

Dr. U.N. Bora, Ex. Chief Executive ... vs Assam Roller Flour Mills Association on 26 October, 2021

Equivalent citations: AIRONLINE 2021 SC 938

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Bench: M.M. Sundresh, Sanjay Kishan Kaul

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1967 OF 2009

DR. U.N. BORA, EX. CHIEF EXECUTIVE
OFFICER & ORS.

APPELLANT(S)

VERSUS

ASSAM ROLLER FLOUR MILLS
ASSOCIATION & ANR.

RESPONDENT(S)

JUDGMENT

M.M. SUNDRESH, J.

1. The present appeal has been filed against the order of the Division Bench of the High Court finding the appellants guilty of willful disobedience of the order passed in Writ Petition (Civil) No. 5491 of 2001 etc. dated 12.09.2008 in respect to the levy made while upholding Section 21 of the Assam Agricultural Produce Market Act, 1972.

2. Pending the appeal, the first appellant died on 27.02.2017. Taking note of the aforesaid fact, the proceedings as against him were declared as abated by the order of this court dated 07.10.2021.

3. We have heard the arguments of the counsels at the Bar and perused the documents filed along with the written arguments.

FACTS:

4. While leapfrogging unnecessary facts, a brief sketch is furnished hereunder:

a) On 03.09.1974, the Assam Agricultural Produce Market Act, 1972 came into the statute book. Section 21 of the Act conferred power on the marketing committees or the Assam State Agricultural Marketing Board (hereinafter referred to as “the Board”) to levy cess on the agricultural produce bought or sold in the notified market area, at the prescribed rate. Explanation-I appended to the said provision brought in a deeming fiction. Rules were enacted in exercise of the power conferred under Section 49 of the Act.

b) Writ petitions were filed by the respondent no.1-Association among others before the High Court on the premise that its members purchased the agricultural produce outside the State and thus, no cess is leviable. Rules were struck down leading to the introduction of the Amendment Act, 2000, amending Section 21 of the Act while inserting Section 21A. A challenge made by the Board to the decision of the Full Bench dated 04.04.2001 before this Court resulted in the order dated 08.12.2005, inter alia holding that in view of the subsequent developments, there is no need to go into the issues.

c) Section 21A was inserted by the amending Act, 2006 facilitating the Board to levy and collect cess for the marketing committees in the notified market areas in addition to their existing power. This amendment was put into challenge in the batch of writ petitions before the Division Bench of the High Court. While upholding the constitutional validity vide judgment dated 12.09.2008, it has been held that the deeming fiction would apply only to such of those cases where a trader fails to establish that there is direct evidence of sale or purchase having been undertaken outside the notified market area. It was further held that disputed questions including that of refund cannot be gone into in a writ petition invoking Article 226 of the Constitution of India, and such disputes can be dealt with by the committee constituted.

d) Alleging that the orders passed by the Division Bench with respect to the direct evidence produced by the members of the respondent no.1 were not looked into and scrutinized on purpose while levying cess, a contempt petition was filed in Contempt Case (Civil) No.401 of 2008. Incidentally, the respondent no. 1 also filed a Special Leave Petition (Civil) No. 11317 of 2009 challenging the order of the Division Bench dated 12.09.2008, which was converted into Civil Appeal No. 9655 of 2013, wherein, leave was granted by this court vide order dated 25.10.2013.

e) In the aforesaid contempt petition, the Division Bench vide the impugned order dated 23.10.2009 took note of certain documents produced by two members of the respondent no.1, such as sale invoices, lorry challans, tax challans, insurance receipts etc. It went into the factual assertions made, notwithstanding the committee constituted by it earlier for the aforesaid purpose and accordingly, hauled all the appellants for committing willful disobedience.

f) Against the aforesaid order punishing the appellants for having committed a contumacious act, a Special Leave Petition (Civil) No.10538 of 2010 was filed by the Board and on grant of leave the same was registered as Civil Appeal No. 9656 of 2013. This Court has passed the following order on 30.03.2010 while issuing notice in the aforesaid appeal filed by the Board when the matter was pending as a special leave petition:

“Permission to file SLP is granted.

