

Sunil Kumar Ghosh Vs. the State of West Bengal and ors.

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Court : Kolkata

Decided On : Feb-03-1995

Reported in : 1995CriLJ2179

Judge : Arun Kumar Dutta and ;Vidya Nand, JJ.

Appeal No. : Cr. No. 213 of 1994 (arising out of) P. No. 612 and 620 of 1992

Appellant : Sunil Kumar Ghosh

Respondent : The State of West Bengal and ors.

Advocate for Def. : Ashit Goswami and ;Tulsidas, Advs.

Advocate for Pet/Ap. : Sadananda Ganguly and ;Manik Bhowmik, Advs.

Judgement :

Arun Kumar Dutta, J.

1. This is a contempt application by the petitioner Sunil Kumar Ghosh against the opposite-party-contemner, Shri Ashoke Santra, The Director of Rationing, West Bengal, (hereinafter referred to as, the opposite party) for appropriate orders for his (latter's) wilful and deliberate non-compliance of the directions given by this Court in the Judgment and order dated 19th July, 1993 in F.M.A.T. Nos. 619-20 of 1992 on the allegations made therein. We had already heard the submissions of the learned Advocates for both sides at length.

2. Upon perusal of the record we find that the aforesaid two appeals had been disposed of by the Judgment and order dated 19th July, 1993 'by directing the Director of Rationing to make appropriate orders/appointment/s allowing the said two brothers to run two separate Ration Shops in the premises in question within their respective allotted portions in the manner indicated above, on their complying with the requisite formalities therefor, if so required. Such order/appointment has to be made by the Director of Rationing within two months from this date.

3. While disposing of the aforesaid two relevant appeals and issuing the aforesaid direction it had been observed in the said judgment as follows:-

'The Director, who was directed to appear before us, had submitted that there would be some administrative inconvenience in allowing the two brothers to run two separate Ration Shops with the existing units in the locality. But that does not seem to us to be an insurmountable hurdle. We find from the materials on record that there are a number of Ration Shops, being A.R. Shop Nos. 256, 541 and 761, within sub-area Barangore, having much less than 2,000 units each. When the Rationing Authority could have allowed those Ration Shops to run with much less than 2,000 units, there should not be any difficulty on the part of the Director to allow the two brothers to run two separate Ration Shops within the same premises in their respective allotted portions, by appointing them separately therefor, instead of jointly, the way he did, numbering and/or sub-numbering the two shops separately, by dividing/ splitting up the existing units of more than 4,000 units of the A.R. Shop in question between the two brothers, as equally and equitably as possible, so that the two brothers may get more than 2,000 units each, without any further addition thereto, which could neither possibly give cause for any complaint from any quarter. Such an arrangement would neither be in any way inconvenient and/or prejudicial to the rationees, but might be beneficial to them as they might be in a position to get better service from each shop with lesser number of units under them. The distribution system might thereby be better managed to the convenience of the Rationees. Should the Director of Rationing feel any administrative difficulty in making arrangement in the above manner, he could very well do so in terms of the order of the Court to that effect.'

4. The relevant two appeals had thus been heard and disposed of in presence of the opposite-party-Director of Rationing. A xerox copy of the Judgment further appears to have been sent to him by the learned Advocate for the petitioner by letter dated 28-7-93, which was duly received by his office on due acknowledgement, as appearing from Annexure 'C' to the instant application. The opposite-party was to make order/appointment in terms thereof within two months from the date thereof.

5. It appears from the record that two special leave petitions were moved on behalf of the State of West Bengal & Ors. against the aforesaid Judgment and order dated 19th July, 1993 (in the aforesaid P.M. A.T. Nos. 619-20 of 1992) before the Supreme Court which were rejected by the Court by Orders dated 29-10-93 and 16-11-93 respectively. The relevant Judgment and Order of this Court (dated 19th July, 1993) stood final and absolute as such. But even thereafter the opposite-party does not appear to have taken any step whatsoever for complying therewith. In terms of the said Judgment and Order he was to comply therewith within two months from the date thereof, as indicated above. But he has pointedly failed, neglected and ignored to comply with the directions contained therein within the aforesaid specified period without obtaining any Stay Order or seeking for extension of time for complying therewith. He merrily went on without complying with the directions given therein on the belated plea that certain formalities are required to be complied with therefor.

