

*** THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 11.10.2012

+ CONT.CAS(C) 40/2010

FOOD CORPORATION OF INDIA
WORKERS UNION & ANR

..... PETITIONERS

versus

SURENDRA RAM & ORS

..... RESPONDENTS

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner : Mr. Rajiv Talwar and Mr. Nipu Patiri,
Advocates

For the Respondent : Mr. Sanjiv Bahl, Mr. Eklavya Bahl and Mr.
Chandan Kumar, Advocates for R-2 to 6

**CORAM :-
HON'BLE MR. JUSTICE RAJIV SHAKDHER**

RAJIV SHAKDHER, J (ORAL)

1. Vide judgment dated 19.01.2012, respondent nos.2 to 6 have been found guilty of contempt. The matter is placed today before me for considering whether or not sentence, if any, ought to be accorded to respondent nos.2 to 6 in the facts of this case.

2. It may be recapitulated that the contempt proceedings were instituted by the petitioner herein, on account of deliberate violation and willful disobedience of the judgment of this court dated 31.03.2006 passed in CS (OS) 2349/2000 as also the judgment dated 15.12.2006 passed in RFA(OS) 33/2006.

3. My predecessor has discussed the aspect of violation of the direction contained in aforementioned judgment/order of this court in great detail. It may only be noticed that respondent nos.2 to 6 in the captioned petition were at the relevant time members of the petitioner no.1 Union. Civil suits were filed in this court being: CS (OS) 681/1999 and 2349/2000. It is in these suits, that a common order dated 31.03.2006 was passed by a single Judge of this court.

3.1 The upshot of the said judgments was that respondent nos.2 and 6, who were defendants in the suit, were restrained from projecting themselves as General Secretary/office bearers of petitioner no.1 Union. Since elections were also ordered from time to time, various Court Commissioners were appointed. Though the Court Commissioner, in the first instance, was appointed in the suit itself, this was continued in the appeal, to which I have already made a reference i.e., RFA(OS) 33/2006.

3.2 What is noticed in the judgment of this court dated 19.01.2012 passed in the captioned petition is that, respondent nos.1 to 6 alongwith certain other members of the Executive Committee, in the teeth of the orders of this court, convened a meeting for dissolving the petitioner no.1 Union itself. This resolution was passed on 15.06.2008. It is noticed by this court vide its judgment dated 19.01.2012 that, the said resolution, dissolving the petitioner no.1 Union itself records the fact that, this court, had appointed Court Commissioners to conduct elections to the petitioner no.1 Union.

3.3 The court then went on to notice that, instead of approaching this court for variation of the order, respondent nos.1 to 6 alongwith others went about passing the aforementioned resolution dated 15.06.2008. One of the defences which was raised before this court, was that, at the meeting at which the aforementioned resolution dated 15.06.2008 was

passed, there were nearly around 43,000 persons present who claimed to be members of the petitioner no.1 Union.

3.4 Defence was also taken qua the aspect of limitation. This court by the said order, i.e., order dated 19.01.2012 rejected the defence taken by the respondent nos.1 to 6, and came to the conclusion that, respondent nos.2 to 6 were guilty of contempt.

3.5 It may also be noted that this court before coming to this conclusion specifically recorded the fact that, respondent nos.2 to 6, had not tendered an apology in the replies filed to the contempt petition, and had in fact, tried to justify their conduct of what was then an allegation of breach of the order/judgment of this court, at that point in time.

3.6 After considering the above, this court held respondent nos.2 to 6 guilty of contempt. It may also be relevant to mention that against the order dated 19.01.2012, a contempt appeal bearing no.7/2012, was preferred by respondent nos.2 to 6. The said contempt appeal vide order dated 23.03.2012, was dismissed as withdrawn.

3.7 Thereupon the respondents have filed affidavits dated 23.04.2012, seeking to tender unqualified and unconditional apology. It may be noted that while tendering an unqualified and unconditional apology, there is also a reference to the fact that each of the said respondents i.e., respondent nos.2 to 6 acted the way they did, under the guidance of one, Mr. N.Das, who, at some point in time, was the President of the petitioner no.1 Union. In other words, their participation in the process, whereby the resolution dated 15.06.2008 was passed to dissolve petitioner no.1 Union; was bonafide.

4. In the background of the aforesaid brief facts, learned counsel for respondent nos.2 to 6 made the following submissions :-

- (i). an unqualified and unconditional apology has been tendered by each of the respondent nos. 2 to 6;
- (ii). the resolution of 15.06.2008 had no effect, in as much as, elections were held in the ensuing years, i.e., in 2009 and 2011; consequent to which office bearers were elected; and
- (iii). lastly, respondents acted with sincerity though erroneously in as much as they were guided by Sh. N. Das in the resolution of 15.06.2008.

4.1 Apart from this, Mr. Bahl also relied upon the provisions of sections 12 and 13 of the Contempt of Courts Act, 1971 (in short, the Act). It was Mr. Bahl's submission based on Section 12 of the Act that if an apology is tendered then, the accused is ordinarily discharged or the punishment, if any, awarded to him is remitted.

