(2006) 06 CAL CK 0003

Calcutta High Court

Case No: W.P.C.R.C. 10220 (W) of 2006 and W.P. 15902 (W) of 2005

Ma Santoshi Transport		APPELLANT
	Vs	
Sasim Kr. Barui		RESPONDENT

Date of Decision: June 15, 2006

Acts Referred:

- West Bengal Motor Vehicles Rules, 1989 - Rule 119

Citation: AIR 2007 Cal 130

Hon'ble Judges: Pratap Kr. Ray, J

Bench: Single Bench

Advocate: Sanat Kumar Roy, Subrata Banerjee, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Pratap Kr. Ray, J.
Heard the learned Advocates appearing for the parties.

2. This contempt Rule arose out of the alleged violation of the order dated 19th September, 2005 passed in W.P. 15902 (W) of 2005 whereby the time table as fixed by the Sub-Committee as constituted, which was de hors of the Motor Vehicles Act and the Rules, being impugned in the writ application thereof, was stayed till final hearing of the writ upon giving liberty to the existing operators concerned to lodge any dispute under Rule 119 of the West Bengal Motor Vehicles Rules, 1989 with reference to the time table as fixed by the Regional Transport Authority, Burdwan while issuing the permit, being Stage Carriage Permit, in the concerned route with a rider that the Regional Transport Authority, in the event of lodging any dispute by any Operator, would decide the matter upon hearing the petitioners and the objector thereof. In the contempt application in Paragraphs 9 and 10 it has been alleged that the alleged contemnor, Sri Barui, who is the Secretary of the Regional Transport Authority, Burdwan violated the order of the Court in

view of contumacious act and conduct, namely, non service of any notice of hearing to the petitioners before disposal of the objection as raised by the existing Operator, Jagdish Gupta and non service of copy of the objection upon the petitioners despite requisition to serve as made by filing registered letter, as such letter, as was intended to be served by hand, was refused by the gentleman. In the contempt application the petitioners accordingly have assailed the subsequent decision of fixation of timetable on adjudicating the objection raised by one Jagadish Gupta by the alleged contemner by taking a decision on 17th February, 2006, which is annexed at page 36 of the contempt application. The petitioners also have prayed for punishment of the alleged contemner suitably on adjudicating the matter. The Contempt Rule was issued against the alleged contemner, Sri Barui and Affidavit -in-Opposition has been filed by him wherein the contention raised in paragraphs 9 and 10 of the contempt application about non-service of any notice of hearing in terms of the Court''s order and non-service of the objection as filed by another Objector was denied by contending, inter alia, that on 15th Fehruary, 2006 hearing date was fixed, but the same was adjourned due to administrative reasons by re-fixing the date of hearing on 17th February, 2006 at 12 noon with intimation to the writ petitioners as well as the objectors verbally and on 17th February, 2006 the matter was disposed of in presence of the writ petitioner and the objectors, but the writ petitioner refused to sign the minutes. In paragraph 6 it has been further averred that the requisition notice asking to serve copy of the objection was received by the Office after hearing on 17th February, 2006 and as such, copy of the objection was not possible to be supplied. Affidavit-in-reply has been filed by the petitioner reiterating the contention made in the contempt application and by further contending, inter alia, that the petitioner never was present when the matter was heard and no notice of adjourned date as alleged was served. Before considering the Contempt Rule, the factual matrix of the writ in summary since would be helpful to adjudicate the issue, is stated herein below.

3. In the writ application the petitioners raised a grievance about change of time table as fixed while Stage Carriage Permit was granted in the concerned route by the Subcommittee who had no jurisdiction and whose formation and constitution was dehers of the Motor Vehicles Act and the Rules as this Sub-Committee was constituted by the persons concerned who are stranger under the statute. During pendency of hearing of the writ, interim order was passed staying operation of the impugned decision of such Sub-Committee. Since under Rule 119 of the West Bengal Motor Vehicles Rules, any existing operator has a right to file a dispute about fixation of time table while granting Stage Carriage Permit at the initial stage when such Stage Carriage Permit was granted, the Court kept the matter open by allowing such objectors to file the objection as per statutory provision with a positive order that, though there was no necessity to pass such order as statute provides such scope of hearing to the objector as well as the person concerned who would be aggrieved thereof, but in the event objection is allowed, hearing to be allowed by the concerned authority not only to the writ petitioners but also to the objectors and a decision could be reached by him. The order of the Court dated 19th September, 2005, which is now the subject matter of the Contempt Rule, reads to this

effect:

Heard learned Advocate for the petitioners.

