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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CONT.CAS(C) 628/2013

CT/GD NARENDRA KUMAR

..... Petitioner

Through Mr.N.L.Bareja, Advocate.

versus

SH N K RAGHUPATHI & ANR

..... Respondents

Through Mr.Ripu Daman Bhardwaj, CGSC
with Mr.Sahaj Garg, Advocate for R-
1 & 2/UOI.

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Date of Decision : 30th August, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present contempt petition has been filed alleging wilful disobedience of the order dated 13th February, 2013 passed in W.P.(C) No.256/2013, whereby the respondents were directed to keep one vacancy in the post of Sub-Inspector (GD) in one of the Central Police Organizations reserved for the OBC category for being filled by the petitioner in the event of his being ultimately cleared in the pending investigation within three months.

2. In the present contempt petition, it is the petitioner's case that he has not received any communication with regard to his

appointment to the post of Sub-Inspector (GD) in one of the Central Police Organizations or any communication in pursuance to the aforesaid order passed by this Court.

3. In the counter-affidavit, it is stated that the petitioner had opted only for two post preferences as 'B' and 'C' i.e. the CISF and CRPF. It is also stated that the marks of the last selected OBC candidates in CISF and CRPF were 271 and 262 respectively and as the petitioner had secured only 261 marks, he was not found eligible for selection.

4. Since the counsel for the petitioner on 6th February, 2015 had urged that the petitioner had given preferences for all the Central Police Organizations, the respondents were directed to produce the original application form.

5. Upon perusal of the petitioner's original application form, learned counsel for the petitioner admitted that the petitioner had opted only for two post preferences as 'B' and 'C' i.e. CISF and CRPF.

6. Subsequently, learned counsel for the petitioner had sought to urge that it needed to be verified as to whether any of the nominated candidates out of the withheld candidates had lower marks than the petitioner in options 'B' and 'C'.

7. On 28th September, 2015, the results of the selected candidates in CISF and CRPF were produced before the Court. From the said results, it is apparent that no candidate in the OBC category has been recruited in either CISF or CRPF with marks lower than the petitioner.

8. Today learned counsel for the petitioner has urged that the respondents had never pointed out before the Division Bench that the petitioner had opted for only two post preferences as 'B' and 'C' i.e. CISF and CRPF. Consequently according to him, the direction to keep one vacancy in the post of Sub-Inspector (GD) in one of the Central Police Organizations for OBC category meant that the petitioner had to be considered for appointment in all the Central Police Organizations and the respondents were estopped from relying upon the fact that the petitioner had exercised post preferences only for CISF and CRPF.

9. Since great emphasis has been laid on para 5 of the Division Bench order dated 13th February, 2013 passed in W.P.(C) No.256/2013, the same is reproduced hereinbelow:-

“5. In view of the above, this Court is of the opinion that a similar approach needs to be adopted in this case. The respondents are hereby directed to keep one vacancy in the post of Sub-Inspector (GD) in one of the Central Police Organization reserved in the OBC category for being filled by the petitioner in the event of his being ultimately clear in the pending investigation. The respondents shall make an endeavour to complete the said investigation within three months from today. The result of the investigation/further processing shall be done under direct intimation to the petitioner at the end of the said period.”

10. In the opinion of this Court, the aforesaid direction of the Division Bench can only be read to mean to keep one vacancy in the post of Sub-Inspector (GD) in one of the Central Police Organizations for which the petitioner had applied. It could never have been the intent of the aforesaid order that the petitioner should be considered

for appointment to one of the Central Police Organizations for which he had not applied.

11. It is settled law that a person can be held guilty of contempt only if he has wilfully disobeyed any judgment, order or direction. Though the term 'wilful' has not been defined, the Supreme Court has, in number of judgments, explained its meaning. In ***All India Anna Dravida Munnetra Kazhagam vs. L.K. Tripathi and Ors., (2009) 5 SCC 417*** the Supreme Court has held as under:-

"54. An analysis of Section 2(b) of the 1971 Act shows that wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court constitutes civil contempt. If this definition is read with Article 129 of the Constitution of India, it becomes clear that being a court of record, this Court can punish a person for civil contempt if it is found that he has wilfully disobeyed any judgment, etc. or violated an undertaking given to the Court.

55. The term "wilful" (willfull) has not been defined in the 1971 Act. Therefore, it will be useful to notice dictionary meaning of the said term. As per The New Oxford Illustrated Dictionary (1980 Edn.), the term "wilful" means "asserting or disposed to assert one's own will against instruction, persuasion, etc.; obstinately self-willed; deliberate, intentional, showing perversity or self-will".

56. According to Black's Law Dictionary (8th Edn.)—"Wilful" means "[v]oluntary and intentional, but not necessarily malicious" and "wilfulness" means

"1. The fact or quality of acting purposely or by design; deliberateness; intention; wilfulness does not necessarily imply malice, but it involves more than just knowledge.

