

CASE NO.:
Writ Petition (civil) 4677 of 1985

PETITIONER:
M.C. Mehta
In the Matter of M/s. Ashok Chhabra & Co.

RESPONDENT:
Union of India & Ors.
By its Sole Proprietor Ashok Chhabra

DATE OF JUDGMENT: 02/04/2003

BENCH:
Y.K. SABHARWAL & H.K. SEMA

JUDGMENT:
J U D G M E N T

With I.A. Nos. 47, 57 and letter No. Nil. Dt. 27.10.1998

SEMA, J

A contempt petition against the respondent Ashok Kumar Chhabra arises pursuant to the show cause notice of contempt issued by this Court on 25th November, 1999 for willful violation of various orders passed by this Court. The respondent was running hot mix plant industry located at village Rangpuri, New Delhi. The hot mix plant was the subject matter of consideration by an Expert Committee of Central Pollution Control Board (CPCB) to determine the pollution and hazardous aspects of this industry. On 13th March, 1996 this Court directed the CPCB to issue notices to the hot mix plants located in Delhi as to why they be not relocated. The Board issued notices to the Hot Mix Plants and after considering the replies/objections filed by them, the Expert Committee of the Board arrived at the following conclusion:

"The process emissions from Hot Mix Plants contain particulate matter and sulphur dioxide besides Poly Aromatic Hydrocarbons most of which are proven carcinogens. Therefore, the Expert Committee of CPCB has categorised Hot Mix Plants as hazardous industry ('Ha' category). AS per Master Plan 2001, all hazardous/noxious industries should be shifted out of the U.T. of Delhi."

Basing on the aforesaid report, this Court on 10th October, 1996 inter-alia directed the 43 hot mix plants to stop functioning and operating in the city of Delhi w.e.f. February 28, 1997. The directions are contained in paragraph 4 of the order. For the purpose of disposal of this petition direction nos. 1, 2 and 8 are relevant which read thus:
"(1) The above listed 43 Hot Mix Plants cannot be permitted to operate and function in Delhi. These Hot Mix Plants may relocate/shift themselves to any other industrial estate in the NCR. We direct that the 43 Hot Mix Plants listed above shall stop functioning and operating in the city of Delhi with effect from February 28, 1997. These Hot Mix Plants shall close down and stop functioning in Delhi with effect from the said date.

(2) The concerned Deputy Commissioner of Police shall, as

directed by us, effect the closure of the above Hot Mix Plants with effect from February 28, 1997 and file compliance report in this Court within 15 days thereafter.

(8) The closure order with effect from February 28, 1997 shall be unconditional. Even if the re-location of Hot Mix Plants is not complete they shall stop functioning in Delhi with effect from February 28, 1997."

Undisputedly, the aforesaid directions were with regard to 43 hot mix plants in which the unit of the respondent does not figure. Accordingly, the order dated 10th October, 1996 was clarified by this Court on 5th December, 1997 in which the name of Ashok Kumar Chhabra's unit has been included. On noticing that the respondent's unit has also been closed down which required to be relocated outside Delhi, this Court also directed that the land for relocation of 44 hot mix plants (including the respondent) shall be made available by the State Government concerned within three months from passing of the order. The draw of lots for the hot mix plants was held in the office of the NCR Planning Board on 8.2.1998 at 4.00 p.m. pursuant to the order passed by this Court on 16th January 1998. Master sheet including the name of the parties and the sites allotted to them was annexed with the order dated 12th February 1998 of the Chief Regional Planner, in which the respondent - Ashok Kumar Chhabra has been allotted alternative site at Dadri. The name of the respondent is shown at Sl.No.36 of the list.

Despite the order of closing down by this Court on 10th October, 1996, as noticed above, and allotment of the alternative site, respondent was continued operating his unit at Delhi culminating in the order dated 16th May, 1997 passed by the Chairman, Delhi Pollution Control Committee, under Section 31(A) of Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as 'the Act'). In the said order sequence of events has been noted. It has an important bearing for proper adjudication of the case at hand and it is extracted in extenso.

"DELHI POLLUTION CONTROL COMMITTEE
DEPARTMENT OF ENVIRONMENT: GOVT. OF DELHI
4TH FLOOR, ISBT BLDG. KASHMERE GATE, DELHI 6.

No.F.12/G(041)/PCC III/96/790-805

Date:16/5/97

Sub: Directions u/s 31(A) of Air (Prevention and Control of Pollution) Act, 1981.

