

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

SUO MOTU CONTEMPT IN WRIT PETITION (CIVIL) NO. 260 OF 2004

Kalyaneshwari

...Petitioner

Versus

Union of India & Ors.

...Respondents

J U D G M E N T

Swatanter Kumar, J.

In our detailed order dated 21st January, 2011, besides disposing of the Writ Petition No. 260 of 2004 with the directions as contained in paragraph 16 of that order, we noticed the contemptuous behaviour of the petitioner NGO and its officials and had issued show-cause notice to the petitioner Kalyaneshwari and its Secretary Shri B.K. Sharma, in his personal capacity, which reads as under:

“Keeping in view the conduct of the petitioner, particularly, B.K. Sharma, we hereby issue notice to him as well as the petitioner to show cause why proceedings under the Contempt of Courts Act, 1971 be not initiated against them and/or in addition/alternative, why exemplary cost be not imposed upon them. Further, we also call upon the petitioner to show cause why the Registrar, Government of NCT, Delhi

be not directed to take action against them in accordance with law.”

In response to this show-cause notice, Shri B.K. Sharma had filed a response affidavit dated 22nd March, 2011 on behalf of Kalyaneshwari as well as himself. This is a very short affidavit of seven paragraphs in which the petitioner has rendered his unconditional apology and prayed before this Court not to initiate proceedings under the Contempt of Courts Act, 1971. He further prayed to discharge the notice of contempt and drop proceedings for imposition of cost and revocation of license and registration of the NGO Kalayneshwari. Relevant portion of the said affidavit reads as under:

“2. THAT deponent herein tenders his unconditional apology to this Hon’ble Court with folded hands concerning all actions in respect of which this Hon’ble Court has been pleased to issue Show Cause Notice as to why proceedings under the Contempt of Courts Act, 1971 be not initiated against the Petitioner and the deponent herein and further as to why exemplary costs be not imposed upon them and their license be not cancelled/revoked.

3. THAT deponent herein unconditionally withdraws each and every averment and allegation made by the Petitioner in respect of the Judgment of the Hon’ble high Court of Gujarat dated 9.12.2004 passed in Special Civil Application Nos. 14460, 14813 and

14819 of 2004 titled B.K. Sharma v. Union of India and others reported in AIR 2005 Gujarat Page 203. Petitioner further withdraws all such pleadings made in this regard in the affidavit filed by the petitioner through deponent in response to the order dated 13.8.2010 passed by the Hon'ble Court as well as all the consequent proceedings."

There is no doubt that at the very initial stage, the respondents have tendered apology and prayed for dropping of the contempt proceedings. We are not quite certain as to the *bona fide* and intent of the respondents in tendering such an apology. For a Court to accept the apology in a contempt action, it is required that such apology should be *bona fide* and in actual repentance of the conduct which invited initiation of contempt proceedings. Furthermore, the conduct should be such which can be ignored without compromising the dignity of the Court. 'Contempt' is disorderly conduct of a contemner causing serious damage to the institution of justice administration. Such conduct, with reference to its adverse effects and consequences, can be discernibly classified into two categories: one which has a transient effect on the system and/or the person concerned and is likely to wither away by the passage of time while the other causes permanent damage to the institution and administration of justice. The latter

conduct would normally be unforgivable.

Institutional tolerance which the judiciary possesses, keeping in mind the larger interest of the public and administration of justice, should not be misunderstood as weakness of the system. Maintaining the magnanimity of law is the linchpin to the wheels of justice. Therefore, in certain cases, it would be inevitable for the Court to take recourse to rigours of the statute.

It is the seriousness of the irresponsible acts of the contemnors and the degree of harm caused to the institution and administration of justice which would decisively determine the course which the Court should adopt, i.e. either drop the contempt proceedings or continue proceedings against the contemner in accordance with law.