It is the grievance of the petitioners that the Regional Transport Authority without dealing with the matter for fixation of the time table has entrusted the same to a Sub Committee, which is not permissible under the law. A supplementary affidavit has been filed giving names of different persons of the Sub Committee, wherefrom it appears that it is constituted by some members of different Unions and Associations. Having regard to such, the Chairman, Regional Transport Authority, Burdwan and the Secretary, Regional Transport Authority, Burdwan, both are directed to file their respective affidavits answering the issue as to whether under the Motor Vehicles Act read with the Rules thereof, any Sub Committee could be formed for finalizing the issue of time table and/or for deciding the dispute as being raised by the different operators in terms of Rule 119 of the West Bengal Motor Vehicles Rules, 1989, Such affidavit be filed within 10 days from this date. Since the Court is prima facie satisfied that the Sub-Committee has no legal entity in terms of the Motor Vehicles Act read with the West Bengal Motor Vehicles Rules, 1989, which has fixed time table impugned herein, there will be an interim order of stay of the impugned time table till 2 weeks from this date. The petitioners are allowed to ply their vehicle in terms of the earlier timetable as fixed subject to the result of the writ application. Matter will appear 10 days hence. However, it is made clear that if any operator is aggrieved by the earlier time table fixed, he is at liberty to file objection and/or dispute under Rule 119 of the West Bengal Motor Vehicles Rules 1989 for deciding that issue, and in the event such objection is filed, the Regional Transport authority is at liberty to dispose of the same irrespective of the order as passed today allowing the petitioners to ply the vehicle, upon hearing the writ petitioners and the objector, if any.

4. From the last portion of the order accordingly it appears that the Regional Transport authority was directed to dispose of the matter after hearing the writ petitioner and the objector in the event any dispute was raised. It is the stand of the alleged contemner in the Affidavit-in opposition that notice of hearing was duly served to the writ petitioners on the issue of the objection as raised by one Jagadish Gupta under Memo No. 616/1(2)2/MV dated 1st February, 2006. Learned Advocate for the alleged con-temner, however, has very frankly submitted before this Court that no objection as filed by Sri Jagdish Gupta was served to the petitioners either before the date of hearing or after the date of hearing. In the Affidavit-in-opposition filed by the alleged contemner it is implied as the alleged contemner accepted by. contending, inter alia, that as the notice asking for service of copy of the objection was received by his office after hearing was concluded on 17th February, 2006, no copy of the objection was served upon the petitioners. The notice as was allegedly served upon the petitioners inviting them to attend the hearing on 15th February, 2006, at 12 noon has been annexed, which is at page 32 of the contempt application, which reads to this effect:

To

Jagadish Gupta,

Chandmari Lane,

Badamtala,

P.O. & Dist. Burdwan.

Sub : Hearing notice in connection with High Court order dated 19-9-2005.

Ref : W.P. No. 15902 (W) of 2005.

As per your prayer in connection with High Court order dated 19-9-2005, date of hearing is fixed on 15-2-2006 at 12 noon in the office chamber of Secretary, R.T.A., Burdwan.

You are requested to attend the hearing along with documentary evidence in your support.

Sd/-

Secretary,

Regional Transport Authority,

Burdwan.

Memo No.... /MV Dated.... /06

Copy forwarded to:

1-2) Sri Sukanta Koner, Member RTA, Burdwan B.D.O. Office Para, P.S. Memari, Dt. Burdwan/Shri Samar Hazra, Member, R.T.A., Burdwan, Vill.+P.O: Nabagram, P.S. Jamalpur, Dist. Burdwan with request to attend the meeting.

Sd/-

Secretary,

Regional Transport

Authority, Burdwan.

Memo No. 616/1(2)2 M.V. Dated : 1/2/06.

Copy forwarded for information to:

3-4) Maa Santosh Transport, Prop. Susanta Sain (Managing Partner), S.O. Lt. Bhagabati Charab Sain, 2 No. Parkas Road, P.O. & Dist. Burdwan/All Existing Operator.

Sd/-

Regional Transport

Authority, Burdwan.

1-2-2006.

