

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 11.10.2022.
% **Judgment delivered on: 28.10.2022.**

+ **CONT.CAS(C) 138/2019**

DELHI ROZI ROTI ADHIKAR ABHIYAN

..... Petitioner

Through: Mr. Prasanna S, Adv.
versus

RAJESH AHUJA

..... Respondent

Through: Mr. Bhagwan Swarup Shukla, CGSC
with Mr. Ram Karan, Advs.
Mr. Anuj Aggarwal, ASC, GNCTD
with Ms. Ayushi Bansal, Mr. Sanyam
Suri and Ms. Arshya Singh, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present Contempt Petition is arising out of an interlocutory order dated 01.09.2017 passed in W.P.(C)No. 2161/2017 titled as ***Delhi Rozi-Roti Adhikar Abhiyan Vs. Union of India and Ors.***

2. The Contempt Petition has been filed under the Contempt of Courts Act, 1971 by the Petitioner alleging willful non-compliance of Order dated 01.09.2017 of this Court. It is stated that vide Order dated 01.09.2017, Respondent No. 2, Govt. of National Capital Territory of Delhi (GNCTD)

had been directed to place a status report before this Court within 6 weeks on the following issues – (1) Steps taken by Respondent No. 2 for examining the Model Rules suggested by the Government of India under the National Food Security Act, 2013 (“NFSA”) (2) Formation of a grievance redressal mechanism as envisaged under Sections 14-18 of the NFSA (3) Steps taken for providing a periodical social audit of fair price shops by a local authority or any other authority/ body authorized by the State Government as envisaged under Section 28 of the NFSA. Subsequently, this Court vide Orders in the Writ had requested the Respondent/ GNCTD to comply with the aforesaid Order dated 01.09.2017.

3. The undisputed facts of the Writ reveal that it was filed by the Petitioner herein for quashing the notification dated 08.02.2017 issued by GNCTD and declaring it as ultra vires. The Petitioner had further prayed to this Court for a writ of mandamus to adhere to various interim orders passed by the Apex Court in W.P (C) 494/ 2012, titled as ***K.S. Puttuswamy (Retd.) &Anr. v. Union of India &Anr*** or any other direction/ order directing the Respondent No. 2 to disburse food grains to the beneficiaries eligible under NFSA without requiring the production of Aadhar or undergoing its authentication. Vide the aforesaid notification, GNCTD had made the production/ proof of enrolment into Aadhar mandatory for accessing subsidized food grains under the Targeted Public Distribution Scheme (“TPDS”) as envisaged in the NFSA. The reliefs of the main Writ Petition which was filed in public interest are reproduced hereunder-

“i. Any writ, order or direction in the nature of certiorari and/or any other writ, order or direction quashing the notification issued by Respondent No. 1 dated 08.02.2017.

ii. Any writ, order or direction in the nature of mandamus and/or any other writ, order or direction directing the Respondents to adhere to the orders dated 23.09.2013; 11.08.2015; 15.10.2015 passed by the Hon'ble Supreme Court in batch of writ petitions led by W.P. (Civil) No. 494 of 2012, order dated 24.03.2014 passed by the Hon'ble Supreme Court in SLP (Crl) No. 2524 of 2014 and order dated 28.10.2016 passed by the Hon'ble Supreme Court in batch of writ petitions led by W.P. (Civil) No. 797 of 2016.

iii. Any writ, order or direction in the nature of mandamus and/or any other writ, order or direction directing the Respondent No.2 to disburse subsidised food grains to beneficiaries under the National Food Security Act, 2013 without requiring the production of Aadhaar card or undergoing the Aadhaar authentication as a precondition to avail food grain under Public Distribution System Scheme.”