The apology tendered even at the outset of proceedings has to be *bona fide*, should demonstrate repentance and sincere regret on the part of the contemner lest the administration of justice is permitted to be crudely hampered with immunity by the persons involved in the process of litigation or otherwise. An apology which lacks *bona fides* and is intended to truncate the process of law with the ulterior motive of escaping the likely consequences of such

flagrant violation of the orders of the Court and disrespect to the administration of justice cannot be accepted. In the case of *Prem Surana v. Additional Munsif and Judicial Magistrate* [(2002) 6 SCC 722] this Court sternly reprimanded a contemner who had slapped the Presiding Officer in open court and held that “the slap on the face of the judicial officer is in fact a slap on the face of the justice delivery system in the country and as such question of acceptance of any apology or an undertaking does not and cannot arise, neither can there be any question of any leniency as regards the sentence.”

The rule of law has to be maintained whatever be the consequences. The ‘welfare of people’ is the supreme law and this enunciates adequately the ideal of ‘law’. This could only be achieved when justice is administered lawfully, judiciously, without any fear and without being hampered or throttled by unscrupulous elements. The administration of justice is dependent upon obedience or execution of the orders of the Court. The contemptuous act which interfered with administration of justice on one hand and impinge upon the dignity of institution of justice on the other, bringing down its respect in the eye of the commoner, are acts which may not fall in the category of cases where the Court can

accept the apology of the contemner even if it is tendered at the threshold of the proceedings.

The Black's Law Dictionary (8th edn., 1999) defines 'Contempt' as, "Conduct that defies the authority or dignity of a Court or legislature." It also adds that "Because such conduct interferes with the administration of justice, it is punishable."

This special jurisdiction has to be unquestionably invoked when the offending acts are intentional by the contemner at the cost of eroding the system of administration of justice which practice is necessarily required to be deprecated at the very initial stage.

In the case of *Aligarh Municipal Board v. Ekka Tonga Mazdoor Union* [(1970) 3 SCC 98], this Court said that it is the seriousness of the irresponsible acts of the contemnors and the degree of harm caused to the administration of justice which would decisively determine whether the matter should be tried as a criminal contempt or not.

In the case of *M.Y. Shareef v. The Hon'ble Judges of the High Court of Nagpur* [AIR 1955 SC 19], this Court while explaining

the requirements of genuine apology held as under:

“45.....With regard to apology in proceedings for contempt of court, it is well-settled that an apology is not a weapon of defense to purge the guilty of their offence; nor is it intended to operate as a universal, panacea, but it is intended to be evidence of real contriteness.”

Similar observations were made by this Court in the case of *L.D. Jaikwal v. State of U.P.* [(1984) 3 SCC 405], wherein this Court held as under:

“6. We do not think that merely because the appellant has tendered his apology we should set aside the sentence and allow him to go unpunished. Otherwise, all that a person wanting to intimidate a Judge by making the grossest imputations against him has to do, is to go ahead and scandalize him, and later on tender a formal empty apology which costs him practically nothing. If such an apology were to be accepted, as a rule, and not as an exception, we would in fact be virtually issuing a “licence” to scandalize courts and commit contempt of court with impunity.....”

Making of scandalous allegations against the judicial system always needs to be discouraged. Moreover, invoking the extraordinary jurisdiction of the constitutional Courts allegedly in the name of public interest and using it as a platform for lowering the dignity of the institution of justice is an act which besides being contemptuous also is undesirable. This Court, in the case of *M.B.*

Sanghi Advocate v. High Court of Punjab & Haryana [(1991) 3 SCC 600], has cautioned against the growing tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure desired orders. While observing that it was high time that such tendency is to be nipped in the bud, this Court said, “such causes raise larger issues touching the independence of not only the concerned Judge, but the entire institution... It is high time that we realize that the much cherished judicial independence has to be protected not only from the executive or the legislature, but also from those who are an integral part of the system.”

We have referred to the above judgments of this Court with an intention to indicate the callous attitude of the contemnors despite the directions of this Court in paragraph 16 of its order dated 21st January, 2011. Such contemptuous actions of the contemnors have increased with passage of time rather than being reduced.

