

PETITIONER:
RAJIV CHOUDHARY

Vs.

RESPONDENT:
JAGDISH NARAIN KHANNA & ANR.

DATE OF JUDGMENT 29/11/1995

BENCH:
KIRPAL B.N. (J)
BENCH:
KIRPAL B.N. (J)
BHARUCHA S.P. (J)

CITATION:
1996 SCC (1) 508 JT 1995 (8) 451
1995 SCALE (6) 640

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

KIRPAL.J.

In these contempt-petitions, it is alleged that the respondents had deliberately disregarded and violated interim orders passed by this Court while dealing with Special Leave Petition (C) Nos. 14760-62/1992 filed against an order of the Delhi High Court.

The petitioner had filed a writ petition in the Delhi High Court in which it was, inter alia, contended that Jagdish Narain Khanna, the contemnor, (the respondent No. 1 herein) was the owner of House No. 47, Sunder Nagar, New Delhi which had been demolished and he was in the process of completing an illegal construction for opening of a 50 bed hotel. In the aforesaid petition, and interim order dated 30.9.1992 was passed by the High Court. In the said order, the statement of counsel for the contemnor herein was recorded which was to the effect that the construction at House No. 47, Sunder Nagar, New Delhi was being carried on as per sanctioned plan and that it was a residential house. It was further stated by the counsel that when the construction is completed, the contemnor will apply to the Municipal Corporation of Delhi (hereinafter referred to as the MCD) for grant of completion certificate and that the said premises will not be used for any other purpose. It was further stated that if the contemnor will use the premises for any other use except residential or even for running a guest house, he will do so only after getting permission from the appropriate authority. The High Court ordered that the contemnor herein shall remain bound by the statement of his counsel.

Aggrieved by the aforesaid order dated 30.9.1992, the petitioner herein filed Special Leave Petition (D) No. 14760-62/1992 along with application for stay. While issuing notice, this Court by order dated 13.11.1992 directed that there will be an interim injunction restraining the contemnor

from using the premises in question for any commercial purpose.

On 1.3.1993, after hearing the counsels for the parties, this Court passed the following order in the aforesaid Special Leave Petition:

"Heard learned counsel for the parties. Mr. V.P. Singh, learned counsel appearing on behalf of respondent No. 10, Jagdish Narain Khanna made a statement before the High Court that when construction will be completed, he will apply to the MCD for grant of completion certificate. Mr. Singh had made a further statement that he will use the premises for any other use except residential or even for running of guest house, he will do so only after getting permission from the appropriate authority. It has been stated before us that application for running the guest house is already pending before the Police Commissioner. We direct that the said application shall not be disposed of finally without hearing the petitioner-Rajiv Choudhary. Any order passed finally by the Police Commissioner would be subject to the result of the writ petition pending before the High Court. In case any application is moved for permission of running the guest house by the respondent No. 10 before the MCD, the same would also be disposed of after hearing the petitioner Rajiv Choudhary and any order passed thereon shall also be subject to the final decision of the High Court. The special leave petitions are disposed of."

On a clarification being sought, this Court on 5.3.1993, passed the following order:

"It has been mentioned on behalf of the petitioner that in our order dated 1.3.1993, it should also be added that in case any application is moved for permission of running the guest house/change of user by the respondent No. 10 before the Land and Development Officer (respondent No. 4), the same direction be given as given in the case of the application to be dealt by the police Commissioner and the MCD. In our view, the above request is proper and as such we further add in our order dated 1.3.1993 that in case any application is moved for permission of running the guest house/change of user by the respondent No. 10 before the Land and Development Officer (respondent No. 4), the same would be disposed of after hearing the petitioner-Rajiv Choudhary and any order passed thereon shall also be subject to the final decision of the High Court."

In the present petition filed by the petitioner for initiating contempt of court proceedings against the

contemnor and Virendra Singh, the then Municipal Commissioner, MCD, it was alleged that according to the aforesaid order of March 1, 1993, the respondent-contemnor had given an undertaking that only after getting the permission from all the authorities, he will open the guest house. It was alleged that without getting the requisite permission, a guest house consisting of about forty rooms and named as 'The Renaissance' had been opened and this amounted to willfully flouting the aforesaid orders of this Court and, therefore, the respondent should be punished for intentionally flouting the order dated 1.3.1993.