5. On a bare perusal of the said notice it appears that in the notice nowhere it is mentioned that one Jagadish Gupta is an existing operator and that he has lodged complaint and/or grievance and/or dispute so far as fixation of the time table in plying the vehicle of the petitioner in the route in question. From the said notice it further appears that it was addressed to Jagadish Gupta directing him to attend hearing along with documentary evidence. Copy of such dispute never was served upon the petitioner. Even in the notice copy there was no mentioning that the petitioner also would be heard on that date. Learned Advocate for the alleged contemner vehemently has contended before this Court that once a party got a notice for hearing to be held on a particular date, even if there was no direction for his appearance at the time of hearing and/or even if there is no disclosure of the subject matter of hearing either by contending the issue precisely or by explicitly on annexing any document and/or objection thereof, it was the duty of the noticee, the writ petitioners, to take information to that effect and to attend at the time of hearing. I am afraid to accept such contention of the learned Advocate for the alleged contemner. In the order passed by this Court, as already quoted, this Court categorically directed that the petitioner to be heard, which clearly means that notice of hearing was required to be served upon the petitioners giving the particulars, namely, the date and time of hearing and disclosing the subject-matter of hearing with copy thereof. From the contempt application filed by the petitioners it appears that the petitioners after receiving the said notice wherefrom nothing was understood by them, they prayed for supply of copy of objection, if any, filed by Jagadish Gupta. Since no copy of objection was served upon the petitioners, this Court is of the view that there was no effect hearing given to the petitioners in terms of the Court"s order. Furthermore, from the Affidavit-in-opposition of the alleged contemner it appears from paragraph 6 thereof, which has been affirmed as true to his knowledge that the alleged contemner, Sri Barui on 15th February, 2006 adjourned the date of hearing for administrative reasons refixing the date of hearing on 17th February, 2006 at 12 noon on an intimation to the writ petitioners as well as the objectors verbally. Against such contention of the alleged contemner, Mr. Roy, learned Advocate for the petitioners, has submitted before this Court on producing a documentary evidence, namely, affidavit in connection with AST 548/06 with reference to MAT No. 2567 of 2006 affirmed by one Sri Jagadish Gupta with reference to the notice concerned, to contend that in paragraph 7 of the said Affidavit it was averred that the Secretary, Regional Transport Authority, Burdwan, as was pre-occupied in another Court case in this Hon"ble Court, accordingly hearing was adjourned and it was informed by him that the objection would be heard on 17th February, 2006 learned Advocate for the alleged contemner has not denied such fact about presence of the alleged contemner in the High

Court at Calcutta with reference to another case on 15th February, 2006. But the learned Advocate for the alleged contemner failed to satisfy this Court that when the alleged contemner was present in the Calcutta High Court on 15th February, 2006, then how the hearing as fixed at a far off distance in the Burdwan town in the District Burdwan was adjourned by re-fixing the date on 17th February, 2006 and how such refixing was communicated verbally to the petitioners and the objectors. Only one possible answer could be made to satisfy the contention made in paragraph 6 of the Affidavit-in-opposition by the alleged contemner that the date was re-fixed on 17th February, 2006. On 15th February, 2006 when the alleged contemner, Sri Barui, came to Calcutta High Court with the case records and in the Hon''ble High Court corridor he took up the matter in presence of the petitioners and the objectors and thereby adjourned the same. That is also not the submission before this Court also.

6. Having regard to such state of affairs, this Court is of the view that the alleged contemner, Sri Barui, practically has made the order of the Court infructuous by his alleged conduct. Now the question stands whether such conduct is wilful or deliberate action on his part to suffer the rigour of Contempt of Courts Act as well as punishment thereof. Learned Advocate for the alleged contemnor has submitted before this Court that it was not willful, namely, non-giving of any notice of hearing to the petitioners, as intimation letter was served by disclosing that the hearing would be held. It was also not willful and deliberate not to serve any copy of the objection, is also the submission. The petitioner had the responsibility to come and approach to take a copy and the adjournment, as was done, even if he was absent from Burdwan, was lawful and legal and there was no motive behind it to adjourn the matter is also the strong contention of learned Advocate of contemner. Whether it is willful and deliberate for the purpose of deciding the Contempt Rule, the issue to be considered on the reflection of the Affidavit-in-opposition. In the Affidavit-in-opposition the alleged contemner has contended that the submission of the petitioner that no notice of hearing was given and no copy of the objection was served, were not the real state of affairs. Hence it is a clear contention that notice of hearing was given and there was necessity to serve any objection. From the tenor of the order it appears that the gentleman was directed to decide the issue on merit by hearing the objector and the writ petitioners and accordingly responsibility was casted upon the alleged contemner to serve notice positively to the petitioners fixing particular date of hearing by serving a copy of such objection.Without doing such, this Court is of the view that the alleged contemner not only has breached the order of the Court but his action is willful on his part. The alleged contemner, being a Government Officer, is holding the post of Secretary, Regional Transport Authority, Burdwan and he is in the date of West Bengal Civil Services. Hence, it cannot be said that the alleged contemner failed to understand the order in its proper way. The order was very explicit that the petitioners should be heard. Hearing means a notice of hearing to be given by fixing a date of hearing with the copy of the objection as to be considered for decision. Here both the aforesaid contingencies are absent though the alleged contemner holding higher post, ought to have taken a decision in terms of the Court''s order. The conduct of the alleged

