

Ranjit Kumar Halder Vs. State of West Bengal and ors.

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Court : Kolkata

Decided On : Sep-12-2003

Reported in : (2006)1CALLT355(HC)

Judge : Asok Kumar Ganguly and ;Sailendra Prasad Talukdar, JJ.

Acts : [Administrative Tribunals Act, 1985](#) - Section 19; ;[Contempt of Courts Act, 1971](#) - Sections 2 and 22; ;Evidence Act - Section 57

Appeal No. : W.P.S.T. No. 612 of 2003

Appellant : Ranjit Kumar Halder

Respondent : State of West Bengal and ors.

Advocate for Def. : Amal Baran Chatterjee and ;Prafulla Ghosh, Advs. for Respondent No. 1 and ;Aparna Lal Basu and ;Kartick Kr. Bhattacharyya, Advs.

Advocate for Pet/Ap. : L.K. Gupta, Sr. Adv. and ;Sumit Ghosh, Adv.

Judgement :

Asok Kumar Ganguly, J.

1. This contempt application has been filed by the petitioner alleging wilful and deliberate violation of the order dated 5th August, 2003, passed by this Court by W.P.S.T. No. 612 of 2003. On 5th August, 2003 this Court, upon hearing the

parties, was pleased to pass the following order:

Heard counsel for the parties.

The order of the Tribunal against, which this application has been filed could not be annexed, as according to the learned Counsel for the petitioner, he is not able to obtain the copy of the same. We, therefore, adjourn the matter till Monday the 11th August, 2003. We hope by that time the order impugned in this writ application will be made available to the petitioner.

Let the matter appear on next Monday the 11th August, 2003.

Parties are directed to maintain status-quo as on date till next Tuesday the 12th August, 2003.

In the facts and circumstances of the case let a Xerox plain copy of the Order duly countersigned by the Assistant Registrar (Court) be made available to the learned Counsel for the parties, on usual undertaking.

2. The prayer for injunction was made in connection with an appointment which was about to be made to the post of Additional Engineer, Mechanical in PW (Roads) and over which litigations were pending.

3. The basic facts of the case are that the writ petitioner was holding the post of Superintending Engineer (Mechanical) in PW (Roads). His case is that he is entitled to be promoted to the said post with effect from 4.8.1985 on a vacancy which arose in the said post. Various legal proceedings have been initiated by the petitioner in respect of that claim.

4. The petitioner came to know that the Finance Department, by their order dated 21st January, 2000 agreed to a proposal of Special Secretary, Public Works (Road) Department for creating a supernumerary post of Superintending Engineer (Mechanical) for the period from 4.8.1985 to 20.10.1996 to accommodate the petitioner.

5. The further case of the petitioner is that the Finance Department ordered that the pay of the petitioner would be fixed initially in the post of Superintending

Engineer (Mechanical) with effect from 4.8.1985. The petitioner has also referred to the opinion of the Finance Department and the response of the Administrative Department. But for the purpose of deciding the issue in this contempt proceeding, those facts are not strictly necessary.

6. However, the petitioner moved an original application under Section 19 of the [Administrative Tribunals Act, 1985](#) before the State Administrative Tribunal challenging the order dated 7th February, 2003 by which one Sri C.S. Dutta, then holding the rank of Superintending Engineer (Mechanical) in the PWD (Roads), was promoted to the post of Additional Chief Mechanical Engineer.

7. When the O.A. was filed by the petitioner challenging the said order, the said O.A. being O.A. No. 200 of 2003 was admitted by the Tribunal but the prayer of interim order, made by the petitioner, was refused.

8. Against such refusal to pass an interim order, the petitioner moved a writ petition before the High Court which was numbered as W.P.S.T. 185 of 2003 and this Hon'ble Court was pleased to grant an interim order on 12th March, 2003 restraining the respondents from filling up the post of Chief Engineer (Mechanical) in PWD (Roads). But such order was issued for a limited period. The said proceeding came up before this Court, and by an order dated 11th June, 2003, the said writ petition was disposed of by this Court and the interim order, granted earlier, was allowed to continue till 31st July, 2003.

