
(2009) 03 CAL CK 0117

Calcutta High Court

Case No: W.P.C.R.C. No. 6023 (W) of 2007

Tapasi Patra Nee
Hazra

APPELLANT

Vs

Sonali Sadhukhan

RESPONDENT

Date of Decision: March 4, 2009

Citation: (2009) 03 CAL CK 0117

Hon'ble Judges: Soumitra Pal, J

Bench: Single Bench

Advocate: Ashis Sanyal, Biswajit De and Panchanan Hazra, for the Appellant; Biswaroop Bhattacharya, for the Respondent

Final Decision: Allowed

Judgement

Soumitra Pal, J.

The Judgment of the Court was delivered by:

1. This contempt application was filed by the petitioner alleging violation of the directions contained in the order dated 9th June, 2006 passed in

W.P. 13459(W) of 2006, (for short "the said order") Tapasi Patra vs. State of West Bengal & Ors., by Sonali Sadhukhan, the Headmistress,

Ramnagar Vidyasagar Balika Vidyalaya directing her to allow the petitioner along with other eligible candidates to appear at the interview to be

held on 14th June, 2006 to the post of peon in Ramnagar Vidyasagar Balika Vidyalaya if found eligible and possessed necessary qualifications and

fulfilled other criteria. It has been stated that by letter dated 9th June, 2006 the gist of the said order was communicated to the alleged contemnor

who, on 12th June, 2006 under her seal and signature, had accepted the same. It appears from a letter dated 14th June, 2006, being Annexure R-

3 to the contempt application, that as she was not called for interview, the petitioner had requested her to comply with the directions contained in

the order dated 9th June, 2006. The said letter dated 14th June, 2006 was dispatched by post and was received by the alleged contemnor on 15th

June, 2006. On 15th June, 2006 the petitioner had also informed the District Inspector of Schools (Secondary Education), Hooghly and the

Additional District Inspector of Schools (Secondary Education), Chandannagore regarding the fact of the non-compliance of the order by the

alleged contemnor and were informed about the contempt application being moved before the High Court.

2. Thereafter, the contempt application was moved on 27th February, 2007. Rule was issued, which was made returnable on 12th March, 2007.

On 12th March, 2007 the alleged contemnor appeared. Directions for filing of affidavits were issued. Affidavits have since been filed and are on

record.

3. Mr. Biswaroop Bhattacharya, learned Advocate appearing on behalf of the alleged contemnor submitted that in order to constitute contempt

there should be deliberate and willful disobedience. From the chain of events or from the totality of facts it is evident that there was no willful

disobedience. Since Managing Committee is the competent body for recruitment of non-teaching staff she on 12th June, 2006 informed the

Secretary of the Managing Committee of the school about the order passed on 9th June, 2006 by the High Court and had requested him to allow

the petitioner to participate in the interview. Had intention been otherwise she would not have brought it to the notice of the Secretary. Evidently it

meant no disrespect or defiance of the order. Moreover, even on 14th June, 2006, that is on the day of interview, the fact regarding willful

disobedience was not brought to her notice. Thus, as disobedience, if any, was not willful and deliberate which should be the basis of committing

contempt, the contempt application is without merit. Learned Advocate for the alleged contemnor relied on the judgment of the Supreme Court in

Anil Ratan Sarkar and Others Vs. Hirak Ghosh and Others, , in support of his submission.

4. Mr. Asish Sanyal, learned Advocate appearing on behalf of the petitioner submitted that the alleged contemnor was directed to allow the

petitioner along with all other eligible candidates to appear in the interview to be held on 14th June, 2006. The order was communicated and was

received by the alleged contemnor personally on 12th June, 2006. Therefore, the obligation of the alleged contemnor was to allow the petitioner to

appear in the interview. However, though she understood the order she has tried to shift the obligation either by stating that she had immediately

informed the Secretary of the Managing Committee of the institution as the Managing Committee is the sole authority regarding appointment or by

stating she was not empowered to issue call letters. According to him excuses are frivolous. It is evident from the conduct of the alleged contemnor

that the order passed was frustrated by her action. Assuming the statements made in the affidavit filed by the alleged contemnor are correct, the

alleged contemnor did not take any action and kept silent when the Secretary failed to act. Since application was neither filed for recalling the order

dated 9th June, 2006 nor appeal was preferred and thus the order had attained finality, the alleged contemnor cannot traverse beyond the order

and question it. Reliance was placed on the judgments of the Apex Court in Union of India (UOI) and Others Vs. Subedar Devassy PV, and in

