

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

C.P.17/91 in OA/80/88

Date of Decision: 28, 09, 2000

Shri Mohammad Nizamuddin : Petitioner (s)

Mr M.R.Anand Advocate for the petitioner(s)

Versus

Union of India & Ors. : Respondent(s)

Mr M.S.Rao Advocate for the Respondent(s)

CORAM

The Hon'ble Mr.P.C.Kannan : Member(J)

The Hon'ble G.C.Srivastava : Member (A)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

DR

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Mohammad Nizamuddin,
Then Hon. Branch Secretary,
A.I.T.E.E. Union, Class III,
Kalol Branch, Kalol (N.G.)

: Applicants

Advocate: Mr. M.R. Anand

Versus

1. Union of India
(through Shri S.G. Pitroda
or his successor in office, Secretary,
Telecom Department, New Delhi.)
2. Mr. Mahendra Kumar Kulkarni,
Or his successor in Office,
Chief General Manager,
Telecom, Gujarat Circle,
Ahmedabad-380 009.

: Respondents.

Advocate: Mr. M.S. Rao.

JUDGMENT
C.P. 17/91
in
OA/80/88

Date: 28-9-2000

Per: Hon'ble Mr. P.C. Kannan

: Member (J)

We have heard learned counsel for both sides.

2. The Contempt Petition in this case was filed some time in May, 1991. It was lying under office objections and vide orders dated 3.3.92 and 17.3.92 the applicants were given some time to remove the office objections. Thereafter, the file appears to have been mislaid and lost.

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However, this case was placed before the Hon'ble Vice Chairman in September, 99 and thereafter the applicants were given further time for removal of office objections ~~and~~ which was accordingly removed in December, 99. Thereafter notice was issued to the respondents. The respondents have filed their reply and the matter was heard on 21.2.2000.

3. In the main O.A., this Tribunal directed that " In view of our decision in the said O.A., we direct the applicant-association to file a representation to the 2nd respondent giving all the relevant information as indicated in our judgment in OA 131/1988 within a period of two months from the date of receipt of a copy of this order. On receipt of such a representation, the 2nd respondent is directed to pass a reasoned order as per the directions contained in our judgment in OA 131/1988 within a period of four months from the date of receipt of such a representation." Accordingly, the applicants submitted their representations (Annexure -B) dated 11.9.2000. to the Respondents. The respondents after considering the representations, communicated their decision vide letter dated 2.4.91 (Annexure-D). Being aggrieved with the decision of the Respondents, the applicants had filed the present C.P.

4. The main contention of the applicants in the present C.P. is that the earlier OA was allowed with a clear direction to the respondents to consider the case of the applicants as to whether the respondents should order payment of project allowance to the applicants without going into the assumption that they were disqualified on the ground that they received HRA/CCA.

DRW

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Accordingly, the applicants were permitted to submit their representation with a direction to the respondents to consider the same and pass a reasoned order within four months from the date of receipt of such a representation. The applicants in the C.P. contend that in the speaking order of the respondents no reference has been ^{made} ~~main~~ to the specific direction of this Tribunal but goes on to discuss the distinction between Construction Project and Drilling Project etc. which were not raised in the O.A. The applicants therefore submit that the impugned order at Annexure-D would amount to contempt of this Tribunal under the Contempt of Courts Act. The applicants also submit that the respondents have also committed delay in the disposal of their representation.

5 The respondents in their reply have stated that the C.P. is liable to be rejected mainly on the ground that the action was ⁱⁿ ~~not~~ initiated within one year. Under Section 20 of the Contempt of Courts Act, 1971, a period of one year is prescribed for actions for contempt. On merits, the respondents have submitted that the matter was examined in consultation with the Ministry of Finance and after a review it was decided to withdraw the project allowance from 1.4.1975. In the facts and circumstances, the respondents have rejected the representation of the applicants for the grant of project allowance.

6. We have heard the learned counsel for both sides. Mr. Raval submitted that as the contempt petition was filed within one year, there was no question of applying limitation. He submitted that the respondents have not considered the directions of this Tribunal and the representations of the applicants have not been examined

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in the light of the O.M. dated 17.1.1975 which provides for the grant of project allowance with a ceiling of 50 % of pay.

7. Mr.Rao, counsel for the respondents submitted that Section 20 of the Contempt of Court Act is a bar to the present C.P. In this connection, he relies upon the judgment of the Hon'ble Gujarat High Court in the case of Dineshbhai vs. Kripalu Co-op.Housing Society, Nagarvel, Ahmedabad and Ors.(AIR 1980 Gujarat 194) .

8. We have carefully considered the submissions of both counsel and examined the pleadings. The respondents have taken the preliminary objection with regard to the question of limitation under Section 20 of the Contempt of Courts Act, 1971 reads as follows:-

" No Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed."

9. The judgment of the Hon'ble High Court of Guajrat in Dineshbhai vs. Kripalu Co-op.Housing Society referred to supra considered this question and made the following observations which reads as follows:-

The conclusion which was recorded therefore ,is that no contempt proceedings can be initiated by a court after the expiry of a period of one year from the date of the alleged commission of contempt. Action under

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Contempt of Courts Act, 1971 can be taken if the court has applied its mind and initiated proceedings by passing some order within a period of one year from the date of alleged act of Contempt. If an application for taking action under the Contempt of Courts Act, 1971 is filed within a period of one year from the date of the alleged commission of contempt, but the Court has passed no order thereon before the expiry of one year from the said date, such application automatically fails and the jurisdiction of the Court is barred because the Court did not apply its mind to the complaint or information within a period of one year. It is this application of mind by the Court which amounts to initiation of proceedings within the meaning of Section 20 of the Contempt of Courts Act, 1971."

In this case, the judgment is dated 19.7.90. The speaking order was passed on 2.4.91. The present C.P. was filed on or about 9.5.91. The notice was issued to the Respondent on 21.12.99 after about 8 years from the date of issue of the speaking order. In the particular facts of this case and in the light of the above observations of the Gujarat High Court, we hold that the C.P. is liable to be rejected on the ground of limitation under Section 20 of the Contempt of Courts Act, 1971.

10. On merits of the C.P., we find that the respondents have considered the representations of the applicants and rejected the same with a speaking order. The direction in the main O.A. was to consider the representations of the applicants and to pass a reasoned order within a certain prescribed period. In our view, the respondents have substantially complied with the said direction by passing the impugned speaking order (Annexure ^{Ex}-D). The applicants could have challenged the said speaking order in separate proceedings. They have not done so.



11. Rule 13 (b) of the Central Administrative Tribunal (Contempt of Courts) Rules, 1992 provides that if the respondents does not admit that he has committed contempt, the Tribunal may drop the proceedings and discharge the respondent, if it is satisfied that there is no prima facie case, or that it is not expedient to proceed.

12. In our considered view, the respondents have substantially complied with the direction of this Tribunal, and in the facts and circumstances, there is no prima facie case against the respondents and therefore it is not expedient to proceed against them.

13. In the light of the above, the C.P. fails and accordingly, dismissed and the alleged contemners are discharged. No Costs. Re

Concurred
(G.C.Srivastava)
Member (A)

Dhananjay
(P.C.Kannan)
Member (J)

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