

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CONTEMPT CASE NO.1879 OF 2013

ORDER:

The order, violation of which is alleged in this Contempt Case, is the order passed by this Court in W.P.No.9425 of 2013 dated 09.04.2013 permitting the petitioner to submit an application in the prescribed form within two weeks from the date of the order; and in directing respondents 2 to 4 to consider such application and pass orders thereupon, in accordance with law, within three months thereafter, and communicate their decision to the petitioner.

It is not in dispute that the petitioner submitted an application on 20.04.2013. The three month period, stipulated by this Court, expired on 20.07.2013. As the respondents did not comply with the order, the petitioner filed the present Contempt Case on 27.10.2013. Notice before admission was ordered in the Contempt Case on 21.03.2014, and it is only on 27.09.2014 that the petitioner's application was considered and rejected.

The delay of more than 14 months, in complying with the order of this Court, is sought to be explained by respondents 2 and 3 in the counter affidavits filed by them. In his counter affidavit, the third respondent (Tahsildar) stated that, pursuant to the representation made by the petitioner, the second respondent-Joint Collector had called for remarks /reports from the field staff including himself; his detailed report was submitted on 14.05.2013; and the second respondent, after considering the representation, had passed a detailed order on 27.09.2014 rejecting the petitioner's claim as the said land was found to be Wakf property. Along with the counter affidavit is enclosed a report submitted by the third respondent to the second respondent-Joint Collector on 04.05.2013. The third respondent could only have submitted a report on being so directed by the second respondent and, as his report was submitted well within the three months period stipulated by this Court, the third respondent

cannot be faulted much less held to have wilfully and deliberately violated the order of this Court.

What is disconcerting, however, is the lethargy and indifference of the second respondent in complying with the order of this Court within the time stipulated therein. Though he received a report from the Tahsildar on 04.05.2013, and the order of this Court required him to dispose of the application on or before 20.07.2013, the second respondent passed an order only on 27.09.2014, more than 14 months after expiry of the time stipulated by this Court. The justification for the inordinate delay in compliance, is attributed by the second respondent to the Panchayat elections which were notified on 19.03.2013 and were held on 23.08.2013; elections to Local Bodies which were notified on 17.03.2014 and were held on 06.04.2014; the General elections which were notified on 12.04.2014 and were held on 07.05.2014; the Helen and Neelam Cyclones and the consequent rehabilitation schemes; and the Samaikhya Andhra agitation in two spells, the first for 66 days from 13.08.2013 to 17.10.2013 and, thereafter, for 14 days from 06.02.2014 to 19.02.2014.

The averments in the counter affidavit seem to suggest that, in the opinion of the second respondent, all his administrative duties should take precedence over his obligation to comply with the orders of Court. Even after the first phase of the Samaikhya Andhra agitation ended on 17.10.2013, the second respondent chose not to comply with the order of this Court. During the intervening period of 3½ months, between the first spell of agitation which ended on 17.10.2013 and the second spell of agitation which began on 06.02.2014, the second respondent slept over the matter despite the specific directions of this Court to comply with the order within three months. The Panchayat elections, Local Body elections or even the General elections held thereafter, do not justify the second respondent's failure to comply with the order of this Court. If, as is now contended before this Court, the second respondent had a genuine difficulty in complying with the order

of this Court, he ought to have filed an application, in the Writ Petition, seeking extension of time. No such application has, admittedly, been filed. The counter affidavit filed by the second respondent does not even state when the cyclones took place, or how the second respondent was disabled thereby from complying with the order of this Court. It is evident that the averments in the counter-affidavit are an afterthought to somehow justify his failure to pass orders within the stipulated time, and thereby avoid being punished for contempt.

