

GAHC010315402019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Cont.Cas(C)/15/2020

TILOK GAON RANCHADHAN SAMABAI SAMITY (TRSS)
VILL- BORCHARA, P.O. TRILOK GAON, DIST.- BONGAIGAON,, REP. BY ITS
SECY. SRI PADMA KALITA, AGED ABOUT- 58 YEARS, S/O- LT. NABIN
KALITA, R/O- BASUGAON, P.O. BASUGAON, DIST.- CHIRANG, ASSAM

VERSUS

HABIBUR RAHMAN
IN-CHARGE DY. DIRECTOR, FOOD AND CIVIL SUPPLY AND CONSUMERS
AFFAIRS, BONGAIGAON, ASSAM

Advocate for the Petitioner : MR. P KATAKI

Advocate for the Respondent : MR. S S ROY

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

JUDGMENT

Date : 19-07-2024

Heard Ms. B. Choudhury, learned amicus curiae and Mrs. R. Begum, learned counsel for the petitioner. None appears for the sole respondent.

2. This is an application under Article 215 of the Constitution of India read with Section 12 of the Contempt of Court's Act, 1971 and Contempt of Courts (Gauhati High Court) Rules, 1977 for initiating contempt proceedings against the contemnor for willful alleged violation of this Court's order dated 22.02.2019 passed in WP(C) No. 1165/2019.

3. It appears that since the sole respondent during the pendency of the contempt proceedings has retired from the post of Deputy Director, Food and Civil Supplies & Consumer Affairs, Bongaigaon, Assam, the petitioner requested for accommodation to take steps for impleading the new incumbent to the said post. However, no impleadment application of the new incumbent has been filed till date. On the last occasion, i.e., 15.07.2024, when the matter was called, Ms. R. Begum, learned counsel for the petitioner submitted that she has been instructed by the petitioner to withdraw the contempt petition as the address of the new incumbent could not be ascertained. At that stage, this Court requested Ms. B. Choudhury, learned counsel, who was present in the Court to assist this Court as to whether the contempt petition can be permitted to be withdrawn.

4. Today, when the matter was called, Ms. B. Choudhury, learned counsel by relying on the decision of the Apex Court in the Case of ***Amrit Nahata Vs. Union of India***, reported in ***(1985) Volume 3 SCC at Page 382***, submits that the role of the petitioner after filing the contempt petition comes to an end and thereafter, it is between the Court and the contemnor. She submits that since the order of this Court passed on 22.02.2019 in WP(C) No. 1165/2019 appears to have not been complied till date, the present petition can be taken up suo moto

by this Court under the powers contained in the Contempt of Court's Act, 1971. Paragraph 7 of the aforesaid decision is reproduced hereunder for ready reference-

7. While considering the request for withdrawal of the proceedings initiated for taking action for contempt of the Court, the Court would generally be guided by the broad facts of the case and more particularly whether respect for judicial process would be enhanced or dwindled by either granting or refusing to grant the request. There is a marked difference between a complaint made by an individual for wrong done to him and a petition moved before this Court inviting the Court to take notice of the fact that its contempt has been committed. The contempt is of the Court and not of the individual. Therefore, Section 15 of the Contempt of Courts Act, 1971 confers power on this Court as well as on the High Court to take suo motu action or on a motion made by amongst others, the Solicitor-General. It is for the Court to determine whether the act complained of tending to scandalise the Court if viewed with certain severity with a view to punishing the person would in the larger interest of the society enhance respect for the judicial process, or too sensitive attitude in such matter may even become counter-productive. The power to commit for contempt of court has to be exercised with the greatest caution. Neither too sensitive attitude nor an easy escape from performing the harsh duty would help in maintaining respect and decorum for the judicial process which is essential for establishing a society based on rule of law. The Court is to steer clear between two extremes but it must be remembered that the petitioner who has moved for taking action in contempt is not entitled as a matter of right to withdraw the petition whenever it suits his purpose. Once the act, which prima facie shows that contempt of the court has been committed, is brought to the notice of the court, it is the court which has to decide whether the contempt has been committed or not or whether it is appropriate to take action or at a later date

whether to drop the proceedings. The matter is primarily between the Court and the contemner. It is for this reason that while we are inclined to grant request for withdrawal of petitions we consider it proper to give few reasons why we consider it proper at this stage to permit withdrawal of the two petitions.

