

Sri. Subrata Kundu and Others Vs Sri. Kshiti Goswami and Others

Court: Calcutta High Court

Date of Decision: Nov. 30, 2009

Acts Referred: Constitution of India, 1950 " Article 129, 215

Contempt of Courts Act, 1971 " Section 20

Contempt of Courts Rules, 1980 " Rule 10

Limitation Act, 1963 " Section 10, 11, 12, 13, 14

Citation: AIR 2010 Cal 44

Hon'ble Judges: Kalyan Jyoti Sengupta, J; Adbul Ghani, J

Bench: Division Bench

Advocate: Tapan Kumar Mukherjee, for the Appellant; Balai Chandra Ray, General, Sandip Srimani and Bhaskar Ghosh for Contemnor, for the Respondent

Judgement

Kalyan Jyoti Sengupta, J.

This is an application for committing contempt of Court for wilful and deliberate violation of the order passed

by this Court dated. 12th September 1997 by not appointing all the candidates from the merit list. In this matter the Rule was issued on 28th

September 2007 against the Respondent Nos. 2, 3 and 4 for formal drawing up of the aforesaid contempt proceedings. After affidavits having

been filed the matter was finally heard. The facts and circumstances leading to initiating this contempt application is stated hereunder:

2. On or about 31st March 1995 after written test followed by interview having been taken the Chief Engineers PWD (Roads) and Chairman of

the Selection Committee prepared a merit list for appointment of 4th Grade Clerks whereby and where under 254 candidates were chosen to be

eligible. Out of 254 candidates, 179 candidates were reserved for general category and 28 candidates were selected from the Department out of

the aforesaid general category. The rest of the candidates were enlisted in the reserved category of various classifications. The respondents without

following the seniority of the merit list started appointing candidates and by reason thereof the petitioner Nos. 1 and 2 along with other candidates

were compelled to file application in the State Administrative Tribunal (hereinafter referred to as the learned Tribunal) asking for appointment of the

petitioners on the basis of the merit list wherein their names figure. The said application being OA No. 183 of 1996 was disposed of by the learned

Tribunal by order dated 29th April 1997 directing the Chief Engineers (Roads) to appoint the candidates on the basis of the merit list without

resorting to pick and choose policy. The said order of the learned Tribunal was challenged in this Court by the State by filing appropriate

application and the same was dismissed by order dated 12th September 1997. The Division Bench of this Hon"ble Court while dismissing the said

application upheld decision of the learned Tribunal and further directed the Government to appoint the candidates on the basis of the merit list

within two months. On 30th January 2001 it was learnt without complying with the said orders the Hon"ble Minister in Charge and other

respondents cancelled the merit list after appointing the candidates enlisted in the merit list from and amongst the departmental candidates and the

candidates from reserved category. The petitioners having learnt aforesaid illegality filed on or about 15th February 2002 another application in the

said Tribunal challenging the said order cancelling the panel and asked for direction upon the respondents to offer appointment. This application

was dismissed by the learned Tribunal on 5th April 2006 holding that there was no fresh cause of action to move the said application hence fresh

application does not lie. It was further held that since the panel was cancelled and the respondents have filled up the vacancies no relief could be

granted. The petitioners herein challenged the said order of the Tribunal dated 5th April 2006 by filing an application in this Court and the said

application being WPST 392 of 2006 was disposed of on 11th April 2007 holding inter alia that order of the learned Tribunal was just and proper

and it was observed by the Division Bench that contempt proceeding was appropriate remedy as there has been violation of the earlier order of

this Court.

3. On 17th of April 2007 the learned Advocate for the petitioner wrote a letter calling upon the respondents to comply with the said order that has

been violated.

4. In the affidavit it has been alleged that the present contempt application is barred by limitation as such it is not maintainable. Factually it is

admitted position that the petitioners have not been appointed in terms of the order passed by this Court on 12th September 1997.

5. While meeting the aforesaid question of limitation Mr. Tapan Kumar Mukherjee learned Advocate appearing for the petitioners submits that the

question of limitation in a contempt proceeding in the High Court does not and cannot arise as violation of the order of the Court is continuous one.