9. Since the main matter was pending before the Tribunal, this Court, while disposing of the writ petition, observed that the Tribunal should take up the matter for final hearing on 2nd July, 2003 and the hearing should be concluded and the final order be passed by 31st July, 2003. It was also observed in the said order that if the Tribunal cannot dispose of the matter by 31st July, 2003, the parties would be at liberty to pray for suitable interim order before the Tribunal,

10. It is the case of the petitioner that, in the meantime, the post of Chief Engineer (Mechanical) in PW (Roads) Department was kept in abeyance from 1.1.2003 and the post of Additional Chief Engineer (Mechanical) in the said Department was revived.

11. Thereafter, the Tribunal allowed the application for addition of party filed by Sri Pijush Pal, the respondent No. 2 in this proceeding. The Tribunal could not complete the hearing of the matter by 31st July, 2003 and as such, the petitioner made an application for interim order before the Tribunal. Proceedings could not be completed by 1st of August, 2003 and then the Tribunal adjourned the matter till 13th of August, 2003, as such, the petitioner's prayer for interim order was renewed.

12. The petitioner's case is that even though it was pointed out before the Tribunal that the post of Chief Engineer (Mechanical) was not existing and the vacant post of Additional Chief Engineer (Mechanical) is going to be filled up and the Hon'ble High Court granted liberty to the petitioner to apply for suitable interim order, the Tribunal, it has been asserted by the petitioner, instead of considering different prayers for the interim order in the petition filed by the petitioner, merely extended the interim order granted by this Court. Against such interim order of the Tribunal dated 1st August, 2003, a writ petition (AST 612 of 2003) was filed and this Hon'ble Court was moved on 4th August, 2003 and the learned Counsel for the petitioner prayed for ex parte interim order.

13. This Court, however, declined to consider the said prayer for injunction petition ex parte and directed that notice be served on the respondents.

14. Pursuant to such order, a notice was served on 4.8.03 on the respondents and the said notice was filed before this Court by the learned Counsel for the petitioner when the writ petition was taken up on 5th August, 2003.

15. From a perusal of the said notice, it appears that such notice was served on by the Principal Secretary, Public Works (Roads) Department, Government of West Bengal, on the Special Secretary, 'Public Works Department (Roads), Writers' Buildings and also by the Engineer-in-Chief and Ex-officio Secretary, Public Works (Road) Department.

16. Thereafter, the matter was taken up by this Court on 5th August, 2003 and the order of status quo, as extracted above, was passed. This Court asked the learned Counsel, representing the alleged contemnors whether or not any promotion order

as apprehended by the petitioner, is going to be passed. This Court was informed by the learned Counsel that although the process might have been initiated, but actually, the promotion order has not yet been issued. Thereafter, the Court granted the order of status quo on 05.08.2003.

17. This contempt petition was filed before this Court on 06.08.2003 and the matter was taken up on 07.08.2003. On that date, it was mentioned before this Court by the learned Counsel that the alleged Contemnor No. 2, viz. Sri Pijush Ranjan Pal, was present in the Court when the order was passed. In view of such submission, the Court asked the learned Counsel appearing for Mr. Pal to ascertain whether his client was present in the Court on 06.08.2003, when the order was passed. The learned Counsel appearing for Mr. Pal wanted to take instruction and this Court directed Mr. Pal to present in Court at 2.00 P.M. on that date i.e. 7.8.2003. Pursuant thereto, Mr. Pal came to the Court at 2.00 P.M. on that date and informed the Court that he was not physically present before the Court, when the Court passed the order.

18. Thereafter, the Court directed the parties to file their Affidavits and fixed the date of hearing of the said Contempt Application. In the said order dated 07.08.2003, the Court made it clear that the promotion of the alleged Contemnor No. 2 on 05.08.2003 to the post of Additional Chief Engineer in Public Works (Roads) Department and his assumption of charge will abide by the further orders to be passed in this contempt proceedings.