5. She further relies upon the decision of the High Court of Patna in the case of ***Manoj Kumar Jha Vs. State of Bihar, in M.J.C. No. 499/1991***, wherein the Division Bench of the High Court of Patna after allowing the application filed by the petitioner for withdrawing the contempt petition, initiated a contempt proceeding on the basis of the allegation/averments disclosed in the pleadings, suo moto against the respondent for willful violation of the Court's order.

6. She further relies upon the decision of the High Court of Patna in the case of ***Mantosh Kumar Singh Vs. State of Bihar in M.J.C. No.1468/1996***, wherein the Co-ordinate Bench of the High Court of Madras held that the transfer of officers can be no ground to defeat implementation of Court's order.

7. What transpires from the above is that the retirement of the officer concerned is no ground for defeating the implementation of the Court's order. Though the officer retired, continues to be responsible for the non compliance of the judgment/order, however if the violation still continues, the new incumbent officer holding the post at the time when the contempt petition is being heard, will also be equally responsible and one cannot be absolved of the contemptuous act.

8. It appears that by order dated 22.02.2019, this Court directed the Deputy Director of Food, Civil Supplies & Consumer Affairs, Bongaigaon to look into the grievance of the petitioner as per application dated 17.12.2018 and thereafter, take appropriate decision within a period of 30(thirty) days from the date of receipt of a certified copy of the order in accordance with law with due intimation to the petitioner. Despite the unambiguous order

passed by this Court, way back on 22.02.2019, the said exercise has not been undertaken by the Deputy Director of Food, Civil Supplies & Consumer Affairs.

9. The aforesaid inaction of the respondent appears to be contemptuous and is still continuing. Once the act of committing prima-facie contempt of act is brought before the notice of the Court, it is thereafter primarily between the Court and the contemnor.

10. Therefore, the retirement of the Officer concerned is no ground for closing the contempt. In fact, the burden of complying the aforesaid direction of this Court along with him also shifts to the new incumbent of the subject post.

11. Thus, presence of both the retired as well as the new incumbent of the subsequent post is essential and necessary for effective adjudication of the contempt petition.

12. Since the learned counsel appearing for the petitioner has endorsed the instruction of the petitioner for not pressing the contempt petition any further, this Court allows the prayer of the petitioner for withdrawing the said contempt petition.

13. Accordingly, Contempt Cas(C) 15/2020 stands dismissed on withdrawal. However, since a prima facie case of contempt of this Court's order dated 22.02.2019 passed in WP(C) No. 1165/2019, appears to have been made against the contemnor as well as the new incumbent of the said post, this Court is empowered under the provisions of the Contempt of Court's Act, 1971 to take up the matter suo moto.

14. Accordingly, this Court directs the Registry of this Court to register a suo moto contempt petition against Sri Habibur Rahman, In-charge Deputy Director of Food, Civil Supplies & Consumer Affairs, Bongaigaon, Assam and the new incumbent to the said post for willful violation of the Court's order dated 22.02.2019 passed in WP(C) No. 1165/2019, by taking the allegation/averments disclosed in the pleadings of the Contempt Cas(C) 15/2020.

15. Further, keeping in mind that the details of the new incumbent of the said post is not available in the records of the case, this Court requests Ms. U. Das, learned Addl. Sr. Government to give the details of the new incumbent of the subject post to the Registry of this Court within a period of 1(one) week from today for doing the needful.

16. This Court appreciates the assistance rendered by Ms. B. Choudhury, learned Amicus Curiae.

17. Let a copy of this Court's order be furnished to Ms. U. Das, learned Addl. Sr. Government Advocate to do the needful.

18. Disposed of.

JUDGE

Comparing Assistant