Effective administration of justice would require some penalty to be imposed for disobedience of orders of the Court if disobedience is more than casual, accidental or unintentional. (**Heatons Transport Ltd. v. Transport and General Workers Union**^[1]; **Court on its own motion v. N.S. Kanwar**^[2]). In exercise of its contempt jurisdiction, the Court is primarily concerned with an enquiry whether the contemnor is guilty of intentional and wilful violation of the orders of the court. (**Maninderjit Singh Bitta v. Union of India**^[3]). The wilful element is an indispensable requirement to bring home the charge within the meaning of the Act. (**Anil Ratan Sarkar v. Hirak Ghosh**^[4]). “Wilful means an act or omission which is done voluntarily and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with the purpose of either disobeying or disregarding the law. (**Patel Rajnikant Dhulabhai v. Patel Chandrakant Dhulabhai**^[5]; **Ashok Paper Kamgar Union v. Dharam Godha**^[6]). Wilful would exclude casual, accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order. Whether or not disobedience is willful depends on the facts and circumstances of each case. Even negligence and carelessness can amount to disobedience. (**Kapildeo Prasad Sah v. State of Bihar**^[7]).

If a party who is fully in the know of the order of the Court, or is conscious and aware of the consequences and implications of the Court's order, ignores it or acts in violation thereof, it must be held that the disobedience is wilful. It may not be possible to prove the actual intention behind the act or omission. A Court can approach the question only objectively, and it may presume the intention from the act done as every man is presumed to intend the probable consequence of his act. (**N.S. Kanwar**^[2]). To establish contempt of court, it is sufficient to prove that the conduct was willful and that the contemnor knew of all the facts which made it a breach of the order. It is not necessary to prove that he appreciated that it did breach the order. (**St. Helen's Ltd. v. Transport & General Workers' Union**^[8]; **Adam Phones Ltd v. Goldschmidt**^[9]). While the jurisdiction exercised in cases of contempt is quasi-criminal in nature and the court must be satisfied, on the material before it, that contempt of court was in fact committed, such satisfaction may be derived from the circumstances of the case. (**Ram Autar Shukla v. Arvind Shukla**^[10]; **Bank of India v. Vijay Transport**^[11]). For the purposes of judging 'civil contempt', intention or mens rea is not relevant. The question is only whether the breach was on account of willful disobedience i.e, whether it was not casual or accidental and unintentional. (**V.C. Govindaswami Mudali v. B.Subba Reddy**^[12]).

Of late, Courts are coming across several instances where senior government officers display scant regard for orders of the court, and offer lame excuses for its violation. (**Gurminder Singh Kang v. Shiv Prasad Singh**^[13]). It has become a tendency with government officers to somehow or the other circumvent the orders of the court taking recourse to one justification or the other even if, ex facie, they are unsustainable. This tendency of undermining the court order

should not be countenanced. (**Maninderjit Singh Bitta**³; **E.T. Sunup v. C.A.N.S.S. Employees Assn.** ^[14]).

The very fact that, even after notice was served on him in the Contempt Case on 04.04.2014, the second respondent chose not to pass an order for nearly 5 ½ months thereafter till 27.09.2014, is sufficient proof of his indifference to the need to comply with Court orders within time. I am satisfied that the second respondent has not only violated the order of this Court, but that such violation is wilful and deliberate.

It is no doubt true that the 2nd respondent in this contempt case has tendered his unconditional apology. Section 12(1) of the Contempt of Courts Act, and the Explanation thereto, enable the Court to remit the punishment awarded for committing contempt of court on an apology being made to the satisfaction of the court. An apology should not be rejected merely on the ground that it is qualified or tendered at a belated stage if the accused makes it *bona fide*. However a conduct which abuses, and makes a mockery of, the judicial process of the court must be dealt with an iron hand. (**Bal Kishan Giri v. State of U.P.**, ^[15]). An apology can neither be a defence nor a justification for an act which tantamounts to contempt of court. An apology can be accepted in cases where the conduct, for which the apology is given, is such that it can be "ignored without compromising the dignity of the court", or it is intended to be evidence of real contrition. It should be sincere. Apology cannot be accepted in case it is hollow, there is no remorse, no regret, no repentance, or if it is only a device to escape the rigour of the law. Such an apology is merely a "paper apology". (**Bal Kishan Giri**¹⁵).