19. According to the averments contained in the contempt petition, the Court's order was passed some time about 12-30 p.m. on 5.8.2003 and the said order was served on the respondents between 2 p.m. to 2-30 p.m. The respondent No. 2 asserted that it was served on him at 3-35 p.m. on 5.8.2003.

20. In the Contempt Petition, the main grievances are that after the order of status quo was passed by this Court at 12.30 P.M. on 05.08.2003, the alleged Contemnor No. 1 with full knowledge and notice of the order issued an order in favour of the alleged Contemnor Nos. 1 and 2 at about 5.00 P.M. on 05.08.2003 and, as such, the order of promotion was passed in wilful violation of the interim order of status quo dated 05.08.2003. It is stated in paragraph 26 of the Contempt

Petition that the said order of promotion was passed to over-reach this Hon'ble Court.

21. In this Contempt Petition, two Affidavits have been filed separately by the alleged Contemnor Nos. 1 and 2. In the affidavit, which has been filed by Sri Prasanta Kumar Guha, working as Engineer-in-Chief & Ex-officio Secretary, Public Work (Roads) Department, Government of West Bengal, the stand, which has been taken is that regarding filling up of vacancy to the post of Additional Chief Engineer (Mechanical), all steps were already taken by the authority before the Court passed the interim order. He took specifically the following plea in paragraph 2(b) of his Affidavit. The relevant portion from the said paragraph is set out below :

The file regarding the appointment of Sri Pijush Ranjan Pal to the said post keeping in view the interest of public service after following the procedure reached my table and in the forenoon of 5.8.2003, Administrative order in the note sheet for appointment having No. 52-R/E dated 5.8.2003 containing the required notification in connection of the said appointment of Sri Pal to the said post was signed by me.

22. It has also been stated that Sri Pal, alleged Contemnor No. 2, joined the post of Additional Chief Engineer (Mechanical) on 05.08.2003. But, it has not been stated whether he joined the post on the forenoon of 05.08.2003. It has, however, been denied that with full notice and knowledge of the Court's order dated 05.08.2003, the order of contempt was passed. The notification, which was issued by the alleged Contemnor No. 1 for the promotion of the alleged Contemnor No. 2 is set out below :-

The Governor is pleased to appoint in the interest of public service, Shri Pijush Ranjan Pal, Superintending Engineer, Mechanical Circle No. 1, P.W. (Roads) Directorate to Officiate in the rank of Additional Chief Engineer in the West Bengal Senior Service of Engineers (Mechanical) under P.W. (Roads) Department with effect from the date of his joining the post and until further orders.

The Governor is also pleased to direct that Shri Pijush Ranjan Pal will continue to hold the charge of Superintending Engineer Mechanical Circle No. 1, P.W. (Roads) Directorate in addition to the charge of Additional Chief Engineer

(Mechanical) till a suitable substitute is posted there.

23. It may be noted in the said Notification that it has nowhere mentioned that such Notification was issued in the forenoon of 05.08.2003.

24. In the Affidavit-in-Opposition which has been filed by the alleged Contemnor No.2, it has been stated that Sri Pal joined the promotional post on 05.08.2003 in the forenoon and assume his charge of the same immediately. In paragraph 9, it has been stated that he was working in his office on 05.08.2003 at about 3.35 P.M.. and then he received a communication of the interim order of status quo passed by this Court. In the said Affidavit filed by Sri Pal, his joining report to the post of Additional Chief Engineer (Mechanical) has been disclosed to be on the forenoon on 05.08.2003.

25. The alleged Contemnor No. 1, however, has not denied that the interim order of injunction was communicated to him between 2.00 P.M. to 2.30 P.M. on 05.08.2003. This has been specifically averred in paragraph 20 of the Contempt Petition and in paragraph 12 of the Opposition filed by the alleged Contemnor No. 1, this has not been denied.

26. Apart from that, a close scrutiny of the stand taken in paragraph 2 (b) of the Affidavit filed by the alleged Contemnor No. 1, also shows that the file regarding the appointment of Sri Pal to the post in question reached his table in the forenoon of 05.08.2003. But, it has not been stated that when the notification was signed by him on that date. In fact, it has not been stated by him that the notification was signed by him before receiving the communication of the order of the Court.

