



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Date of order : 24th July, 2023**
 + **CONT.CAS(C) 867/2022**

AJAY KUMAR BHAGAT AND ORS Petitioners
 Through: Appearance not given.

versus

B.L. SHERWAL AND ANR Respondents
 Through: Ms.Nidhi Raman, CGSC with
 Mr.Zubin Singh and Mr.Mayank
 Sansanwal, Advocates for UOI
 Mr.Anupam Kishore Sinha and
 Mr.Apoorv Jha, Advocates for R-2

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant civil contempt petition has been filed under Article 215 of the Constitution of India read with Section 2(b), 10, 11 and 12 of the Contempt of Courts Act, 1971 against the non-compliance of order dated 30th November 2018 passed by this Court in Writ Petition Civil No. 12920 of 2018 seeking the following reliefs:

“a) Initiate contempt proceedings against the Contemnor/ Respondents and they be held guilty of “Civil Contempt” for



violating order passed by this Hon'ble Court in WPC 12920/2018 dated 30.11.2018 and be punished accordingly.

b) Direct the contemnor/respondents to comply with the order dated 30.11.2018 of the Hon'ble High Court in WPC No-12920/2018 in letter and spirit and further disengaged petitioners be engaged. to the post of Security Guard (contractual) forthwith with continuity and back wages. Or

c) Pass any other order(s), which this Hon'ble High Court may deem just & equitable in the facts & circumstances of the case"

2. The petitioners are members of Contract Workers Union, Dr. Ram Manohar Lohia Hospital who were employed as contractual security guards at the Hospital through a private contractor named Good Year Security Services since 2005. In the year 2018, the services of the petitioners were discontinued arbitrarily by the respondent No.2.

3. Aggrieved by the same, the petitioners and other terminated employees filed a Writ Petition Civil bearing No. 12920 of 2018. The Coordinate Bench of this Court *vide* interim order dated 30th November 2018 directed respondent No.5 to not disturb the services of the petitioners. The interim order is reproduced herein:

"Issue notice.

Learned counsel appearing on behalf of respondent nos.1 to 3 accepts notice and seeks time to file the counter affidavit.

Let the needful be done within a period of six weeks. Rejoinder thereto, if any, to be filed within four weeks thereafter. On taking steps within one week let notices be served upon the respondent nos.4 & 5.

file counter affidavit within four weeks. Rejoinder thereto, if any, to be filed within four weeks thereafter.

Renotify on 25th March, 2019.



Till further orders, respondent no.5 is directed not to disturb the services of the petitioners.”

4. Despite the interim relief provided by this Court, the services of the petitioners were discontinued by the respondents. Thereafter, the petitioners made representations before respondent No.2 in order to apprise them of the order dated 30th November 2018 and prayed for continuance of the service in light of the aforesaid order passed by the Court, but the respondent did not comply with the order.
5. Upon non-compliance of the directions/orders of this Court, a Contempt Case (C) No.21/2019 was filed by some of the terminated employees. The said case was disposed of *vide* order dated 25th April 2019 directing the respondents to appoint the terminated employees. The same was duly complied with by the respondent.
6. Subsequently, the members of the Union who were not the petitioners in the abovementioned contempt case were denied appointment letters, despite making several representations to the concerned respondent.
7. Being aggrieved by the conduct of the respondents, the petitioners have approached this Court by way of filing the instant civil contempt petition.
8. Learned counsel appearing on behalf of the petitioners submitted that the conduct of the respondents amounts to willful disobedience and stands in contempt of the interim order dated 30th November 2018 passed by this Court.



9. It is submitted that the services of the petitioners were discontinued arbitrarily by respondent No.2 on 1st December 2018 despite the order dated 30th November 2018, wherein this Court had directed the respondents to not disturb the services of the petitioners.

10. It is submitted that the respondent No.2 was employed by respondent no.1 replacing the previously employed contractor M/s Good Year Security Services through whom the petitioners were originally employed. It establishes that the respondent No.1 is the principal employer of the respondent No.2 and hence is vicariously liable for the acts of respondent No.2.

11. It is submitted that liability of respondent No.1 as principal employer did not cease to exist upon the expiration of the employment contract since the order dated 30th November 2018 was already in effect before the contract's expiry and the commencement of a new contract with respondent No.2.

