

A

GOSTHO BEHARI DAS

v.

DIPAK KUMAR SANYAL & ORS.

(Civil Appeal No.4725 of 2023)

B

JULY 28, 2023

[B. R. GAVAI AND SANJAY KAROL, JJ.]

C *Contempt of Courts Act, 1971 : ss. 2, 12 – Contempt of Court – Punishment for – Appellant unauthorisedly constructed a structure which deviated the plans sanctioned by the Municipal Corporation – Demolition order passed, however, the same was not carried out by the appellant – Contempt petition against appellant – Order passed suspending the appellant’s licence to practice medicine – On appeal, held: Punishment of suspension of licence could not be given under the 1971 Act – Power to punish a registered medical practitioner for misconduct rest exclusively with the body envisaged under the 1956 Act and the 2019 Act – Punishment handed down to the contemnor is entirely foreign to the Act, thus, unsustainable – Court in awarding such punishment showed complete disregard for the statutory text of the 1971 Act – Judgment and order by the court’s below set aside – Licence of the appellant to practice medicine revived – Medical Council Act, 1956 – National Medical Commission Act, 2019.*

E

Allowing the appeal, the Court

F **HELD: 1.1 A perusal of the provisions of the National Medical Commission Act, 2019 as well as the now repealed, Medical Council Act, 1956 shows that the power to punish a registered medical practitioner for “misconduct” rest exclusively with the body envisaged under this Act. The Act itself provides for an exhaustive, complete mechanism to revoke the licence of a registered practitioner for professional misconduct. The same may be done after holding an inquiry and complying with the principles of *audi alterum partem*. [Para 8][1178-C]**

G

1.2 The punishment handed down to the contemnor is entirely foreign to the Contempt of Courts Act 1971 and, thus,

H

unsustainable. The Court, in awarding such punishment showed complete disregard for the statutory text of the 1971 Act, which is abundantly clear in respect of the punishment that can be imposed thereunder. [Para 20][1182-D] A

1.3 A medical practitioner guilty of contempt of Court may also be so for professional misconduct but the same would depend on the gravity/nature of the contemptuous conduct of the person in question. They are, however, offences separate and distinct from each other. The former is regulated by the 1971 Act and the latter is under the jurisdiction of the National Medical Commission Act, 2019. [Para 21][1182-E] B C

1.4 The Division Bench in the impugned judgment did not consider or discuss this issue nor was any final decision taken by the Single Judge in the subject contempt proceedings. The judgment of the court's below are set aside. The licence of the appellant, to practice medicine is revived. [Paras 22 and 25][1182-F; 1183-B] D

1.5 The appellant submitted before the High Court that the requisite demolition has been carried out with the exception of approximately 250 mm in the rear portion of the concerned building as, removal of the same would have rendered the building, legally constructed, to be unsafe. In respect of the unauthorized construction that remains, an undertaking be furnished before the concerned High Court that remedial construction to safeguard the soundness of the existing building and the consequent demolishing of the unauthorized construction would be completed within a reasonable time. [Para 24][1182-G-H; 1183-A] E F

Parashuram Detaram Shamdasani v. Emperor 1945 AC 264; *C.S. Karnan, In re* (2017) 7 SCC 1; *Baradakanta Mishra v. Registrar Orissa High Court* (1974) 1 SCC 374 : [1974] 2 SCR 282; *W.B. Administrative Tribunal v. SK. Monobbor Hossain* (2012) 11 SCC 761; *Prashant Bhushan, In re* (2021) 3 SCC 160 : [2020] 8 SCR 510; *Bar Council of Maharashtra v. M.V Dabholkar* (1975) 2 SCC 702 : [1976] 1 SCR 306 – referred to. G

H

A	<u>Case Law Reference</u>	
	(2017) 7 SCC 1	referred to Para 14
	[1974] 2 SCR 282	referred to Para 15
	(2012) 11 SCC 761	referred to Para 16
B	[2020] 8 SCR 510	referred to Para 16
	[1976] 1 SCR 306	referred to Para 17

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4725 of 2023.