27. Since, the Court finds that the action of the alleged Contemnors is rather unusutal despite the communication of the Court's order dated 05.08.2003, the Court called for the relevant file and the relevant file was handed over to this Court. On a perusal of the file, it appears that with the retirement of Sri Chandra Shekher Dutta on 31.7.2003 (AN), it was felt that there was a need for filing up the said post by promoting one Superintendent Engineer. The said matter was routed on 28.7.03 on the basis of a Memo dated 17.7.2003 submitted by the General Secretary of the Engineers' Association. The matter was referred to the

Government 'for examination in the light of the legal point of view' by the Chief Engineer and in response to the same the concerned Deputy Secretary dealt with the matter on 31.7.2003, It was referred back to the Chief Engineer (Roads). The proposal of the Chief Engineer (Roads) was then submitted before the Engineer-in-Chief, ex-Officio Secretary by the former by a note dated 1.8.2003. Principal Secretary forwarded it to the Minister-in Charge on 1.8.2003 for approval. The note was approved on 5.8.2003 by the Minister-in-Charge.

28. Nothing appears from the said file whether the proposal was approved by the Minister-in-Charge on the forenoon or afternoon of 05.03.2003. But it appears on 05.08.2003 itself, a draft order was sent for approval and a notification in draft form was also made ready on 05.08.2003. The same appears from Memo No. 1115(13) R/E dated 05.08.2003. On the left side corner of the said draft notification, there is an endorsement 'please issue immediately'. Thereafter, notification, was claimed to have been issued and signed by the alleged Contemnor No. 1 also on 05.08.2003. It may be noted that it has nowhere been mentioned in the file (a) whether the approval of the Minister concerned was obtained in the forenoon of 05.08.2003; (b) whether the draft notification was prepared in the forenoon of that date; (c) nor it has been mentioned anywhere whether actually the notification was issued on the forenoon of 05.08.2003: (e) not. has it been mentioned anywhere whether the final notification was issued in the forenoon of 05.08.2003.

29. In the context of these facts, which appear from the file, the statement made in paragraph 2(b) of the Affidavit filed by the alleged Contemnor No. 1 is significant. In the said paragraph, it has been stated that the file reached the table of the alleged Contemnor No. 1 on the forenoon of 05.08.2003 in the stage of note-sheet. But, in the said Affidavit, it has not been stated when the note-sheet was converted into a notification and when the final notification was numbered and was signed by the alleged Contemnor No. 1. In the state of these factual positions, the Court finds that the claim of the alleged Contemnor No. 2 in his affidavit is rather strange.

30. According to the claim of the alleged Contemnor No. 2, between 10.00 A.M. and 12.00 noon of 5.8.2003, the following things happened--

- (a) The approval of the Minister to the proposal of promotion of the alleged Contemnor No. 2 was obtained.
- (b) A note-sheet containing the said proposal was prepared.
- (c) The said proposal was put up for approval.
- (d) A draft notification promoting the alleged Contemnor No. 2 was made ready.
- (e) The said draft notification was signed by the alleged Contemnor No. 1.
- (f) The said notification was founded containing the promotion order of the alleged Contemnor No. 2 was taken out from the Writers' Buildings, Calcutta and was served on the alleged Contemnor No. 2, who was holding office at 9A, Esplanade (East), Calcutta.
- (g) Thereafter, on the basis of the said notification served on the alleged Contemnor No. 2 at Esplanade (East), Calcutta, the said alleged Contemnor No. 2 went and took charge in the promotional post at Purta Bhawan in Salt Lake City.

All the steps mentioned in 9(a) to (h) took place between 10 a.m. and 12 noon on 5.8.2003. But the status quo order of this Court was passed at 12.30 P.M. on that date. Therefore, there is no contempt.