According to him so long appointment is not given to the petitioners violation continues and naturally cause of action in the contempt application

arise afresh in each and every day. He submits that the limitation of one year as provided in the Contempt of Courts Act 1971 (hereinafter referred

to as the said Act) has no application as the jurisdiction of High Court to initiate contempt proceedings emanates from Article 215 of the

Constitution of India. This Court, he urges, will not only deal with alleged contemnors but will also pass the necessary order of enforcement. For

his submission he has drawn support of Division Bench decision of this Court reported in Sunil Kumar Ghosh Vs. The State of West Bengal and

Others, a decision of Division Bench of this Court reported in Dulal Chandra Bhar and Others Vs. Sukumar Banerjee and Others, and an English

decision (Chancery Division) reported in (1985) 1 All ER 211. He in this connection has also relied on a decision of Supreme Court reported in

(2001) 1 SCC 516 : 2000 AIR SCW 4611.

6. On merit he says that the violation of the order of the Court will appear from the facts that the respondents have not only refused appointments

to the petitioners but the panel wherein the petitioners name figured was cancelled by the Respondent No. 1.

7. The learned Advocate General while resisting this contempt proceedings submits that the action is hopelessly barred by limitation as the order

was passed on 12th September 1997 whereas the present contempt application has been filed on 2nd May 2007 and the Rule was issued

thereafter viz. on 28th September 2007. Thus it is clear that after long 10 years this contempt proceeding has been initiated. He submits that the

period commencing from 15th February 2002 ending on 11th April 2007 during which the proceeding was pending is of no help to validate the

contempt proceeding or to arrest running off time.

8. He urges it is now the law settled by the Supreme Court that the provision of the said Act prescribing the period of limitation is applicable in the

contempt proceedings before High Court. In support of his contention on the question of limitation he has drawn our attention to the following

decisions of the Apex Court : Dr. L.P. Misra Vs. State of U.P., Om Prakash Jaiswal Vs. D.K. Mittal and Another [OVERRULED], Pallav Sheth

Vs. Custodian and Others, .

9. Learned Advocate General further submits on merit that panel was cancelled as it cannot be kept alive for indefinite period. If the order is

looked into then it will appear the direction was for giving appointment to the candidates and there was no prohibitory order against cancellation of

the panel after expiry of reasonable time. It is further submitted that appointment was given from the merit list in accordance with law read with the

said decision. For long four years there has been no grievance nor any action was taken by the petitioners for implementation of the aforesaid

order. Hence there cannot be any wilful and deliberate violation.

10. Having regard to the aforesaid contention it is incumbent upon this Court to decide the issue first as to whether cause of action for initiating the

contempt application is continuing one or not. From the statement of fact recorded by us as above it appears that the order dated 12th September

1997 of the Division Bench of this Court not only affirmed previous order of the learned Tribunal in OA No. 183 of 1996, but fresh direction was

also given upon the respondents, that in terms of the order of the learned Tribunal offer of appointment should be made to the candidates on the

basis of the merit list within a period of two months from the date of communication of this order. Thus it is clear the appointment was to be given

to the candidates from the merit list within period of two months from 12th September 1997 and violation started on expiry of 12th November

1997. From 12th November 1997 till 15th February 2002 for more than 4 years no action was taken so it cannot be said to be continuing cause

of action. When it was found in November 1997 no action was taken to offer appointment to the petitioners the contempt application should have

been filed, instead a fresh application was filed on 15th February 2002 for implementation of the said order and for consequential relief. Of course

from 15th February 2002 till 11th April 2007 action was taken by the petitioners in the Tribunal and in this Court, and the period during which this

proceeding was pending in Tribunal and High Court can legitimately be excluded from the period of 10 years. We do not find any explanation as to

why the petitioners and each of them, were remaining silent for four years prior to 15th February 2002. Only explanation was given that the

petitioners were waiting for their turn to come for offer of their appointment. According to us this explanation is not satisfactory.

11. It is contended with the support of authority of the decision of the learned Single Judge reported in 1996 (2) CLJ 349 that question of

limitation in contempt proceedings initiated by the High Court does not arise. Similar view is also taken by Division Bench of this Court in the case

of Shri Sunil Kumar Ghosh v. State of West Bengal and Ors. reported in Sunil Kumar Ghosh Vs. The State of West Bengal and Others, . In

paragraph 10 it has been held while relying on Division Bench Judgment reported in Dulal Chandra Bhar and Others Vs. Sukumar Banerjee and