contemner accordingly very well could be considered by this Court as deliberate and willful latches on his part to comply with the Court''s order in its letter and spirits. It is settled law that a Government official, if hauled up in a contempt jurisdiction, the Court should not deal with the matter leniently. Reference may be placed to the judgment of the Apex Court passed in the case Mohd. Aslam alias Bhure Vs. Union of India, so far conduct of a Government servant and dealing thereof in a contempt proceeding, Calcutta High Court has also followed the said judgment in the case of Rabindra Nath Biswas, Head Surveyor Retd. v. B.C. Mookerjee, Secretary, Department of Land and Land Reforms, Govt. of West Bengal, reported in (1988) 1 CHN 239. In the case of E.T. Sunup Vs. C.A.N.S.S. Employees Association and Another, the Apex Court held that "it has become a tendency with the Government Officer to somehow or the other circumvent the orders of the Court and try to take recourse to one deprivation or other. This shows a complete lack of grace in accepting the orders of the Court. This tendency of undermining the Court''s order cannot be countenanced. This Court time and again has emphasized that in democracy the role of the Court cannot be subservient to the administrative fiat. The executive and the legislature had to work within a constitutional framework and the judiciary has been given a role of watch dog to keep the legislature and the executive within check".

7. Having regard to such state of affairs, this Court is of the view that the alleged contemner, Sri Barui, a Government Officer holding higher post in the cadre of West Bengal Civil Services, ought to have complied with the Court''s order in its letter and spirits, which in the instant case, has not been done and this Court is recording his conduct as willful and deliberate flouting of the Court''s order by not complying the same. It appears that even in the notice as served upon the objector, Sri Jagadish Gupta, copy of which has been served upon the petitioners, there was no mention about the subject-matter of the hearing and nothing has been stipulated therein that the petitioners were to be heard on that date though the objector was directed to produce the relevant evidence and documents in support of his case, by the petitioner was simply served with a copy of the notice. This is a clear breach as already discussed earlier and the same is willful and deliberate. In that view of the matter, this Court has no other alter-native but to hold that the alleged contemner, Sri Barui, is guilty of the contempt and he is liable to suffer consequential order in terms of the Contempt of Courts Act.

8. Now the second chapter so far as the contention of Sri Barui as made in the Affidavit-in-opposition, namely, the tendering of unconditional apology to be dealt with.

9. It is now a settled law that mere tendering of unconditional apology cannot be a weapon of defence to purge the guilty of their offence; nor it is a universal panacea but it depends upon the real contriteness of the alleged contemner. The English Court and the Apex Court has considered the issue of apology in a contempt proceeding in the following term. In the case Jennison v. Baker, reported in (1972) 1 All ER 997 at page 1006 it is held "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". Said view has been relied upon by the Apex

Court in the case Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, . In the case M.Y. Shareef and Another Vs. The Hon''ble Judges of The High Court of Nagpur and Others, the Court held "With regard to apology in proceedings for contempt of Court, it is well settled that an apology is not a weapon of defence to purge the guilty of their offence, nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness". In the case L.D. Jaikwal Vs. State of U.P., The Apex Court held "it is one thing to "say" sorry -- It is another to "feel" sorry". In M.Y. Shareef (supra) also has been followed by the Apex Court subsequently in the case M.B. Sanghi, Adv. Vs. High Court of Punjab and Haryana and others, A Special Bench of Calcutta High Court in the case In Re : Hiren Bose, reported in In Re: Hiren Bose, at page 3 held "Apology cannot be a weapon of defence forged always to purge the guilty. It is intended to be evidence of real contrition, the manly consciousness of a wrong done, of an injury inflicted and the earnest desire to make such reparation as lies in the wrongdoer''s power". Same principle of In Re. Hiren Bose (supra) having been approved by the Apex Court in the case Debabrata Bandopadhyay and Others Vs. The State of West Bengal and Another, . In the case T.M.A. Pai Foundation and others, etc. Vs. State of Karnataka and others, the Apex Court in para 10 held "It is equally necessary to erase an impression which appears to be ground that the "mantra" of unconditional apology is a complete answer to violations and infractions of the orders of this Court".