Whereas, the Central Pollution Control Board exercises the powers and performs the functions under the Air (Prevention & Control of Pollution) Act, 1981 as a State Board for Union Territories;

Whereas the Central Pollution Control Board has delegated all its powers and functions under the Air (Prevention and Control of Pollution) Act, 1981 in respect of Union Territory of Delhi to a committee known as Delhi Pollution Control Committee vide notification No. S.O.198(E) dated 15.3.1991;

Whereas, the whole of the Union Territory of Delhi is declared as an air pollution control area under sub-section (1) of Section 19 of the Air (Prevention & Control of Pollution) Act, 1981 vide notification no. GSR 106(E) dated 20.2.1987;

Whereas, you M/s Ashok Kumar Chhabra Constructions alias Sh. Ashok Kumar Chhabra, Civil Engineers and

Contractors, Village Rangpuri, N.Delhi 110037 are operating hot mix plant;

Whereas, the Hon'ble Supreme Court of India in the matter of IA No. 22/94 in CWP No. 4677/85 have interalia observed in their order dated 10.10.1996 that 'The Hot Mix Plant' having been categorised hazardous industries (Ha) under the Master Plan 2001 have to be relocated' and that these plants 'cannot operate in the city of Delhi;'

Whereas, all the 43 hot mix plants whose records were placed before the Hon'ble Supreme Court in the aforementioned matter by the Central Pollution Control Board, were directed to stop functioning and operating in the city of Delhi w.e.f. 28.2.97;

Whereas, you M/s Ashok Kumar Chabra Constructions alias Sh. Ashok Kumar Chhabra, Civil Engineers & Contractors, were issued notice No.12/6/641)/PCC 111/96/10223 dated 6.3.97 to show cause as to why the said hot mix plant falling in H(a) category of Master Plan 2001 should not be ordered to be closed down immediately;

Whereas, you have submitted a reply dated 15.3.97 pointing interalia that the order of the Hon'ble Supreme Court referred to above does not include your name in the list of 43 hot-mix plants and thus that order is not binding on you; and that your unit is neither hazardous nor air polluting;

Whereas, the hot-mix plants have been categorised in H(a) category under the Master Plan 2001 as per order of Hon'ble Supreme Court;

Whereas, the units falling under H(a) category cannot operate in the city of Delhi as per Master Plan-2001;

And whereas, your unit was found operating by the inspection team of Delhi Pollution Control Committee on 12.05.1997;

Now, therefore, in exercise of the powers conferred u/s 31(A) of the Air (Prevention and Control of Pollution) Act, 1981 and the rules made thereunder the competent authority in Delhi Pollution Control Committee, after careful consideration of your reply to the said show cause notice and all other relevant records, hereby direct you M/s Ashok Kuma Chabra Constructions alias Sh.Ashok Kumar Chhabra Engineer & Contractors, Village Rangpuri, New Delhi-37 as follows:-

"That you M/s Ashok Kumar Chabra Construction alias Shri Ashok Kumar Chhabra, Civil Engineers & Contractors Village Rangpuri, New Delhi 37 shall stop functioning and operating the hot mix plant in the city of Delhi with immediate effect.

(D.S. NEGI)
CHAIRMAN, (DPCC)"

In consequence of order dated 16th May, 1997 the unit of the respondent was also sealed by the order dated 10th December, 1997. The order dated 16th May 1997 and 10th December 1997 were challenged by the respondent before the Appellate Authority under Section 31 of the Act. The same was dismissed by the Joint Secretary to the Government of India and the Appellate Authority, Ministry of Environment and Forests, by its order dated 20th March, 1998. The relevant portion reads:

"The appeals were heard on 10.3.98. The arguments advanced by the parties were heard at length and the material placed on record was duly considered. It emerges that the hot mix plants as a category of industry/activity was categorised as an activity falling in 'H' category as per the Master Plan of Delhi (MPD) 2001 and is to be relocated outside of NCT of Delhi with effect from 1.3.1997. The Supreme Court has made no exception in its order dated 10.10.1996 and directed the hot mix plants closed/functioning and operating in the city of Delhi falling in NCT to be closed and relocated/shifted to any other industrial estates in NCR. There is no evidence of the Applicant having been specifically declared as non-hazardous unit. The date fixed by the Supreme Court for closure of hot mix plants of Delhi has already expired on 28.2.1997. The Hon'ble Supreme Court vide its order dated 5.12.1997 and 16.1.1998 has further directed and made it clear that the Appellant unit be also included for the allotment of site outside NCT of Delhi. The National Capital Region Planning Board has already allotted sites for the hot mix plant in compliance of the Supreme Court order. The Appellant has been allocated site at Dadri. The Appellant has committed a violation of Section 21 of the Air (Prevention & Control of Pollution) Act, 1981 as it is mandatory to obtain consent under the Air Act. The Appellant had failed to comply with the directions of the DPCC. This Authority, therefore, directs the unit to stop all its operation in the National Capital Region of Delhi. The Supreme Court has already directed closure of hot mix plants operating in the city of Delhi including their relocation outside the city of Delhi in any other industrial estates of NCR. M/s. Ashok Chhabra has been allotted a fresh site in terms of the Hon'ble Supreme Court's order above mentioned. The Appellant's hot mix plant can not be allowed to be reopened. The submission of the appellant made for vacating the order of sealing the appellant unit, made by the Delhi Pollution Control Committee is also rejected. The appeals are accordingly dismissed. Ordered accordingly."

