

Union Of India And Ors vs Subedar Devassy Pv on 10 January, 2006

Author: Arijit Pasayat

Bench: Arijit Pasayat, Tarun Chatterjee

CASE NO.:

Appeal (civil) 1066 of 2000

PETITIONER:

Union of India and Ors.

RESPONDENT:

Subedar Devassy PV

DATE OF JUDGMENT: 10/01/2006

BENCH:

Arijit Pasayat & Tarun Chatterjee

JUDGMENT:

JUDGMENT ARIJIT PASAYAT, J.

Challenge in this appeal is from an order passed by a learned single Judge of the Madhya Pradesh High Court in contempt proceedings. The respondent had filed a writ petition (W.P. No.4511/1996) which was disposed of with certain directions. Alleging that the directions were not complied with, a petition was filed for initiation of contempt proceedings. Response was filed by the appellants taking a positive stand that the directions have been complied with and whatever was to be legally done has been so done. After taking note of the stand taken by the present appellants who were respondents in the contempt proceeding, learned single Judge dropped the contempt proceeding by accepting the explanation of the respondents as reasonable. It was specifically noted that from the steps taken by the alleged contemnors, it cannot be said that the action of the respondents in the contempt proceedings, i.e. the present appellant, was, in any manner, contemptuous or disrespectful. Having said that, certain further directions were given. The directions given form the subject matter of challenge in this appeal. According to Mr. Vikas Singh, learned Addl. Solicitor General, after having held that there was no contempt involved, further directions given have no sanctity in law. The order, however, is supported by the learned counsel appearing for the respondent.

While dealing with an application for contempt, the court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a court to examine the correctness of the earlier decision which had not been assailed and to take a view different from what was taken in the earlier decision. A similar view was taken in *K.G. Derasari v. Union of India*, [2001] 10 SCC 496. The court exercising contempt

jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher court. The court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order. Though strong reliance was placed by learned counsel for the appellants on a three-Judge Bench decision in Niaz Mohd. v. State of Haryana, [1994] 6 SCC 332 we find that the same has no application to the facts of the present case. In that case the question arose about the impossibility to obey the order. If that was the stand of the appellants, the least it could have done was to assail correctness of the judgment before the higher court.

The above position was highlighted in Prithawi Nath Ram v. State of Jharkhand and Ors., [2004] 7 SCC 261.

On the question of impossibility to carry out the direction, the views expressed in T.R. Dhananjaya v. J. Vasudevan, [1995] 5 SCC 619 need to be noted. It was held that when the claim inter se had been adjudicated and had attained finality, it is not open to the respondent to go behind the orders and truncate the effect thereof by hovering over the rules to get around the result, to legitimise legal alibi to circumvent the order passed by a court.

In Mohd. Iqbal Khanday v. Abdul Majid Rather, [1994] 4 SCC 34, it was held that if a party is aggrieved by the order, he should take prompt steps to invoke appellate proceedings and cannot ignore the order and plead about the difficulties of implementation at the time contempt proceedings are initiated.

If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible.

We notice that pursuant to the direction given by the High Court, the exercise directed to be undertaken was in fact undertaken. The respondent was given promotion and in the meantime he has retired. That being so, it is not necessary to go into the correctness of the direction given, except clarifying the position in law.

The appeal is accordingly disposed of. No costs.