

Sabnam Begum Vs The State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: May 15, 2014

Acts Referred: Administrative Tribunals Act, 1985 " Section 17

Constitution of India, 1950 " Article 129, 215, 226

Contempt of Courts Act, 1971 " Section 10, 15, 20

Limitation Act, 1963 " Section 17

Citation: (2014) 3 CALLT 541 : (2014) 2 CALLT 582 : (2014) 5 CHN 42

Hon'ble Judges: Tapash Mookherjee, J; Nishita Mhatre, J

Bench: Division Bench

Advocate: Himadri Sekhar Chakraborty, Advocate for the Appellant; Nuguve Ahmed and Mr. Benazir Ahmed for the State, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Nishita Nirmal Mhatre, J.

This petition is directed against the decision of the West Bengal Administrative Tribunal in C.C.P. No. 78 of

2001. By its decision dated 23rd April, 2009 the Tribunal dismissed the contempt petition on the ground that it had not been filed within the period

of limitation as prescribed under the Administrative Tribunals Act, 1985 read with Contempt of Courts Act, 1971.

2. The petitioner was selected for empanelment in the list of successful candidates for the post of Staff Officer and Instructor in the Civil Defence

Organisation, West Bengal on 15th September, 1985. She was informed that after training for a period of four weeks she would be appointed on

a provisional basis subject to the availability of a vacancy.

3. As directed by the Memo of 15th September, 1985, the petitioner reported for training. A certificate was issued by the Central Civil Defence

Training Institute on 1st February, 1986 indicating that the petitioner has successfully completed her training. The petitioner was then directed by

the letter dated 18th April, 1986 to appear before the Board of Officers with her original certificates and other credentials and the petitioner

complied with this direction.

4. The petitioner had not received any information regarding her appointment with the respondents. She submitted her representations to various

officers and Ministers of the Government of West Bengal on several occasions between 1987 and 1992.

5. However, there was no response to any of the representations made by the petitioner. She therefore preferred W.P. No. 17740(W) of 1992

before this Court. The petition was subsequently transferred to the West Bengal Administrative Tribunal as this Court had no jurisdiction to

entertain the representation. On 26th April, 1997, the Tribunal allowed the application of the petitioner by directing the respondents to consider her

case for employment in any existing vacancy according to the Rules. The Tribunal further observed that in the event there was no vacancy

available, she should be considered for employment against a future vacancy.

6. The respondents preferred an application for review before the Tribunal in November, 1997. The Review Application was dismissed on 7th

March, 2001. Thereafter the respondents preferred another Review Application which was also dismissed by the Tribunal. Despite the decision of

the Tribunal in T.A. No. 1585 of 1997 which was decided on 26th August, 1997, the respondents took no steps to implement the same. The

petitioner states that the orders of the Tribunal dated 26th August, 1997 in T.A. No. 1585 of 1997 and 7th March, 2001 in Review Application

case No. 60 of 1997 and R.A. case No. 27 of 1998 were challenged by the respondents in WPST No. 664(W) of 2001 in this Court. By an

order dated 24th December, 2001, the Division Bench of this Court dismissed the writ petition as it was of the opinion that there was no need to

interfere with the order passed by the Tribunal. The petitioner therefore filed CCP No. 78 of 2001 before the Administrative Tribunal on 29th

June, 2001.

7. The petitioner's claim for being appointed to the post of Staff Officer and Instructor in the Civil Defence Organisation, West Bengal was

rejected by the Director of Civil Defence by an order dated 31st January, 2002, during the pendency of the contempt petition before the Tribunal.

This order of 31st January, 2002 was placed on record by the petitioner by way of supplementary affidavit in the contempt petition. By an order

dated 15th July, 2002, the Director of Civil Defence was directed to appear in person before the Tribunal. That order was challenged by the

respondents in WPST No. 1100 of 2002 filed in this Court. The Division Bench of this Court dismissed the writ petition.

8. When the contempt petition came up for hearing before the Tribunal on 28th June, 2005, the Tribunal observed that despite several

opportunities being given to the respondents to submit a status report in compliance with the order passed on 26th August, 1997, no report had

been submitted. The Tribunal therefore directed that the status report regarding the implementation of its order passed in the Original Application

should be produced on the next date of hearing.

9. Instead of complying with this order, the respondents preferred another writ petition being WPST No. 529 of 2005. That writ petition was also

dismissed by the Division Bench while directing the Tribunal to hear the matter finally as early as possible. This order was passed on 22nd August,

2005.

10. It appears that the respondents filed one more writ petition challenging the order passed on 26th August, 1997 in T.A. No. 1585 of 1996 and

also certain orders which were passed in the contempt petition pending before the Tribunal. That writ petition was registered as WPST No. 662 of

2008. By an order dated 17th June, 2008 the Division Bench of this Court held that since interim orders which were passed in the contempt

petition by the Tribunal had been challenged in the writ petition, there was no need to interfere with the same. However, the Tribunal was directed

to decide the question of limitation first before going into the merit of this matter at the time of final hearing".