Issue notice on the application for condonation of delay as well as on the special leave petitions.

Assam State Agricultural Marketing Board is permitted to collect tax in accordance with the Judgment passed by the Division Bench of High Court dated 12.9.2008, uninfluenced by the order passed in the contempt proceedings dated 23.10.2009.

Post along with SLP(C) No. 11317 of 2009.”

g) The special leave petitions filed by the respondent no.1 challenging the original order of the Division Bench was taken up as Civil Appeal Nos. 9655 of 2013, 9657-9665 of 2013 and 9666 of 2013 and accordingly the order dated 29.09.2021 was passed, which is appositely referred hereunder:

“Learned Counsel for the Appellants state that the impugned Act has been repealed by an Ordinance issued on 13.07.2020 and subsequently Act has been brought in place.

In view of the aforesaid, the issue sought to be debated in the present appeals have become academic and thus it is not disputed that the appeals really do not survive for consideration.

Civil appeals are disposed of accordingly.

Pending applications also stand disposed of.”

h) After the order dated 12.09.2008 passed by the Division Bench upholding Section 21 of the Act, there were exchange of communications between the appellants and the respondents. While the respondent no.1 alleged violation of the order passed, the appellants contended that the action was only taken in tune with the mandate of the Board under Section 21 of the Act and the remedy, if any, to the members of the respondent no.1 would be before the Committee constituted in pursuance of the said decision.

5. Thus, much water has flown under the bridge after the order under challenge before us. The provision underwent further change having been repealed by an ordinance followed by an appropriate enactment. In light of the aforesaid factual scenario, we shall proceed with the case.

SUBMISSIONS OF THE APPELLANTS:

6. Learned counsel appearing for the appellants submitted that the second appellant was transferred on 23.07.2008 and the appellant no. 1 was in-charge only till 21.01.2009. The first appellant died on 27.02.2017. There is no willful and deliberate violation of the order involved. The High Court has erred in going into the facts in appreciating evidence. It exceeded its jurisdiction which it declined to exercise even while invoking Article 226 of the Constitution of India. It could have relegated the members of the respondent no.1 to go before the committee constituted. There is absolutely no material to implicate the appellants with the alleged action of their subordinates. The concept of vicarious liability is alien to a contempt jurisdiction. Unconditional apologies were also rendered before the High Court. The respondent no.1 is the one who simultaneously assailed the order dated 12.09.2008 passed by the Division Bench, before this Court, while approaching the High Court under its contempt jurisdiction. Even otherwise, in light of the subsequent developments, the appeal deserves to be allowed. On the aforesaid submissions, the appellants placed reliance upon various decisions of this Court in the case of:

Ashok Paper Kamgar Union vs. Godha and Ors., (2013) 11 SCC 1 Kapildeo Prasad Sah and Ors. vs. State of Bihar, (1999) 7 SCC 569 Dinesh Kumar Gupta vs. United India Insurance Company Ltd. and Ors., (2010) 12 SCC 770 Anil Ratan Sarkar and Ors. vs. Hirak Ghosh and Ors., (2002) 4 SCC India Airports Employees Union vs. Ranjan Chatterjee and Anr., (1999) 2 SCC 537 Director of Education, Uttaranchal vs. Ved Prakash Joshi and Ors., (2005) 6 SCC 98 Union of India and Ors. vs. Subedar Devassy PV, (2006) 1 SCC 613 Mrityunjay Das and Anr. vs. Sayed Hasibur Tahaman and Ors., (2001) 3 SCC 739 Bal Kishan Giri vs. State of Uttar Pradesh, (2014) 7 SCC 280

SUBMISSIONS OF THE RESPONDENTS:

7. Learned counsel appearing for the respondents submitted that the press release followed by the failure on the part of officials working under the appellants would clearly show the intention to circumvent the orders passed by the Court.