On notice being issued by this Court on 11.2.1994, affidavit by way of reply was filed on behalf of the contemnor on 16.4.1994. It was, inter Ala, stated in this affidavit that he had started using the aforesaid premises No. 47, Sunder Nagar, New Delhi as a guest house on the basis of a licence which had been issued in his favour by the Deputy Commissioner of Police (Licensing), Delhi. It was denied that he had flouted the orders dated 1.3.1993 and 5.3.1993 as, according to the contemnor, the said order did not restrain him from running the said premises as a guest house as and when he received the requisite and appropriate permission/license to do so. To this a re-joinder affidavit was filed by the petitioner in which it was, inter Ala, contended that the contemnor had admittedly not got any permission from the Municipal Corporation of Delhi for running a guest house and the Deputy Commissioner of Police (Licensing) had no right or authority to grant a license for running a guest house in a residential area. It was also stated therein that the Land and Development Officer had also indicated that there was violation of perpetual lease dated 29.12.1954 whereby the land in question had been given on perpetual lease by the President of India.

By order dated 15.7.1994, notice was issued by this Court only to Jagdish Narain Khanna (respondent No. 1 in the petition) to show cause why he should not be punished for contempt for disobeying this Court's Orders dated 1.3.1993 and 5.3.1993. By this Order, an ad interim direction was also issued to the contemnor to stop the use of the said building for commercial purposes (guest house or hotel). The MCD was required to clarify the position as to whether or not in law, it was permissible for the contemnor to commence the use of the premises and if not, what action it had taken in the matter.

In response to the aforesaid notice, the contemnor filed on 5.9.1994 an affidavit by way of reply. In paragraph 1 of the said affidavit. It was stated that he submitted his "sincerest and unconditional apology to this Hon'ble Court". Thereafter, facts were stated, inter Ala, relating to the sanctioning of building plans for additions and alterations by the MCD and to the grant of completion certificate on payment of Rs. 7,94,71/- as compounding fee. It was also stated that permission for running of a guest house was required under the provisions of Delhi Police Act and the Regulations framed thereunder whereby the Police Commissioner had granted a temporary licence which was valid up to 8.10.1994. While admitting that the contemnor had started running the guest house, it was stated that he had made a large investment for putting up the guest house and that he was suffering huge losses every day. It was also stated, while apparently referring to the permission granted by the Police Department, that "the undertaking given on behalf of the deponent by the counsel was only with regard to obtain a licence for running the guest house from the appropriate authority. This has been duly done". It was also

mentioned in this affidavit that there were five other guest houses which were running in the said colony, namely in Sunder Nagar and that all of them had been granted licenses under the Delhi Police Act.

Along with the affidavit in reply, the contemnor also annexed a copy of the order of the Deputy Commissioner of Police giving a temporary licence to the contemnor. In this order, it was specifically stated that temporary licence was being granted subject to conditions and restrictions laid down in the "Regulations for keeping places of public entertainment in the Union Territory of Delhi" and it was also subject to the conditions which were attached to the licence. The conditions No. 22 and 24 which are relevant, are as follows:

"22: This licence would not absolve the licence of his responsibilities for compliance of provisions under any other Act/Regulations, for the time being in force, framed by any other local body.

24: The licence shall have to furnish all the requisite documents including a valid MCD/licence indicating the number of rooms and beds by the due date."

Affidavit has also been filed by the Additional Deputy Commissioner, Central Zone (MCD) in which it has been stated that while applying for building plans the contemnor had not conveyed that the premises shall be used for commercial purposes like running a guest house. When it was found that the construction had not been made in according to the building plans, the deviations were regularised only after payment of compounding fee and removal of those portions of construction which could not be compounded. While admitting that completion certificate was given, the MCD, however, stated that the contemnor "occupied and started using the said premises for commercial purposes (Guest House) without any valid licence issued by Municipal Corporation of Delhi and accordingly criminal proceedings were initiated against the respondent NO. 1". It was thus categorically stated on behalf of the MCD that the contemnor could not carry on the business of guest house without a proper licence.