4. At the relevant point in time when the Contempt Petition was filed, the main Writ Petition was very much pending, thereafter the main Writ Petition has been disposed of by a Division Bench of this Court. This Contempt Petition was filed on 18.02.2019 and the Hon'ble Supreme Court thereafter has disposed of the case of **Puttuswamy** (*supra*) on 26.08.2019, dealing with similar issues raised by the Petitioner in the Writ Petition. Accordingly, this Court disposed of the Writ Petition on 05.04.2022, dismissing it on the ground that the contentions raised by the Petitioner have been dealt with in detail by the Hon'ble Supreme Court vide the Final Judgement in the case of **Puttuswamy** (*supra*), thus nothing survived in the Writ Petition. The operative Paragraphs of the Order dated 05.04.2022 passed by this Court in the Writ Petition as contained in paragraph 10,11,12 and 13 read as follows:

“10. A reading of the above judgment would clearly show that the submissions made by the learned senior counsel for the petitioner cannot be accepted. The above judgement in K.S. Puttaswamy

(supra) has considered in detail the requirement of Aadhaar authentication under the NFSA. The Supreme Court has held that Section 7 of the Aadhaar Act is aimed at offering subsidies, benefits or services to the marginalised sections of the society for whom such welfare schemes have been formulated from time to time. That also becomes an aspect of social justice, which is the obligation of the State stipulated in Part IV of the Constitution of India. It has held that the rationale behind Section 7 of the Aadhaar Act lies in ensuring targeted delivery of services, benefits and subsidies which are funded from the Consolidated Fund of India. In discharge of its solemn constitutional obligation to enliven the fundamental rights of life and personal liberty (Article 21) to ensure justice, social, political and economic and to eliminate inequality (Article 14) with a view to ameliorate the lot of the poor and the Dalits, the Central Government has launched several welfare schemes. Some such schemes are the Public Distribution System, scholarships, mid-day meals, LPG subsidies, etc. The right to receive these benefits, from the point of view of those who deserve the same, has now attained the status of a fundamental right based on the same concept of human dignity. The Supreme Court further took specific note of the NFSA and Section 12, which in sub-section (c) thereof, requires the Central and State Governments to endeavour to progressively undertake necessary reforms in the Targeted Public Distribution System, including leveraging Aadhaar for unique identification, with biometric information of entitled beneficiaries for proper targeting of benefits under the NFSA. The Supreme Court held that by providing that the benefits for various welfare schemes shall be given to those who possess an Aadhaar number and after undergoing the authentication as provided in Section 8 of the Aadhaar Act, the purpose is to ensure that only rightful persons receive these benefits. The Supreme Court therefore, upheld the insistence on Aadhaar for availing benefits under the NFSA.

11. The submission of Mr. Parikh that the disbursement of subsidized foodgrains to the beneficiaries under the NFSA is not a “dole”, since the same has been elevated to a statutory right under the NFSA, in recognition of the right to life under Article 21 of the Constitution of India, has no merit. As a welfare State, the

Parliament has enacted the NFSA to fulfil the requirement of food of the targeted beneficiaries at subsidized rates. Therefore, even though a statutory right has been created in favour of the targeted beneficiaries to receive rations/food articles under the NFSA, such benefits do not lose their character of being welfare measures undertaken by the State for the needy and downtrodden.

12. We may also observe that the judgments of the Supreme Court cannot be read as Statutes and, therefore, it would not be proper to pick out one word “dole” from the observations made by the Supreme Court, and to found a submission on that basis.

13. In view of the above, we find that the issue raised in the present petition no longer survives. The writ petition is accordingly disposed of.”

5. It is submitted by the Petitioner that there has been persistent, continued, willful and deliberate disobedience with the Order of this Court dated 01.09.2017. It is the case of the Petitioner that the food authorities cannot insist upon either production of Aadhar or insist the eligible beneficiaries to apply for the same in order to provide subsidized food grains to them. It was submitted that the Petitioner has placed on record documents and other material to demonstrate that people who are eligible for accessing food grain under NFSA are being excluded due to mandatory requirement of Aadhar. Further, even those who have Aadhar cards/ numbers, are being denied their monthly entitlement of food grains under the NFSA on account of issues relating to Point of Service (“PoS”) devices for Aadhar authentication. To name a few issues, these include unreliable or intermittent internet connectivity, frequently interrupted power supply, malfunctioning of PoS and biometric devices. Further, these aforesaid allegations were further reinforced and confirmed vide report dated 30.08.2017 of the local commissioner appointed by this Court vide Order dated 25.05.2017.

6. It was submitted that even after the Order dated 01.09.2017 was passed by this Court, this Court took notice of the continued default of the Respondent No. 2 in the Writ and vide Order dated 17.08.2018, further four weeks' time was granted to the Respondent No. 2 to bring on record the timeline and schedule by which all statutory requirements under NFSA and the directions issued by this Court vide Order Dated 01.09.2017 would be complied with.