6. In view of the observations made in the Judgement, as already indicated above, there could not have been any difficulty on the part of the opposite-party in complying with the directions given therein. There could, therefore, be little justification for his not complying with the same on mere technical pleas, belatedly sought to be raised by him. The directions given therein being, what they are, it was not open to him to consider whether appropriate order/appointment could be made in favour of the petitioner or not. The opposite-party was obliged to make order/appointment in favour of the petitioner in terms of the directions given therein. True it is, the opposite-party had been directed to make order/appointment in terms thereof on the petitioner's complying with the requisite formalities therefor, if so required. The Judgment, makes clear why the petitioner

should be allowed to run separate Ration Shop in the premises in question. It had clearly been observed therein that should the Director of Rationing feel any administrative difficulty in making arrangement in the manner indicated, he could very well do so in terms of the order of the Court to that effect. That being so, the petitioner could not clearly have been treated like an ordinary applicant and called upon to apply for and comply with all necessary formalities for the purpose of running a separate Ration Shop for consideration of his case on merits by the opposite-party, by passing the order of the Court, as he sought to do, as if he is above law and the order of the Court.

7. From the materials placed before the Court, such as they are, the opposite-party does not appear to have ever been in complying with the order of this Court, which stands final and absolute in view of the rejection of the two special leave petitions on behalf of the State of West Bengal & Ors. It was he (opposite-party) who knew what formalities are required to be complied with by the petitioner for implementing the Court's order. Had he been keen and interested in implementing the directions given in the aforesaid Judgment and Order of the Court he would have certainly informed the petitioner about the formalities required to be complied with by him for implementation of the Court's order at the earliest available opportunity. But he did not do so. Per contra, he appears to have lamentably failed to take any step therefor within a reasonable period, even though he was directed to comply with the Order of the Court within two months from the date of the Order (19-7-93). It was only after the rejection of their first special leave petition by the Supreme Court on 29-10-93 that the opposite-party for the first time had asked the petitioner to submit 'all papers and documents' for implementation of the Court's Order by his letter dated 10-11-93 (long after two months of the Court's Order dated 19-7-93), without specifying what specific papers and documents are required therefor, as appearing from Annexure 'E' to the Contempt Application. It would further pretty clearly appear from the Annexure 'F' to the Contempt Application, the letter dated 16-11-93 addressed by the petitioner to the opposite-party, which was duly received by the latter's office on acknowledgement on 17-11-93, that the petitioner had met the opposite-party and wanted to know what papers and documents are sought for by his aforesaid letter dated 10-11-93. The Annexure 'F' further makes clear that it could be gathered during the conversation

at that time that (i) the plan of the Shop Room, and (ii) a xerox copy of the Municipal Tax Receipt would be required for the purpose, which had been sent by the petitioner to the opposite-party, along with his aforesaid letter dated 16-11-93. The petitioner in his said letter dated 16-11-93 further wanted to know whether any other document and paper would be necessary for the purpose so as to enable him to produce the same on requisition by the opposite-party. But the petitioner's aforesaid letter dated 16-11-93, though duly received on acknowledgement on 17-11-93, had not been replied to by the opposite-party. He did neither intimate the petitioner whether he was required to produce any other document and paper and/or comply with any other formality for implementing the order of the Court, giving the clearest and conclusive indication that he (petitioner) was not required to comply with any other formality for implementation of the Court's Order. Even so, the Court's Order had not still been complied with by the opposite-party. The petitioner having submitted the relevant papers and documents, along with the aforesaid letter dated 16-11-93 in reply to the letter of the opposite-party dated 10-11-93, is not, therefore, required and expected to comply with any other formality for implementation of the Court's Order, in the circumstances indicated above. The opposite-party having still failed to implement the Court's Order, the petitioner had been constrained to send a letter dated 20-12-93 to him (former) through his learned Advocate, duly received of the office of the opposite-party on acknowledgement on 21-12-93, (as appearing from Annexure 'G' to the Contempt Application) asking him (opposite-party) to implement the Court's Order within seven days from the date of receipt thereof, failing which he should be left with no other alternative but to take recourse to contempt proceeding against him in terms thereof. It was only thereafter that the somnolence of the opposite-party was shaken, and his office by letter dated 24-12-93 appears to have requested the petitioner to meet him (opposite-party) in his office on 19-1-94 (after more than three weeks therefrom) 'for a discussion regarding completion of formalities, as ordered by the Hon'ble High Court' (as appearing from Annexure 'H' to the Contempt Application), even though he was directed to comply with the Court's Order within two months from the date of the order. The opposite-party, on the face of the materials on record, did not exhibit any urgency in complying with the Court's Order. And, in the facts and circumstances already indicated above, the