C From the Judgment and Order dated 29.07.2022 of the High Court of Calcutta, Circuit Bench at Jalpaiguri in MAT No. 67 of 2022.

Yashwant Singh, Ms. Deeksha Tripathi, Harshit Goel, Ashish Kumar Pandey, Ms. Kheyali Singh, Advs. for the Appellant.

Ms. Anwesha Saha, Deborshi Dhar, Salim Ansari, Advs. for the Respondents.

The Judgment of the Court was delivered by

SANJAY KAROL, J.

Leave granted.

E The question this Court must consider, is: –

“Whether the suspension of the Petitioner’s license to practice medicine is alien to the nature and types of punishment and penalties specified under the Contempt of Courts Act, 1971?”

THE FACTS

F 1. The present appeal stands filed against the judgement rendered by the High Court of Calcutta, (Circuit Bench at Jalpaiguri) in MAT No. 67 of 2022, by which it upheld various orders passed by learned single Judge dated 5th, 11th, 12th and 14th July, 2022 in contempt proceedings bearing number WPCRC9 of 2022, whereby vide the order dated 11th July, 2022 the Petitioner/Appellant’s licence to practice medicine, was suspended.

H 2. Further with the order dated 14th July 2022, while extending the period of suspension till 19th August 2022, the petitioner was asked to show cause as to why such suspension be not affected for a period of two years.

3. A perusal of the record reveals that the Appellant had unauthorizedly constructed a structure which was in deviation with the plans sanctioned by the Siliguri Municipal Corporation.¹ Respondent No.1 (private party) filed numerous complaints against such unauthorised construction, but to no avail. Discontented by the non-intervention of the Commissioner of SMC², and the SMC³ - appellant herein filed a writ petition before the High Court. Vide order dated 22nd December 2016 passed in W.P No. 11464 (W) of 2016, Respondent No. 3 was directed to have the construction so made, inspected and submit a report before the court. On the next date of hearing, that is 19th December 2017 it was directed that the representation that stood already filed before the Municipal Corporation dated 2nd August 2007, was to be considered and a reasoned order was to be passed thereon.

4. Pursuant to the above direction, an order dated 13th June 2018, directing the Respondents No. 3 to demolish the unauthorised construction, was passed. This order however, came to be quashed by the High Court observing the Commissioner SMC, not to be the competent authority and instead, only the Board of Councillors of the SMC, who could pass orders for demolition. Subsequently, vide a fresh order dated 25th June 2019 the Board of Councillors of SMC while observing the construction to be unauthorised, ordered its demolition. In furtherance thereto, Respondent No. 2 passed an order dated 3rd August 2019 directing the demolition to be carried out.

5. Aggrieved by this order, the petitioner, (Appellant herein) filed a Writ Petition bearing No. 349/2019 before the High Court of Calcutta (circuit bench at Jalpaiguri.) The same was disposed of with the observation that an appeal from the order dated 25th June 2019, lay before the Principal Secretary, Urban Development and Municipal Affairs, Government of West Bengal. The said authority passed orders on 8th January 2020 and 28th July 2020 directing the SMC to take necessary steps to aid the petitioner in undertaking self- demolition of the unauthorised construction and, in the event of his failure to do so, directed that the SMC itself undertakes such steps to do so.

6. Respondent No. 1 then filed a contempt petition in WPA No. 349 of 2019. It is hereunder that the license to practice medicine, of the Appellant herein, was suspended.

¹ Hereafter, "SMC"

² Hereafter, Respondents No. 2

³ Hereafter, Respondents No. 3

A **LAW ON THE ISSUE AT HAND**

7. The grant, regulation and suspension of the licence to practice medicine is governed by the National Medical Commission Act, 2019. It facilitates the maintenance of a medical register for India and enforces high ethical standards in regards of all aspects of medical services. A

B statutory body namely the National Medical Commission looks after the above-mentioned activities.

