

Nabhakumar Vs. Abhishek Krishna Collector and Competent Authority and Another

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Court : Mumbai Nagpur

Decided On : Jun-25-2015

Judge : A.S. Chandurkar

Appeal No. : Contempt Petition No. 104 of 2015 in Writ Petition No. 216 of 2014 (D)

Appellant : Nabhakumar

Respondent : Abhishek Krishna Collector and Competent Authority and Another

Judgement :

Oral Judgment:

1. By the present proceedings the petitioner seeks appropriate action being taken against the respondents for passing contradictory orders thereby disobeying the order dated 25.02.2014 passed by this Court in Writ Petition No.216/2014. By said order dated 25.02.2014 this Court had permitted the present petitioner to operate the licence in question by keeping accounts of the business and by making payment of revenue to the government on regular basis till the decision of the dispute or the appeal or as the case may be by the Competent Authority.

2. Shri S.S. Voditel, the learned counsel appearing for the petitioner submitted that by order dated 25.02.2014 passed in Writ Petition No.216/2014 this Court had

found that after the death of the original licensee, the present petitioner had been running the shop in question. There was a dispute amongst the legal heirs of the original grantee and the licence in question came to be suspended by relying upon Clause 10 of Circular dated 20.08.1996. It was submitted that this Court found that it was not in the interest of either party to keep the shop closed and hence, the petitioner was permitted to operate the said licence by maintaining accounts and making payment of revenue to the State on regular basis. He submitted that despite aforesaid order the respondent no.1 on 30.04.2014 passed an order holding that the licence in question was liable to be suspended pending adjudication of disputes between the legal heirs. The licence accordingly came to be suspended on 01.05.2014. It was submitted that this order was then challenged before the Appellate Authority and the respondent no.2 decided the appeal and maintained the order passed by the respondent no.1 on 03.03.2015. According to the learned counsel, in terms of the order passed by this Court the petitioner was entitled to continue to operate the licence till the dispute between the legal heirs was resolved amicably and hence, the respondents by not considering aforesaid order of this Court in its letter and spirit directed closure of the shop by suspending the licence. According to the learned counsel this conduct on the part of the respondents while passing aforesaid orders amounted to willful disobedience of the order passed by this Court in Writ Petition No.216/2014 thereby rendering the said respondents liable for having committed civil contempt under Section 2(b) of the Contempt of Courts Act, 1971. It was submitted that the aforesaid order was very much within the knowledge of said respondents and they were duty bound to have followed the same in its true letter and spirit while deciding the proceedings. The learned counsel referred to the decision of the Supreme Court in (2007) 11 SCC 374 All Bengal Excise Licensees Association v. Raghavendra Singh and others to urge that the respondents ought to have understood the implication of the order passed by this Court and failure to do so rendered them liable for action of having committed contempt. He also submitted that despite filing of affidavits on record the respondents had not chosen to purge the contempt.

3. Mrs. Bharati Dangre, the learned Government Pleader appearing for the respondents opposed aforesaid contentions. According to her, the respondents did not commit any contempt whatsoever when they decided the proceedings vide

orders dated 30.04.2014 and 03.03.2015. The learned counsel referred to the order passed by this Court in the aforesaid writ petition and submitted that it was clear from reading of said order that the petitioner was permitted to operate the licence only till the decision of the proceedings between the parties. She submitted that as the dispute amongst the legal heirs continued, the direction to suspend the licence pending such adjudication was in accordance with the provisions of the Bombay Prohibition Act, 1959 as well as the Circular dated 20.08.1996. It was, therefore, denied that passing of aforesaid orders resulted in wilful disobedience of the order dated 25.02.2014 passed by this Court. It was also submitted that without challenging the aforesaid orders in appropriate proceedings, the petitioner had sought to invoke contempt jurisdiction of this Court.

