

Pramod Kumar Nayak Vs. Pratap Kumar Mallick and anr.

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Court : Orissa

Decided On : Jul-10-2008

Reported in : 2008(II)OLR492

Judge : B.P. Das and; ; R.N. Biswal, JJ.

Appellant : Pramod Kumar Nayak

Respondent : Pratap Kumar Mallick and anr.

Advocate for Pet/Ap. : Mr. S. Sahoo

Judgement :

ORDER

1. Heard Mr. S. Sahoo, learned Counsel for the petitioner and Mr. N.K. Rath, learned Counsel for the O.P.- contemnors.

2. Pursuant to the order of this Court dated 7.5.2008, both the contemnors, namely, Pratap Kumar Mallick, Branch Manager, Nimapara Branch of United Puri-Nimapara Central Cooperative Bank Ltd., Puri and Prasanta Kumar Dash, C.E.O., Nimapara Block-cum-Authorised Officer and Management-in-charge of Kapileswar Service Cooperative Society Ltd., Patpur, appear in person today before this Court.

3. The petitioner has filed this petition under Section 12 of the Contempt of Court's Act, 1971 alleging violation of the interim order passed by a collateral Bench of this

Court dated 4.9.2006 in Misc. Case No. 9733/2006 arising out of W.P.(C) No. 10933/2006. While issuing notice in the writ petition, this Court passed the said interim order dated 4.9.2006, which is as follows:

Operation of order No. 803 dated 23.5.2006, Annexure- 2, passed by the Secretary, United Puri Nimapara Central Cooperative Bank Ltd., Puri to hand over charge, shall remain stayed till 14.9.2006.

4. Annexure-2, i.e., order dated 23.5.2006 passed by the Secretary, United Puri-Nimapara Central Cooperative Bank Ltd., Puri, transferring one Rabinarayan Panda, Jr. Supervisor to Kapileswar S.C.S. to act as its Secretary and directing the petitioner to hand over the detail charges of Kapileswar S.C.S. to Rabinarayan Panda, was stayed by this Court.

5. The case of the present petitioner is that this Court has passed the aforesaid interim order of stay considering the fact that no posting order was issued to the petitioner. Thereafter, the petitioner made an allegation that both the contemnors with utter disregard to the Court's order passed the order dated 26.6.2007 (Annexure-A) and appointed a retired person, namely, Achyutananda Dash, to act as Secretary of Kapileswar S.C.S. Ltd., Patapur from 27.6.2007, in which the petitioner was working and the interim order was in operation.

6. The contemnors were also aware of the interim order as they had already entered appearance on 19th September, 2006 through Sri K.P. Nanda, Advocate.

7. The order dated 28.11.2006 passed in the writ petition indicates that the O.Ps. prayed for time to file counter affidavit, considering which, time was granted till 15th December, 2006. During subsistence of the writ petition as well as continuance of the interim order dated 4.9.2006, the contemnors passed the order dated 26.6.2007 (Annexure-A) appointing another person in place of the petitioner, which according to the petitioners only to render the interim order passed by this Court granting protection to him infructuous/frustrated.

8. On 19.12.2007 this Court issued notice to the contemnors to show cause as to why proceeding under the Contempt of Court's Act shall not be initiated against

them. As it appears from the order of this Court dated 4.4.2008, pursuant to the notice, O.P. 1- Pratap Kumar Mallick, Branch Manager of the Bank instead of filing show cause reply filed counter affidavit but on the request of the counsel for the O.P. 1, the counter affidavit was treated as a show cause reply, Paragraphs-5, 6 & 7 of which are as follows:

5. That, at this juncture without handing over the charges he approached this Hon'ble Court vide W.P.(C) No. 10933/2006 and in Misc. Case No. 9733/2006 this Hon'ble Court stayed the handing over of the charge of the petitioner. After dissolution of the elected body of the Society, the C.E.O., Nimapara took the charge of the Society.

