

Suresh Chandra Vs. Ashok Kumar

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Court : Allahabad

Decided On : Jul-15-1996

Reported in : 1997CriLJ1134

Judge : G.S.N. Tripathi, J.

Acts : [Contempt of Courts Act, 1971](#) - Sections 12 and 12(1)

Appeal No. : Civil Misc. Contempt Petn. No. 565 of 1994

Appellant : Suresh Chandra

Respondent : Ashok Kumar

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : R.S. Misra and ;R.S. Kushwana, Advs.

Judgement :

ORDER

G.S.N. Tripathi, J.

1. This petition has been filed under Section 12 of the [Contempt of Courts Act, 1971](#) for the violation of the order dated 23-8-1993 duly amended on 27-10-93 in Civil Misc. Writ Petition No. 33733 of 1991, which is an under:-

Time was granted to the standing counsel on 19th November, 1991, but no counter-affidavit has been filed. He prays for and is granted one month's time to file a counter-affidavit. List thereafter.

Meanwhile the respondent No. 2 is directed to release the aid of Rs. 5,000/- (Rs. five thousand only) to the institutions (Annexure-2) in compliance with the order dated 20th March, 1989 or to show cause before the next date of hearing.

2. In fact, relief had been claimed by the petitioner in favour of the institutions and not in favour of the petitioner, who is a free lance social worker attached to Bhrashtachar Unmulan Sangarsh Samity, Batiya Karyalai, 48, Mira Patti, Allahabad. The order, in fact, should have been passed in favour of the Institutions and not in favour of the petitioner. The defect in this order was detected by the petitioner and an application for correction of this technical error was made before the learned Judge, who modified this order for payment of Rs. 5,000/- to the Institutions given in Annexure 2 to the petition. However, the spirit of the order remained the same.

3. The main allegations in the Civil Misc. Writ Petition No. 33733 of 1991 were that Angan Bari Kendra is a registered Institution and it has been established in several Districts of Uttar Pradesh, namely Lucknow, Kanpur Varanassi, Allahabad, Agra, Etawah, Farrukhabad, Ballia, Raebareilly, Gorakhpur, Lalitpur, Banda and Sitapur. The Institutions have been established in the aforesaid Districts under the scheme of the State Government to promote special care, educational and economical interests of the children of weaker section of society in particular, children of sweepers and other children of the locality and to care for the children of such ladies, who leave their household during the course of the day for discharging their duties. The Institutions are fully dependent on the aid of the State Government. The State Government paid Rs. 5,000/- per year to such Institutions. At least 25 children are managed in each Institutions until they complete their age of 6 years.

4. In the financial year 1988-89, a sum of Rs. 5,000/- was sanctioned as per head through drafts. This amount was due to be distributed after inspection of the District Social and Welfare Officers of the districts concerned. The total amount sanctioned in this head for all the 30 institutions of the U. P. was Rs. 1,50,000/-.

The order for payment was issued by the Director of Harijan Welfare Directorate, Kalyan Bhawan, 3 Prayag Narain Road, Lucknow (respondent No. 2 in the original petition). Despite that, the amount was not disbursed to these Institutions. Consequently, the Institutions were facing acute difficulties in maintaining the children of lower sections of the society. The petitioner in his capacity as a social worker, contacted the respondent No. 2 aforesaid and requested him for release of the funds as sanctioned by the State Government. But his request was not acceded to. Thereafter on 18-2-1990, the petitioner made a representation to the respondent No. 2 on behalf of the Institutions aforesaid by registered post. But till the date of filing of the petition on 18-11-91, nothing was paid. Again on 28-9-91 (Annexure 3 to the petition) the petitioner made another representation. But that too was not respected.

5. It is further said that there is no allegation against the Institutions mentioned above regarding misuse of the Govt. funds. The respondent thus were illegally depriving the Institutions by withholding the money aforesaid despite the Govt. order to that effect. Under these circumstances, the writ petition was filed for the reliefs as under:-

(1) A writ of mandamus to direct the respondent to pay sanctioned money of Rs. 1,50,000/- to those Institutions at the rate of Rs. 5,000/- per Institution.