Materials were accordingly produced. It is a case of deliberate attempt to overcome the judgment of the Court, notwithstanding the adequate knowledge. As the High Court has considered the relevant materials, there is no need to interfere with the reasoned order passed.

DISCUSSION:

8. We are dealing with a civil contempt. The Contempt of Courts Act, 1971 explains a civil contempt to mean a willful disobedience of a decision of the Court.

Therefore, what is relevant is the “willful” disobedience. Knowledge acquires substantial importance qua a contempt order. Merely because a subordinate official acted in disregard of an order passed by the Court, a liability cannot be fastened on a higher official in the absence of knowledge. When two views are possible, the element of willfulness vanishes as it involves a mental element. It is a deliberate, conscious and intentional act. What is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature. Similarly, when a distinct mechanism is provided and that too, in the same judgment alleged to have been violated, a party has to exhaust the same before approaching the court in exercise of its jurisdiction under the Contempt of Courts Act, 1971. It is well open to the said party to contend that the benefit of the order passed has not been actually given, through separate proceedings while seeking appropriate relief but certainly not by way of a contempt proceeding. While dealing with a contempt petition, the Court is not expected to conduct a roving inquiry and go beyond the very judgment which was allegedly violated. The said principle has to be applied with more vigor when disputed questions of facts are involved and they were raised earlier but consciously not dealt with by creating a specific forum to decide the original proceedings.

9. We do not wish to reiterate the aforesaid settled principle of law except by quoting the reasoned decision of this Court in *Hukum Chand Deswal v. Satish Raj Deswal*, 2020 SCC Online SC 438 wherein the celebrated judgment in *Ram Kishan v. Tarun Bajaj*, (2014) 16 SCC 204, has been quoted. The following paragraphs would govern the aforesaid principle:

“18. At the outset, we must advert to the contours delineated by this court for initiating civil contempt action in *Ram Kishan vs. Tarun Bajaj & Ors.* In paragraphs 11, 12 and 15 of the reported decision, this Court noted thus:

“11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society 5 (2014) 16 SCC 204 18 will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. (Vide *V.G. Nigam v. Kedar Nath Gupta*, (1992) 4 SCC 697, *Chhotu Ram v. Urvashi Gulati*, (2001) 7 SCC 530, *Anil Ratan Sarkar v. Hirak Ghosh*, (2002) 4 SCC 21, *Bank of Baroda v. Sadruddin Hasan Daya*, (2004) 1 SCC 360, *Sahdeo v. State of U.P.*, (2010) 3 SCC 705 and *National Fertilizers Ltd. v. Tuncay Alankus*, (2013) 9 SCC 600.

12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. The word “wilful” introduces a mental element and hence, requires looking into the mind of

a person/contemnor by gauging his actions, which is an indication of one's state of mind. "Wilful" means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct." (Vide *S. Sundaram Pillai v. V.R. Attabiraman*, (1985) 1 SCC 591, *Rakapalli Raja Ram Gopala Rao v.*

Naragani Govinda Sehararao, (1989) 4 SCC 255, *Niaz Mohammad v. State of Haryana*, (1994) 6 SCC 332, *Chordia Automobiles v. S. Moosa*, (2000) 3 SCC 282, *Ashok Paper Kamgar Union v. Dharam Godha*, (2003) 11 SCC 1, *State of Orissa v. Mohd. Illiyas*, (2006) 1 SCC 275 and *Uniworth Textiles Ltd. v. CCE*, (2013) 9 SCC 753.

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15. It is well settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. [See *Sushila Raje Holkar v. Anil Kak*, (2008) 14 SCC 392 and *Three Cheers Entertainment (P) Ltd. v. CESC Ltd.*, (2008) 16 SCC 592." Similarly, in *R.N. Dey & Ors. vs. Bhagyabati Pramanik & Ors.*, this Court expounded in paragraph 7 as follows:

"7. We may reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law. Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemner and the court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the first appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the 6 (2000) 4 SCC 400 20 said award wherein the State can or

may contend that the award is a nullity. In such a situation, as there was no wilful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified.” xxx xxx xxx