In the present case, Shri B.K. Sharma has certainly abused the process of law by filing petitions, under the guise of public interest, against one business rival at the behest of another. The writ petition filed by him before this Court was obviously filed with the intent of creating impediments in the establishment and

operation of industrial units dealing with the mining, manufacture and production of Asbestos and its products which are carrying out their operations in accordance with law and without infringing the rights of any person.

This Court in the case of *Consumer Education and Research Center v. Union of India* [(1995) 3 SCC 42], had pronounced a detailed judgment giving directions in relation to various matters pertaining to operation of units engaged in manufacture and production of asbestos and its products. This resulted in presentation of a Bill in this regard by the Central Government before the *Rajya Sabha*. Despite the detailed directions already given in the above judgment of this Court and introduction of a Bill before the Parliament, Shri B.K. Sharma persisted in filing petitions after petitions praying for complete ban on manufacture, import and use of asbestos to secure unlawful closure of asbestos industry for the purpose of settling business rivalry.

Sh. B.K. Sharma had filed a writ petition before the Gujarat High Court titled as *B.K. Sharma v. Union of India*, [AIR 2005 Guj 203] in which every attempt was made to prevent respondent No.5 in that case, M/s. Sopai Ltd., from completing construction of its

asbestos production unit and proceeding further with any activity. In fact, it was prayed that construction raised by them be demolished which was declined by the Gujarat High Court. The Gujarat High Court also declined to accept the prayer for closure of that asbestos manufacturing unit and held in specific terms that the petition had been filed at the behest of rival industrial groups and lacks *bona fide*.

Shri B.K. Sharma, disregarding the fact that this judgment of the Gujarat High Court had attained finality on whole factual matrix, filed Writ Petition No. 260 of 2004 before this Court and tried to brush aside the judgment of the Gujarat High Court stating, "Gujarat High Court had failed to apply its mind". Besides making such irresponsible statement against the judgment of a constitutional Court, Shri B.K. Sharma miserably failed to explain and clarify as to why the present petition was filed in face of the judgment of this court in the case of *Consumer Education and Research Centre* (supra).

Shri B.K. Sharma even went to the extent of filing incorrect affidavits before this Court and the Court was compelled to pass an order on 27th August, 2010 directing him to explain his conduct in

reference to the observations made by the Gujarat High Court in the said judgment.

It was argued before the Court, by several of the respondents, on different occasions that the whole purpose of filing the present writ petition was to secure a ban on mining and manufacture of asbestos which would inevitably result in increase in the demand of cast and ductile iron products as they are a suitable substitute for asbestos. It was, thus, argued that the petition before the Gujarat High Court as well as this petition has been filed at the behest of the industrial group engaged in production of cast and ductile iron products.

It is a settled principle of law that contempt is a matter primarily between the Court and the contemner. The Court has to take into consideration the behaviour of the contemner, attendant circumstances and its impact upon the justice delivery system. If the conduct of the contemner is such that it hampers the justice delivery system as well lowers the dignity of the Courts, then the Courts are expected to take somewhat stringent view to prevent further institutional damage and to protect the faith of the public in the justice delivery system. In the case of *Advocate-General, State*

of Bihar v. M/s. Madhya Pradesh Khair Industries [(1980) 3 SCC 311], this Court took the view that abuse of the process of court, calculated to hamper the due course of judicial proceedings or the orderly administration of justice, is contempt of court. Where the conduct is reprehensible as to warrant condemnation, then the Court essentially should take such contempt proceedings to their logical end. There cannot be mercy shown by the Court at the cost of injury to the institution of justice system.

