

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.**

**CONTEMPT PETITION NO. 329 OF 2019
IN
WRIT PETITION NO. 2 OF 2017**

Omprakash S/o. Kisanlal Mutha,
Age : 46 years, Occu. Trolley Vendor,
R/o. Parbhani, Dist. Parbhani.

.... Petitioner

Versus

The Union of India & Ors.

.... Respondents

.....
Shri. Ramesh R. Mantri & Shri. R. R. Sancheti, Advocate for the
petitioner
Shri. S. B. Deshpande, ASGI for respondents
.....

**CORAM : PRASANNA B. VARALE &
R. G. AVACHAT, JJ.**

DATE : 6TH AUGUST, 2019

PER COURT:-

1. Heard Shri. Ramesh R. Mantri, learned counsel for the petitioner.

2. By way of present petition, the petitioner prayed for initiation of action for the alleged willful disobedience and purposeful silence on the factual aspect on behalf of the respondent-authorities namely respondent nos. 1 to 4-authorities and respondent No. 6 as

well. Respondent No. 5 is the counsel representing the other respondents.

3. Shri. Mantri, learned counsel for the petitioner, firstly submitted before us that, Writ Petition No. 2 of 2017 was filed in this court seeking protection to the petitioner to carry on his business of providing certain items such as tea, snacks on a moving trolley on the Railway Platform. By order dt. 17.01.2017, the Division Bench was pleased to grant interim protection in the nature of interim order to the petitioner to continue his business till the affidavit is filed by the respondents. It was the further submission of Mr. Mantri, learned counsel appearing for the petitioner that, the respondent - authorities failed to file affidavit-in-reply within the stipulated period of two weeks. The interim order of this Court was continued by subsequent order dt. 31.01.2017. It was submitted by the learned counsel for the petitioner that, the continuation of interim order dt. 31.01.2017 was in presence of the learned counsel appearing for respondent-authorities. The matter was adjourned to 19.03.2018 on one reason or the other. Mr. Mantri, learned counsel admitted that, though the affidavit-in-reply was not filed within two weeks, subsequently the respondent-authorities filed affidavit-in-reply to the petition. On 19.03.2018, the petition was posted before this Court. On that day,

Mr. Mantri & Mr Sancheti, learned counsel for the petitioner, who were aware of the facts of the matter were engaged in other court. As such, the junior associate of Mr. Mantri namely Shri. Kakani mentioned the matter before the court and sought adjournment in the matter. Accordingly the matter was adjourned to 09.04.2018. On 19.03.2018, while adjourning the matter the Division Bench was pleased to observe that the interim order was till the respondents file affidavit-in-reply. Then the Division Bench recorded the presence of the learned counsel appearing for the respondent-authorities and matter was adjourned to 09.04.2018. The learned counsel for the petitioner vehemently submitted that, though the interim order was not vacated on 19.03.2018 and though the learned counsel for the respondent-authorities was present in this court, the communication was forwarded to respondent no. 6 – Sr. DCM, South Central Railway, Nanded, who in turn, on the very day i.e. 19.03.2018 informed the subordinate authority i.e. DCS/NED for removal of trolley of petitioner at Parbhani Railway Station. The communication dt. 19.03.2018 is placed on record at Annexure – 'A'. It is submitted by the learned counsel for the petitioner that, in view of the communication dt. 19.03.2018, the authorities immediately and forcibly removed the petitioner's trolley from the Railway Station in the intervening night 19.03.2018 and 23.03.2018.

4. It is then submitted by Mr Mantri, the learned counsel for the petitioner that, the petitioner immediately informed this change to the learned counsel in the night of 19.03.2018 itself and on the next day, the counsel for the petitioner informed the counsel for the respondents and also requested him to attend the matter as the petitioner is in the process of submitting an application in this Court. It is then submitted that, on receiving information from the petitioner, Mr. Mantri immediately prepared the application and filed the same in this court. The counsel for the petitioner informed this fact to the counsel for respondent-authorities and requested him to remain present in this Court, but the counsel for respondent-authorities failed to remain present in this court and the application was then circulated on 23.03.2018. On 23.03.2018, the Division Bench of this Court was pleased to observe that the interim order passed earlier would continue till 09.04.2018. The thrust of submission of the learned counsel for the petitioner is on the act of the communication to the authorities by the counsel for the authorities on 19.03.2018 whereby the authorities were informed about the vacation of interim order. It was the submission of the learned counsel for the petitioner that, when there was interim order operating in favour of the petitioner, in exercise of the

communication forwarded by the counsel to the authorities on 19.03.2018, the authorities proceeded to take a forcible action against the petitioner whereby the trolley of the petitioner was removed from the Railway Station and the act of the counsel for respondents firstly communicating vacation of interim order and subsequently silence on the date when the matter was adjourned at the instance of the junior associate of the counsel for the petitioner, is willful disobedience of the order of this court and a purposeful act.

5. Though the learned counsel for the petitioner vehemently submitted before this court that the alleged act of the respondents call for an action in the four corners of contempt of courts act, on perusal of the record and considering the sequence of events, we are unable to accept the submission of the learned counsel for the petitioner. It would be necessary for us to refer to certain additional facts. The interim order was passed by the Division Bench of this Court on 17.01.2017 and it is not in dispute that, subsequently the petition was decided on merits by the Division Bench of this Court. The Division Bench of this Court could not find any favour on merits with the petitioner. Resultantly, the petition was dismissed.

6. It is also not in dispute, that the judgment and order of this

Court is a subject matter of challenge before the Hon'ble Apex Court. The petitioner preferred SLP challenging the order of this Court and the same is pending consideration of the Hon'ble Apex Court. It is also not in dispute that, in the SLP preferred by the petitioner, the petitioner is protected by way of interim order passed by the Hon'ble Apex Court.