22. Pertinently, the special leave petitions were filed by the respondent against the order dated 28.1.2019, which as aforesaid, did not deal with the question regarding the monthly rent payable by the respondent but explicitly left the parties to pursue the same before the executing Court. The plaintiff/petitioner having acquiesced of that observation of the High Court, cannot be allowed to contend to the contrary. This Court in Jhareswar Prasad Paul & Anr. vs. Tarak Nath Ganguly & Ors., in paragraph 11, opined thus:

“11. ... The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, 7 (2002) 5 SCC 352 23 be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes levelled against the courts exercising contempt of court jurisdiction “that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute” in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts.” xxx xxx xxx

23. Thus understood, we find force in the explanation offered by the respondent that as per its bona fide understanding, there was no outstanding dues payable to the petitioner. Moreover, as observed by the High Court, these aspects could be answered by the executing Court if the parties pursue their claim(s) before it in that regard. Suffice it to observe that it is not a case of intentional violation or wilful disobedience of the order passed by this Court to initiate contempt action against the respondent. Instead, we hold that it would be open to the parties to pursue their claim(s) in execution proceedings or any other proceedings, as may be permissible in law in

respect of the issue(s) under consideration. In such proceedings, all aspects can be considered by the concerned forum/Court on merits in accordance with law. We say no more.

24. Reverting to the allegation about damage caused to the suit property by the respondent at the time of vacating the same, in our opinion, the respondent has made out a formidable case that it did not cause any damage, much less permanent damage to the structure in the suit property.

Whereas, the petitioner was relying on photographs concerning the debris on the site left behind at the time of vacating the suit property. The debris cannot cause damage and it is certainly not a case of defacement of the suit property. That position is reinforced from the fact that the water park in the suit premises was started and became fully functional within 2-3 months. Viewed thus, it is rightly urged that it can be safely assumed that no damage was caused by the respondent to the structure in question. Minor repairs required to be carried out by the petitioner for making the water park functional cannot be painted as intentional disobedience of the order of this Court. In any case, that being a complex question of fact, need not be adjudicated in the contempt proceedings. We leave it open to the petitioner to pursue even that claim in execution proceedings or such other proceedings as may be permissible in law. We may not be understood to have expressed any final opinion in respect of condition of the suit premises, whilst handing over possession to the petitioner. We hold that even this issue under consideration does not warrant initiation of contempt action against the respondent.”

10. On facts, we find that the High Court on the earlier occasion while dealing with the challenge made to Section 21 of the Act, made a categorical assertion that it did not wish to go into the disputed questions of fact. However, in the order under challenge it was done. A finding has been given on the documents produced by the respondent no.1 which could at best be pieces of evidence to be appreciated by the committee constituted already. It is the specific case of the appellants that they did not violate the directives of the court. There is no material to either establish their knowledge on the action of their subordinates, or that they acted in collusion with each other. Vicarious liability as a principle cannot be applied to a case of contempt. The question as to whether the drivers of two members of the respondent no.1 showed the order passed by the court and the documents produced are true and genuine being in the realm of adjudication, ought not to have been taken up by the High Court while exercising contempt jurisdiction. We may note that it is the respondent no.1 who not being satisfied with the order passed by the High Court, filed the special leave petition. Even in the communications sent apart from the Press Note, it is nowhere stated that the order passed by the court could be violated. We find that the subsequent developments also shall enure to the benefit of the appellants. In cases where cess was levied, individual members of the respondent no.1 could have made their challenge before the committee. In our considered view, the entire exercise of the High Court is not warranted and the aggrieved members of the respondent no.1 could have been well advised to seek the alternative remedy open to them including redressal through the committee.

11. In light of the aforesaid discussion, we accordingly set aside the order passed by the High Court on 23.10.2009 in Contempt Case No.401 of 2008. Consequently, the appeal filed by the appellant nos. 2 to 4 stands allowed. No costs.

.....J. (SANJAY KISHAN KAUL)J. (M.M. SUNDRESH) New
Delhi, October 26, 2021