11. Not being satisfied with the order, the respondents again moved this Court by filing a Review Application against the order dated 17th June,

2008 which is apparently pending before this Court.

12. The petitioner's contempt petition which was pending before the West Bengal Administrative Tribunal since 2001 was dismissed on the

ground that it was barred by limitation. The Tribunal observed that the petitioner had learnt about the violation of its order when one Shukla Gomes

was appointed in a vacancy on 18th July, 1999 although she was junior to the petitioner. The Tribunal found that the contempt petition was

preferred on 29th June, 2001, after one year had elapsed from the date of knowledge of the breach of the order passed by the Tribunal. It was

therefore of the view that since the contempt petition is barred by limitation no further action could be taken in the matter. The contempt petition

was dismissed.

13. Thus, the issue before us is whether the Tribunal was right in dismissing the contempt petition. There is no dispute that the Tribunal had on 26th

August, 1997 allowed the application filed by the petitioner for appointment in service by directing that she should be appointed in any existing

vacancy according to the Rules and if there was no vacancy, the petitioner must be appointed against any future vacancy which may arise. It

appears from the record that the petitioner was aware of the fact that one Shukla Gomes had been appointed on 18th July, 1999 which is apparent

from the pleadings in the contempt petition. However the petitioner waited till the Review Application which was filed by the respondents against

the original order dated 26th August, 1997 was disposed of by the Tribunal. The Review Application was decided on 7th March, 2001 while the

contempt petition was filed on 29th June, 2001. The Tribunal has held that the existence or the filing of the Review Application by the respondents

ought not to have deterred the petitioner from filing the contempt petition within the stipulated period of limitation.

14. The issue therefore is whether the petitioner's contempt petition could be said to be barred by the period of limitation as contemplated under

the Administrative Tribunals Act, 1985 read with the Contempt of Courts Act, 1971. u/s 17 of the Administrative Tribunals Act, 1985, the

Administrative Tribunal has been vested with the same jurisdiction, powers and authority in respect of contempt of itself as the High Court has and

it can exercise all powers which are vested in the High Court under the Contempt of Court Act. u/s 20 of the Contempt of Courts Act, no Court

can initiate proceedings for contempt, either on its own motion or otherwise, after the expiry of the period of one year from the date on which the

contempt is alleged to have been committed.

15. In the case of Pallav Sheth Vs. Custodian and Others, the Supreme Court considered the provisions of Section 20 of the Contempt of Courts

Act and Section 17 of the Limitation Act. The Court dealt with the issue of limitation and held that rules had been framed by certain High Courts

indicating that the proceedings for contempt are initiated with the filing of an application or petition before the Court. If such proceedings are not

initiated within a period of one year from the date on which the contempt is alleged to have been committed then the Court would not have

jurisdiction to punish a party for committing contempt. However, when proceedings are properly initiated by filing of the petition before the Court

within the period of limitation, the provisions of Section 20 would not be impediment for the Court to exercise its jurisdiction. The Court observed

as follows:

41. One of the principles underlying the law of limitation is that a litigant must act diligently and not sleep over its rights. In this background such an

interpretation should be placed on Section 20 of the Act which does not lead to an anomalous result causing hardship to the party who may have

acted with utmost diligence and because of the inaction on the part of the Court a contemner cannot be made to suffer. Interpreting the section in

the manner canvassed by Mr. Venugopal would mean that the Court would be rendered powerless to punish even though it may be fully convinced

of the blatant nature of a contempt having been committed and the same having been brought to the notice of the Court soon after the committal of

the contempt and within the period of one year of the same. Section 20, therefore, has to be construed in a manner which would avoid such an

anomaly and hardship both as regards the litigant as also by placing a pointless fetter on the part of the Court to punish for its contempt. An

interpretation of Section 20, like the one canvassed by the Appellant, which would render the constitutional power of the Courts nugatory in taking

action for contempt even in cases of gross contempt, successfully hidden for a period of one year by practicing fraud by the contemner would

render Section 20 as liable to be regarded as being in conflict with Art. 129 and/or Art. 215. Such a rigid interpretation must therefore, be

avoided.

42. The decision in *Om Prakash Jaiswal Vs. D.K. Mittal and Another* [OVERRULED], , to the effect that initiation of proceedings u/s 20 can only

be said to have occurred when the Court formed the prima facie opinion that contempt has been committed and issued notice to the contemner to

show cause why it should not be punished, is taking too narrow a view of Section 20 which does not seem to be warranted and is not only going

to cause hardship but would perpetrate injustice. A provision like Section 20 has to be interpreted having regard to the realities of the situation. For

instance, in a case where a contempt of a subordinate Court is committed a report is prepared whether on an application to Court or otherwise,

and reference made by the subordinate Court to the High Court. It is only thereafter that a High Court can take further action u/s 15. In the

process, more often than not, a period of one year elapses. If the interpretation of Section 20 put in *Om Prakash Jaiswal*'s case (supra) is correct,

it would mean that notwithstanding both the subordinate Court and the High Court being prima facie satisfied that contempt has been committed

the High Court would become powerless to take any action. On the other hand if the filing of an application before the subordinate Court or the

High Court making of a reference by a subordinate Court in its own motion or the filing an application before an Advocate-General for permission

to initiate contempt proceedings is regarded as initiation by the Court for the purposes of Section 10, then such an interpretation would not impinge

on or stultify the power of the High Court to punish for contempt which power, de hors the contempt of Courts Act, 1971 is enshrined in Art. 215

of the Constitution. Such an interpretation of Section 20 would harmonise that section with the powers of the Courts to punish for contempt which

is recognised by the Constitution.