4. As according to the petitioner, the alleged contempt emanates from the order dated 25.02.2014 in Writ Petition No.216/2014, it would be necessary to refer to certain facts leading to filing of said writ petition. The licence in question was initially granted to one Anusaya Bose, who expired on 07.08.2013. There were two claimants who sought to continue to operate the licence as being legal heirs of the original grantee. The present petitioner on 08.08.2013 moved an application before the Collector stating therein that till the existing licence was transferred in the name of the legal heirs or till 31.03.2014 which was the period for which the original licence was to operate, he be permitted to operate the licence for the remainder period. On 20.08.2013 one Rajendranath Bose also requested the Collector to keep the licence in question in abeyance till the dispute between the legal heirs was resolved. The petitioner thereafter on 30.08.2013 submitted another application to the Collector along with an affidavit requesting that he be permitted to operate the licence till 31.03.2014. On the application moved by the petitioner the Superintendent on 02.09.2013 directed suspension of said licence until further orders in view of dispute between the legal heirs. Thereafter, on 01.10.2013 another order came to be passed granting permission to the petitioner to operate the licence till 31.03.2014 on a temporary basis. The petitioner was also directed to submit the consent of other legal heirs till 31.03.2014. This permission however, came to be withdrawn on 11.12.2013 by the Superintendent, State Excise Department, Nagpur. Being aggrieved, proceedings were initiated before the State Government which on 09.01.2014 stayed the order dated 11.12.2013

passed by the Superintendent, State Excise. In view of aforesaid order of stay the licence revived and the petitioner started operating the same.

5. The order passed by the State Government came to be challenged in the Writ Petition No.216/2014 by one Rajendranath Bose. This Court while issuing notice on 20.01.2014 granted ad-interim stay to the orders dated 09.10.2013, 09.01.2014 and 13.01.2014. After hearing both sides this Court on 25.02.2014 disposed of aforesaid writ petition. The relevant observations in the order dated 25.02.2014 are in para 6 of said order and the same read thus:

6. I have perused the records so also the relevant Government Circular. It is not necessary to adjourn the proceedings as requested by Mrs. Maldhure, learned AGP since the Petition is against an ex-parte interlocutory order dated 09.01.2014 under the revisional power of the State Government pending the proceedings either before the Appellate Authority or some other authority. That is all the more so because the petition does not raise any substantial question for being decided but only relates to the order dated 09.01.2014 allowing the respondent no.5 to continue to run the licence. It is then seen that the proceedings of Appeal are pending before the Appellate Authority or other competent authority and it is for the Appellate Authority to decide the Appeal one way or other. But then since the shop is being run even after the death of original licensee with effect 07.08.2013 it would be a loss of revenue to the Government if the shop is closed down which admittedly is being run from August, 2013 till passing of the ad-interim stay by this Court. It ensures to nobody's benefit that the shop is closed. On the contrary, closure of the shop would mean stoppage of income to the beneficiaries, so also stoppage of revenue to the Government. It is true that 10 of Govt. Circular dated 20th August, 1996 provides for modalities of suspending of licence in case of dispute between the legal heirs of original licensee. But then the power of the Government to deviate from clause 10 of the Circular in the interests of revenue, cannot be whittled down by virtue of the said clause 10. To protect the interests of the petitioner, the respondent no.5 who is running the license, can be asked to keep the accounts of the business; but then to close down the shop because of the dispute amongst the legal heirs is not advisable. That being so, the respondent no.5 shall maintain the accounts of business in running the license and also to

make payment of revenue to the Government on regular basis. The respondent no.5 is permitted to continue to run the license till the decision of the dispute or the Appeal or, as the case may be, by the Competent Authority.?

6. From the aforesaid it can be seen that Writ Petition No.216/2014 had been filed challenging the interim order dated 09.01.2014 permitting the present petitioner to operate the licence till the appeal was decided by the Appellate Authority. This Court in para 6 observed that the proceedings in appeal were pending and it was for the Appellate Authority to decide the appeal one way or the other. It then observed that it did not enure to anybody's benefit that the shop remained closed and in that background issued directions to the petitioner to run the licence by maintaining accounts and making payment of revenue to the Government on regular basis. The petitioner was permitted to run the licence till the decision of the dispute or the appeal or as the case may be by the Competent Authority.