The respondent-contemners, in their reply-affidavit, have hardly disputed the observations made by this Court in the show cause notice issued to them. They have only attempted to tender an unconditional apology for their various acts and omissions which certainly were prejudicial to the administration of justice and have even adversely affected the rights of the other parties in the disguise of a petition filed in public interest. The contemners have abused the process of law by instituting various petitions under the garb of 'Public Interest Litigation' and have succeeded, at least partially, in damaging the asbestos industry in the country. They even withheld the facts from the Court which were within their personal knowledge. The examination of the factual matrix of the present case and conduct of the respondent-contemners,

particularly the reply filed by them, places it beyond ambiguity that they have committed the following acts and omissions intentionally, which have undermined the dignity of this Court and the justice delivery system:

- (a) The contemners have abused the process of law to the extent that it impinged upon the dignity of the justice delivery system as well as prejudicially affected the rights of other private parties.
- (b) The contemners have withheld material facts from the Court which were in their personal knowledge. While withholding such material facts, they have also persisted upon filing petitions after petitions in the name of public interest with somewhat similar reliefs.
- (c) The contemner, B.K. Sharma, has made irresponsible remarks and statements against the Gujarat High Court without any justifiable cause in law.
- (d) The public interest litigation [Writ Petition (C) No. 260 of 2004] instituted by the contemner lacks *bona fide* and, in fact, was instituted at the behest of a rival industrial group which was interested in banning of the activity of mining and manufacturing of asbestos and its products by obtaining certain orders and

directions from this Court. A definite attempt was made by the contemnors to secure a ban on these activities with ultimate intention of increasing the demand of cast and ductile iron products as it has come on record that they are some of the suitable substitutes for asbestos. Thus, it was litigation initiated with ulterior motive of causing industrial imbalance and financial loss to the industry of asbestos through the process of court.

- (e) The contemner has also filed petitions and affidavits either with incorrect facts or with facts which even to the knowledge of the contemner were not true.

Despite this, the Court has to keep in mind that there is a duty upon the courts to eliminate the cause of such litigation. The maxim *Justitia est duplex, viz., severe puniens, et vere praeveniens* by its very virtue imposes dual obligation upon the Courts of considering various facets of severe punishment on the one hand and really and efficiently preventing crime on the other, with the ultimate object of maintaining the dignity of law. In other words, the Court has to balance the quantum of punishment keeping in view the seriousness of the offence committed by the contemnors. Repeated contemptuous behaviour of the contemnors before the

Gujarat High Court as well as this Court certainly needs to be deprecated and punished in accordance with law. Even if we were to take somewhat liberal view, still it is the duty of this Court to ensure that such unscrupulous and undesirable public interest litigation be not instituted in the Courts of law so as to waste the valuable time of the Courts as well as preserve the faith of the public in the justice delivery system.

The contemnors when asked to address the quantum of sentence, again tendered an apology but none of the contemptuous behaviour spelled out in our order dated 21st January, 2011 was denied by the contemnors at any stage of the proceedings or even in their reply affidavit to the show cause notice.

Having given our due consideration to all the relevant factors and behaviour of the contemnors, we have no hesitation in holding that the contemnors are liable to be punished for their offensive and contemptuous behaviour which has undermined the dignity of the Courts of law and justice administration system as well as prejudicially affected the rights of third parties who, in fact, were not even impleaded as parties in the public interest petitions. They have squandered the valuable time of this Court which could have

been devoted more fruitfully in dealing with the pending cases and matters of greater urgency and importance.

In these circumstances, we direct as follows:

- (1) We order and award sentence of simple imprisonment till rising of this Court to the contemner, Shri B.K. Sharma.
- (2) We also impose a sentence of fine of Rs.2,000/- on the contemnors, to be paid within one week from today. In default, he shall undergo simple imprisonment for a period of one week.
- (3) Lastly, we impose a cost of Rs.1,00,000/- upon the contemnors to be paid to the S.C. Legal Services Committee.
- (4) We also hereby direct the Registrar of Societies, Government of NCT of Delhi to take action against the contemner-society, namely Kalyaneshwari, in accordance with law and submit its action-taken report, interim or final, to this Court within six weeks from today.

.....
.....CJI.

[S.H. Kapadia]

.....J.
[K.S. Panicker]

Radhakrishnan]

.....J.
[Swatanter Kumar]

New Delhi
May 12 , 2011.