4.2 Based on the provisions of Section 13 of the Act, Mr. Bahl submitted that a court will not impose a sentence unless it is satisfied that the contempt is of the nature that substantially interferes or tends to substantially interfere with the course of justice.

5. On the other hand, Mr. Talwar submitted that the manner in which the respondents have proceeded in the case would show that there was every attempt made by the respondents in the initial stage to defend their stand. Mr. Talwar submitted that even in the affidavit filed on 25.04.2012, by the respondents herein, a caveat has been entered to the so called unqualified and unconditional apology. The respondents have attempted to demonstrate that they were not at fault and that the action which they took of participating in the meeting which resulted in the resolution of 15.06.2008, was taken under the guidance of Mr. N. Das. Mr. Talwar submitted that such an apology cannot be considered as one which is genuine. It is his submission that the apology has now been

tendered only to escape from the rigours of law. In support of this submission, Mr. Talwar relied upon the following judgments of the Supreme Court of India :-

- (i). ***M.C. Mehta Vs. Union of India and Others, (2003) 5 SCC 376.***
- (ii). ***Patel Rajnikant Dhulabhai and Anr. Vs. Patel Chandrakant Dhulabhai and Others, (2008) 14 SCC 561.***

6. I have heard learned counsels for the parties and perused the records of the case.

7. Having considered the record, it be noted that in the reply filed to the contempt petition, in the first instance, respondent nos. 2 to 6 took up every possible defence to contend that there was no breach of the orders of this court.

7.1 To cite an example one may only quote from the affidavit filed by respondent no.3. The averments made in the said affidavit, in particular those made in paragraph 4, suggest that it was the stand of the respondent no.3 that in terms of clause 22 of the Constitution of petitioner no.1 Union, the contemnors were entitled to dissolve the said Union, based on the decision of the majority members present at the meeting.

7.2 A further averment was made that since this dissolution was in conformity with the constitution of the petitioner no.1 Union, there was no violation of the judgment dated 31.03.2006 and 15.12.2006, passed by this court. The relevant averments are quoted in their entirety, for the sake of convenience :-

“..4. I further state that the Petitioner Union has failed to disclose and file the Constitution of the Union wherein in terms of the clause 22 the Union can be dissolved by a decision of majority members present at a meeting. The dissolution of the Union by the Deponent and the other members is in conformity with the Constitution of the Union and there is no violation of

the orders dated 31/3/2006 and 15/12/2006 passed by this Hon'ble Court..."

7.3 In paragraphs 6 and 13 of the same very affidavit, it is also averred that Mr. N.Das and other members of petitioner no.1 Union were elected as office bearers of petitioner no.1 Union in an earlier election held on 11.04.1998. In paragraph 13, respondent no.3 goes on to say that even though Mr. N.Das retired from the service of Food Corporation of India (FCI) and therefore, would have automatically lost the membership of the petitioner no.1 Union and had logically ceased to be its president; he continued in that position, as the workers and the office bearers refused to accept this position. A particular reference in this regard is made to Mr. G.S. Jena, the then Joint Secretary of petitioner no.1 Union. For the sake of convenience, the said paragraphs are quoted hereinafter :-

"..6. That Mr. N.Das and other members of the Union were duly elected as the office bearers of the Union in the earlier elections held on 11.04.1998.."

"..13. That Mr. N.Das on retiring from the services of the FCI was informed that he would deem to have automatically lost his membership of the Union and ceased to be its President. However, the workers and the office bearers refused to accept that position. In particular, Mr. G.S. Jena (then Joint Secretary of the Petitioner Union) insisted that he continues to be a member and the President of the Union..."

8. It is not disputed before me that the averments made in the affidavit of other respondents are on identical lines. A perusal of the affidavits filed by the respondents would show that they have put up a full blown defence qua the allegation of disobedience of the directions of this court. There was no remorse or regret expressed. It is because of this, that the court, after considering the said aspect came to the conclusion vide order dated 19.01.2102, that the respondents were guilty of contempt. In the

affidavits now filed, by which, respondent nos.2 to 6 have tendered their unconditional and unqualified apology, the same caveat has been entered; at least partially. It has been averred that respondent nos.2 to 6 acted under the guidance of Mr. N.Das; though with purported sincerity.

9. There is no doubt in my mind that the apology tendered by respondent nos. 2 to 6 at this juncture, is an attempt clearly to escape the rigour of law. Respondent Nos.2 to 6 showed no remorse even when order dated 19.1.2012 was passed. For a Court to ascertain whether a contemnor is contrite, his/her conduct leading upto the date when he/she is found guilty, will have to be taken stock of. As indicated above, clearly respondent Nos. 2 to 6's conduct in no way shows that they were contrite or remorseful.