petitioner could neither be called upon to meet him for a 'discussion regarding completion of formalities' when he was not informed what other formalities he was required to comply with in terms of his (Petitioner's) aforesaid letter dated 16-11-93. The conduct of the opposite-party would at once seem to give the clearest and conclusive indication that he was deliberately seeking to frustrate and/or delay the implementation of the Court's Order on frivolous pretext without giving the same the due importance and weight it deserves.

8. Even though the relevant matters involved a dispute between the two brothers relating to running of the Ration Shop in question, the opposite-party, having been directed to appear before the Court during the hearing of the relevant appeals, and submitted that there would be some administrative inconvenience in allowing the two brothers to run two separate Ration Shops with the existing units in the locality. He was thus opposed to allowing the two brothers to run two separate Ration Shops in the locality from the very beginning. And, when he was so directed to do by the Court's relevant Judgment, he does not appear to have accepted the Court's Order in good grace. Like a private party, treating the matters to be his personal cause, and goaded by personal ego, he had caused the State to move two special leave petitions before the Supreme Court against the relevant Judgment and Order (even though the other brother does not appear to be aggrieved by the same), though the matter did not raise any issue worth the name so far as the State is concerned, nor any question of law to be decided by the Court, as would be evident from the summary rejection of the two special leave petitions by the Supreme Court on 29-10-93 and 16-12-93. this is how the Court's valuable time is sought to be wasted by the State at the instance of such-Tike irresponsible officers, adding to unnecessary accumulation of the Court's business. It is time enough for the State to bestow thought how to put a stop to such bad practice of moving higher forums in matters without merit to satisfy the personal ego of particular officer/s in the interest of all concerned and for avoiding avoidable wastage from the public exchequer. In view of the rejection of the two special leave petitions of the Supreme Court, the relevant Judgment and Order of this Court dated 19th July, 1993 stood final and absolute. The opposite-party was still in no mood to implement the directions contained therein. As already indicated, the opposite-party did never intimate the petitioner as yet what specific

formalities are required to be complied with by the petitioner for implementation of the Court's Order. The logic of events can no longer be ignored, and carried to its logical conclusion there is no avenue of escape from the inescapable conclusion that the opposite-party did not intimate the petitioner the formalities he is required to comply with for implementation of the Court's Order (despite request made by the latter by his aforesaid letter dated 16-11-93) with cunning deliberation to create and find a pretext/excuse for not implementing the Court's Order. As a result, the Court's Order dated 19-7-93, which was to be complied with by the Opposite-Party within two months thereof, remained 'non-complied' as yet, despite lapse of more than 13 months, making a mockery of the Court's Order. By so doing he has clearly exhibited extreme lack of solicitude for the Rule of Law. And, with an unmistakable and incredible air of arrogance and defiance he has further stated in paragraph 5(P) of his belatedly filed affidavit-in-opposition that 'it is very difficult' on his part to comply with the order of the Court dated 19-7-93 unless the formalities, specified therein, are complied with, despite the specific and positive directions given therein. He clearly appears to have shown scant regard and respect for the solemn order of the Court by such unseemingly conduct and attitude. Such irresponsible conduct on the part of a responsible officer of the State, as he is, cannot but earn frown from the Court which could only be ignored at the cost of jettisoning the dignity, authority and majesty of law and the Court. The failure to comply with the Court's Order dated 19-7-93 by the opposite-party clearly amounts to contempt of Court. The first act of contempt on his part is his failure to implement the Court's Order within two months from the date of the Judgment and Order dated 19th July, 1993 without obtaining any order of stay or seeking for extension of time to implement the Court's Order from any competent forum. The second act of contempt is his deliberate and wilful failure to inform the petitioner about the formalities required to be complied with (by him) for implementation of the Court's Order with a view to frustrate and/or delay the implementation of the Court's Order on the frivolous pretext that the requisite formalities had not been complied with by the petitioner. His third act of contempt is the plea taken by him in paragraph 5(P) of his belatedly filed affidavit-in-opposition that it is 'very difficult' on his part to comply with the Court's Order dated 19-7-93 unless the formalities specified therein are complied with, despite specific and positive directions upon