Aggrieved by the said order, the respondent preferred a Writ Petition before the High Court of Delhi being CW No. 2319 & CM No.5759 of 1998. The High Court of Delhi on 29th May, 1998 passed the following ad-interim order:

"For what has been observed by me above, the operation of the order sealing the premises is stayed till further orders. In case any seal has been applied, the same shall be removed forthwith. I am making it clear that this in no way would affect the order of closure. Dasti also."

(Emphasis supplied)

At this stage, we may dispose of one argument of the respondent that he was allowed to continue to run the unit on the strength of the order passed by the High Court, which is belied by the order as noticed above.

When the pendency of the Writ Petition was brought to the notice of this Court on 9th September 1999, this Court observed in paragraphs 2, 3 and 4 of its order as under:

"It is brought to our notice that M/s. Ashok Chhabra & Co. has filed a Writ Petition in the High Court of Delhi which is pending for hearing since 1998. Since the question of desirability of not having Hot Mix Plants in Delhi City was in session of this Court and orders have been passed therein, we do not know under what circumstances, the High Court has entertained the Writ Petition.

Be that as it may, since the said writ petition is pending before

the High Court, the Chief Justice, High Court of Delhi is requested to see that the writ petition in question is heard and disposed of within two months from today. The order passed by it be communicated to this Court. Put up this after two months.

It is also further alleged that taking advantage of pendency of the writ petition in the High Court, the said Company is continuing to operate its Hot Mix Plants. In view of earlier orders of this Court, we direct that the said Hot Mix Plants must be closed down, if operating and appropriate steps must be taken by the Delhi Pollution Control Board (DPCB) with necessary help from the Delhi Police."

The respondent also filed C.W.No.2746 of 1997 in Delhi High Court questioning the validity of various orders passed by the Competent Authority, which was dismissed by the High Court on 2nd March, 1998.

The question now for consideration is whether the respondent continued functioning of hot mix plant unit, which has been declared as hazardous industry (Ha Category) by the Expert Committee. As noticed above, in defiance of various orders passed by this Court and orders passed by the competent authority, the respondent continued operating his unit. The unit operated by the respondent is in perfect tandem and in line with the categorisation of HMPs by the Expert Committee of C.P.C.B. pursuant to which order dated 10th October, 1996 was passed by this Court holding the HMPs as hazardous and noxious industries.

The respondent, in CWP NO. 2319/98 and CM No. 5759/98, had admitted that he was still operating the factory. This is what the High Court has noticed in its order dated 24th November 1998, which is as under:

"On query learned counsel for the petitioners states that the petitioners are still operating the factory. From reading of the order dated May 29, 1998 it appears that there is an order passed by the Competent Authority directing closure of the petitioner's factory. In the circumstances, I am not allowing the petitioners to withdraw the writ petition.

List the matter for hearing on November 26, 1998."

This Court issued contempt notice dated 25th November, 1999 to the respondent. The notice reads:

"So far as the Delhi Hot Mix Plant Owners Association is concerned, the grievance appears to have been settled by allotting lands to it after closing down the Hot Mix Plants. But, from the affidavits filed by the D.P.C.C. it appears that Messrs Ashok Kumar Chhabra & Co., was continuing the business notwithstanding the order of this Court and the fact that alternative site has been allotted in its favour.

Issue notice to the Managing Director/Proprietor of Ashok Kumar Chhabra & Co to appear in person to show cause as to why he should not be duly punished for having deliberately violated the Court's orders regarding closing down of the Hot Mix Plants.

Letter No. Nil of 27th October, 1998 be tagged on with I.A. Nos. 47 and 57."

After issuance of show cause notice, the respondent filed I.A. No. 1203 with a prayer to recall and/or modify the order dated 9th September, 1999. He also filed a detailed reply on 6th March, 2000 to the show cause notice. In paragraph 4 of the reply he denied that his unit was operational when the DPCC carried out surprise inspection of the plant on 27/28th September, 1999. He stated that the plant was operating in the earlier periods pursuant to the orders of the Hon'ble High Court passed from time

to time. He also submits that he has not been in contempt of any order of this Court in the matter of operating the plant. He also found fault with this Court in passing the orders dated 9th September, 1999 and 25th November, 1999 without the complete facts being brought to the notice of this Court.