7. Thereafter, the respondent no.1 considered the proceedings and after noting that the dispute between the legal heirs had not been resolved, proceeded to suspend the licence from 01.05.2014. Reference has been made to the order passed in Writ Petition No.216/2014 as well as the observations made therein. Similarly, the respondent no.2 thereafter, considered the appeal and on finding that said dispute had not yet been resolved directed the licence to be kept in abeyance till such dispute was resolved.

8. In the light of the observations made by this Court while deciding Writ Petition No.216/2014 and considering the backdrop in which said writ petition arose during pendency of the proceedings before the State Government, it cannot be said that the order passed by respondent no.1 and confirmed by respondent no.2 in appeal resulted in wilful disobedience of the order dated 25.02.2014 passed by this Court. It is not in dispute that the petitioner continued to operate the licence till the decision of the appeal by respondent no.2 on 03.03.2015 and hence, the directions as issued by this Court to permit the petitioner to run the licence till the decision of the dispute or the appeal or as the case may be by the Competent Authority cannot be said to have been violated. The submissions made on behalf of the petitioner that the petitioner was entitled to run the licence till the dispute

amongst the legal heirs was finally resolved, cannot be said to be true import of the order dated 25.02.2014 for holding that the respondents had wilfully disobeyed the order passed by this Court in Writ Petition No.216/2014.

9. Another aspect that requires consideration is that for the purposes of constituting civil contempt? under Section 2(b) of the said Act, the disobedience alleged must be wilful. Wilful connotes a deliberate, conscious and intentional act. Perusal of the contempt petition indicates that there is no allegation in the petition that the alleged disobedience by the respondents is wilful so as to attract provisions of Section 2(b) of the said Act. Reference can be usefully made to the following observations of the Supreme Court in *Dinesh Kumar Gupta v. United India Insurance Company Limited and others* reported in (2010) 12 SCC 770 wherein it has been observed in para 23 as under:

23. Besides this, it would also not be correct to overlook or ignore an important statutory ingredient of contempt of a civil nature given out under Section 2(b) of the Contempt of Courts Act, 1971 that the disobedience to the order alleging contempt has to satisfy the test that it is a willful disobedience to the order. Bearing this important factor in mind, it is relevant to note that a proceeding for civil contempt would not lie if the order alleged to have been disobeyed itself provides scope for reasonable or rational interpretation of an order or circumstance which is the factual position in the instant matter. It would equally not be correct to infer that a party although acting due to misapprehension of the correct legal position and in good faith without any motive to defeat or defy the order of the Court, should be viewed as a serious ground so as to give rise to a contempt proceeding.?

10. At this stage, it would also be necessary to refer to the observations of the Division Bench in 1990(3) BCR 82 *Shakuntala Sahadevram Tiwari and another v. Hemchand M. Singhania* as regards the exercise of contempt jurisdiction in the matters of such nature. In para 11 it has been observed thus:

11. While dignity of the Court is to be maintained at all costs, it must be borne in mind that the contempt jurisdiction is of a special nature and should be sparingly used and that any attempt to obtain an adjudication from the Court or an action

which a party desires to have for his own interest or purpose under the guise of a contempt action must not be encouraged. In other words, the test has to be and should be whether the exercise of this jurisdiction is necessary for the preservation of the dignity of the Court or for the purposes of administration of justice. It is only when the answer is clearly in the affirmative that this special power should be exercised.?

11. In the context of the order passed by this Court of which contempt had been alleged, it cannot be said that there has been a failure on the part of respondents to understand the implication and import of said order. The observations of the Supreme Court in para 29 of its judgment in All Bengal Licencees (supra) cannot be made applicable to the facts of the present case. As the petitioner has operated the licence till the appeal was decided by the respondent no.2 on 03.03.2015 there is no case made out for invoking contempt jurisdiction.

12. Hence, the petition is dismissed. No costs.

Pending civil application also stands dismissed.

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