10. Since this Court has already has found the alleged contemner guilty of the contempt, which is pre-condition of consideration of the apology issue in terms of the judgment passed in the case In Re: In Re: Ram Pratap Sharma and Others, , the issue is now being considered on the reflection of the aforesaid judgment of the Apex Court as already quoted above. From the affidavits and the findings above it has been clearly established that the action of the alleged contemner Sri Barui was deliberate and willful and as such, the unconditional apology cannot be a "mantra" to pray exemption inasmuch as when there is no justification of such.

11. Having regard to such, this Court is sorry to accept the unconditional apology as tendered.

12. Now on issue of punishment, before dealing with that, the judgment of the Apex Court would be a guiding factor, which is discussed herein below. In the case Chandra Shashi Vs. Anil Kumar Verma, the Apex Court held "contemner should be given an adequate punishment and incarceration of the contemner must work as eye-opener for the others and it must have a deterrent effect. Tendency of willful defence of the order of Court is required to be curbed, which requires somewhat deterrent sentence". In the case Dhananjay Sharma Vs. State of Haryana and Others, , the Apex Court held "Court cannot ignore such action, which to be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of Court and interfere with due process of judicial proceedings or the administration of justice". In the case Mohd. Aslam (supra), the Apex Court held "if not punished it will demolish public faith in the accepted constitutional institutions and weaken people''s resolve to solve issues by

peaceful means. It will destroy respect for the Rule of Law and the authority of Courts and seek to place individual authority and strength of numbers above the wisdom of law". The Apex Court also dealt with that sentence of imprisonment is an exception while the sentence of fine is the rule in the case Smt. Pushpaben and Another Vs. Narandas V. Badiani and Another, On the reflection of the above judgment, the contemner Sri Barui who is present before this Court has been invited to submit about the quantum of punishment when the learned Advocate prayed for lesser punishment by imposition of fine.

13. Considering the entire scenario of the matter and having regard to the violation as made, this Court is of the view that the contemner, Sri Barui, for the first time could be exempted from suffering any order of imprisonment to tail from this Court. Accordingly the submission of the alleged contemner is accepted. Hence, only option before this Court, considering the entire matter, is that punishment of fine would suffice to satisfy the issue involved herein, namely, adjudication of the Contempt Rule. This Court accordingly is of the view that a punishment of Rs. 1000/- would be justified in this case, Accordingly it is ordered that a fine of Rs. 1000/- is imposed upon the contemner, Sri Barui, who has been found guilty of the contempt.

14. Since the Court has already found the contemner as guilty of the contempt, the impugned decision as reached on 17th February, 2006, being in utter violation of the Court''s order, is set aside and quashed exercising the contempt jurisdiction.

15. Furthermore, consequential direction is being passed in the contempt jurisdiction directing Sri Barui to hear the objection as lodged by Sri Jagadish Gupta upon giving proper opportunity of hearing to the petitioner and upon serving a copy of such objection de novo in accordance with law.

16. In view of the submission made by Mr. Roy, learned Advocate for the petitioners that the Division Bench of the Calcutta High Court with reference to the appeal, being MAT. 2567 of 2006 as preferred by Sri Jagadish Gupta challenging the order dated 19th September, 2005, has already granted such leave to the Regional Transport Authority Board, this Court is of the view that since there is an order of the Division Bench dated 14th June, 2006, the said order is to be followed.

17. Fine, as imposed upon the contemner, be paid to the High Court Registry within a week from this date from his own pocket by the contemner, Sri Barui.

18. Till the decision is reached following the order of the Division Bench aforesaid, the petitioners will ply their vehicle in terms of the earlier time table, which was fixed while granting Stage Carriage Permit in their favour initially, being the permit granted on 14th July, 2005.

19. The Rule is accordingly allowed and made absolute.

20. Urgent Xerox certified copy of this order, if applied for, be given.