6. That, the averments made in Para-6 is not totally correct. It is correct to say that the letter No. 803 dated 23.5.2006 has already been withdrawn by the Secretary, United Puri-Nimapara Central Co-operative Bank Ltd. which was the subject matter of challenge by the present petitioner in W.P.(C) No. 10933/2006 and the appointment of the Secretary, Sri Rabi Narayana Panda has also been withdrawn by its order dated 28.12.2006.

7. That, even though the petitioner has not been debarred to work as the Secretary but due to his fault he is not doing any work of the Society. So the C.E.O., Nimapara who is in charge of the Society appointed a retired person temporarily as the Secretary. The copy of the same has already been annexed by the petitioner as his first Annexure. Similarly as per the request of the C.E.O. who is in charge of the Society, this OP. has supplied Receipt Books for day to day function of the Society. So in no way the order of this Hon'ble Court has been violated by this O.P. Assuming the charge of Kapileswar Service Co-operative Society as authorised officer by the C.E.O., Nimapara and appointment of one Achyutananda Dash on contractual basis which is also temporarily in nature is annexed herewith as Annexure-E. Similarly the bone of contention in W.P.(C) No. 10933/06 i.e. Order No. 803 dated 23.5.06 wherein the Secretary, UPNCCB Ltd. had attached one Rabi Narayan Panda of his office to act as the Secretary, Kapileswar Service Co-operative Society has already been withdrawn by the same office bearing Order No. 4877 dated 28.12.06. The copy of the said withdrawal

order is annexed herewith as Annexure-F.

9. Rejecting the show cause reply, we directed initiation of proceeding for contempt. The O.P.-contemnors thereafter filed show cause affidavits. We perused the said show cause affidavits, wherein the O.Ps. have offered unconditional apology and have prayed to drop the contempt proceeding. A stand has been taken by the contemnor-Prasanta Kumar Dash that due to misreading of the Court's order, there was communication gap for which one Achyutananda Dash was appointed as Secretary on contractual basis.

10. The aforesaid plea cannot be accepted, as both the contemnors are well educated and are managing the Cooperative Society and the Society is represented through a lawyer. So misreading of the Court's order cannot be a plea to wriggle out of the proceeding under the Contempt of Court's Act.

11 More over, if there was any doubt for implementation of the orders of the Court, the O.Ps. could have approached this Court for clarification of the same, which has not been done by the contemnors. After deliberately violating the order of this Court, now they have come with the aforesaid plea and tender apology. In the previous show cause affidavit, the contemnors tried to justify their action but that was not accepted. Thereafter, by withdrawing the order dated 28.12.2006, they have appointed one Achyutananda Dash. The action of the contemnors shows that the order of this Court was not acceptable to them and by any means, they wanted to frustrate the same. We have no doubt that both the contemnors have willfully violated the order of this Court and passed the orders to circumvent the same. Thus, they are guilty of contempt.

12. Now the question is whether the apology tendered by the contemnors can be accepted.

13. Law is well settled that apology must be bona fide and must not be tendered with ulterior motive of escaping the likely consequences of violation of the order of the Court. In the case of T.M.A. Pal Foundation v. State of Karnataka reported in : 1995 CriLJ3220 , the apex Court held that 'it is necessary to erase an impression which has been gaining ground that the 'mantra' of unconditional apology is

complete answer to violations and infractions of orders of the Supreme Court'.

14. Now a tendency has grown to violate orders of this Court and when contemnors are found that they are likely to be punished for such violation, they come up with unconditional apology. In the instant case, the conduct of the contemnors would show that they were determined to flout this Court's order. At the cost of repetition, we may say that tendering of apology by the contemnors is only to ward off the punishment they are supposed to get for their act of violation/infraction of the Court's order. We are, therefore, not inclined to accept the unconditional apology tendered by the contemnors. We punish them for committing contempt of this Court and impose a fine of Rs. 5,0007 (rupees five thousand on each of the contemnors to be paid within a period of one month from today, failing which they shall serve Simple Imprisonment for seven days. If the fine is not paid by the aforesaid time, the Registry shall issue warrant of arrest against the contemnors on the 31st day.

15. With the aforesaid observation/direction, this contempt petition is disposed of.