

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

O.A./T.A. /CCA No. 191 of 2008 in O.A. No. 349/05

Date of decision 18.05.2009

Smt Riche Gupta Applicant(s)

Sri V.S. Sisodia Counsel for the applicant(s)

Versus.

Union of India through its Secretary ²⁰⁰⁸ Sri Vijay Singh Respondents(S)

Sri S.C. Mishra & Sri R.C. Shukla counsel for the respondent(s)

CORAM

Hon'ble Mr. Justice A.K. Jogi V.C./Member(J)

Hon'ble Mr. S.N. Shukla Member (A)

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not? Yes -
3. Whether their Lordship wish to see the fair copy of the judgment? No
4. Whether to be circulated to all Benches? Yes


SIGNATURE

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 18th day of May 2009

Coram

Hon'ble Mr. Justice A.K. Yog, Member (J)

Hon'ble Mr. S.N. Shukla, Member (A)

Contempt Application No. 191 of 2008

IN

Original Application No. 349 of 2005

Smt. Richa Gupta, C/o Shri Y.C. Gupta, R/o House No. 115/13, Raja Babu Road, Bulandshahar UP. Presently working as House wife.

. . . Applicant

By Adv : Sri V.S. Sisodia

V E R S U S

1. Union of India through its Secretary, Shri Vijay Singh, Ministry of Defence, New Delhi.
2. Brig. R.C. Chaddha, Commander Head Quarter, Meerut, Sub Area Meerut Cantt (UP).
3. Sri Chandra Kiran, Manager of CSD Canteen, Distrcit Bulandshahar UP.

. . . Respondents

By Adv: Shri S.C. Mishra and Sri R.C. Shukla

O R D E R

(Justice A.K. Yog, Member-J)

Heard learned counsel for the parties; perused the pleading and the documents on record.

2. Ms. Richa Gupta has filed this Contempt Application - contending that opposite parties are guilty of flouting Tribunal order dated 03.06.2008 in



OA No. 349/05 wilfully and intentionally; for convenience, relevant extract of said order dated 03.06.2008 (whose breach is complained in this Contempt Petition) is - reproduced:-

"..... Normally we would have remanded the case back for fresh decision but in this case undisputed and un remanded facts and circumstances are mentioned. We are of the opinion that action taken against the applicant was promoted due to ulterior motive and impugned action is vindictive in nature. Since the applicant is not at fault and also coupled with the circumstances that she has not been paid back wages (as directed by this Tribunal in the earlier OA), we quash the impugned order and direct the applicant to be reinstated forthwith with further direction that respondents shall not interfere with the working of the applicant and she shall be paid her arrears of salary/wages as may be due till date along with 9% Per annum simple interest within 30 days of receipt of certified copy of this order.

7. The OA stands allowed subject to payment of cost quantifying Rs. 5000/-, which is also to be paid within aforesaid period."

3. Sri R.C. Shukla, learned counsel for the respondents, informs that one J.K. Sharma, (S/o late P.N. Sharma), Accountant, in the office of Station Canteen, Bulandshahar is present and identifies him as such. J.K. Sharma, in ^{turn} ~~turn~~ stated that order of the Tribunal in question (dated 03.06.2008 in **OA No. 349/05 - Smt. Richa Gupta Vs. Union of India**) has been complied with in all respects - including payment of certain amount in 'lump-sum' by cheque to the Applicant and, therefore, contempt proceedings be dropped.

4. On the other hand, learned counsel for the applicant submits that A/C statement containing relevant - details and particulars of the calculations (on the basis of which - figure of cheque amount has

Dec

been arrived) has not been provided to the applicant to enable her to verify correctness of the 'quantum of payment'.

5. J.K. Sharma, Accountant (referred to above), realising the mistake readily offered orally - 'undertaking' to provide requisite A/C Statement with desired details to the applicant within a period of four weeks from today.

6. We cannot, however, ignore brazen - Volte-face 'conduct' of the Opposite Parties in defying order of the Tribunal on their self gained excuse and finding on the basis of their self-suiting 'interpretation', restoring on "citations" - (ignoring later - binding precedents of Apex Court) does not justify breach of 'Mandate' contained in Tribunal/Court order. All concerned have to bear in mind, that 'Dignity' of Court and 'sanctity' of its order - are two essential ingredients to preserve Rule of law. To ignore Tribunal order dated 03.06.2008 - by stretching litigation (without stay/interim order in one's favour) does attract provision of law of Contempt.