Others, that contempt application is not directed merely towards punishing alleged contemnors but also for implementation of the order passed at

the instance of the parties in whose favour the order was passed. Now it is settled law by plethora of decisions of Supreme Court that limitation of

one year is applicable in a contempt proceeding initiated whether in High Court or Supreme Court. In case of Dr. L.P. Misra Vs. State of U.P.,

the Supreme Court held in paragraph 12 that High Court has jurisdiction under Article 215 of the Constitution of India to initiate contempt

proceedings but this has to be exercised in accordance with the procedure prescribed by law. The Supreme Court in that case by necessary

implication held that the said Act 1971 is the procedure prescribed by law and the provision for limitation in the said Act has to be made

applicable. In case of Om Prakash Jaiswal Vs. D.K. Mittal and Another [OVERRULED], two Judges Bench of Supreme Court in paragraph 15

in this context explained that Section 20 of the Contempt of Court Act 1971 is not the limitation in the sense it is understood in, the Limitation Act

1963. Hence Section 5 of the Limitation Act does not apply. However, a larger Bench of the Supreme Court subsequently in case of Pallav Sheth

Vs. Custodian and Others, has held while noting earlier decision rendered in case of State of West Bengal and others Vs. Kartick Chandra Das

and others, that by virtue of Section 29(2) read with Section 3 of the Limitation Act 1963, provision of Section 4 to 24 thereof stands attracted in

a contempt proceeding, but it was held that the period of limitation of one year as prescribed in the said Act will also be applicable. In fact in this

decision legal principle laid down in the case of Dr. L. P. Mishra's case has been accepted to the extent that Contempt of Court Act 1971 is the

legal procedure to be adopted while exercising jurisdiction by the High Court under Article 215 of the Constitution of India. Thus, it is no longer

res integra that provisions of Contempt of Courts Act has no application. In case of T. Sudhakar Prasad Vs. Govt. of A.P. and Others, it was held

as a statement of law in paragraph 9, that the provisions of the said Act 1971 are in addition to not in derogation of Articles 129 and 215 of the

Constitution. The provisions of said Act 1971 cannot be used for limiting or regulating the exercise of jurisdiction contemplated by the said two

Articles. But this judgment has not clearly stated that the provision of limitation as contained in Contempt of Courts Act has no application.

12. Thus on careful reading of decisions as above it emerge that provisions of limitation as contained in the said Act 1971 is applicable, but in a fit

case provision of Section 5 as well as Section 17 of the Limitation Act, 1963 is applicable by virtue of Section 29(2) read with Section 3 thereof

for the simple reason that in the said Act 1971 there has been no expressed provision to exclude the applicability of Section 5 of the Limitation

Act, 1963.

13. We would have applied the provision of Section 5 of the Limitation Act but we do not find any cogent ground or explanation to condone the

delay in this case.

14. The learned Single Judge of this Court in case reported in 1996 (2) CLJ 349 Begunkodar High School v. Samarendra Bandopadhyaya and

Ors. held that the limitation to initiate contempt proceeding of one year as provided in the Contempt of Court Act is not applicable to proceedings

for violation of order passed by this Court, cannot be said to be good law in view of consistent decisions of the Supreme Court as quoted above.

We, therefore, hold that the contempt proceedings cannot be maintained in view of the limitation as aforesaid for purpose of holding the

respondents guilty for committing Contempt of Court as such the alleged contemnors cannot be dealt with as the Rule was issued for this purpose

as we have noted there is no sufficient cause to condone delay.

15. But on this ground should this proceedings be dropped? Answer would be in the negative as we find from the statement and averment of the

petition and the affidavit in opposition that the order of the Tribunal asking the respondents to give appointment amongst other to the petitioners

and as affirmed by an order of this Court has not been carried out and the same is yet to be implemented even today. We are in this regard

fortified by the law laid down by the Apex Court in T. Sudhakar Prasad Vs. Govt. of A.P. and Others, that provisions of Contempt of Courts Act

cannot be used for limiting or regulating exercise of jurisdiction contemplated by amongst other Article 215 of the Constitution of India.

16. Division Bench of this Court in two cases reported in Dulal Chandra Bhar and Others Vs. Sukumar Banerjee and Others, and Saibal Kumar

Gupta and Others Vs. B.K. Sen, has explained object of initiating Civil Contempt. It is observed amongst other when an order is made for the

benefit of a party is disregarded or violated, the Court enforces the order, as such proceedings is a form of execution. In paragraph 12 of judgment

in case of Dulal Chandra (supra) P. Chakravarti, C. J. speaking for the Bench opined ""In the above state of facts, I am clearly of opinion that the

contempt alleged in the present case was purely civil contempt and that the proceedings initiated on the application of the respondents were

proceedings in the nature of execution.