31. In support of the said stand taken by the alleged Contemnor Nos, 1 & 2, the learned Counsel for the alleged Contemnor No. 1 relied on the following Judgments: -

- i) (2001) 3 SCC 739, Mrityunjoy Das and Anr. v. Sayed Hasibur Rahaman and Ors.
- ii) : AIR 1995 SC308 Niaz Mohammad and Ors. v. State of Haryana and Ors.
- iii) : 1987 CriLJ1860 State of Bihar v. Kripalu Shankar

32. The learned Counsel for the alleged Contemnor No. 2 also relied on the decision of the Hon'ble Supreme Court in (2001) 3 SCC 739.

33. Relying on the aforesaid Judgments, the learned Counsel for the alleged Contemnors 1 and 2 submitted that-

(a) The instant case is a case of civil contempt. The case of the civil contempt has been defined under Section 2(b) of the [Contempt of Courts Act, 1971](#) (hereinafter called the 'said Act'). From the said definition, it is clear that in order to arrive at a finding of civil contempt, the Court must come to the conclusion that there was deliberate and wilful violation of the Court's order. Mere violation will not, do.

(b) It has also stated that the standard of proof in case of civil contempt must be a strict proof as the contempt of Court is a proceeding with quasi-criminal implications.

(c) Remarks in note-sheet in the file do not amount to contempt.

(d) The burden of proof in a case of contempt is upon the party who alleges contempt.

(e) In this case the entire action relating to the promotion of the alleged Contemnor No. 2 was over, including assumption of charge by him by 12 noon. That was prior to the passing of the order by this Court at 12-30 p.m.

34. In controverting the aforesaid submissions of the learned Counsel for the alleged Contemnors, the learned Counsel for the petitioners mostly relied on the series of events pointed out above to show that it is impossible for all these things to happen between 10.00 A.M. to 12.00 noon on 05.08.2003.

35. The learned Counsel for the petitioner further tried to establish his case by referring to the Memo number disclosed in the report of the assumption of charge by the alleged Contemnor No. 2. He submits that the purported charge report starts with Memo No. 1, which is unusual in normal situation. Normally there should be continuing memo number. On the basis of this memo number it was submitted that entire case has been prepared subsequently for the purpose of defence in this contempt case.

36. The learned Counsel of the petitioner relied on Section 57 of Evidence Act and urged the Court to take Judicial notice of the facts that Government cannot move with such speed. The learned Counsel argued that some facts are so notorious in themselves and so well known and consistently displayed in various proceedings before the Court that Court can take notice of those facts. Such facts do not require any proof. The indolence of government machinery is one such fact and the Court can take judicial notice of the same. In support of such submission, the learned Counsel relied on the following decisions:

(i) : AIR1968 Bom229 The Lokamanya Mills Barsi Limited, Barsi v. Barsi Municipal Council, Barsi and Anr.

(ii) 71 CWN 824 Ballygunge Building Society Pvt Ltd. v. Munshi Farhadali and Ors.

(iii) : AIR 1992 SC184 D.C. Oswal v. K. Subbiah and Ors.

37. The learned Counsel relied on the decision in the case of Brahma Prokash Sharma and Ors. v. The State of Uttar Pradesh, reported in : 1954 CriLJ238 in order to highlight the purpose of Contempt jurisdiction.

38. This Court is of the opinion that the standard of proof in a case of contempt must be a strict one since Contempt Case may lead to quasi-criminal implication. It is also well settled that the person who alleges contempt must prove it.

39. The Court has considered the matter in some depths and finds that a clear case of contempt might not have been out. It is, of course, true that in a case of this description where the entire act of contempt, viz. passing of the order of promotion by the alleged Contemnor No. 1 and the assumption of charge by Contemrior No. 2 took place in the secrecy of the office of the respondents and it is difficult for the petitioner to prove that the said act was committed after this Court passed the order.

40. Even then, certain filings appear clearly from the aforesaid chain of circumstances. The notice of injunction was served on the alleged Contemnors on 04.08.2003 and nobody has disputed that position. Rather pursuant to that notice, when the petitioner's case for injunction was taken up by this Court on 5.8.2003,

the alleged Contemnors appeared through their counsel.

41. Things started happening so thick and fast during those two hours, between 10 a.m. and 12 noon on 5.8.2003 that it is difficult for the Court to swallow that they were in the normal run of events.