(2) Any other relief which the Court may deem fit and proper in the circumstances of the case may also be given.

6. Annexure 1 to the petition in the Govt. Order issued under the respondent No. 2. It also contains the procedure regarding utilization of the amounts. Copy of this order was circulated to all the authorities concerned, including respondent Nos. 2 and 3.

7. Annexure 2 is the list of 30 Institutions who were held entitled to get sanctioned amount. This list was also issued by the State Govt.

8. Annexure 3 is the notice dated 19-9-1990 sent by the petitioner to the State of U. P. and other respondents in the aforesaid writ petition requesting them to

release the amount as aforesaid. When this request was not conceded, another letter, Annexure 4 was issued and when all these efforts failed, the petitioner took resort to the filing of the present contempt petition.

9. It is further to be noted that as yet no counter-affidavit has been filed in the original writ petition till date.

10. The present contempt petition containing all these allegations was filed on 22nd March, 1994. It was ordered to be listed along the record of writ petition No. 33733 of 1991 in the week commencing 4-4-1994. The notice was issued to Ashok Kumar, Director of Harijan and Social Welfare, Depts of Directore, Kalyan Bhawan, 3 Prayag Narain Road, Lucknow to appear on 3-3-1995 or through an Advocate to show cause as to why he should not be prosecuted for alleged contempt of the Court for flouting the order dated 23-8-93 passed in the aforesaid writ petition. For the first time. Ashok Kumar, respondent No. 2, Director, Harijan and Social Welfare Directorate, Kalyan Bhawan aforesaid filed the counter-affidavit on 8-3-1995 with a prayer to condone the delay in filing the reply. The simple reason for delay was alleged as 'due to the fact that the material for filing the counter-affidavit was being collected and now it is ready and is being filed today' (15-3-1995) with a prayer that delay may be condoned in filing the counter-affidavit and the counter affidavit may be accepted as having been filed well within time. The Court condoned the delay and counter-affidavit was ordered to be kept on record.

11. In his counter-affidavit, Ashok Kumar has admitted that he was posted as Director of Social Welfare, Govt. of Uttar Pradesh from 22-10-1992 to 28-10-1994 (original writ petition was filed on 13 11 91) and for nearly 3 years, the State Government went on making requests to file counter-affidavit that by itself shows that the Act of filing the counter-affidavit was considered to of no priority at all.

12. He has alleged that after the receipt of the contempt petition, the deponent enquired and studied the matter regarding the compliance of the order of the High Court. The petitioner Suresh Chandra is not associated with any of the Institutions and has no locus standi to file the petition. He further admits that Bal Bars Kendra in several districts of Uttar Pradesh for imparting pre-primary education to the

children up to 6 years age had been recognised. In these Kendras, children of working women, scavengers and people below poverty line are being looked after. The financial assistance given by the State is of non-recurring nature. These institutions are not fully dependent on Government Further he admits that during the financial year 1988-89, total sum of Rupees 1,50,000/- was sanctioned to 30 Institutions at the rate of Rs. 5,000/- each in that financial year. The sanctioning order dated 20th March, 1989 unfortunately got misplaced and it could not reach to the cash section of the Directorate according to him. As such, the sanctioned amount could not be drawn from the Govt. Treasury and the amount lapsed. This fact came to the light after the said financial year was closed and nothing could be done at that stage. The amount sanctioned during the year 1988-89 could not be drawn from the Govt. Treasury. Hence it could not be paid. On enquiry by the petitioner, he was apprised of the fact and clearly told that the grant for the year 1988-89 cannot be paid as the amount could not be drawn from the treasury. Any way, the matter regarding grant had already been referred to the Government of Uttar Pradesh and the decision of the Government is expected. In the end, the respondent Ashok Kumar states in paragraph 22 of his reply that the deponent is a responsible Govt. servant and always ensures compliance of the orders of the Hon'ble Courts. Even if inadvertently and without intention, any order of this Hon'ble Court has not been complied with, the deponent tenders unconditional apology for the same.