A cursory reading of paragraph 4 shows that he has not made any specific denial with regard to the functioning of the plant. At the same time his plea that the plant was operating in earlier periods pursuant to the order of the High Court has been falsified by various orders of the High Court, as noticed above. In paragraph 7 of the reply he has categorically stated that he has not committed any contempt of the order of this Court. The reply in paragraph 7 is interesting. It reads:

"I respectfully say that I have not committed any contempt of the orders of this Hon'ble Court as alleged or otherwise. I say that orders have been passed at the instance of interested persons and at the behest of the D.P.C.C. which had by itself removed the deponent's plant from the list of hazardous industry in proceedings before this Hon'ble Court. I state that the D.P.C.C. has been taking different stands from time to time in the different proceedings in the matter of the hot mix plant of the deponent for ulterior motives and to create self-serving evidence."

The statement made in paragraph 7 is all the more contemptuous. He is not only defending his action but to say that all the orders passed by this Court were at the behest of D.P.C.C. and not in public interest is by itself contumacious. Reading the entire paragraphs of the reply, it is in the tone of defiant posture. There is not even a whisper of the apology, muchless unconditional apology, not to speak of remorse and contrition.

In contrast of what has been stated in reply to contempt notice, in the rejoinder affidavit filed by him dated 31st January, 1998 in CM No. 10898 in CWP No. 2746 of 1998, before the High Court, he has stated in clause V thus:

"The petitioners have executed Government contracts for Rs.360.42 lacs and are still having orders for execution of work from Government, Governmental agencies for a sum of Rs.228.00 lacs. Apart from this the petitioners have been found first lowest in various tenders quoted by the petitioners approximately for a sum of Rs. 200 lacs which are also likely to be awarded to the petitioners within the validity period of 3 to 6 months from the date of opening of tenders.."

In paragraph 5 it is stated as follows:

"Till date, petitioner has completed various works and is placing on record as Annexure 'A' documents to show that petitioner's unit is functional and is in operation even till today. It has not been closed down as has been falsely submitted before Hon'ble Supreme Court of India. It may be submitted that petitioners are operating their plant from 'Rangpuri Pahar' which neither reserved forest area nor residential area. "

In paragraph 11 it is stated as under:

"It is submitted that petitioner's unit was never closed down execution of contract award by various Governmental Agencies during night time from 9 p.m. to 8 a.m. as permission from Deputy Commissioner of Police (Traffic) was not given to the petitioner due to heavy flow of the traffic on roads during day time."

The respondent-contemner, in his own admission, has continued the functioning of the plant which is treated to be as hazardous and noxious industry in total disregard and consistent defiance of the orders passed by this Court with impunity. Mr. Kailash Vasdev, learned Senior counsel's contention, that in the order of 10th October, 1996 the unit of the contemner is excluded inasmuch as the said order covered only 43 hot mix plants and as such the respondent has not committed any contempt, deserves out-right rejection. Firstly, the order dated 10th October, 1996 is of general direction ordering the closer of all industries (HMP) which are hazardous and noxious industries. As already noticed, the plant of the respondent is one of such units, which has been categorized as hazardous and noxious industry by Expert Committee. Secondly, this Court by the order dated 5th December, 1997 included the hot mix plant of the contemner and directed the State government concerned to make available the land for relocation of 44 hot mix plants within three months of the passing of the order. Consequent upon the orders of 5th December, 1997 and 16th January, 1998, the draw of lots was held on 8th February, 1998 at 4.00 p.m. in the office of NCR Board and the respondent had been allotted an alternative site at Dadri. His name appeared at Sl.No.36 of the list.

In the facts and circumstances as adumbrated above and taking into account the entire course of conduct of the contemner, it is apparent that the contemner was taking the Court for a ride by raiding one Court or the other deliberately with oblique motive to circumvent the Court's orders thereby salvaging himself by feigning ignorance of this Court's order which was in the knowledge of the contemner.