42. This Court would have appreciated if a fraction of such zest and speed in governmental working were displayed in other matters. Records of this Court are replete with cases where even after passing of the Court's order, the Government machinery has not responded for months and years. In the background of such well known facts, the pace at which the Government machinery functioned between 10.00 p.m. and 12.00 noon on 5.8.2003 is, to say the least, both astonishment and incredible.

43. Therefore one thing is clear that after getting notice of injunction from the Court, things were rushed in an unprecedented manner by the alleged contemnors.

44. In my considered view, there can be no two opinion about the fact that the alleged contemnors were trying to over-reach the Court anticipating the order of injunction.

45. It is axiomatic that the power of this Court under contempt jurisdiction is not derived from the said Act. Such power is inherent in Courts of record of plenary jurisdiction like the High Court. Such Courts exercise this power to vindicate its own dignity to protect its officers, or to shield those who are entrusted to its care'. (See Oswald on Contempt of Court, 3rd Edn. pages 8 & 9.)

46. Exercise of such power fundamentally amounts to 'a mode of vindicating the majesty of law, in its active manifestation, against obstruction and outrage'. (See the observation of Justice Frankfurter in *Offutt v. U.S.* reported in (1954) 348 US 11 at page 146, quoted with approval by Supreme Court in *Delhi Judicial Service Association v. State of Gujarat* reported in : AIR 1991 SC2150).

47. In *Delhi Judicial Service Association*, the Supreme Court accepted the *raison d'être* given by Lord Morris about the necessity for the Law of Contempt. The

learned Judge opined:

In an ordered community Courts are established for the pacific settlement of disputes and for the maintenance of law and order. In the general interests of the community it is imperative that the authority of the Courts should not be imperilled and that recourse to them should not be subject to unjustifiable interference. When such unjustifiable interference is suppressed it is not because those charged with the responsibilities of administering justice are concerned for their own dignity: it is because the very structure of ordered life is at risk if the recognised Courts of the land are so flouted and their authority wanes and is supplanted.

48. This being the position in law, the question is what the Court can and should do in the facts of this case?

49. There is ample authority for the proposition that in a situation when the respondent, on getting notice from the petitioner, that an injunction petition will be moved before a Court, hurries up things in an effort to circumvent the impending Court proceedings or rushes to over-reach the Court by anticipating its order with a view to stealing a march over the opponent, the Court can, in an appropriate case, by issuing an injunction order in a mandatory form, nullify the steps hurriedly taken by the respondents after the notice as received.

50. Reference in this connection may be made to two old decisions of the Chancery Division. The first one was rendered in *Daniel v. Ferguson* reported in (1891) 2 Chancery Division 27.

51. In *Daniel*, the plaintiff objected to the erection of a building upon a piece of land adjoining his property which would materially affect the access of light and air to his property. After some correspondence between the parties, plaintiff decided to initiate an action for injunction and gave notice. Notice of such injunction was served on 5th December, 1890 - a Friday. The defendant on receiving the notice employed extra men who worked overtime during Saturday and Sunday and by Monday morning ran up the wall upto 39 feet from the ground.

52. Mr. Justice Sterling, before whom the matter came up for hearing, restrained the defendant from further building on the land and also from permitting the wall which he had erected to remain on the land.

53. On appeal, it was argued by the defendant that it is against the practice of Court to order a building to be pulled down - on an interlocutory application.

54. Lindley L.J. one of the Judges in the appeal Court held:.Defendant, upon receiving notice that an injunction is going to be applied for, sets a gang of men to work and runs up his wall to a height of thirty-nine feet before he receives notice that an injunction has been granted. It is right that buildings thus run up should be pulled down at once. Without regard to what the result of the trial may be.

55. Kay, L.J., another learned member of the Bench referring to the acts or the defendant, held:

Whether he turns out at the trial to be right or wrong, a building which he has erected under such circumstances ought to be at once pulled down, on the ground that the erection of it was an attempt to anticipate the order of the Court. To vary the order under appeal would hold out an encouragement to other people to hurry on their buildings in the hope that when they were once up the Court might decline to order them to be pulled down. I think that this wall ought to be pulled down now without regard to what the result of the trial may be.