7. It was submitted by the Petitioner that the Order of this Court dated 01.09.2017 was in the nature of a Final Order in respect of expediting the implementation of some of the critical provisions of the NFSA. Further, the same is an issue that survives and the Respondent No. 2/ GNCTD continues to be in non-compliance of it. It was submitted that on the basis of a reply to an RTI Application dated 12.04.2022, it transpires that none of the directions of this Court have been complied with by Respondent No. 2. It was submitted that on 30.08.2022, when this Petition came up for hearing before this Court, the Counsel for GNCTD had erroneously indicated that the aspect of non-compliance of Order dated 01.09.2017 had been covered by the Final Order dated 05.04.2022 of this Hon'ble Court, disposing of the Writ Petition, while placing reliance on the judgement in the case of *Puttuswamy (Supra)*. It was submitted that the judgement in the case of *Puttuswamy (Supra)* deals exclusively with Aadhar and is not relatable to the non-implementation of the NFSA. Thus, neither the Final Order in W.P. (C) 2161/ 2017 or the Judgement in the case of *Puttuswamy (Supra)* have any bearing on the Order dated 01.09.2017 directing the Respondent No. 2 to implement the provisions of NFSA. Placing reliance on the Judgement of the Hon'ble Supreme Court in the case of *Prithawi Nahth Ram v. State of*

Jharkhand, (2004) 7 SCC 261 and *Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.*, (1997) 3 SCC 443, it was submitted that dismissal of main relief is not a ground for non-obeyance of any interim orders.

8. The Respondent submitted that pursuant to Order dated 17.08.2018 in the Writ Petition, the Respondent No. 2 therein had filed an affidavit through the Respondent herein, apprising this Court of its stand. It was submitted that the matter concerning the formation of a State Food Commission and Grievance Redressal Rules under Sections 14-18 of the NFSA was being examined by the Hon'ble Supreme Court on a Pan-India scale, vide W.P. (C) 857/ 2015, titled as *Swaraj Abhiyan v. UOI & Ors.* It was submitted that the Apex Court has been passing Orders in the matter from time to time and the Respondent has been regularly sending compliance reports and status updates to the Government of India in this regard. Subsequently, the final Judgment has also been passed by the Hon'ble Supreme Court. The answering Respondent vide letter dated 11.07.2017 addressed to the Joint Director (NFSA), Department of Food Distribution enclosed a duly filled proforma regarding rules to be framed by States/ UTs under NFSA, 2013. In compliance of directions of Hon'ble Supreme Court in *Swaraj Abhiyan (supra)* the Respondent sent a letter dated 07.08.2017 to the Joint Director (NFSA), Department of Food and Public Distribution regarding implementation of various provisions of NFSA. Another letter was issued to Joint Director (NFSA) enclosing a duly filled proforma on compliance of provisions of NFSA as per directions of Hon'ble Supreme Court in *Swaraj Abhiyan (supra)*. A letter dated 11.09.2018 was issued by Respondent herein to Under Secretary (NFSA),

Ministry of Consumer Affairs, enclosing a duly filled proforma regarding status of rules to be framed under Section 40 of the NFSA and vide affidavit, the Respondent had stated in detail the manner in which the directions of this Court had been complied with by the Respondent.

9. It was submitted by the Respondent that the issue regarding mandatory submission of Aadhar Card numbers for distribution of food grains to eligible persons under the NFSA had been taken care of by the Respondent by not insisting for the same. It is the case of the Respondent that once this issue was dealt with by the Respondent, the Petitioner belatedly started raising an entirely different plea regarding implementation of the scheme under Sections 14-18 of the NFSA, 2013. It was submitted that it is pertinent to note that the issue of the linkage of Aadhar with different schemes being run/ moderated by the government has been dealt with extensively by the Hon'ble Supreme Court in the case of *Puttuswamy (supra)*.