Commissioner, Kamataka Housing Board vs. C. Muddaiah, reported in 2007(7) SCC 689, in support of his submission.

5. In order to constitute contempt of an order passed, disobedience or breach must be willful and deliberate. Therefore, the conduct of the alleged

contemnor and the defence taken in the affidavit in opposition (for short the "said affidavit") is of great significance. In this regard the submissions in

paragraph 4 and sub-paragraphs (a), (b) and (c) of the said affidavit may be noted:

4(a). The applicant/writ petitioner (hereinafter referred to as the said Petitioner) had preferred the instant writ application being W.P. No.

13459(W) of 2006, inter alia, assailing the action of Ramnagar Vidyasagar Balika Vidyalaya (hereinafter referred to as the said school) in not

permitting the petitioner to appear in the selection test and interview held for the post of peon. In the writ application the petitioner had made me

contesting Respondent No. 3 in my capacity as the Headmistress of the said school though I have practically very little role to play in the matter of

selection of non-teaching staff. It is the Managing Committee of the said school which has the sole power to appoint non-teaching employees on

permanent or temporary basis against permanent or temporary vacancies. Thus in such a case I have practically very little role to play except for

the fact that by virtue of my post I am the ex officio member of the Managing Committee in terms of Rule 6 of the Management Rules, 1969. In

this connection I also say that by dint of my post I was also a part of the selection Committee constituted for the purpose of selection. I respectfully

say that my role in the matter of selection is merely incidental and it is the Managing Committee and the Secretary thereof who has the most

important role to play. Having regard thereto the Managing Committee of the said school represented by its Secretary ought to have been made

parties to the writ application since they are very much necessary parties to the same. The writ application on that ground alone ought not to have

been entertained. By non impleadment of the Managing Committee of the said school as well the Secretary thereof the writ application suffered

from non-joinder of necessary parties.

(b) However, I say that I was informed of the order dated 9.6.06 passed by the Hon'ble High Court at Calcutta on 12.6.06 through a letter of the

petitioner's learned Advocate which was dated 9.6.06. Since the selection was to take place on 14.6.06 I had immediately informed the Secretary

of the Managing Committee of the said school about the letter written to me by the petitioner's learned Advocate informing me about the order

passed by the Hon"ble High Court. The Secretary of the Managing Committee of the said school had received the letter written to me by the

petitioner's learned Advocate from me on 12.6.06 itself. Now as stated since I had very little role to play in the matter of selection I refrained from

pursuing with the matter since I felt that the Secretary of the Managing Committee would be in a position to deal with the matter more effectively.

However, I say that the Secretary was not a party to the proceedings and the petitioner or her learned Advocate did not furnish any certified copy

of the order upon me at the material point of time. I further say that I had absolutely no intention of not permitting anyone, fearless to speak of the

petitioner from participating in the selection. However, as stated I once again maintain that I am not empowered by law to issue call letters to any

candidate who is eager to participate in the selection process and the same is within the exclusive domain of the Secretary of the Managing

Committee and the Managing Committee itself.

(c) Therefore, I say that what ever has happened in the instant case is owing to the failure of the petitioner to implead the Managing Committee and

its Secretary as respondents. I have never, willfully and/or deliberately sought to violate the order passed by this Hon"ble Court and had done

whatever was incumbent upon me having regard to the exigency of the situation and urgency of the matter. Hence, the instant proceeding for

contempt initiated against me may kindly be dropped and I may be honorably exonerated.