56. This ratio in Daniel was reiterated in Von Joel v. Hornsey reported in (1895) 2 Chancery Division 774.

57. In Von Joel, the defendant evaded service of notice of injunction and in the mean time went on constructing the building in respect of which injunction was prayed for, but there was no report that extra men were employed by the defendant.

58. Kekewich J. granted an injunction restraining the defendant from building and also from allowing the building, built after date of notice, 24th May, 1895, to remain and there was a direction to pull down that part.

59. In appeal it was argued that the case is distinguishable from Daniel in that the defendant had no notice of injunction proceeding, he did not employ extrat men. Nor did he disobey any injunction order,

60. Overruling such contentions, Lindley L.J., a member of the Appeal Court held:

The case is within the principle upon which this Court acted in Daniel v. Ferguson (1), and upon which I will always act. The Court will not allow itself to be imposed upon by a proceeding of that kind. If builders will take the chance of running up a building in that way they must take the risk of pulling it down; and to that extent I think Kekewich J. was perfectly justified in the view that he took; and this appeal must be dismissed, with costs.

61. Lopes L.J. another member of the Bench also agreed as the building was constructed in defiance of.... The proceedings before the Court'. (P.776) Rigby L.J., also agreed as his Lordship found that the object of the defendant was to get a position of the advantage in the action before the Court could interfere'. (P.777)

62. Both these Judgments were followed by the Division Bench of Calcutta High Court in Israil v. Samser Rahaman reported in 19 Calcutta Law Journal 47.

63. Speaking for the Court, Sir Asutosh Mookherjee laid down the principles while exercising Revisional Jurisdiction.

64. That was also a case of erection of Construction by an adjoining owner and the Court found that a substantial portion of the building had been erected after the defendants became aware of the institution of the suit and of the application for injunction (Page 51). The High Court in exercise of revisional jurisdiction restored the order of injunction granted by the Court of first instance and discharged the order of the subordinate Judge. One of the reasons for Court for doing so was 'the conduct of the defendant, which, in substance, amounts to a defiance of the authority of the Court. (P. 52)

65. Following the above principles, in the fact situation here a clear case for grant of injunction has been made out. It is rather late in day to dispute the power of this Court to grant injunction in a contempt proceeding. The nature of and necessity for

the contempt power has been indicated above and it is well settled that such power is inherent in every Court of Record of plenary jurisdiction. This is also clear from Section 22 of the said Act which is as follows ;

Section 22. Act to be in addition to, and not in derogation of, other laws relating to contempt.-- The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law relating to contempt of Courts.

66. Therefore the said Act does not exhaust the Court's power in Contempt jurisdiction. The act by laying down the procedure can regulate the exercise of such power.

67. The power of the Court to issue injunction in Contempt proceeding has been recognised by Oswald on Contempt (Third Edition) at page 16 or the treatise, the learned author said:

The Court, however, has power to restrain by injunction threatened contempts. It is competent for the Court where a contempt is threatened or has been committed, and on an application to commit, to take the lenient course of granting an injunction instead of making an order for committal or sequestration whether the offender is a party to the proceedings or not.

68. A question may still remain whether the Court without reaching a finding on contempt can issue an order of injunction. There are at least three Judgments in which the Supreme Court, without any express finding that Contempt has been committed, passed various directions to maintain the majesty of law and the dignity of judicial proceeding.

Reference may be made to the decisions reported in

(i) : 1992 CriLJ858 Dutt Chand and Ors. v. Union of India and Ors.

(ii) : 1992 CriLJ2315 Smt Ram Pyari and Ors. v. Jagdish Lal.

(iii) : 1996 CriLJ895 Abhijit Tea Company Pvt. Ltd. v. Terai Tea Co. Pvt. Ltd. and Ors.