2. The voluntary, intentional violation or disregard of a known legal duty."

57. As per Stroud's Judicial Dictionary, Vol. 5 (4th Edn.), "wilful disobedience" means:

“(1) The wilful disobedience of a SEAMAN or apprentice is ‘wilfully disobeying any lawful command DURING the engagement’: ‘There may be many cases in which DESERTION, or ABSENCE without leave, would not amount to wilful disobedience, and in these cases the seaman would only be liable to the lesser penalty. Where, however, the seaman deserts or is intentionally absent without leave after the time at which he has been lawfully ordered to be on board, his desertion or absence may amount to “wilful disobedience,” and, consequently, that he would be liable to imprisonment. The words “during the engagement” seem to suggest that the contract between the employer and the employed should be taken into account, and that if, having regard to that contract, the order was one which the employed was bound to obey, his disobedience might be dealt with under clause (d)’;”

58. In Shorter Oxford English Dictionary, the term “wilful” has been defined as:

- “1. Asserting or disposed to assert one's own will against persuasion, instruction, or command; governed by will without regard to reason; obstinately self-willed or perverse.*
- 2. Willing; consenting; ready to comply with a request, desire, or requirement—1598.*
- 3. Proceeding from the will; done or suffered of one's own free will or choice; voluntary—1687.*
- 4. Done on purpose or wittingly; purposed, deliberate, intentional. (Chiefly, now always, in bad sense of a blameworthy action; freq. implying ‘perverse, obstinate’.)”*

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62. Para 17 of the judgment which contains discussion on the subject reads as under: (Dharam Godha case [(2003) 11 SCC 1] , SCC pp. 14-15)

“17. Section 2(b) of the Contempt of Courts Act defines ‘civil contempt’ and it means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of undertaking given to a court. ‘Wilful’ means an act or omission which is done voluntarily and intentionally

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 bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extraordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case. The facts mentioned above show that none of the respondents to the petition can be held to be directly responsible if the Scheme which had been formulated by the Government of India on 28-6-1996 and had been approved by this Court by the order dated 8-7-1996 could not be implemented in letter and spirit as many factors have contributed to the same. The reasons given for non-inclusion of Shri Umadhar Prasad Singh in signing of the agreement appear to be quite plausible. NCFL has undoubtedly not discharged its liability of making payment of its entire liability of Rs 6 crores. However, it has come out with a case that some additional expenditure has been incurred in running the unit. It is not possible to get the complete financial picture only on the basis of the affidavits filed in the present petition. On the material on record, therefore, it is not possible to hold that the charge of having committed contempt of court on account of alleged non-compliance with the orders passed by this Court on 8-7-1996, 1-5-1997 [Ashok Paper Mills Kamgar Union v. Union of India, (1997) 10 SCC 113] and 31-7-2000 [Ashok Paper Mills Kamgar Union v. Union of India, (2003) 11 SCC 16] has been established against any one of the respondents.”

(emphasis added)

63. In *DDA v. Skipper Construction* [(1995) 3 SCC 507] this Court highlighted the distinction between the civil and criminal contempt in the following words: (SCC p. 517, paras 43-44)

“43. Civil contempt is defined under Section 2(b) of the Act. Thus, any wilful disobedience to the order of the court to do or abstain from doing any act is prima facie a civil contempt.

Civil contempt arises where the power of the court is invoked and exercised to enforce obedience to orders of the court.

44. On the contrary, criminal contempts are criminal in nature. It may include outrages on the Judges in open court, defiant disobedience to the Judges in court, libels on Judges or courts or interfering with the courts of justice or any act which tends to prejudice the courts of justice.”

64. In Kapildeo Prasad Sah v. State of Bihar [(1999) 7 SCC 569: 1999 SCC (L&S) 1357] the Court outlined the object of its contempt jurisdiction in the following words: (SCC pp. 573-74, paras 9 & 11)

“9. For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court's order. Since notice of contempt and punishment for contempt is of far-reaching consequence, these powers should be invoked only when a clear case of wilful disobedience of the court's order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the court's orders and its implications. Disobedience of the court's order strikes at the very root of the rule of law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice.

11. No person can defy the court's order. Wilful would exclude casual, accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order. A petitioner who complains breach of the court's order must allege deliberate or contumacious disobedience of the court's order.”

(emphasis added)”

12. In the same judgment, it was also reiterated that the contempt of Court is a quasi criminal act and as such the standard of proof required is that of a criminal proceeding and the breach or wilful disobedience has to be established beyond all reasonable doubt.

13. In the present case, this Court finds that the stand of the respondents is bonafide and legal.

14. Consequently, the present contempt petition is dismissed and the notices issued are discharged.

MANMOHAN, J

AUGUST 30, 2016
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