

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1840 of 2023

In
Civil Writ Jurisdiction Case No.13888 of 2016

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1. Dr. Rajesh Kumar Sinha Son of Late Sri V.P. Sinha, Resident of Flat no. 404, Siyasan Palace, Ara, Garden Road, Near Jagdeo Path, P.O.- Bihar Veterinary College, P.S.- Rupaspur, District-Patna-800014.
 2. Dr. Prabhash Chandra Pathak Son of Late Dr. P. Pathak, Resident of East Mahavir Colony, P.O. and P.S.- Beur, Anisabad Patna-800002.
 3. Dr. Kumar Vikash Son of Lalan Prasad, Resident of A-202, Sree Apartment Opposite SBI, Anandpuri, P.O.- Patna GPO, P.S.- S.K.Puri, Patna- 800001.

... .. Petitioner/s

Versus

1. The Union of India through Secretary, Ministry of Health and Family Welfare, Government of India.
2. The State of Bihar through the Principal Secretary, Health Department Government of Bihar, 1st Floor, Vikas Bhawan, Bailey Road, Patna.
3. Sri Anil Kumar Tiwari, Director-In-Chief, Health Department, Government of Bihar, Patna.
4. Sri Praful Chandra Suman, Under Secretary, Health Department, Government of Bihar.
5. Dr. Shravan Kumar, Civil Surgeon-cum-Chief Medical Officer, Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Advocate Mr. Sumit Kumar Jha, Advocate Ms. Riya Giri, Advocate
For the Opposite Party/s :		Dr. K.N. Singh, AD SG Mr. Abhay Shankar Jha, CGC

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

2 24-07-2023 The present M.J.C. is filed for non-compliance of the order dated 16.12.2016 read with 10.03.2017 passed in C.W.J.C. No. 13888 of 2016 (Dr. Rajesh Kumar Sinha & Ors. Vs. The Union of India & Ors.) and M.J.C. No. 686 of 2017 filed by Dr. Rajesh Kumar Sinha & Ors, Vs. The Union of India & Ors. The



present contempt petition is filed beyond the time limit stipulated under Section 20 of the Contempt of Courts Act, 1971. The present M.J.C. is filed for the 2nd time insofar as non-compliance of the order dated 16.12.2016. Earlier M.J.C. No. 686 of 2017 was disposed of on 10.03.2017 and it is noticed that no liberty to file fresh M.J.C. - contempt petition was granted.

2. This Court has to examine the maintainability of the contempt petition in relation to the limitation prescribed under Section 20 of Contempt of Courts Act, 1971. Section 20 of the Contempt of Courts Act, 1971 provides limitation for actions for contempt “No Courts shall initiate any proceedings for contempt, either on its motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.”

3. The present M.J.C. - contempt petition is filed for the 2nd time on the same cause of action. On this ground itself, M.J.C. - contempt petition is not maintainable in the absence of liberty to file revival of order or to file fresh contempt petition. Even from the date of disposal of earlier M.J.C. - contempt petition, read with presenting this M.J.C. - contempt petition on 13.07.2023, there is a delay. That apart, it is crystal clear that a limitation is prescribed for filing a contempt petition against



non-compliance of the order passed by the Court and one year period is prescribed from the date of cause of action accrued. The present M.J.C. - contempt petition is filed on 13.07.2023 for non-compliance of the order dated 16.12.2016 read with 10.03.2017. Thus, there is a delay of more than one year even in filing present M.J.C. No. 1840 of 2023.

4. It is necessary to take note of, whether this Court can invoke Article 215 of Constitution of India for entertaining the contempt petition beyond the time limit stipulated of one year.

5. Article 215 of the Constitution of India provides that High Courts to be Courts of record “Every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself.”

6. The Constitution provides powers to the High Court to punish for contempt itself. No doubt, such power is granted for the effective implementations of the orders of the respective Hon'ble High Court. However, this Court has to examine, whether such power could be exercised beyond the period of limitation prescribed under Section 20 of the Contempt of Courts Act 1971, and under what circumstances.

7. The general principle of law in this regard would be



whenever there is a Special Act enacted in respect of limitation, the powers to confer under the Constitution as well as the Special Act to be read cogently and harmoniously. Harmonious reading of these provisions, no doubt, the High Courts are empowered to exercise the power of contempt as the High Court is the Court of record. However, such power could be exercised only with reference to Section 20 of the Contempt of Courts Act, 1971. In other words, powers of contempt beyond the limitation period could be exercised only on exceptional circumstances, and sparingly. The powers conferred under the Constitution in normal circumstances are to be exercised only in the light of Special Act viz., the Contempt of Courts Act. Only in extraordinary circumstances; the High Courts can go beyond the period of one year and exercise the powers of Contempt under Article 215 of the Constitution of India.

8. Apex Court in the case of ***Pallav Sheth Vs. Custodian & Ors.***, reported in ***(2001) 7 SCC 549***, it is held as under:-

“Firstly, a contempt proceedings can be initiated by two words, either the Court can initiate the contempt proceedings on its own (suo moto), or otherwise. The word otherwise has been interpreted to mean that the initiation would have to be done by a party by filing the contempt petition. Therefore, the High Court was of the opinion that the proper construction to be placed on Section 20 of the Act must be that action must be initiated, either by filing of an application, or by a Court issuing notice suo



moto within a period of one year from the date on which the contempt is alleged to have been committed.