him to comply therewith within two months from the date of the Judgment and Order in the background of the observations made therein, as already indicated above. If he is allowed to frustrate the Order of the Court, as he sought to do, with impunity, it would indeed be a bad day for the Judiciary and a bad precedent for all concerned to the prejudice and detriment of the administration of justice. The opposite-party must clearly, therefore, be held guilty of contempt of Court, and must be punished therefor, so that it might have deterrent effect upon all concerned.

9. Realising the difficulty somewhat tardily, the opposite-party had filed an application for modification of the Court's Order 19-7-93 for the reasons stated therein long after the rejection of their two special leave petitions by the Supreme Court and the filing of the instant contempt application by the petitioner, presumably to cover up his deliberate failure to implement the Court's Order. His said application does not appear to have been entertained by the Division Bench by which the Judgment and Order was passed. His application for modification of the Order dated 19-7-93 could neither be entertained by the Court in view of the rejection of the two special leave petitions thereagainst by the Supreme Court, making the said order absolute, final and unalterable.

10. In view of the contempt alleged, the petitioner had prayed the Court, during the hearing, for passing appropriate directions upon the contemner for compliance with the aforesaid relevant order dated 19th July, 1993 and for passing such necessary penal orders against the opposite-party, as the Court may deem fit and proper. A question naturally arises as to whether in Contempt Proceedings and Contemner could only be punished or let off, and whether there is any other way out. The point may somewhat differently be posed as to whether any consequential relief could be given on a Contempt Application. A Division Bench of this Court in *Dulal Chandra Bhar v. Sukumar Banerjee*, AIR 1956 Cal 474, has held that a civil contempt when the party in whose interest the order was made moved the Court for action to be taken in contempt against the Contemner with a view to enforcement of his right, the proceeding is only a form of execution. Another Division Bench of this Court in *Saibal Kumar Gupta v. B.K. Sen*, AIR 1959 Cal 106, has held that when an order made for the benefit of a party is disregarded

or violated and the Court enforces the order by punishing the delinquent for contempt, it is said that such proceedings is a form of execution. The Supreme Court in *Md. Idris v. Rustam Jehangir Sapuji*, AIR 1984 SC 1826, had held that a single Judge of the High Court was justified in giving appropriate direction, in addition to punishing the party for contempt of Court. The High Court can, accordingly, pass direction on Contempt Application for implementation of its Order. The Supreme Court in *Noorali Babul Thanewala v. Shri K.M.M. Setty*, AIR 1990 SC 464, has clearly held that in a Contempt Application arising of a civil proceeding the Court is competent to issue necessary further and consequential directions for enforcing the Order. The aforesaid decisions had been followed by a learned Single Judge of this Court in *Hindustan Lever Sramik Karamchari Congress v. Ashia Chakraborty*, 1991 (1) C LJ 602. There is nothing to depart from the aforesaid decisions. That being so, there could clearly be no mistaking that in a Contempt Application the Court is competent to issue necessary further and consequential directions for enforcing its Order. In the nature of the matter, we accordingly direct the opposite-party-contemner, Ashok Santra, Director of Rationing, West Bengal, to comply with the directions given in the Judgment and Order of this Court dated 19th July, 1993 passed in P.M.A.T. Nos. 619-20 of 1992 within three weeks from this date.

11. There now remains the question of sentence. The Affidavit filed by the opposite-party-contemner does not contain any expression of regret. Nor, did his learned Advocate convey anything during the hearing to indicate that the Contemner is repentent for not complying with the aforesaid Order of the Court. The plea has been one of the justification for non-compliance with the Court's Order on the assertions made in the affidavit-in-opposition. Having heard to the contumacious conduct of the opposite-party-contemner, amply and appallingly indicated above, we sentence him to pay a fine of Rs. 2,000/-(Rupees two thousand) only. The Contemner is directed to deposit the said amount with the Registrar. High Court Appellate Side, within three weeks from this date. On his failure to do so, the fine shall be realised in accordance with law.

12. The Contempt Application is, accordingly, disposed of, and the Rule is made absolute.

Vidya Nand, J.

13. I agree.

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