APOLOGY TENDERED BY THE RESPONDENT

It is significant to note that in reply to the contempt notice dated 25th November, 1999, a detailed reply was filed by the respondent on 6th March, 2000. No apology, muchless unconditional apology, was tendered by the respondent. In fact, as already noticed the respondent defended his action and also found fault with the orders passed by this Court on 10th October, 1996 and 9th September, 1999. The last affidavit filed by the respondent was on 28th January, 2003. In paragraph 6 of the said affidavit the respondent-contemner categorically stated that he has not committed any contempt of any order passed by this Court. This is what he has stated in para 6:

"I most respectfully state that I have not committed any contempt of any Order passed by this Hon'ble Court. I state that no order passed by this Hon'ble Court prior to 9.9.1999 was available to me and I was not a party to this proceeding in this Hon'ble Court. Further I state that to my knowledge no alternative land had been allotted to me."

In the background of the facts, as noticed above, the statement of the contemner in paragraph 6 of the affidavit is false to the knowledge of the contemner. Filing false affidavit/statement has been held to be Criminal Contempt. [See Murray & Co. v. Ashok Kr. Newatia & Anr. (2000) 2 SCC 367; Bank of India v. Vijay Transport and Ors. (2000) 8 SCC 512; and Dhananjay Sharma v. State of Haryana & Ors. (1995) 3 SCC 757.]

However, in paragraph 9 of the said affidavit the respondent tendered apology, which is as under:

"I tender an unconditional and unqualified apology to this Hon'ble Court for any of my actions which might be deemed to be in contempt of the orders of this Hon'ble Court and pray that the said apology be accepted. I state that I hold this Hon'ble Court in highest esteem and have no intention whatsoever to be in breach of any order passed by this Hon'ble Court. I most respectfully pray that this Hon'ble Court may be pleased to recall the notice to show cause as to why proceedings for alleged contempt of Court issued to me and the said proceeding be dropped."

The conduct of the contemner, as recited above, is beyond condonable limit. It is now well-settled principle that an apology is not a weapon of defence to purge the guilt of the contemner. At the same time, the apology

must be sought at the earliest opportunity. The apology tendered by the respondent is at a belated stage to escape punishment of the Court. Furthermore, as already noticed, in paragraph 6 of the affidavit he has stated that he has not committed any contempt and defended his action. In paragraph 9 of the affidavit, as quoted above, though it is stated that he tenders unconditional apology, it is not really so, as in paragraph 6 of the affidavit he has defended his action. Therefore, the apology so tendered by the contemner is not a product of remorse or contrition.

In *Delhi Development Authority vs. Skipper Construction*, (1995) 3 SCC 507 at page 523 it was pointed out as under:

"In considering whether the action of the contemnors amounted to contempt of court we take into account the entire course of conduct of the contemnors. As our order dated 25.1.1995 would disclose, the contemnors have indulged in judicial adventurism by raiding one court or the other. Each of such raids is a clear abuse of process of court calculated to obstruct the due course of judicial proceeding and the administration of justice. Thus, we conclude that the contemnors are guilty of contempt of court. No doubt, the contemnors have tendered apology. This apology is coming forth after sensing that the adventures have turned out to be misadventures, realising that the contemnors have ended up in a cul-de-sac. An apology is not a weapon of defence forged to purge the guilt of the offences nor is it intended to operate as a panacea. It is intended to be evidence of real contriteness, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrongdoer's power. We do not find the apology to be so in this case. The conduct of contemnors is highly reprehensible."

In the facts and circumstances aforesaid, we reject the apology tendered by the contemner and hold that Ashok Kumar Chhabra is guilty of contempt of Court.

This takes us to consider the quantum of punishment. In the last affidavit filed, the contemner has stated that he is 53 years old. The gravamen of contemptuous act of the respondent is of superlative dimension as this relates to the violation of not only the Court's orders but also of the Air (Prevention and Control of Pollution) Act, 1981. The pollution of air is causing deleterious affect on the health of the entire society. We have also considered the larger interest of the society and orders passed by this Court for the interest of the society at large. Liberty of an individual which is so dear to every citizen of this country must necessarily be balanced with his duties and obligations towards his fellow citizens. Every citizen of this country has freedom to breathe unpolluted air. In air pollution related matter or in any matter relating to environmental hazard, if the orders of the highest court are disobeyed as sought to be done in this case, the health hazard of the entire society is at great risk. We are, therefore, convinced to send strong signal by imposing exemplary punishment so that like minded people would not repeat and such recurrence is thwarted. Keeping this background in mind, we are of the view, that the ends of justice would be served, if the contemner is sentenced to one-week simple imprisonment. We order accordingly. In addition, he is saddled with costs, which we quantify at Rs. one lakh. The costs shall be deposited in the Registry of this Court within two weeks from today and on the costs being deposited, the Registry shall pay 50 per cent to Delhi Pollution Control Board and 50 per cent to Mr. Ranjit Kumar, amicus curiae, who assisted the Court.

The petitions are disposed of in the above terms.

JUDIS