the life of patients would be in danger.

Nothing is precious than life. That is why this Court has ordered that the doctors should not resort to strike en masse.

9. In the present case, there was an order of the Court that the doctors should not go on strike. This Court also passed a specific order on 15-11-

2011 that the doctors should not resort to strike. In spite of that the contemner and other doctors went on strike. The contemner is the President of

Junior Doctors" Association, hence, he is responsible for his act and the acts of other junior doctors. The conduct of the contemner that in spite of

clear orders of this Court, he went on strike and even if he was arrested by the police, he refused to join the duties which shows that the contemner

has no regard to the orders of the Court. Hence, we found the contemner guilty for contempt of Court. Looking to the facts of the case, it would

not be appropriate to accept the apology. However, we award a jail sentence to the contemner for the period when the contemner was in jail from

17-11-2011 to 20-11-2011. The contemner shall also pay a fine of Rs. 10,000/- (Rupees Ten Thousand only). The contemner is directed to

deposit the aforesaid fine amount with the Registry of this Court. In default of payment of aforesaid fine amount, the contemner shall undergo a jail

sentence of fifteen days.