10. It was submitted by the Respondent that pursuant to Order dated 19.02.2019 in this Contempt Petition, the Respondent herein had been directed to file an affidavit apprising this Court of the steps taken by it in respect of implementing the mandate of the Order passed in W.P. (C) 2161/ 2017. It has been submitted by the Respondent that pursuant to Order dated 01.09.2017, on 09.08.2017, the Respondent had forwarded the relevant file to Chief Secretary of GNCTD for approval and constitution of State Food Commission along with Draft Notification for Grievance Redressal Mechanism Rules. The Respondent on 14.08.2017 received remarks from the office of the Chief Secretary to confirm salaries and allowances proposed under Rule 15. The file was resubmitted to the Chief Secretary's

office on 21.08.2017 and the same was in turn forwarded to the office of the Chief Minister of Delhi, through the office of Minister, Food Supplies & Consumer Affairs. Hon'ble Lieutenant Governor of Delhi approved the file on 01.09.2017 and the Chief Minister had directed the constitution of a committee on 05.09.2017 to prepare and implement effective rules. The same was constituted on 12.09.2017 and a report was submitted by it to the concerned department on 25.10.2017. Relevant observations and suggestions made by the committee were incorporated into the Draft Rules and forwarded to the Law Department on 16.11.2017. The file was subsequently forwarded to the Law Minister's Office on 06.09.2018 and the Minister, Food Supply and Consumer Affairs vide his note dated 10.09.2018 had observed that the Department is committed to provide Doorstep Delivery of Ration for which Cabinet Decision has already been taken and that it would be appropriate that the Rules are framed accordingly. The Department of Food and Supplies vide its note dated 10.10.2018 had also sought the file relating to Doorstep Delivery of Ration, duly approved for enabling the Department to frame rules/ incorporate doorstep delivery of ration under grievance redressal rules. On 12.11.2018, the Minister of Food & Supplies & Consumer Affairs vide his note dated 12.11.2018 directed the Department of Food & Supplies to give a presentation on the proposed draft Grievance Redressal Rules. The Department examined the matter and proposed vide its note dated 09.01.2019 to forward to the Law Department through the office of Hon'ble Minister Food Supply & Consumer Affairs on 09.01.2019, seeking its opinion on whether the Department may incorporate the provision of 'Doorstep Delivery of Ration' into the Grievance Redressal Rules. The matter is currently under consideration of Delhi Government.

11. Heard learned Counsels appearing for the parties and perused the material on record.

12. The contentions of the Petitioner, Respondent, and the effect of the Judgement of the Hon'ble Supreme Court in the case of ***Puttusway (supra)*** on the instant case were recorded comprehensively by the Division Bench and this Court has given a well-reasoned Final Order dismissing the Writ Petition.

13. The only question which arises for consideration herein is whether the Respondents can be held to be in wilful and deliberate disobedience of the order passed by this Court dated 01.09.2017, thereby committing Contempt of Court.

14. Section 2 (b) of the Contempt of Courts Act, 1971 defines civil contempt as wilful disobedience of any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a Court. The Hon'ble Supreme Court in the case of ***Ram Kishan v. Tarun Bajaj & Ors., (2014) 16 SCC 204*** has in very clear terms elucidated the meaning of 'wilful disobedience'. The relevant paragraphs of the aforesaid Judgement are reproduced as hereunder:-

“11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the

law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. (Vide V.G. Nigam v. Kedar Nath Gupta [V.G. Nigam v. Kedar Nath Gupta, (1992) 4 SCC 697 : 1993 SCC (L&S) 202 : (1993) 23 ATC 400] , Chhotu Ram v. Urvashi Gulati [Chhotu Ram v. Urvashi Gulati, (2001) 7 SCC 530 : 2001 SCC (L&S) 1196] , Anil Ratan Sarkar v. Hirak Ghosh [Anil Ratan Sarkar v. Hirak Ghosh, (2002) 4 SCC 21] , Bank of Baroda v. Sadruddin Hasan Daya [Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360] , Sahdeo v. State of U.P. [Sahdeo v. State of U.P., (2010) 3 SCC 705 : (2010) 2 SCC (Cri) 451] and National Fertilizers Ltd. v. Tuncay Alankus [National Fertilizers Ltd. v. Tuncay Alankus, (2013) 9 SCC 600 : (2013) 4 SCC (Civ) 481 : (2014) 1 SCC (Cri) 172] .)