13. From the narration of facts aforesaid, it is not disputed now that Government had recognised 30 institutions all over the Uttar Pradesh, which were carrying on the aforesaid work for the poorer sections of the society. It is also not disputed rather admitted that the order of the Government for the year 1988-89 releasing the funds to the 30 voluntary institutions, had been issued (Annexure 1 to the petition). Annexure 2 is a list of the aforesaid Institutions, which was issued on the same date i.e. 20-3-89 and thus the entitlement of these Institutions to get funds at the rate of Rs. 5,000/- each is not now in dispute.

14. It is also not disputed that the amount was not paid to these Institutions in the year 1988-89 and even as yet.

15. Further, it is not disputed that repeated requests made by the petitioner to the respondent No. 2 to comply with his request, were received and they were not attended to. No reply to any of the letters sent by the petitioner was sent by respondent No. 2. There is no evidence on the record filed by Ashok Kumar to show that he made any effort towards the payment of the amount as raised by him. The fact that the contempt petition was filed by the petitioner on 22-3 1994 is not disputed. On 2-12-1994, the Court issued notice to the respondent to comply with the order or show cause. That order was also received by the respondent in time. Thereafter, it is alleged that the deponent after the receipt of the contempt petition enquired and studied the matter regarding the compliance of the order of the High Court. Ashok Kumar states in paragraph 9 of the counter-affidavit that sanctioning order dated 20th March, 1989 unfortunately got misplaced and it could not reach the cash section of the Directorate. As such the sanctioned amount could not be drawn from the treasury and ultimately, it lapsed and this fact came to his knowledge after the lapse of the financial year and nothing could be done at that stage. There is further no evidence to show as alleged in paragraph 13 of the counter-affidavit that the matter regarding the grant of lapsed amount has already been referred to the Government of U. P. No document on the record showing that any effort is being made by way of reference, has been filed. Again it is not proved on the record that this file was misplaced or any action had been taken by the appointing authority against the concerned staff. It means that the receipt of the copy of the order of this Court has not been disputed by the respondents. It is not established as to what effort has been made to comply with the order of this Court. Even if it is believed that the record is misplaced and Ashok Kumar was helpless, the minimum that was expected from him, was to immediately approach the High Court stating the position and seek further time for compliance of the order of the Court. Nothing of this sort was done despite repeated requests made by the petitioner. It means that Ashok Kumar treated the order of this Court with scant regard. Not only that, he failed to comply with the order of the Government, for which he had been appointed. The scheme to help the poorer section of the society was neglected by Ashok Kumar intentionally or at least, with gross negligence, not expected of an officer of his status, who is virtually at the top of his Department. He did not inform the Court that he was pursuing the matter in a bona

bona fide manner and was trying to comply with the same in its true letter and spirit. Thus it is clear that the order of this Court along with the order of the Government has been totally ignored by Ashok Kumar and it is fully proved that he did not take any action for compliance of the orders of this Court. So he has violated the order and hence committed the gross contempt of Court as contemplated in Section 12 of the Contempt of Courts Act. In fact what to talk of attempt to comply with the order of the Court, he slept over the matter. Even when he was awakened, he remained dormant throughout and failed to take any action in this regard for complying with the order of this Court. He did not care to file counter-affidavit in the original Petition No. 33733 of 1991 although he was in office from 22-10-1992 to 28-10-1994. He had the knowledge of the Court's order but he flouted it intentionally. Therefore an explanation given by Ashok Kumar in the counter-affidavit is absolutely shorn of reality. In this contempt petition also, the counter-affidavit was filed as late as on 2-3-1995, although the order was passed about 2 years earlier on 22-8-1993, duly corrected on 27-10-1993. Thus it is a cast iron case in which the allegations of committing intentional contempt of Court as contemplated in Section 12(1) is proved to the satisfaction of the Court.