10. Mr. Bahl's other argument that the resolution of 15.06.2008, did not have any effect since, elections were held, is, an argument, which has no relevance, in so far as the conduct of respondent nos.2 to 6 is concerned or qua the imposition of sentence. The fact that, the said respondents acted in a manner which was in complete and willful disobedience of the judgment and order of this court got concluded, once the resolution was passed. What followed thereafter cannot help the cause of respondent nos.2 to 6.

11. Lastly, Mr. Bahl's argument that once an apology is tendered, then the court should remit the punishment or discharge the accused, cannot be accepted as an absolute proposition since, what the court has to examine is: whether the person tendering the apology is contrite and remorseful. The fact that this apology was neither tendered in the first instance nor at time during which, the captioned proceedings were pending in this court, shows that the apology, which is being tendered now, comes only after an

order of conviction has been passed to avoid the inevitable. Arguments based on Section 13 of the Act, thus cannot be accepted.

12. In view of the above, I am of the opinion that there was a clear, willful and a direct disobedience of the judgment of this court, whereby the respondents were restrained from projecting themselves as the office bearers of petitioner no.1 Union. As a matter of fact in sum and substance this is what my predecessor held vide judgment dated 19.01.2012. I tend to agree with the submissions of Mr. Talwar, based on the aforementioned judgments of the Supreme Court that, apology cannot be used as a “*weapon of defence to purge the guilt of the contemnor*”. I can do no better than to extract the observations of the Supreme Court in the case of *M.C. Mehta (supra)* :-

“..22. The conduct of the contemnor, as recited above, is beyond condonable limit. It is now well-settled principle that an apology is not a weapon of defence to purge the guilt of the contemnor. At the same time, the apology must be sought at the earliest opportunity. The apology tendered by the respondent is at a belated stage to escape punishment of the Court. Furthermore, as already noticed, in paragraph 6 of the affidavit he has stated that he has not committed any contempt and defended his action. In paragraph 9 of the affidavit, as quoted above, though it is stated that he tenders unconditional apology, it is not really so, as in paragraph 6 of the affidavit he has defended his action. Therefore, the apology so tendered by the contemnor is not a product of remorse or contrition..”

13. Similar observations were made by the Supreme Court in the case of *Patel Rajnikant Dhulabhai (supra)*. For the sake of convenience, the observations made in paragraphs 76 and 77 of the said judgment are extracted hereinafter :-

“..76. In *T.N. Godavarman Thirumulpad (102) v. Ashok Khot*, a three Judge Bench of this Court had an occasion to consider the

question in the light of an “apology” as a weapon defence by the contemnor with a prayer to drop the proceedings. The Court took note of the following observations of this Court in *L.D. Jaikwal vs State of UP. (Ashok Khot case, SCC p.17 para 32)*.

“..32. ...We are sorry to say we cannot subscribe to the 'slap-say sorry- and forget' school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slapper taken the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to 'say' sorry-it is another to 'feel' sorry.

The Court, therefore, rejected the prayer and stated;

“...31. Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward.

Similar view was taken in other cases also by this Court.

77. We are also satisfied that the so-called apology is not an act of penitence, contrition or regret. It has been tendered as a “tactful move” when the contemnors are in the tight corner and with a view to ward off the Court. Acceptance of such apology in the case on hand would be allowing the contemnors to go away with impunity after committing gross contempt of Court. In our considered opinion, on the facts and in the circumstances of the case, imposition of fine in lieu of imprisonment will not meet the ends of justice.

78. Considering the facts and circumstances in their entirety, in our opinion, ends of justice would be served if we hold the respondents/contemnors guilty under Section 12 of the Contempt of Courts Act, 1971, read with Section 94(c) and Rule 2-A of Order 39 of the Code of Civil Procedure, 1908 as amended by the Code of Civil Procedure (Amendment) Act,

1976 and Article 129 of the Constitution and order the respondents-contemnors to undergo simple imprisonment for a term of two weeks i.e. fourteen days.

79. Ordered accordingly. The Contempt Petitions are disposed of...”

14. The respondents in their latest affidavit dated 23.04.2012 also refer to the present circumstances which includes the size of their family, in the fact that each one of them are over 50 years of age and hence a lenient view in the matter be taken.

14.1 In my opinion, these factors by themselves, in the present case, are not good enough to persuade me to ignore the belligerent stand that the respondents Nos. 2 to 6 took qua the orders of which obedience was required by law. Each one of the contemnors should be held accountable for their conduct.

15. Having regard to the conduct of respondent nos.2 to 6 and the principles of law enunciated by the Supreme Court in the aforementioned two judgments referred to above, I am of the view that respondent nos. 2 to 6 should be sentenced to simple imprisonment for a period of five days and a fine of Rs.1,000/- each. However, this sentence shall remain suspended for a period of 30 days from, today to enable the respondents to prefer an appeal.

16. With the aforesaid observations, the contempt petition is disposed of.

RAJIV SHAKDHER, J

OCTOBER 11, 2012
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