On 6.10.1994, when this petition came up for hearing, this Court was informed that the guest house had been completely closed down w.e.f. 21.7.1994. This Court also took note of the fact that the counsel for the contemnor had stated that he would like to file an affidavit expressing unconditional apology. While] the case to 21.10.1994, notice was issued to the D.C.P. (Licensing) to explain the circumstances under which the order dated 19.4.1994 was passed by the D.C.P. granting a temporary licence to the contemnor. Affidavit of the D.C.P. who had granted the licence was directed to be filed.

On 20.10.1994, affidavit was filed by Ms. Vimla Mehra, Deputy Commissioner of Police (Licensing). Inter Ala, stating that licence was granted to the contemnor purely on temporary basis subject to certain conditions such as the licence complying with the Municipal bye-laws and any other rules/regulations under any law that may be in force in this regard. It was also stated that the deponent had acted in accordance with law and the licence had been issued according to regulations relating to "keeping places of public entertainment in the Union Territory of Delhi". It was also stated that the temporary licence was given only after the petitioner herein had been heard.

The contemnor filed another affidavit dated 17.10.1994 tendering his apology in which he had stated that he had not

intentionally flouted the orders of this Court and that he submitted his sincerest and unconditional apology for disobedience of orders of this Court dated 1.3.1993 and 5.3.1993. In the said affidavit, he made further averments purporting to explain the circumstances under which he made his earlier affidavit. While stating that an application had been made by the contemnor to the MCD for a licence, it was stated that he did not understand this Court's orders to mean that application to MCD had to be made before starting the guest house. It was stated by the contemnor that he had spent an amount of Rs. 2 crores on the additions and alterations made to the said premises. The guest house was not operated and had been closed down and it was further stated that "I realised that my interpretation of the order was wrong and that I can not open the said premises till I get the MCD licence. I never intended to by pass the statement made by my counsel or the orders of this Court. I acted on my interpretation, for which I sincerely and unconditionally tender my apology..... However, I realised that 'I' cannot use the same till such time as I obtain the M.C.D. licence".

On the next date of hearing i.e. 21.10.1994 while taking the aforesaid affidavit filed by MS. Vimla Mehra, D.C.P. on record, this Court observed that the said affidavit was far from satisfactory and prima facie it revealed non-compliance with the Court's orders. Notice was accordingly, directed to be issued to the said D.C.P. to show cause why action for contempt of court should not be taken against her.

In response to the aforesaid notice, the then Commissioner of Police M.B. Kaushal filed an affidavit before the Court stating that his Department had followed the procedure for granting temporary licence in anticipation of production of NOC/clearance from M.C.D. This was done under Regulations 19 and 40(A) of the Regulations, a practice which was evolved on the basis whereof one hotel 'Priya' was given temporary licence on 1.12.1992. He further stated in this affidavit that after the present case, on the basis of the legal advice received from the Additional Solicitor General of India, directions had been issued by order dated 3.12.1994 to discontinue the practice of granting temporary licence in anticipation of NOC/clearance from the local authority. A copy of the order dated 3.12.1994 was also placed on the record. The Commissioner of Police in the said affidavit finally stated that:

"I deeply regret that the practice of issuing temporary licence based on mistake of law has prevailed in my department and upon this state of affairs having come to my notice I have taken the remedial action. I and the entire Police Force under me have the highest regard for the orders of this Hon'ble Court. An unintended mistake in carrying out these orders is deeply regretted for which I sincerely apologise for and on behalf of my subordinates."

Vimla Mehra, D.C.P. (Licensing) had also filed an affidavit on 5.12.1994 expressing her regret and tendering her unqualified and unconditional apology to this Court.

We will first take up the notice of contempt which was issued to the D.C.P. (Licensing). From the affidavit which was filed by her as well as the affidavit of the then Commissioner of Police, it appears that there was a practice

prevailing whereby the police authorities were issuing temporary licences to such guest houses. The fact that this practice was wrong has been admitted by the Commissioner of Police who now appears to have been correctly advised that it is not proper for the police to issue such temporary licences without the competent local authority having first issued NOC/licence. It does appear that it was in view of the practice which was then prevalent that Vimla Mehra, DCP (Licensing) issued the licence dated 19.10.1994 to the contemnor. As we have already noticed in the affidavit filed by her, she tendered her unconditional apology and this has again been tendered on her behalf in Court by the Additional Solicitor General of India. Under the circumstances we deem it fit and proper to accept her apology and further proceedings against her are dropped.