17. The same Bench in case of Saibal Kumar as above, a year later almost reiterated the same view with the expression in paragraph 4 as follows:

It is well settled that the Contempt of Court may be of two kinds namely, Civil Contempt and Criminal Contempt, when an order made for the

benefit of a party is disregarded or violated and the Court enforces the order by punishing the delinquent for contempt it is said that such

proceedings is in a form of execution and the Contempt concerned is of a civil nature.

18. This view is again accepted and reiterated by a Bench decision of this Court in case of Sri Sunil Kumar Ghosh (Supra).

19. In the case of Firm Ganpat Ram Rajkumar Vs. Kalu Ram and Others, the Hon"ble Supreme Court in paragraph 6 propounded legal position

in dealing with contempt proceedings as follows:

In the aforesaid view of the matter, we are of the opinion that though perhaps the respondents could not be found guilty of violating any

undertaking as there was none, in the facts and circumstances of the case, this Court should ensure compliance with its order dated 24 August,

1987

20. In that case before Supreme Court a Contempt application was filed against some persons who by obtaining order of injunction wanted to

frustrate eviction decree which was affirmed by Apex Court, so that execution thereof could not be levied as the execution was stayed by the

Apex Court in the hope that usual undertaking would be filed to vacate within certain time, but such undertaking was not filed by the original

judgment debtors.

21. In the case of Noorali Babul Thanewala Vs. Sh. K.M.M. Shetty and others, two Judge Bench of Supreme Court expressed legal view in para

graph 11 as follows:

It is settled law that breach of an injunction or breach of an undertaking given to a Court by a person in a civil proceeding on the faith of which the

Court sanctions a particular course of action is misconduct amounting to contempt. The remedy in such circumstances may in the form of a

direction to the contemnor to purge the contempt or a sentence of imprisonment or fine or all of them.

22. In this case, the Hon"ble Supreme Court instead of punishing asked the contemnor to purge the contempt by directing the first respondent

contemnor to deliver vacant possession. Yet a decision of the Supreme Court in the case of Kapildeo Prasad Sah and Others Vs. State of Bihar

and Others, ruled that though initiation of contempt proceeding is not a substitute for execution proceedings though at times that purpose might also

be achieved.

23. Thus upon objective study of all the decisions as above it is our considered view that contempt proceeding (Civil) is not exclusively meant for

awarding punishment of contemnors, it is at times really directed basically towards enforcement of the order when it is found order has not been

carried out, and awarding punishment becomes secondary object in that situation. But when order is complied with, but not according to the

direction of the Court, awarding punishment may become primary object. At times proceeding in Civil Contempt assumes the character of

execution proceedings, when order is not carried out, yet it cannot be substitute of formal execution proceedings but purpose of execution is

achieved.

24. Our above views is clearly reflected in the Rule 10 of Contempt of Court Rules 1975 framed under the said Act by this Court. The said rule is

quoted hereunder:

The Court may issue rule Nisi or summarily reject the petition or make such order thereupon as thought fit.

25. The emphasised portion of the rule clearly and undoubtedly affords wide discretion to deal with Contempt petition as the Court will think fit.

26. In the present case, the petitioners and each of them on earlier occasion approached the learned Tribunal in 2002, thereafter this Court,

consequent upon non-compliance of the order, basically for enforcing of the order. The said proceedings came to an end in 2007 with the Court's

observation contempt proceedings is appropriate remedy without disposing of the same on merit. Therefore, this long five years have to be

excluded from delay of ten years for enforcement of the order. Had it been Civil execution period of limitation would have been twelve years. Thus

there is no reason to think different period of time in this case from ordinary period of limitation for execution.

27. We now dispose of this contempt application directing the State to implement the order dated 12th September, 1997 giving appointment to the

petitioners irrespective of cancellation of the panel as against the present vacancies if available, if not then at the first available opportunity

petitioners and each of them must be appointed. Accordingly, the respondents and each of them is directed to place before the Court the vacancy

position in the said post in question as on today and to file a report to this Court. The said report shall be submitted within eight weeks from the

date of communication of this order.