(Emphasis supplied)

6. The stand taken by the alleged contemnor in the affidavit is that as the Managing Committee has the sole power to appoint non-teaching staff

and she has little role to play, she had immediately informed the Secretary of the Managing Committee about the order dated 12th June, 2008.

Moreover, under the law she is not empowered to issue call letters to any candidate to participate in the selection process. Whatever role she has

under the Management Rules, 1969 is incidental. Thus as she had immediately informed the Secretary of the institution about the directions

contained in the order and as the order has no sanctity of law, there was no deliberate and willful violation and the conduct cannot be called as

contumacious. It is to be noted that neither any application was filed by the alleged contemnor for recall of the order dated 9th June, 2006 nor any

appeal was filed assailing its correctness. Therefore, the order has received finality. The question is can the alleged contemnor still question the

order. The law laid down in Union of India & Ors. vs. Subedar Devassy PV (supra) provides the answer. The relevant paragraph of the said

judgement is as under:

While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received its

finality had been complied with or not. It would not be permissible for a Court to examine the correctness of the earlier decision which had not

been assailed and to take a view different from what was taken in the earlier decision.

(paragraph 2)

In the said judgement the law laid down in T.R. Dhananjaya Vs. J. Vasudevan, , on the question of impossibility to carry out the direction has been

summarised as under:- ""It was held that when the claim inter se had been adjudicated and had attained finality, it is not open to the respondent to

go behind the orders and truncate the effect thereof by hovering over the rules to get around the result, to legitimize legal alibi to circumvent the

order passed by a Court."" (paragraph 4). In paragraph 6 it has been held ""If any party concerned is aggrieved by the order which in its opinion is

wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the Court that passed the order or

invoke jurisdiction of the Appellate Court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the

order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. While dealing with an application for contempt

the Court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done

or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional

direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt

proceedings. The same would be impermissible and indefensible.

7. The same view was reiterated by the Apex Court in Commissioner, Kamataka Housing Board vs. C. Muddaiah (supra) wherein it has been

held as under:

We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any

reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of the rule of law. If a party against

whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to

law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by

the Court. In our judgment, upholding of such argument would result in chaos and confusion and would seriously affect and impair administration of

justice. The argument of the Board, therefore, has no force and must be rejected.

(paragraph 32)

8. Therefore, the law is, an order which has attained finality is irresistible. It is a Gospel truth. Since failure to carry out such order would amount to

hindering administration of justice and undermining the dignity of the Court, its observance in letter and spirit is a must. In my view, taking shelter

under the Management Rules for justifying non-compliance of the directions contained in the order dated 9th June, 2006 instead of applying for

recall of the said order regarding the difficulties faced if any, or not challenging the order before the higher forum, is nothing but circumvention.

Since the order dated 9th June, 2006 had attained finality, the alleged contemnor can now neither question the legitimacy of the order by referring

to the Management Rules nor can raise the issue regarding the maintainability of the writ petition as has been done in paragraph and its sub-

paragraphs of the affidavit in opposition. As she understood the order, she cannot shift the obligation. As evident from the said affidavit, she failed

to act even after the Secretary was unmoved. Thus, the order directing the alleged contemnor to allow the petitioner to appear in the interview got

frustrated. Since on the one hand she has tried to shift the obligation and on the other hand in a veiled manner has questioned the legitimacy of the

order by referring to the Management Rules and has raised the question about the maintainability of the writ petition, the act of the alleged

contemnor cannot be called a ""mere disobedience"" [Anil Ratan Sarkar (supra)] but willful and deliberate violation of the order. Hence, as the

action by the alleged contemnor is deliberate and willful, Sonali Sadhukhan is, thus, guilty of contempt. Therefore, the rule is made absolute.

9. Let the matter appear as for orders on 5th March, 2009 when further orders shall be passed in presence of the contemnor who is directed to be

present at first sitting of the Court.

10. Urgent photostat certified copy of this judgement and order, if applied for, be furnished to the appearing parties on priority basis.

Rule made absolute