On behalf of Jagdish Narain Khanna, the contemnor, Mr. Ashok Desai, the learned Senior Counsel contended that his client who was present in the Court, tenders his unconditional apology once again. Mr. Desai, however, sought to explain the circumstances which had led to the commissioning of the guest house by the contemnor in an effort to show that the said contemnor had mis-interpreted this Court's order, which was to the effect that he could not open the said premises till he got the MCD licence. It was further submitted by him that the Court should take a lenient view inasmuch as the contemnor had undergone a coronary bypass surgery in January, 1995 and furthermore, the guest house had already been closed.

We are not convinced that this is a fit case where the apology, which is being tendered by the respondent-contemnor, should be accepted and the proceedings dropped.

From the facts which have been narrated hereinabove, there is no manner of doubt that the contemnor has paid scant respect to the orders of this Court. It is now not in dispute that there has been a violation of the orders dated 1.3.1993 and 5.3.1993 of this Court and in the affidavit tendering the apology, it was accepted, and in our opinion rightly, that the contemnor could not have started running the guest house without having first obtained a valid licence from the MCD. It is difficult to accept that the aforesaid implication of this Court's order was either not understood or was mis-interpreted by the contemnor.

The order dated 1.3.1993 was clear and unambiguous. This Court had disposed of the Special Leave Petition by taking note of the fact that the contemnor's counsel in the High Court had made a statement that the premises in question will not be out to use for any other purpose except residential or even for running a guest house, and that he would do so only after getting permission from the appropriate authority. It is true that an application for running the guest house was pending before the Police Commissioner but it must have been known to the contemnor that application for permission will have to be moved before the MCD because vide Notification dated 10.1.1964, the byelaws relating to the Delhi Municipal Corporation Regulation of Hotels, Lodging Houses and similar places were published in Delhi Gazette according to which guest houses could be permitted to receive guests on payment in the residential areas only after the issuance of no-objection certificate from various authorities including the MCD. Having secured a temporary licence from the DCP, who in law did not have any authority to issue such licence, the contemnor started running his guest house, even though, in the said licence granted by the DCP, it was stipulated that he was not absolved of the responsibility of complying with

the provisions of other Acts/Regulations framed by local body regarding obtaining of a licence. The contemnor was aware of the requirement of a valid licence from MCD, but he chose to ignore it.

Furthermore, show cause notice on filing of the present contempt petition was issued by this Court on 11.2.1994 and despite the receipt of the same, no action was taken by the contemnor and, in fact. In his first affidavit dated 16.4.1994, he had sought to justify the opening of the guest house by stating that he had obtained a licence issued by the DCP (Licensing). In fact, his contention squarely was that he had not flouted the orders dated 1.3.1993 and 5.3.1993 of this Court. The contemnor conveniently, in the said affidavit, made no mention with regard to the requirement of a licence from the Corporation under the relevant provisions of MCD Act. It is only after this Court on 15.7.1994 had issued show cause notice as to why he should not be punished for contempt that the guest house was closed down on 21.7.1994.

Under the circumstances when the contemnor had been trying to over-reach the Court and has acted contrary to the orders dated 1.3.1993 and 5.3.1993 and continued to run his guest house for a period of nearly six months before he voluntarily closed it after the receipt of the notice for contempt, we do not think that his apology is sincere. We, therefore, do not accept the apology tendered by him and hold him guilty of committing the contempt of this Court by violating the orders dated 3.1.1993 and 5.3.1993.

Coming to the question of sentence, this is a case in which the orders of this Court have been deliberately flouted. The contemnor had shown no respect or regard for the judicial orders which had been passed against him. Normally, the Court would take a very strict view of the matter and impose appropriate punishment. Having regard to the fact, however, that the contemnor had undergone a bypass surgery in January, 1995 and that he is still subjected to regular medical examination at the Escorts Heart Institute and Research Center, ends of justice will be met by levying a fine of Rs. 10,000/- (Rupees Ten Thousand only) and sentencing him to remain in court room till the rising of the Court. The present contempt petitions are disposed of in the above terms.