An apology tendered is not to be accepted as a matter of course, and the court is competent to reject the apology and impose the punishment recording reasons therefor. (**Bal Kishan Giri**¹⁵). Even if the apology is not belated, but is found to be without real contrition

and remorse, and to have been tendered merely as a weapon of defence, the court may refuse to accept it. 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. (**Bal Kishan Giri**¹⁵; **Debabrata Bandhopadhyaya v. State of W.B.**^[16]; **Mulk Raj v. State of Punjab**^[17], **Hailakandi Bar Assn. v. State of Assam**^[18], **C. Elumalai v. A.G.L. Irudayaraj**^[19] and **Ranveer Yadav v. State of Bihar**^[20]). A mere statement of apology by the contemnor before the court would hardly amount to his purging himself of contempt. The Court must be satisfied of the genuineness of the apology. If the court is so satisfied, and on this basis accepts the apology as genuine, it should pass an order holding that the contemnor has purged himself of contempt. (**Pravin C. Shah v. K.A. Mohd. Ali**^[21]).

An apology is not intended to operate as a universal panacea. (**M.Y. Shareef v. Judges of Nagpur High Court**^[22]; **Pravin C. Shah**²¹; **T.N. Godavarman Thirumulpad (102) v. Ashok Khot**^[23]). It is not a weapon of defence forged to purge the guilty of the offence, but is intended to be evidence of real contrition, the consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrongdoer's power. (**Delhi Development Authority v. Skipper Construction**^[24]). Only then is it of any avail in a court of justice. Unless that is done, not only is the tendered apology robbed of all grace but it also ceases to be a full and frank admission of a wrong done, which it is intended to be. (**Hiren Bose, Re**^[25]; **Patel Rajnikant Dhulabhai**⁵). The apology tendered by the contemnor, to be accepted by the Court, should be a product of remorse. (**M.C. Mehta v. Union of India**^[26]). Public interest demands that when a

person has interfered with the judicial process, the judicial decision should not be pre-empted or circumvented merely by a conditional or an unconditional apology. While it is open to the Court, in an appropriate case, to accept an unconditional apology based on the factual position, dropping the proceeding of contumacious acts deliberately done, after accepting the apology offered, would be a premium for the flagrant abuse of the judicial process. (**Ram Autar Shukla**¹⁰).

In **L.D. Jaikwal v. State of U.P.**^[27], the Supreme Court observed:-

“.....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 person taking 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.....” (emphasis supplied).

The apology tendered by the 2nd respondent is neither a product of remorse nor is there any evidence of real contrition on his part. It is but a lofty expression used only to avoid being committed for contempt. Accepting such an apology, in the facts of the present case, would result in the contemnors going scot free after committing gross contempt of Court.

The next question which necessitates examination is the nature and extent of punishment to be imposed on the second respondent for his wilful and deliberate violation of the order of this Court. There is an element of public policy in punishing civil contempt, since the administration of justice would be undermined if the order of a Court of law is disregarded with impunity. (**Patel Rajnikant Dhulabhai**⁵; **Attorney General v. Times Newspaper Ltd**^[28]). The power to punish for contempt is intended to maintain an effective legal system, and is exercised to prevent perversion of the course of justice. (**Kapildeo Prasad Sah**⁷ **Patel Rajnikant Dhulabhai**⁵). There are

certain well recognized principles which govern the exercise of power and jurisdiction to punish for contempt. The power to commit for contempt will not be used for the vindication of a Judge as a person, but only with a view to protect the interests of the public for whose benefit, and for the protection of whose rights and liberties, the courts exist and function. Another factor which a High Court will take into consideration, in exercising its contempt jurisdiction, is to ascertain whether the contempt is merely technical, slight or trifling in character. If it is so the Court will be satisfied with an expression of genuine regret and will not proceed to inflict punishment on the contemnor. (**Advocate General, Andhra Pradesh, Hyderabad v. V. Ramana Rao**^[29]).

