

CASE NO.:
Appeal (crl.) 664 of 1997

PETITIONER:
J. K. Gupta

RESPONDENT:
D.G. Investigation & Registration & Ors.

DATE OF JUDGMENT: 04/11/2004

BENCH:
B.N.AGRawal & H.K.SEMA

JUDGMENT:
J U D G M E N T
WITH

CRIMINAL APPEAL NO. 1184 OF 1997

B.N.AGRawal, J.

Criminal Appeal No. 664 of 1997 has been filed by the appellant under Section 19 of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act') against order rendered by the Chairman, Monopolies and Restrictive Trade Practices Commission whereby the appellant has been convicted under Section 12 of the Act and sentenced to undergo simple imprisonment for a period of one month and to pay a fine of Rs. 2,000/- , in default to undergo simple imprisonment for a further period of one month. Criminal Appeal No. 1184 of 1997 is by special leave challenging the said order.

The short facts are that upon a complaint filed under the provisions of Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as 'the M.R.T.P. Act') before the Monopolies and Restrictive Trade Practices Commission (hereinafter referred to as 'the Commission'), Unfair Trade Practice Enquiry No. 66 of 1997 was registered by the Commission and Chairman of the Commission on 7th February, 1997 issued notice and passed an interim order restraining Computer Education Centre (respondent No. 2) to admit students in any course unless the same is recognized by any appropriate authority. Respondent No. 2 was further restrained from issuing advertisements regarding any course which is not recognized with a confirmed job placement, if respondent No. 2 institute did not guarantee any procurement of job. Upon receipt of the notice, the appellant, who was Service Advisor of respondent No. 2, sent a letter to the Commission for vacation of order of injunction making therein certain contemptuous allegations against the Commission. Upon receipt of such a letter, as in the opinion of the Chairman of the Commission a case of criminal contempt against the appellant was made out, notice was issued to him to show cause as to why he be not punished for criminal contempt, on receipt whereof, reply to show cause was filed and thereafter the Chairman, after considering all the pros and cons of the matter, by the impugned order passed on 9th July, 1997 found the appellant guilty under Section 12 of the Act for criminal contempt and convicted him which gave rise to the filing of these appeals, as stated above.

The only question which falls for our consideration is as to whether in the present case, undisputedly being a case of criminal contempt, Chairman alone was empowered to deal with the contempt proceeding or the same should have been heard and determined by a Bench of not less than two members, as required under Section 18 of the Act? In order to decide this question, it will be useful to notice the provisions of Section 13B of the M.R.T.P. Act, besides Sections 2(c), 14, 15 and 18 of the Act, which are quoted hereinbelow.

Section 13B of the M.R.T.P. Act reads as under: -

"13B. Power to punish for contempt - The Commission shall

have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 shall have effect subject to the modifications that \026

(a) the reference therein to a High Court shall be construed as including a reference to the Commission;

(b) the reference to the Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf."

Sections 2(c), 14, 15 and 18 of the Act read as under :-

"2(c) - "Criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which \026

(i) scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner."

"S.14. Procedure where contempt is in the face of the Supreme Court or a High Court. \026 (1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the court may cause such person to be detained in custody, and, at any time before the rising of the court, on the same day, or as early as possible thereafter, shall \026

(a) cause him to be informed in writing of the contempt with which he is charged;

(b) afford him an opportunity to make his defence to the charge;

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make such order for the punishment or discharge of such person as may be just.

(2) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1) which is held, in pursuance of a direction given under sub-section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

(4) Pending the determination of the charge, the court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify;

Provided that he shall be released on bail, if a bond for such sum of money as the court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the court;

Provided further that the court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid."

"S.15.-Cognizance of criminal contempt in other cases. \026 (1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by -

- (a) the Advocate-General, or
- (b) any other person, with the consent in writing of the Advocate-General, or
- (c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation. \026 In this section, the expression "Advocate-General" means \026

- (a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;
- (b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;
- (c) in relation to the court of a Judicial Commissioner, such Law Officer as the Central Government may, by

notification in the Official Gazette, specify in this behalf."

"S.-18. Hearing of cases of criminal contempt to be by Benches. \026 (1) Every case of criminal contempt under section 15 shall be heard and determined by a Bench of not less than two Judges.

(2) Sub-section (1) shall not apply to the Court of a Judicial Commissioner."
[Emphasis added]

From a conspectus of the aforesaid provisions, it would be clear that by virtue of Section 13B of the M.R.T.P. Act, the Commission has been empowered to exercise all the powers to punish for contempt which have been conferred upon a High Court and the same have to be exercised in the manner prescribed under the Act. Section 2(c) of the Act defines 'criminal contempt'. Under Section 15 of the Act, action for criminal contempt, other than a contempt referred to in Section 14 of the Act, can be taken. Under Section 14, action can be taken if the contempt has been committed in the presence of or hearing of the court. Section 18 lays down that every case of criminal contempt under Section 15 shall be heard and determined by a Bench of not less than two Judges which would obviously show that in the case of the Commission, a proceeding for criminal contempt has to be heard and determined by a Bench of not less than two members. Commission to be established under Section 5 of the M.R.T.P. Act shall comprise a Chairman and not less than two and not more than eight members to be appointed by the Central Government which shows that the Commission would consist of a Chairman and at least two members. Language of Section 18 of the Act that "criminal contempt under Section 15 shall be heard and determined by a Bench of not less than two Judges" is very clear and unequivocal and in case of criminal contempt, the contempt proceeding has to be heard and determined by a Bench of not less than two Judges. As the Commission consists of Chairman and at least two members, the contempt proceeding for punishing the appellant for criminal contempt ought to have been heard by the Chairman along with another member or the Chairman could have assigned the matter for hearing to any two members of the Commission but he alone was not justified in hearing and determining the proceeding which was in violation of the provisions of Section 18 of the Act. Therefore, the impugned order passed by the Chairman is liable to be set aside on this ground alone and the matter has to be remitted to the Commission for disposal of the contempt proceeding in terms of Section 15 of the Act.

Accordingly, Criminal Appeal No. 664 of 1997 is allowed, impugned order is set aside and the matter is remanded to the Commission to dispose of the contempt proceeding in accordance with law. In view of the aforesaid order, Criminal Appeal No. 1184 of 1997 has been rendered infructuous and the same is, accordingly, dismissed.