7. Now, coming back to the order of this Court dt.17.01.2017, it would be necessary for us to refer to the certain observations of the Division Bench.

2. *It is not in dispute that the petitioner was carrying on his business for quite some time.*
3. *The railway authorities took a policy decision that over a period of time, this practice of permitting trolley owners to sell their wares on trolleys should be stopped and it should be replaced by encouraging stallholders to provide food and other articles to the railway passengers. According to the petitioner, so far as Parbhani railway station is concerned, there is no food court, no food plaza nor any automatic food vending machine installed as of today.*
5. *We are of the view that we have no any manner of doubt that the railway authorities are entitled to bring any new policy for the purpose of revamping the old system for the benefit of the passengers. According to the railway authorities, that has been done. According to the petitioner, this process has not begun so far as Parbhani railway station is concerned.*
7. *The learned counsel appearing on behalf of the railway authorities submits that since an order u/s 147 has been passed and the petitioner has been removed, the question of now permitting him to sell his goods on trolleys does not arise.*
8. *It would be in the interest of the passengers that if the petitioner is permitted to carry on his business of selling goods on trolleys till the affidavit is filed, it would at the most benefit the passengers and in any case, this would not come in the way*

of the railway authorities in implementing their new policy. We accordingly permit the petitioner till the affidavit is filed by the respondents. Needless to state that if ultimate policy is put in place, it would not give any right to the petitioner to continue his business. This interim relief is granted without prejudice to the rights and contentions of the railway authorities and also it is made clear that the petitioner would not be entitled to claim any equity on the basis of this order.

8. Thus, on the emergence from the perusal of the order dt. 17.01.2017 that the interim protection granted to the petitioner was for a limited period, that too by making it very clear that the respondent-authorities i.e. Railway Authority is at liberty to frame a policy for the vendors and also further making it clear that there was a counter submission by the respondent-authorities that as an order u/s 147 has been passed and the petitioner was already removed, question of permitting the petitioner to sell goods on trolley would not arise and for providing an opportunity to the other side to submit its say by way of reply-affidavit. The Division Bench protected the interest of petitioner for a limited period. At the cost of repetition, we state that, the Division Bench made it clear that, this temporary protection granted to the petitioner would not entitle the petitioner to claim any equity on the basis of the order.

9. Now other sequence of events if are considered, the interim relief granted by order dt. 17.01.2017 was continued till 31.01.2017. Then the matter was posted on 19.03.2018. On 19.03.2018, as per

the submissions of the petitioner himself that, both the counsels namely Mr. Mantri & Mr. Sancheti, who were aware of the facts, were busy in other court and an adjournment was sought on behalf of these two counsels by junior associate – Shri. Kakani. The matter was adjourned and on the very day a communication was forwarded by respondent No. 5 to respondent No. 6. Now the submission of the petitioner is that, on 19.03.2018, when the matter was before this Court and the other counsels for the petitioner were not present in this court, the learned counsel appearing for the respondents ought to have informed to the court that the interim order is in continuation but the learned counsel kept silence on this aspect and this silence was a purposeful silence. Now this is the inference drawn by the petitioner that the silence by the counsel for the respondent-authorities was a purposeful silence and this silence be treated as an act beneficial to the respondent-authorities so as to forcibly remove the petitioner from the Railway Station. Now for arriving at such conclusion as submitted by learned counsel for the petitioner, we see absolutely neither any merit nor any reason or logic that the counsel for respondent-authorities would keep a purposeful silence only to permit the respondent-authorities to take some forcible steps against the petitioner. The respondents are the authorities of Central Government and the counsel is appearing for these authorities. By no

stretch of imagination an inference can be drawn that the counsel was acting only to provide some opportunity to the respondents to remove the petitioner from Railway Station. If the counsel was appearing for respondent-authorities, there was no question of having any personal attachment either to the matter or to the parties.

10. Thus, we only reiterate, that we are unable to accept the submissions of the petitioner that the learned counsel appearing for the respondent-authorities kept a purposeful silence only with an intention to help the respondent-authorities so that the respondent-authorities would remove the petitioner from Railway Station.

11. Now the second aspect is also interesting to note that, it is admitted by the petitioner that, Civil Application No. 4299 of 2018 was filed in this court. The basic prayer in the application is prayer clause 'B' viz. modify suitably the order dt. 19.03.2018 and direct that the interim order continues in force and/or in force till the decision of this Court on merits of the writ petition. Now, in the present application, the petitioner makes a simple statement in para 4 and the same reads, applicant submits that the statement to this Court by learned ASGI that the interim relief is continued till filing of reply and is not continued further, is factually not correct.

12. On 23.03.2018, the counsel for the applicant submitted before this court that, first three lines in para 4 of this application were inadvertently made and the applicant withdraws the same. Thus, when in the C.A. No. 4229 of 2018, it was simplicitor stand of the applicant that the order communicated by the counsel was factually not correct and the petitioner/applicant sought permission from the Division Bench of this Court to withdraw these lines submitting that these statements were made inadvertently, we fail to understand how the petitioner subsequently suddenly feels aggrieved by the very action of a communication, which was factually not correct. It is also not disputed that the interim protection was granted by this court for a limited period. The petition is decided on merits by this court. The petitioner has also availed the remedies of challenging the order before the higher forum and there is an interim order in favour of the petitioner in SLP filed before the apex Court.

13. Considering all above aspects, we are of the clear opinion that the petition is devoid of any merit and requires no indulgence by this Court. Accordingly, the Contempt Petition is dismissed.

[R. G. AVACHAT]
JUDGE

[PRASANNA B. VARALE]
JUDGE