It is not only the *power* but the *duty* of the court to uphold and maintain the dignity of courts and the majesty of law which may call for the extreme step of punishing the person for contempt of court. For proper administration of justice, and to ensure due compliance with the orders passed by it, the Court would not hesitate in wielding the potent weapon of contempt. (**Patel Rajnikant Dhulabhai**⁵). The summary jurisdiction, exercised by Superior Courts, in punishing contempt of their authority exists in order to prevent interference with the course of justice; to maintain the authority of law as is administered in the Court; and thereby protect the public interest in ensuring the purity of administration of justice (**Hira Lal Dixit v. State of U.P.**^[30]).

While awarding sentence on a contemnor, the Court does so to uphold the majesty of the law and to ensure that the unflinching faith of people in Courts remains intact. If the guilty are let off, and their sentence remitted on grounds of mercy, people would lose faith in the administration of justice. The Court is duty-bound to award proper punishment to uphold the rule of law, however high the person may be. (**J. Vasudevan v. T.R. Dhananjaya**^[31]). There cannot be any laxity, as otherwise law courts would render their orders to utter mockery.

Tolerance of law courts there is, but not without limits and only upto a point and not beyond. (**Anil Ratan Sarkar**⁴). The law should not be seen to sit by limply, while those who defy it go free and those who seek its protection lose hope. (**Jennison v. Baker**^[32]).

Notwithstanding the persuasive submissions of the learned Government Pleader that this Court should take a lenient view and it would suffice to admonish the second respondent with a warning, I am satisfied that the indifference exhibited by the second respondent, to the need to comply with the orders of Court within the stipulated period, would necessitate at least imposition of a fine on him. For his wilful and deliberate violation of the order of this Court, the second respondent is sentenced to payment of fine of Rs.2,000/- (Rupees two thousand only) which he shall pay within four (4) weeks from today failing which he shall undergo Simple Imprisonment for a period of three (3) days.

The Contempt Case is, accordingly, disposed of.

(RAMESH RANGANATHAN, J)

31st December 2015

RRB

^[1] (1972) 3 All ER 101 (House of Lords)

^[2] 1995 Cri.L.J.1261 (Punjab & Haryana HC DB)

^[3] (2012) 1 SCC 273

^[4] (2002) 4 SCC 21

^[5] (2008) 14 SCC 561

^[6] (2003) 11 SCC 1

^[7] (1999) 7 SCC 569

^[8] (1972) 3 All ER 101

^[9] (1999) 4 All ER 486

^[10] 1995 Supp (2) SCC 130

^[11] (2000) 8 SCC 512

- [\[12\]](#) 1986 (2) A.L.T. 131
- [\[13\]](#) (2013) 11 SCC 332
- [\[14\]](#) (2004) 8 SCC 683
- [\[15\]](#) (2014) 7 SCC 280
- [\[16\]](#) AIR 1969 SC 189
- [\[17\]](#) AIR 1972 SC 1197
- [\[18\]](#) AIR 1996 SC 1925
- [\[19\]](#) AIR 2009 SC 2214
- [\[20\]](#) (2010) 11 SCC 493
- [\[21\]](#) (2001) 8 SCC 650
- [\[22\]](#) AIR 1955 SC 19
- [\[23\]](#) (2006) 5 SCC 1
- [\[24\]](#) (1995) 3 SCC 507
- [\[25\]](#) AIR 1969 Cal 1
- [\[26\]](#) (2003) 5 SCC 376
- [\[27\]](#) (1984) 3 SCC 405
- [\[28\]](#) 1974 AC 273
- [\[29\]](#) AIR 1967 AP 299
- [\[30\]](#) AIR 1954 SC 743
- [\[31\]](#) (1995) 6 SCC 249
- [\[32\]](#) (1972) 1 ALLER 997