Secondly, the Hon'ble Supreme Court did not find that Section 20 of the Act either stultifies or abrogates the power <http://www.judis.nic.in> bestowed upon the Apex Court under Article 129 or Article 215 of the Constitution of India.

Thirdly, since Section 20 of the Act is a special law prescribed for a period of limitation, different from the limitation prescribed by the Limitation Act, which happens to be the general law, the special law would naturally override and take precedent over the Limitation Act- the general law. Thus, while exercising the power of contempt under Article 215 of the Constitution of India it has to be exercised in consonance with Section 20 of the Act.

*Fourthly, the word to initiate a proceeding would mean the filing of a petition. Such word does not mean the taking of cognizance by a Court, as was held in the case of Om **Prakash Jaiswal v. D.K.Mittal** reported in (2000) 3 SCC 171.*

37. *Under Section 23 of the Contempt of Courts Act, 1971 power has been given to this Court and to the High Courts to make rules not inconsistent with the provisions of the Act providing for any matter relating to its procedure. Our attention has been drawn to Rules framed under Section 23 by this Court as well as by the High Courts in India. All these Rules inter alia require, other than suo motu action being taken, petition or application being filed in court which is then taken up for consideration. For example, the relevant part of Rule 2 of the Calcutta High Court Contempt of Courts Rules, 1975 reads as follows:*

“2. (1) Proceedings in connection with a civil contempt may be initiated—

(a) by a petition presented by a party or parties aggrieved; or

(b) by the High Court on its own motion; or

(c) on a reference made to the High Court by the subordinate courts as in the case of ‘criminal contempt’.

(2) Proceedings in connection with a criminal contempt may be initiated—

(a) on a motion of the High Court in respect



of a contempt committed upon its own view under Section 14 of the Act; or

(b) on its own motion by the High Court under Section 15(1) of the Act; or

(c) on a motion founded on a petition presented by the Advocate-General under Section 15(1)(a) of the Act; or

(d) on a motion founded on a petition presented by any other person with the consent in writing of the Advocate-General under Section 15(1)(b) of the Act; or

(e) on a reference made to the High Court by the subordinate courts under Section 15(2) of the Act, containing the following particulars—

(a) a brief statement of the case;

(b) the particulars of the contumacious acts;

(c) name, address and other particulars of the respondents along with the copies of the papers relating to contumacious acts.”

38. *The Rules so framed by all the courts in India do show that proceedings are initiated inter alia with the filing of an application or a petition in that behalf. If, however, proceedings are not initiated by filing of an application within a period of one year from the date on which the contempt is alleged to have been committed then the court shall not have jurisdiction to punish for contempt. If, on the other hand, proceedings are properly initiated by the filing of an application, in the case of civil contempt like the present before the Court within the period of limitation then the provisions of Section 20 will not stand in the way of the court exercising its jurisdiction.”*

9. Thus, obviously the power bestowed upon this Court under Article 215 of the Constitution of India would have to be exercised, while keeping in mind the limitation prescribed by Section 20 of the Contempt of Courts Act. Therefore, the contention raised by the learned counsel with regard to lack of



applicability of the limitation upon a power bestowed by Article 215 of the Constitution of India is unacceptable.

10. The High Court cannot invoke the powers under Article 215 of the Constitution of India, in all the cases by entertaining the contempt petition beyond the period of one year, so as to dilute or eradicate the law prescribed under Section 20 of the Contempt of Courts Act, 1971. All contempt petitions ought to be filed within the limitation prescribed under Section 20 of the Contempt of Courts Act, 1971. The High Court on exceptional circumstances, on arriving a conclusion that a gross injustice to the society or the case is of public importance, then the inherent powers provided under Article 215 of the Constitution of India, can be exercised without reference to Section 20 of the Contempt of Courts Act. A litigant may come out with an interpretation that an injustice is caused to all the orders or judgments passed by the High Courts. Such a general proposition, as advanced by the learned counsel appearing for the petitioner deserves no merit consideration. No doubt, the litigants approach the Court to get justice, that does not mean that all the contempt applications have to be entertained after a period of one year prescribed under Section 20 of the Contempt of Courts Act, 1971. Otherwise, the very



object incorporating Section 20 of the Contempt of Courts Act, 1971 would be defeated or it has to be treated as redundant. Generalization in this regard can never be appreciated, While invoking Article 215 of the Constitution of India. Courts have judiciously apply the peculiar facts and circumstances prevailing in each and every case. In other words, Courts have to interpret these provisions in a realistic way than in a general manner. Therefore, it is not a fit case to initiate contempt proceedings or entertain the M.J.C. - contempt proceedings on the limitation issue.

11. In the light of above narrated facts and legal issues, the present M.J.C. - contempt petition filed after lapse of more than one year, cannot be entertained in view of Section 20 read with other provisions of Contempt of Courts Act, 1971 and Chapter XXVIII, PART “A” of contempt of Courts (Patna High Court) Rules.

12. Accordingly, present contempt petition stands dismissed.

(P. B. Bajanthri, J)

(Jitendra Kumar, J)

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