12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. The word “wilful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. “Wilful” means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. “Committal or sequestration will not be

ordered unless contempt involves a degree of default or misconduct.” (Vide S. Sundaram Pillai v. V.R. Pattabiraman [S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591] , Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao [Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao, (1989) 4 SCC 255 : AIR 1989 SC 2185] , Niaz Mohammad v. State of Haryana [Niaz Mohammad v. State of Haryana, (1994) 6 SCC 332 : AIR 1995 SC 308] , Chordia Automobiles v. S. Moosa [Chordia Automobiles v. S. Moosa, (2000) 3 SCC 282] , Ashok Paper Kamgar Union v. Dharam Godha [Ashok Paper Kamgar Union v. Dharam Godha, (2003) 11 SCC 1] , State of Orissa v. Mohd. Illiyas [State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275 : 2006 SCC (L&S) 122 : AIR 2006 SC 258] and Uniworth Textiles Ltd. v. CCE [Uniworth Textiles Ltd. v. CCE, (2013) 9 SCC 753] .) (Emphasis supplied)

.....

15. It is well-settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. [See Sushila Raje Holkar v. Anil Kak [Sushila Raje Holkar v. Anil Kak, (2008) 14 SCC 392 : (2009) 2 SCC (L&S) 497] and Three Cheers Entertainment (P) Ltd. v. CESC Ltd. [Three Cheers Entertainment (P) Ltd. v. CESC Ltd., (2008) 16 SCC 592 : AIR 2009 SC 735]]”

15. This Court has gone through the affidavit filed by the Respondent illustrating the steps taken by GNCTD and it is the opinion of this Court that the Respondent is taking steps to comply with the order dated 01.09.2017.

16. No doubt, this Court has expressed its dissatisfaction regarding the speed in compliance of aforesaid order of this Court by the Respondent, however lack of speed alone is not sufficient for this Court to take action against the Respondent on the ground of deliberate and wilful disobedience

of the orders of this Court. Though this Court does not appreciate the delay on the part of the Respondents in carrying out of the directions of this Court, however, it is not sufficient to hold up the Respondents for committing Contempt of Court within the ambit of Section 2 (b) of the Contempt of Courts Act, 1971.

17. As repeatedly held by the Hon'ble Supreme Court, disobedience of only such a level which brings up the deliberate, wilful and intended action on the part of a person to disobey the order of the Court, it would classify as Contempt of Court.

18. In light of the facts and circumstances of the instant case, it cannot be stated that there has been any wilful disobedience on part of the Respondent and the Petitioner has not been able to bring any facts before this Court to substantiate any wilful disobedience. Pursuant to Orders dated 01.09.2017 and 17.08.2018 in the Writ Petition, the Respondent No. 2 therein had filed an affidavit dated 23.10.2018, placing on record the progress which it had taken on implementing the provisions of the NFSA, 2013. Further, pursuant to Order of this Court dated 19.02.2019 in this Contempt Petition, the Respondent had once again filed an affidavit outlining the progress for implementing the mandate of the Order passed in W.P. (C) 2161/ 2017.

19. On several occasions, this Court has expressed its dissatisfaction in the manner in which the Respondent was proceeding in compliance with the directions issued by this Court in W.P. (C) 2161/ 2017, once again, this Court hopes and trusts that GNCTD shall implement the NFSA, 2013 in its true letter and spirit. The NFSA, 2013 is a welfare legislation enacted to provide for affordable and adequate food for eligible beneficiaries. Proper disbursement of adequate nourishment is a pertinent welfare function of the state

and it should be implemented with utmost thoroughness for the benefit of the intended. However, by no stretch of imagination it can be held that there was any *wilful disobedience* of the Order of this Court dated 01.09.2017, thereby making out a case for contempt of Court.

20. The Division Bench of this Court, as already stated earlier, has decided the matter with and arrived at a conclusion that the issue raised in the public interest litigation (PIL) no longer survive in the light of the judgement delivered in the case of ***K.S. Puttaswamy*** (*supra*).

21. The interim order passed in the PIL was certainly in respect of the NFSA, 2013 and the main matter has been heard finally. The question of initiating contempt proceedings as prayed for in a disposed of matter does not arise.

22. The Petitioner certainly has a right to challenge the order passed in the main Writ Petition before the Hon'ble Supreme Court. However, this Court does not find any reason for exercising contempt jurisdiction.

23. In light of the aforesaid discussion, the present Contempt Petition is rejected and stands dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SUBRAMONIUM PRASAD)
JUDGE

OCTOBER 28, 2022

aks