

CASE NO.:
Appeal (civil) 535 of 2001

PETITIONER:
SURESH CHANDRA PODDAR

RESPONDENT:
DHANI RAM AND ORS.

DATE OF JUDGMENT: 06/12/2001

BENCH:
K.T, THOMAS & S.N. PHUKAN

JUDGMENT:
JUDGMENT

2001 Supp(5) SCR 498

The following Order of the Court was delivered :

This is an instance of how a Tribunal vested with the powers to punish for Contempt of Court became over sensitive in using such powers. Time and again this Court has cautioned as to when and in what circumstances Contempt of Court jurisdiction is to be exercised. Such a power is not intended to be exercised as a matter of course. Courts should not feel unduly touchy when they are told that the orders have not been implemented forthwith. If the court is told that the direction or the order of the Court has been complied with subsequently, albeit after receipt of notice of contempt, we except the courts to show judicial grace and magnanimity in dealing with the action for con-tempt.

The Principal Bench of the Central Administrative Tribunal, New Delhi, has How convicted the Director of Education, Government of NCT of Delhi under Section 17 of the Administrative Tribunals Act, 1985 read with Section 12 of the Contempt of Courts Act, 1971 and sentenced him to a fine of Rs, 2000 as per the impugned order. The Bench held that the appellant is guilty of contempt, not because he did not implement the order passed by the Tribunal but because there was delay in implementing the order.

The order of the Tribunal which is said to have been belatedly complied with was passed on 3rd November, 1999, the operative portion of which reads thus :

"For the foregoing reasons, the present O.A. succeeds. The seniority list published by respondents I to 3 on 21st November, 1995 in so far as the same shows respondents 4 and 5 senior to applicants is set aside. Respondents 1 to 3 are now directed to publish a fresh seniority list in the light of the observations contained in the present judgment and grant the applicants their due seniority over that of respondents 4 and 5 and grant them further consequent! reliefs they may be entitled to under rules. There shall, however, in the facts and circumstances of this case be no order as to costs."

What is discernible from the said operative portion is that the Tribunal did not fix up a time limit within which the said direction has to be complied with. The contempt action was taken against the appellant on 24th August, 2000. Appellant submitted in the reply before the Tribunal that the order of the Tribunal was being challenged before the High Court of Delhi under Article 226 of the Constitution of India and a Division Bench of the High Court had admitted the writ petition and issued nonce to the opposite parties on 24th October, 2000. Despite the pendency of the said writ petition, appellant in-formed the Tribunal that the direction of the Tribunal was complied with on 27th October, 2000 itself.

There is no dispute that the appellant has complied with the order of the Tribunal on 27th October, 2000. There is no dispute that appellants had challenged the said order before the High Court, Ever since the order of the Tribunal was passed, speedy steps have been taken by the Department. Consultations were in progress between the Department and the Secretary (Law and Judicial) and on their instructions the letter was addressed to the Government's counsel and on his advise, further steps were taken and ultimately the Department moved the High Court under Article 226 of the Constitution of India. All these things have been stated by the appellant in full details before the Tribunal. In spite of all those submissions and in spite of the Tribunal being told that even during the pendency of the writ petition before the High Court, they implemented the order so as to avert any possible action against them for contempt, the Tribunal has chosen to convict the appellant and sentenced him to a fine of Rs, 2000.

We may also point out that the appellant, when called upon by the Tribunal to appear in person, tendered an apology even after showing all the steps taken for challenging the order of the Tribunal dated 3rd November, 1999. the Tribunal simply turned down the apology of the appellant for the following reasonings :\007

"The Tribunal's orders are definitely subject to scrutiny of the High Court under Article 226 of the Constitution, But the orders of the Tribunal are passed for compliance and not to be thrown aside to gather dust. They have to be respected with all expedition. Question the order, if you take a decision to do so promptly and should be filed at the latest within three months and if one does not succeed there, one has to abide by the order and comply with the same, at the latest by six months. Any delay thereafter would have to be treated as wilful violation. If the orders are not respected it would destroy the confidence of the people in the courts and if such an object was achieved it would be a great public disaster."

The Tribunal quoted the following observation of this Court in Principal Rajni Parekh Arts, K .B. Commerce and B.C.J. Science College, Khambhat and Anr. v. Mahendra Ambalal Shah, [1986] 2 SGC 560 :-

"If any court is to accept an apology of a contemner tendered at a late stage, it would encourage litigants to flout the orders of courts with impunity".

The background in which the said observation was made had been overlooked and applied it in a different situation

Section 12 of the Contempt of Courts Act, 1971 has indicated a caution that while dealing with the powers of contempt, the court should be generous in discharging the contemner if he tenders an apology to the satisfaction of the Court; In the present case the apology tendered was found to be not genuine by the Tribunal. We are dismayed, if not distressed, that despite delineating on all the steps adopted by the appellant for challenging the order of the Tribunal before the High Court and despite the fact that the appellant had implemented the order even though there was no time schedule to do so, the Tribunal has chosen to depict the apology tendered by the appellant as one without contrition.

Section 13 of the Contempt of Courts Act says that notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence "unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice" (emphasis supplied).

Even if appellant had not implemented the order and if the appellant had brought to the notice of the Tribunal that the order of the Tribunal is under challenge before the High Court under Article 226 of the Constitution of India (the course which has been judicially recognised by a seven Judge Bench of this Court in L. Chandra Kumar v. Union of India and Ors., [1997]

3 SCC 261 the Tribunal should have been slow to proceed against the party in a contempt action. Of course it can be said that no stay was granted by the Court when the appellant moved the Division Bench of the High Court under Article 226 of the Constitution. Not granting the stay by itself is not enough to speed up proceedings against a person in contempt because the very order is yet to become final. At any rate the Tribunal should have directed the appellant to implement the direction, in the absence of the stay order from the High Court, within a time frame fixed by it. We would have appreciated if the Tribunal had done so and then considered whether action should be taken in the event of the non implementation of the order after the expiry of the said time frame.

We have chosen to say so much in this case to give a message to the Tribunal that contempt jurisdiction is not to be exercised casually but only sparingly and in very deserving cases. It is appropriate to bear in mind the adage "It is good to have the power of giant, but not good to use it always."

For the aforesaid reasons we set aside the impugned order of the Tribunal and exonerate the appellant totally from the actions for contempt of court. The fine, if any remitted, shall be refunded to him.