Later in Para 44, the Court held as follows:

44. Action for contempt is divisible into two categories, namely, that initiated suo motu by the Court and that instituted otherwise than on the

Court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the Court

itself which must initiate by issuing a notice. In other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper

construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the Court issuing notice suo

motu, within a period of one year from the date on which the contempt is alleged to have been committed.

16. Thus, the requirement in contempt proceedings is that the proceedings must be filed within one year of the alleged contempt having been

committed. The High Court may then proceed to exercise its jurisdiction in the contempt proceedings even after the expiry of one year from the

date of the order which has been disobeyed was passed. Where the High Court exercises its jurisdiction suo motu, it must issue notice within one

year of the alleged breach of its order.

17. In the Case of Shyamal Krishna Chakraborty Vs. Sukumar Das and Others, the Division Bench of this Court, having regard to the provisions

of Articles 215 and 226 of the Constitution of India the Court was of the view that when an application is filed by litigant bringing notice of the

Court about its order being flouted within one year of the order being passed, the application or petition cannot be barred by limitation because

procedural formalities had not been completed by the Court over which the petitioner had no control. The Court held that once the petition is

presented within one year of the date of the alleged contempt then the petition is maintainable although the necessary formalities under the Calcutta

High Court Rules had not been complied within that period of time.

18. In the case of Sri. Subrata Kundu and Others Vs. Sri. Kshiti Goswami and Others, this Court concluded that though the contempt petition was

filed beyond the period of limitation the High Court's jurisdiction cannot be limited or regulated by the Contempt of Courts Act in view of Article

215 of the Constitution of India. The Court condoned the period of five years of delay in view of the fact that it was only after this Court had

observed that the contempt proceedings were the appropriate remedy that the petitioner in that case approached the Administrative Tribunal,

bringing to its notice the contempt committed by the State and its officers.

19. In the present case there is no doubt that the contempt petition has been filed before the Tribunal after the expiry of one year from the date of

the order passed in the Original Application, i.e., more than one year after 26th August, 1997. An application for review was filed by the

respondents before the Tribunal on 25th November, 1997. That application was registered as R.A. No. 16 of 1997. The application was

dismissed on 9th September, 1998. Soon thereafter on 5th February, 1999 the respondents preferred another Review Application which was

dismissed on 7th March, 2001. Thus the pendency of the Review Petition would indicate that there was no quietus to the order passed by the

Tribunal on 26th August, 1997. Instead of complying with the order of the Tribunal the Respondents appointed Shukla Gomes on 18th July, 1999.

Therefore, the cause of action for filing the contempt petition arose on 18th July, 1999 when the petitioner became aware that somebody else had

been appointed in the vacancy which had arisen, in breach of the order of 26th August, 1997. Therefore, the period of limitation would start

running from 18th July, 1999. The petitioner ought to have filed the petition by 17th July, 2000. The petitioner chose not to bring to the notice of

the Tribunal the fact that its order had been breached, within the period of limitation prescribed, probably because several proceedings were

initiated by the State at every stage to avoid implementation of the order of the Tribunal. However, the filing of the several review petitions and writ

petitions by the State and its officers did not put a fetter on the petitioner's right to approach the Tribunal, complaining of the wilful and deliberate

breach of its order by filing a contempt petition.

20. The reliance placed on the aforesaid judgments by the learned Counsel for the petitioner is of no avail. We cannot exercise powers vested in

the High Court under Article 215 of the Constitution as the contempt complained of is not of disobedience of an order of the High Court but that

of the Administrative Tribunal.

21. Contempt proceedings are quasi criminal in nature. The provisions of the Act must be construed strictly. Considering the ratio in the various

judgments cited at the bar it is apparent that the Tribunal has not committed an illegality by dismissing the contempt proceedings on the ground of

limitation. The Division Bench of this Court in WPST No. 662 of 2008 had directed the Tribunal to consider the issue of limitation before going

into the merits of the matter. The jurisdiction which the administrative tribunal exercises while dealing with matters of contempt is delineated in the

Administrative Tribunals Act. It is confined to those powers which the High Court may exercise under the Contempt of Courts Act. However, it is

not conferred with the powers vested in the High Court under Article 215 of the Constitution of India. Therefore the Tribunal was right in rejecting

the application on the ground of limitation.

22. The petition is therefore dismissed.

23. Urgent certified photocopies of this judgment, if applied for, be given to the learned advocates for the parties upon compliance of all

formalities.