7. Paras 4, 9, 16 and 17 of the Affidavit (sworn on 21.03.2009 by Opposite Party No. 3 (Chandra Kiran - Manager, Station, CSD Canteen Bulandshahar) - filed

alongwith MA No. 1191/09 to 1193/09 in the Registry on 25.03.2009) read:-

- "4. That the impugned judgment dated 0306-2008, passed by this Hon'ble Tribunal in the aforesaid original application was challenged by means of Civil Misc. Writ Petition No. 44373/08 before filing of the present contempt petition, which writ petition had been dismissed by the Hon'ble High Court of Allahabad vide judgment dated 28-08-2008.
 5. That having aggrieved by the judgment dated 28-08-2008 passed by the Hon'ble High Court Allahabad in Civil Misc. Writ Petition No. 44373/08, respondent department has proceeded to file a Special Leave Petition No. CC 1574/09 before Hon'ble Supreme Court alongwith delay condonation application as well as Stay Application.
 6. That the said SLP was taken up by the Hon'ble Supreme Court on 09-02-2009, for hearing on the Delay Condonation application in filing the SLP, which was allowed by the Hon'ble Supreme Court vide order dated 09-02-2009.
 7. That in view of the facts and circumstances stated above, it would be in the interest of justice to keep the proceedings of the present contempt petition in abeyance, till at least the Stay Application filed in the said SLP No. CC 1574/09 gets disposed/decided by the Hon'ble Supreme Court.
 8. That the SLP No. CC 1574/09 filed by the Department is still pending for disposal and the application for stay of the judgment passed by Hon'ble Tribunal as well Hon'ble High Court, Allahabad are also pending and no order has been passed.
 9. That since the SLP No. CC 1574/09 alongwith stay application for stay is still pending, therefore, there is bonafide and genuine grounds for the respondents for the hearing/outcome of the Stay Application filed in the aforesaid SLP, against the judgment passed by this Hon'ble Tribunal as well as Hon'ble High Court, Allahabad, since the same has been assailed by filing the SLP No. CC 1574/09.
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16. That the respondents have full hope in the SLP pending in Hon'ble Supreme Court on this issue, besides it cannot be said that the judgment passed by this Hon'ble Tribunal has been wilfully and deliberately violated.
 17. That in this present case the respondents have bonafide reasons for not following the order as they have full hope in the SLP filed in this issue."

8. Similar averments have been made by Opposite Party No. 2/Brig R.C. Chadha - in his Affidavit sworn on 15.05.2009 (on record).

Ans

9. 'Conduct' of the Opposite Parties (after Tribunal order dated 03.06.2008) is to be judged and appreciated in the 'background' - of the 'findings' of the Tribunal in the order dated 03.06.2008 (in OA No. 349/05) coupled with the litigation before High Court (ending with Division Bench Judgment and order dated 28.08.2008 in Civil Misc. Writ Petition No. 44373/08 - Annexure 4 to CCP) as well as filing of time bared SLP (Civil) No. 4294 of 2009. Supreme Court condoned delay in filing SLP on 09.02.2009 but dismissed SLP on 30.03.2009. One cannot miss, that the Opposite Parties were determined not to comply with Tribunal order (in question) unless - left with no option. Opposite Parties violated Tribunal order dated 03.06.2008- on the pretext of challenging it before Higher Court/Apex Court - but not appreciating that such challenge (without stay/interim order) and also time barred petitions - do not amount to 'pendency of case' as such.

10. Giving reference of Judgments without citing them is of no consequence. There is no explanation for violating Tribunal order between High Court Judgment till delay in filing SLP was condoned by Apex Court on 09.02.2009 (Annexure A-1 to Affidavit in MA No. 1193/09). Prayer in the said M.A. dated 25.03.2009 reads:-

"It is, therefore, Most Respectfully prayed that this Hon'ble court may graciously be pleased to keep the