12. Hence, in view of the foregoing submissions, it is crystal clear that respondent has willfully and deliberately acted contrary to the interim order dated 30th November 2018 passed by the Coordinate Bench. Hence, contempt proceedings may be initiated against them.

13. *Per contra*, learned counsel for respondent No. 1 vehemently opposed the maintainability of the present petition and submitted that the present petition is similar to the application filed before the Deputy Chief Labour Commissioner for compliance of the order dated 3^{0th} November 2018 of the Coordinate Bench of this Court and the original Writ Petition.



14. It is further submitted that respondent No.1 merely outsourced security guards by entering into a contract with respondent No.2 which is a private security agency thereby playing no role in the employment of the petitioners.

15. It is submitted that the respondent No. 1 remains the principal employer of the petitioners only till the validity of the contract and any liability ceases to exist upon the expiry of the same. It is further submitted that the contract warrants no guarantee that the same workers will continue to work at the hospital even after a new contract with a new agency is entered into.

16. Hence, in view of the foregoing submissions, the instant petition being devoid of any merit is liable to be dismissed.

17. Heard learned counsel for the parties and perused the record.

18. Admittedly, the petitioners were engaged on a contractual basis by respondent No. 2 to serve as security guards. Upon termination from the services, the petitioners, along with other terminated employees, approached this Court by filing a Writ Petition (C) No. 12920 of 2018 which is still pending before this Court.

19. This Court *vide* interim order dated 30th November 2018 had directed the respondent No. 5 to not disturb the services of the petitioners. Upon non-compliance, some of the aggrieved workmen who are not part of the instant contempt petition had filed Contempt Petition No.21/2019, whereby the Court granted relief to the aggrieved petitioners which was duly complied by the respondent.



20. Thereafter, a representation was made by the present petitioners seeking parity in light of the relief granted in the Contempt Case. The said representation was denied due to alleged non-compliance with a procedural requirement by the petitioners which led to the filing of the present contempt petition.

21. Before delving into the issue at hand, it is important to establish and discuss the essential ingredients for allowing a contempt petition. The civil contempt is defined under section 2(b) of the Contempt of Courts Act, 1971 (the Act hereinafter) in following manner:

“2. Definitions

(b) “civil contempt” means 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.”

22. On perusal of the aforesaid provision, it is clear that wilful disobedience is a necessary condition for a contempt petition to succeed. In ***Maninderjit Singh Bitta v. Union of India, (2012) 1 SCC 273*** the Hon’ble Supreme Court held as follows:

“20. In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and wilful violation of the orders of the court, even to constitute a civil contempt. Every party to lis before the court, and even otherwise, is expected to obey the orders of the court in its true spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution. The government departments are no exception to it. The departments or instrumentalities of the State must act expeditiously as per orders of the court and if such orders postulate any schedule, then it must be adhered to.



Whenever there are obstructions or difficulties in compliance with the orders of the court, least that is expected of the government department or its functionaries is to approach the court for extension of time or clarifications, if called 20/or. But, where the party neither obeys the orders of the court nor approaches the court making appropriate prayers for extension of time or variation of order, the only possible inference in law is that such party disobeys the orders of the court. In other words, it is intentionally not carrying out the orders of the court. Flagrant violation of the court's orders would reflect the attitude of the party concerned to undermine the authority of the courts, its dignity and the administration of justice.”

23. In ***Ram Kishan v. Tarun Bajaj*, (2014) 16 SCC 204** the Hon’ble Supreme Court elaborated the meaning and scope of wilful disobedience by discussing the mental element/state of mind manifest from the conduct of the party to a proceedings highlighting a wilful disobedience of the Court directions. The relevant part is reproduced herein:

“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."

24. Therefore, it is an established fact that the disobedience as required for initiation of contempt proceedings should be wilful disobedience. Before analyzing the instant case on the said parameter, it is pertinent to look whether the contempt proceedings are barred by limitation or not. Section 20 of the Contempt of Courts Act, 1971 provides for limitation on initiation of proceedings in following manner:

"20. Limitation for actions for contempt.—No court shall initiate any proceedings of contempt, either on its own 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."