16. The allegation in paragraph 22 of the counter-affidavit tendering unconditional apology, is neither bona fide nor correct nor unconditional. He tries to pose that he has been eager to comply with the orders of this Court and the present non-compliance is inadvertent and without any intention. His allegation that 'even if inadvertently and without any intention, any order of this Court has not been complied with the deponent tenders unconditional apology for the same is not an unconditional apology, rather no apology at all. In fact, attempt has been made to prove that the deponent Ashok Kumar has bonafidely tried to carry out the orders of this Court. Whereas, it is absolutely false. The fact is that despite information and knowledge, he has taken no steps to comply with the order of this Court. Rather, by sleeping over this important matter for such a long time, he has simply indicated that he was grossly trying to flout the order of this Court. That is why, he has practically done nothing for complying with the order. Thus the apology tendered by him is merely a device to get away from the natural and legal consequences of his act of violating the order of this Court. Thus it is fully proved that his apology is neither bona fide nor genuine. It is accordingly rejected.

17. The charge of committing contempt of the order passed by this Court against the contemner Ashok Kumar is fully established.
18. Now the only question left is as to what punishment should be awarded to him for committing gross contempt of this Court after his apology is rejected by this Court.
19. Ashok Kumar is a very senior officer and was Director of his Deptt. i.e. practically head of the Institution. He must have put in not less than 20 years of service. Therefore, it is expected that he was fully conscious of this fact that non-compliance of the order of this Court amounts to playing with fire. It was expected of him that he should have refrained from showing utter negligence amounting to contempt of Court. It is really very sad that such an officer of high standing and experience has flouted the order of this Court. Therefore, very serious view has to be taken.
20. The Institutions were entitled to get the amount in the year 1988-89 i.e. till 31-3-1989. The amount could not be paid till today. Not only this, even in the contempt petition, he was directed to either comply with the order of the Court or show cause. But here also he kept on sleeping over the matter and did practically nothing to purge him of the offence committed by him. He chose to file the counter-affidavit as late as on 8-3-1995.
21. We are in the 2nd half of the year 1996 today. Unfortunately, due to this callous attitude of Ashok Kumar, pious welfare scheme launched by the State of U. P. has been ignored, rather thrown into waste paper basket. Even when this Court reminded him of his duties, he did nothing. This simply shows that Ashok Kumar gets sadistic pleasure in flouting the Court's order. This approach of Ashok Kumar must be condemned.
22. From the side of the State, the learned Standing Counsel submitted that this is the first offence of this type committed by Ashok Kumar, an officer of high standing status and seniority. Therefore a lenient view should be taken. This prayer made by the learned Standing Counsel has some substance. All the same the Court is getting informations that its orders are ignored by the-high officers and

non-compliance of the Court's order has become a rule rather an exception. Hence the Court has to take a serious view of the matter otherwise people will lose confidence in the administration of justice. Tendency to ignore Court's orders by others less conscious of law will get encouragement and people would like to violate the Courts mandates as and when they chose to do so. That will create a turbulence in the society and people will try to take law in their own hands and thus the democratic functioning of the nation shall come to a stand still.

23. Rule of the law is applicable to all. You may be very big and very high, but law is bigger and higher than you. Hence the Court has to ensure that its orders are not flouted or ignored or violated by anyone, howsoever of high status and importance he may be. Thus I think a simple imprisonment for 2 months and a fine of Rupees 200/- should be awarded to the contemnor.

24. Ashok Kumar, respondent No. 2, then Director of Harijan and Social Welfare, Directorate, Kalyan Bhawan, 3 Prayag Road, Lucknow, who is at present posted as a Commissioner/ Director, Land Acquisition, Govt. of U. P. Lucknow is awarded a simple imprisonment for 2 months and a fine of Rs. 200/-, after having been found guilty of contempt of this Court. On failure to pay the fine, he shall undergo further 15 days simple imprisonment.

25. Ashok Kumar is not present in the Court. He shall be taken into custody at once to serve out the sentence awarded to him by this Court.

26. Let a copy of this judgment be sent to the Chief Secretary, Govt. of Uttar Pradesh, Lucknow for noting this punishment in the character roll of Ashok Kumar and taking such other action as he deems fit. Petition is allowed as aforesaid.