- "10. That in view of the above, the present contempt petition is liable to be dismissed. Similar occasion came before Hon'ble High Court Lucknow Bench Lucknow while dealing with a Criminal Misc. case No. 893 (C) of 2001 in RE O.S. Singh V/s M.C. Dwivedi. The Hon'ble High Court Lucknow has held vide its order dated 3.5.2001 that if any order passed by a Court has been assailed in appeal and no orders have been passed on application for stay, contempt proceedings could not have been initiated. The Hon'ble High Court was pleased to dismissed the Contempt Petition vide judgment dated 3.5.2001.
11. That the Hon'ble Supreme Court has also decided the Criminal Appeal No. 841 of 2001 in RE Ram Avadh V/s Lalji Yadav and others. The Apex Court has been pleased to take the same view as has been taken by the Hon'ble High Court Lucknow.
12. That while relying upon the ratio of the aforesaid cases, in a contempt case of Dr. Ravi Shanker and others, the Hon'ble Tribunal Lucknow came to conclusion that due to pendency of Writ Petition alongwith application for stay contempt proceedings regarding non compliance of the order cannot go ahead successfully. It is open to the applicant to approach the shelter of this Tribunal only after rejection of the application for stay or dismissal of the Writ Petition filed by the administration which ever is earlier.
13. That the case of Modern Food Industries (India) Ltd. and another V/s Sachchida Nand Das and others reported in 1995 SCC (Suopl.) 464 is also fully applicable in this case.
14. That in one of the case reported in 2002 (1) SBR Page 19 (Suresh Chandra Poddar Vs. Dhani Ram and others), the Hon'ble Supreme Court has held that "if the order/judgment of the Tribunal is under challenge before the High Court Under Article 226 of the Constitution of India and the stay application is pending therein (the course which has been duly recognized by the Seven Judges Bench of this Court in case of L. Chandra Kumar Vs. Union of India 1997 (3) SCC page 261). The Tribunal should have been slow to proceed against the parties in a contempt action.
15. That the above scenario would show that the present Contempt Petition is liable to be dismissed without entering into merit or hearing of the Contempt Petition. It should be deferred till rejection of the application for stay or dismissal of the SLP, whichever is earlier or at least the proceedings in the present Contempt Petition be kept in abeyance till at least the Stay Application filed in the said SLP gets disposed/decided by the Hon'ble Supreme Court."

14. Copies of the judgments (referred in as above quoted paras) have not been filed/produced for perusal (though alleged in para 10, 11 and 13 in affidavit).



No citation is placed before in to support their contention in their Affidavit.

15. We expect legal advisor/counsel not to encourage parties to violate or ignore orders of Court on ipsi-dixi. Reference may be made to the Judgment in the case of *Dr. H. Phunindre Singh and others Vs. K.K. Sethi and another* 1998 (8) Supreme Court Cases 640 (para 2) which reads:-

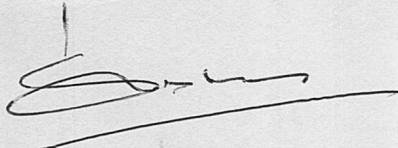
"Heard learned counsel for the parties. In our view, the facts of the case, particularly when the order passed by the learned Single Judge of the High Court was not stayed by the Division Bench, the contempt petition should have been disposed of on merits instead of adjourning the same till disposal of the appeal, so that question of deliberate violation of the subsisting order of the Court is considered and enforceability of the Court's order is not permitted to be diluted. In the facts of the case, we feel that the contempt petition should be disposed of within a period of three months from the date of the communication of this order and we order accordingly. It is further directed that before disposal of the contempt petition, the pending appeal should not be taken up for hearing. The appeal is accordingly disposed of."

16. We hold - there is 'wilful-breach' of order of Tribunal dated 03.06.2008 in OA No. 349/05 - Richa Gupta Vs. Union of India and others and 'Contempt', may be for short spell/s, is committed by the Opposite Parties.

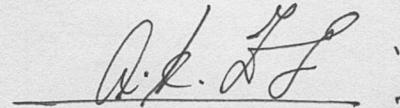
17. Since Order of Tribunal in question is said to be complied in all respect, 'Notices' issued to the Opposite Parties in the Contempt petition are discharged - subject to the condition that the Opposite Parties shall comply with the undertaking given today by J.K. Sharma (noted above); i.e. to furnish A/c Statement and also pay Rs. 10,000/- as



compensation/costs to the applicant within 04 weeks from today. We also provide that in case Smt. Richa Gupta find that order dated 03.06.2008 in OA No. 349/05 passed by this Tribunal has not been complied with, it shall be open to her to seek recalling of this order.



Member (A)



Member (J)

/pc/