69. In the last mentioned case, the Supreme Court made the position clear that the ancillary directions are required to be given so that 'no one shall be left in lurking doubt that by manoeuvre or otherwise one would get over non-implementation of the order of Court'. In this connection, the Court repeated the age-old maxim 'the arm of the Court is long enough to reach injustice wherever it is found'.

(see Page 593 of the report)

70. Following the principles discussed above, as I must, I hold that in a fit and proper case, like the present one, the Court can, without a finding of contempt in view of the difficulty in proving it, issue appropriate orders of injunction in order to implement its previous order and to prevent its flouting by any manoeuvre or subterfuge or by any other subtle modes of defiance which may not be wilful and deliberate defiance. This is necessary in order to sustain the litigants' faith in the administration of justice and also to maintain rule of law. The public purpose behind contempt jurisdiction will thus be satisfied if the Court keeps in mind these two concepts which inevitable corollaries of each other.

71. An observation to that effect was made by the Court of Appeal in England [See *Jennison v. Baker* reported in (1972) 1 All England Reports, 997. In that case the Court held that the High Court has the jurisdiction to commit for breach of an injunction even though injunction had ceased to have effect. The underlying principle behind such observation has been stated in page 1006 of the report thus;

The law should not be to sit by limply, while those who defy it go free, and those who seek its protection lose hope.

72. In the facts of this case upon notice dated 4.8.03 to the respondents the prayer for injunction was moved on the very next day i.e. on 5.8.03. There were definite attempt by the respondent to circumvent the Court proceeding by over-reaching it. This is a clear attitude of defiance by the respondents to the imminent injunction proceeding before this case. The observation of Lopes J. in *Von Joel* and those of Sir Ashutosh Mookherjee in *Israil*, extracted above, also show that in such a case defiance, appropriate orders of injunction can be passed. It may be true that a finding of contempt to the order of the Court cannot be reached. But as there is an

unmistakable attitude of defiance by the respondents to the Court proceeding, the Court, in order to restore public confidence in Court, can issue appropriate orders of injunction, even in mandatory form if the situation so demands.

73. So after considering the peculiar facts of this case and the legal position discussed aforesaid, I stay by an order of injunction the operation of the order of promotion of Sri Pijush Ranjan Pal, the opposite party No. 2, to the post of Additional Chief Engineer (Mechanical) P.W. (Road) till the pending proceeding before the State Administrative Tribunal is decided. As a result of this order, Sri Pal will step down from the post of Additional Chief Engineer and the Government may give him any other posting.

74. I make it clear that in passing this order I have not, as is obvious from this Judgment, considered the merits of the claim of promotion of either Sri Pal or of the petitioner to the said post of Additional Chief Engineer. That question will be decided by the, Tribunal where the proceeding is pending. I make it further clear that the Tribunal will decide all questions pending before it on merit and without being influenced in the slightest way by any observation made in this Judgment. The only direction upon the Tribunal is that it may decide the controversy as early as possible.

75. This Contempt petition is thus disposed of.

76. There will be no order as to costs.

Sailendra Prasad Talukdar, J.

I am in respectful agreement with the findings of my learned brother, the Presiding Judge (Ganguly, J.). I am, however, tempted to add that whatever obstructs or tends to obstruct the stream of justice from remaining clear and pure need be dealt with firmly. In the words of Lord Denning (Ref: 'The Due Process of Law' page 54):- 'the process of contempt of Court is designed to secure that every person has a fair trial; or, to put it in other words, it is a procedure by which the Court condemns any conduct which tends to prejudice a fair trial. The Court will restrain it by injunction beforehand or by punishment afterwards.'

78. In the backdrop of the present case, there is perhaps need to assure the writ petitioner that hands of law are long and strong enough to protect his interest. It is necessary to mention that there must not be any attempt on the part of any one, least of all a Government Department, to act in a manner which may even remotely interfere with the process of law and administration of justice.

Later:

Let plain copy of the operative portion of this Judgment and order duly counter signed by the Assistant Registrar (Court) be made available to the learned Counsel for the parties, on their usual undertakings.

Urgent xerox certified copy of this Judgment and order, if applied for, be given to the parties expeditiously.

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