

DI. December
2. 2, 2022

C.R.C. 3 of 2022

Ashis Mukherjee

Vs.

Dr. Sabyasachi Basu Raychaudhury & anr.

Mr. Soumendra Nath Mookherjee, Sr.

Advocate,

...appears as amicus.

Mr. Piyush Chaturvedi,

Mr. Tarun Kumar Das,

...for the petitioner.

Mr. Arunangshu Chakraborty,

Ms. Feniya Mukherjee,

...for the alleged contemnors.

At the outset, Mr. Soumendra Nath Mookherjee, learned Advocate General, appearing along with Mr. Somnath Naskar, learned advocate, has produced before us a letter dated November 26, 2022 addressed to him by Mr. Arunangshu Chakraborty, learned advocate appearing on behalf of the alleged contemnors. It appears that Mr. Chakraborty has raised an objection with regard to appearance of the learned Advocate General in this matter. Mr. Chakraborty has stated that the learned Advocate General cannot participate in a contempt proceeding as the matter is between the court and the alleged contemnors in which the State is not involved at all.

We make it clear that we have not directed representation of the State by the learned Advocate General, but we wanted assistance of the learned Advocate General as amicus curiae in order to resolve the issue.

Ordinarily, we could straight way hold the alleged

contemnors guilty of contempt for blatantly defying our order notwithstanding the fact that the Special Leave Petition filed on behalf of the alleged contemnors as also the review petition to such Special Leave Petition were dismissed by the Hon'ble Supreme Court on December 10, 2021 and February 15, 2022 respectively.

We are unable to accept the submission of Mr. Chakraborty that the alleged contemnors are not duty bound to obey the direction passed by this court since the Special Leave Petition was dismissed in limini. It was the clear stand of Mr. Chakraborty that by reason of dismissal of the Special Leave Petition, there is no automatic affirmation of our order of which an implementation has been sought for in the contempt proceeding. In other words, the contention of the alleged contemnors is despite dismissal of Special Leave Petition and Review Petition by the Apex Court, the order of this court does not attain finality and not required to be implemented.

Earlier the alleged contemnors appeared before us without rule and subsequently we issued rule against the alleged contemnor no. 2 for not implementing our order. After filing of affidavit in answer to the rule, we dispensed with further appearance of the said alleged contemnor. To our utter shock, we were astonished with the stand taken by the alleged contemnor no. 2 that our order is not required to be implemented or obeyed in spite of dismissal of the special leave petition or the review petition.

It was least expected from Mr. Chakraborty, learned advocate representing the alleged contemnors to advise the alleged contemnors not to comply with our order, as such advice runs

counter to the basic tenets of law. The majesty of law has suffered to which we cannot turn our blind eyes. The order of the court has to be obeyed and respected.

The attempt made by the University to have a review of the order dated December 10, 2021 passed by the Hon'ble Supreme Court in Special Leave Petition No. 3268 of 2021 had also failed in view of the order passed by the Hon'ble Supreme Court on February 15, 2022 in review.

Mr. Chakraborty has urged before us that there are conflicting decisions of the Hon'ble Supreme Court, which are relevant in deciding the contempt proceeding. The points that are now being urged before us were unsuccessfully raised in the Special Leave Petition as also in the Review Petition.

Since the Vice Chancellor of the University is involved, we requested the learned Advocate General to assist this bench as an amicus and not in the capacity of the Advocate General of the State but as a Counsel in assisting the court in deciding the matter.

Mr. Soumendra Nath Mookherjee, learned Senior Advocate, as amicus, has submitted that by reason of the orders of the Hon'ble Supreme Court dated December 10, 2021 and February 15, 2022, it is no more open to the alleged contemnors to deny implementation of our order. However, in the capacity of the Advocate General of the State Mr. Mookherjee has proposed that dues of the alleged contemnors can be taken care of by the State.

In deference to our observations and with the intervention of Mr. Soumendra Nath Mookherjee, learned Senior Advocate, the matter is resolved by directing that :-

- 1) The State of West Bengal, Department of Higher Education, shall make payment to the petitioner directly on account of arrears of salary emoluments as admissible and calculated till November 2022 within a period of two weeks from date.
- 2) In the event, there is any shortage of funds with the Department of Higher Education to make such payment, the Department of Finance of the State of West Bengal shall make necessary provision to ensure that such payment is made.

The aforesaid directions are passed due to an unprecedented situation created by the alleged contemnors.

We hold that the alleged contemnors have violated the order passed by us on December 15, 2020. However, such violation may not be willful or deliberate, as we hold that they have proceeded on the basis of the legal advice detrimental to their interest and to their peril.

With a word of caution, we dispose of the contempt application with the aforesaid directions. We record our appreciation for the assistance of Mr. Soumendra Nath Mookherjee, Senior Advocate, in deciding the application.

The contempt rule, thus, stands discharged without any order as to costs.

(Soumen Sen, J.)