8. A perusal of the provisions of this Act as well as the now repealed, Medical Council Act, 1956 shows that the power to punish a registered medical practitioner for “misconduct” rest exclusively with the body envisaged under this Act. The Act itself provides for an exhaustive, complete mechanism to revoke the licence of a registered practitioner for professional misconduct. The same may be done after holding an inquiry and complying with the principles of *audi alterum partem*.

D 9. The instant dispute involves the question as to whether such a punishment could be handed down under the Contempt of Courts Act, 1971⁴.

10. Contempt of Court is defined in the Act under Section 2(a) :

E “2(a). “Contempt of Court” means civil contempt or criminal contempt;”

11. Civil contempt, with which the present case concerns itself, is defined under Section 2(b) which reads as follows:

F “2(b). “civil contempt” means wilful disobedience o any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;”

12. The punishment for contempt of Court is prescribed under Section 12 of the Contempt Act, which reads as under:

G “12. Punishment for contempt of court.- (1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

H ⁴ Hereinafter referred to as the ‘Contempt Act’

Provided that the accused may be discharged or the punishment awarded may be remitted or on apology being made to the satisfaction of the court. A

Explanation.- An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it *bona fide*. B

(2) Notwithstanding anything contained in any other law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

xx xx xx” C

13. It may be noted that right from the Privy Council onwards, judicious and sparing use of the power of contempt has been an accepted proposition. In **Parashuram Detaram Shamdasani v. Emperor**⁵ the Council had observed-

“... this summary power of punishing for contempt of court should be used sparingly and only in serious cases. It is a power which a Court must of necessity possess; its usefulness depends on the wisdom and restraint with which it is exercised...” D

14. A Bench of seven judges in **C.S. Karnan, In re**⁶, had, referring to various decisions of other jurisdictions, observed E

“63. The authority to punish for contempt of court has always been exercised by the judiciary from times immemorial [In one of the earliest legal pronouncements dealing with the subject, Justice Wilmot in R. v. Almon, 1765 Wilmot’s Notes 243 : 97 ER 94 explained the philosophy behind the power to punish for contempt of court. The passage now a classic exposition runs as follows : (ER p. 100)”... and whenever men’s allegiance to the laws is so fundamentally shaken, it is the most fatal and most dangerous obstruction of justice, and, in my opinion, calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the Judges, as private individuals, but because they are the channels by which the King’s justice is conveyed to the people.”] . The justification for the existence of that is not to afford protection to individual Judges [“14. ... the F G

⁵ 1945 AC 264

⁶ (2017) 7 SCC 1

- A law of contempt is not made for the protection of Judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate.” [Douglas, J., *Craig v. Harney*, 1947 SCC OnLine US SC 79, para 14 : 91 L Ed 1546 : 331 US 367 at p. 376 (1947)] but to inspire confidence in the sanctity and efficacy of the judiciary [“... The object of the discipline enforced by the Court in case of contempt of court is not to vindicate the dignity of the court or the person of the Judge, but to prevent undue interference with the administration of justice.” [Bowen, L.J. — *Helmore v. Smith* (2), (1886) 35 Ch D 449 at p. 455 (CA)]], though they do not and should not flow from the power to punish for contempt. They should rest on more surer foundations. The foundations are—the trust and confidence of the people that the judiciary is fearless and impartial.”

15. Krishna Iyer J. speaking for himself and Bhagwati J. in **Baradakanta Mishra v. Registrar Orissa High Court**⁷ (Constitution Bench), observed-

- “65. ... we would like to underscore the need to draw the lines clear enough to create confidence in the people that this ancient and inherent power, intended to preserve the faith of the public in public justice, will not be so used as to provoke public hostility as overtook the Star Chamber. A vague and wandering jurisdiction with uncertain frontiers, a sensitive and suspect power to punish vested in the prosecutor, a law which makes it a crime to publish regardless of truth and public good and permits a process of *brevi manu* conviction, may unwittingly trench upon civil liberties and so the special jurisdiction and jurisprudence bearing on contempt power must be delineated with deliberation and operated with serious circumspection by the higher judicial echelons. So it is that as the palladium of our freedoms, the Supreme Court and the High Courts, must vigilantly protect free speech even against judicial umbrage — a delicate but sacred duty whose discharge demands tolerance and detachment of a high order.”

