

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. MA 314 of 2000  
(OA 789 of 1996)

Present : Hon'ble Mr.D.V.R.S.G.Dattatreayulu, Judicial Member

Hon'ble Mr.B.P.Singh, Administrative Member

PRABIR SENGUPTA & ORS.

VS

SUDHENDU KR. GANGULY & ORS.

For the applicants : Ms.U.Sanyal, counsel  
Mr.S.K.Dutta, counsel

For the respondents: Mr.A.K.Banerjee, counsel

Heard on : 12.7.2000

Order on : 12.7.2000

O R D E R

D.V.R.S.G.Dattatreayulu, J.M.

This Miscellaneous Application is filed praying to dispense with the personal appearance of the respondent No.1 on 14.7.2000. It is not necessary to go into the details of the facts which would appear from the orders passed thereon. It is seen from the orders passed on 5.5.2000 that at the preliminary stage of hearing of the Contempt Application, the Tribunal has considered the various points raised by both the parties and directed the Registry to serve a notice to the contemners. The relevant portion of the said order may be quoted below :

"Under such circumstances, we are convinced that there is a *prima facie* case to show that the alleged contemner respondents have wilfully violated or disobeyed the directions of the Tribunal as quoted above for which a rule of contempt is required to be issued against each of them and show cause as to why they should not be punished of such contempt. Mr.Das has been anxious enough to submit that if a rule of contempt is issued, the personal attendance of the respondents, especially respondent No.1 may be dispensed with. At this stage, when they are required to appear and show cause we do not find any scope to consider such prayer. Accordingly we direct the Registry to issue a rule of contempt forthwith against all the three respondents to appear in person through an advocate or advocates of their choice and to show cause in writing as to why they shall not be proceeded against according to law and punished for contempt within one week before the next date which we fix on 14.7.2000.

2. Now the ld. counsel for the applicant submits that the personal appearance of the contemner respondent No.1, the present applicant in the MA, should be dispensed with because he is not directly responsible for non-implementation of the order. It is also stated that it is respondent No.2 who was to implement the order passed by the Tribunal. It is further stated that the notice served upon the respondent No.1, shows that he can appear through the advocate and therefore he prays that his advocate may be permitted to appear on his behalf on 14.7.2000. In paragraph 11 of the application, the applicant states that due to re-allocation of duties, he is posted as Secretary, Commerce, Govt. of India and this is one of the grounds on which he prays for his personal appearance to be dispensed with.

3. We have heard both the counsel. Ld. counsel for the applicant in the Contempt Application, Mr. Banerjee, states that the facts of the case will go to show that there is a clear contempt of the order passed by the Tribunal and it is also submitted that from the order dated 5.5.2000, it will be found that the request made by Mr. Das, with regard to the dispensation of the respondent No.1 to appear in person was not accepted by the Tribunal in its earlier orders. So this cannot be considered at this stage.

4. Mr. Ld. brother and myself have given full consideration to the order dated 5.5.2000. It is to be seen that the actual directions given to the Registry, is  
i) to issue the rule of contempt against all the three respondents  
ii) to appear in person or through an advocate or advocates on their choice and to show cause in writing as to why they shall not be proceeded with and the date is fixed on 14.7.2000.

No doubt the first reading of the order goes to show that the request on behalf of the respondent No.1, made by the ld. counsel Mr. Das appears to have been negated but in the next phase of the

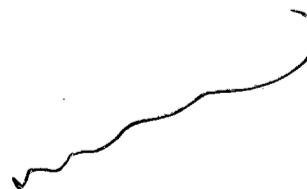
order, the Registry is directed to issue a notice to all the three respondents directing the contemners to appear in person or through an advocate or advocates. The expression, "through an advocate" means and includes that it gives liberty to a person to give vaka-latnama to a legal practitioner permitting him to appear on his behalf. We find that the Contempt Application is fixed for hearing on 14.7.2000. It may be on account of various factors which may be beyond the control of the alleged contemners he being unable to present himself in the Court on the date so fixed. However the Court takes a serious view of the non-implementation of the order of the Court and the Court wants to hear the alleged contemners concerned in person. Be that as it may, if the Tribunal wants, the Tribunal can also permit by its order that the respondent No.1 or any of the respondents can appear through an advocate on the next date i.e. on 14.7.2000 to explain the position to the satisfaction of the Court.

5. Therefore without going into the controversy, the personal appearance of respondent No.1 on 14.7.2000 only is dispensed with and the respondent No.1 is allowed to appear through his advocate Mr. S.K.Dutta. It is also made clear that the moment the Tribunal directs, his personal appearance, he is bound to appear in the Court. We also note that even the notice issued by the Registry permits the contemner to appear in person or through their advocate, there is no breach of any direction that are given in the said orders. With the above observation, the MA is allowed. The personal appearance of respondent No.1 is dispensed with for only 14.7.2000.

2nd member

MEMBER (A)

in

  
MEMBER (C)