25. The said provision has been analyzed by Allahabad High Court in ***Islamuddin v. Umesh Chandrara Tiwari, 2009 SCC OnLine All 690*** and it was held that the Court should not deal with the petition after expiry of one year from the date the contempt is alleged to have been committed. The relevant part of the judgment is reproduced herein:

"66. There is another reason for taking the above view. Section 29(2) of Act, 1963 provides that Sections 4 to 24 (inclusive) shall apply only in so far as and to the extent to which they are



not expressly excluded by such special or local law. From the very reading of Section 20 of Act 1971, we are of the view that it expressly excludes the power of the Court to condone delay in giving to itself jurisdiction to initiate proceedings for contempt after expiry of one year from the date the contempt is alleged to have been committed. Applicability of Section 5 of Act, 1963 to the bar contained in section 20 of Act, 1971 would make the mandate contained therein illusory for all purposes. Where the language of the statute is clear, it is not for the Court to interpret the provision of statute in a manner which would completely destroy the express provision of the statute. Reading Section 20 of Act 1971 in consonance with Section 29(2) and 17 of Act 1963, it can be said that it excludes the period taken beyond one year by a person in moving application, due to lack of information on account of the fraud played by the alleged contemnor and the benefit of Section 17 may be stretched to what extent as there is nothing contrary in Section 20 to exclude section 17 from its application but it does not mean that Section 5 can also be placed on the same pedestal since the purpose and object of Section 5 is totally different."

26. In the case of ***Yogesh P. Sukhanandi v. State of Gujarat, 1995 SCC OnLine Guj 251***, a Division Bench of the Gujarat High Court dismissed the petition on grounds of limitation and held as follows:

"6. Another aspect of the matter on which the applications are liable to be dismissed is that this Court while passing the order on 21-11-1991 has directed the authority to decide the application preferably on or before December 31, 1991. Both these applications are filed in the year 1993. Application No. 200/93 is filed on 20-12-1993 and rule came to be issued on 21-3-1994. Misc. C.A. No. 914/93 was filed on 18-1-1993 and rule came to be issued on 21-3-1994. In views of Section 20 of the Contempt of Courts Act, 1971, the court has no jurisdiction to take cognizance beyond one year of the act or omission



committing or constituting contempt of the court. In view of these facts, both these applications are filed beyond the stipulated time. Hence this Court has no jurisdiction to take cognizance of the same."

27. In the instant case, the petitioners have placed on record the directions given by this Court in the interim order dated 30th November 2018. In the said order, the Court had provided relief to the petitioners and the other terminated employees by directing the respondent No. 5 to not disturb their services.

28. Aggrieved by the non-compliance, some of the terminated employees had filed contempt which was allowed reinstating those employees who had approached this Court.

29. The petitioners in the instant case chose not to file the contempt petition within time limitation, rather filed a representation before the respondent, which was dismissed on the ground of alleged non-conformity with the procedural requirement of submitting the documents.

30. Despite not getting relief from the respondents, the petitioners chose to approach the Labour Commissioner and not this Court and ultimately withdrew the petition from there as well.

31. After waiting for three years, the petitioners chose to file the present contempt petition. One major difference between both the petitions is that the earlier contempt petition filed by the other employees was well within the limitation time as prescribed under Section 20 of the Act i.e. one year.



Whereas, the present petition has been filed after a delay of more than three years.

32. One of the underlying principles behind insertion of limitation is to make the petitioners/aggrieved persons vigil about their rights so that they can act diligently and not sleep over their rights. In the instant case, the other aggrieved employees approached this Court immediately after non-compliance with the interim order, but the petitioners chose not to do so rather they kept on meddling between the respondent and the other authorities. Therefore, the petitioners in the instant case can be only termed as parties who did not exercise their right within the time as provided under Section 20.

33. In view of the above discussion, it is clearly established that the situation of the petitioners cannot be termed as an exceptional situation and is certainly barred by limitation of one year as provided under the Act.

34. Hence, the instant petition is liable to be dismissed on the ground of limitation as barred by Section 20 of the Act.

35. Accordingly, the instant petition stands dismissed.

36. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 24, 2023

pa/av

Click here to check corrigendum, if any