16. In **W.B. Administrative Tribunal v. SK. Monobbor Hossain**⁸, (two-Judge Bench) has observed that the tenor of the dicta of this Court on the topic (contempt) is crystal clear. The Court has time

⁷ (1974) 1 SCC 374

H ⁸ (2012) 11 SCC 761

and again asserted that the contempt jurisdiction enjoyed by the Courts is only for the purpose of upholding the majority of the judicial system that exists. While exercising this power, the Courts must not be hypersensitive or swung by emotions but must act judiciously. The principle of sparing use stood reiterated in **Prashant Bhushan, In re**⁹ A

On the aspect of Punishment under a specified statute B

17. A Bench of seven judges in **Bar Council of Maharashtra v. M.V Dabholkar**¹⁰ had observed as follows, in respect of the role of Bar Councils and the powers of disciplinary action vested within them, as under-

“24. The scheme and the provisions of the Act indicate that the constitution of State Bar Councils and Bar Council of India is for one of the principal purposes to see that the standards of professional conduct and etiquette laid down by the Bar Council of India are observed and preserved. The Bar Councils therefore entertain cases of misconduct against advocates. The Bar Councils are to safeguard the rights, privilege and interests of advocates. The Bar Council is a body corporate. The Disciplinary Committees are constituted by the Bar Council. The Bar Council is not the same body as its Disciplinary Committee. One of the principal functions of the Bar Council in regard to standards of professional conduct and etiquette of advocates is to receive complaints against advocates and if the Bar Council has reason to believe that any advocate has been guilty of professional or other misconduct it shall refer the case for disposal to its Disciplinary Committee. A most significant feature is that no litigant and no member of the public can straightaway commence disciplinary proceedings against an advocate. It is the Bar Council of a State which initiates the disciplinary proceedings.” C
D
E
F

(emphasis supplied)

18. This Court in **Supreme Court Bar Association v. Union of India, (1998) 4 SCC 409** (five-Judge Bench) categorically held that – G

“39. Suspending the licence to practice of any professional like a lawyer, doctor, chartered accountant etc. when such a professional

⁹ (2021) 3 SCC 160

¹⁰ (1975) 2 SCC 702

B (emphasis supplied)

D 20. In view of the above, this Court has no hesitation in holding that the punishment handed down to the contemnor is entirely foreign to the Act and, therefore, unsustainable. The Court, in awarding such punishment showed complete disregard for the statutory text of the Contempt of Courts Act 1971, which is abundantly clear in respect of the punishment that can be imposed thereunder.

F 22. The Division Bench in the impugned judgment did not consider or discuss this issue nor was any final decision taken by the Single Judge in the subject contempt proceedings.

G 24. The appellant has submitted before the High Court that the requisite demolition has been carried out with the exception of approximately 250 mm in the rear portion of the concerned building as, removal of the same would have rendered the building, legally constructed, to be unsafe. In respect of the unauthorized construction that remains, we direct that an undertaking be furnished before the concerned High

H

Court that remedial construction to safeguard the soundness of the existing building and the consequent demolishing of the unauthorized construction shall be completed within a reasonable time. A

25. Consequently, the judgment of the Court's below, i.e., the Division Bench and the orders of the Single Judge, High Court of Calcutta, (Circuit Bench and Jalpaiguri) in MAT No.67 of 2022 and orders dated 11th, 12th and 14th of July 2022 are set aside. The licence of the appellant, to practice medicine is revived. B

26. The appeal is allowed accordingly. The pending application(s), if any, stands disposed of. No costs.

Nidhi Jain

Appeal allowed.