

Form J(2)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :

The Hon'ble Justice Arindam Mukherjee

CPAN/1550/2024

in

WPA/8104/2021

with

CAN/1/2024, CAN/2/2024

Asiatic Society's Employees' Union & Anr.

-Vs.-

***Lt. Col. Anant Sinha, Administrator, Asiatic Society,
Kolkata***

For the petitioners : **Mr. Kallol Basu,
Mr. Suman Banerjee.**

**For the alleged
Contemnor** : **Mr. Firdous Shamim,
Mrs. Sayani Roy Chowdhury,
Mr. Rishabh Ahmed Khan.**

Heard on Judgement (oral) on : 27.09.2024.

Arindam Mukherjee, J.

1. This contempt application arises out of an order dated 4th October, 2021 passed in WPA/8104/2021. The operative portion of the said order dated 4th October, 2021 is as follows:-

"After hearing the parties, the matter requires detailed scrutiny, which is possible only after affording the respondents an opportunity to disclose their stand on affidavits. However, till the writ petition is finally heard out, the interest of the employees of Asiatic Society are

required to be protected. The respondents are directed to act strictly in accordance with the order dated 9th June, 2021, till the writ petition is heard on affidavits. The parties shall be at liberty to bring to the notice of this Court if there is any change in situation from the order dated 9th June, 2021, prior to final hearing of the writ petition."

2. The petitioners say that there has been violation of this operative portion of the order by the alleged contemnor. Although the contempt application is appearing for the first time but the alleged contemnor is personally present in Court and Mr. Firdous Shamim, learned Advocate assisted by Mrs. Sayani Roy Chowdhury and Rishabh Ahmed Khan appears on behalf of the alleged contemnor and submits that he has the instruction to represent the alleged contemnor. Mr. Shamim undertakes that Mr. Rishav Ahmed Khan shall be filing the Vakalatnama on behalf of the alleged contemnor in the Department.
3. The petitioners submit that the alleged contemnor despite being specifically aware of the order dated 4th October, 2021 has prevented some of the employees of Asiatic Society from entering the office or to record their attendance in the biometric device after 31st August, 2024. The petitioners say that three of the employees, namely, Sri Palas Kanti Dutta, Smt. Anita Roy and Sri Sushil Chandra after having attended the age of superannuation was granted extension as permissible under the

Asiatic Society Bye Laws particularly under VI(B)-SR 13(6). The said Bye Laws provide that every employee of the Society shall retire on completing the age of 60 years but his services may be extended by the Council for a period not exceeding one year at a time provided that the total period of such extension should not exceed five years. The petitioners placed before the Court the minutes of the meeting of the Council of Asiatic Society, Kolkata held on 30th July, 2024 and in particular agenda no. 10 whereunder the prayers of the employees of the Society received in the month of June, 2024 for extension of their services was considered. It appears from the minutes that it was resolved to give Sri Palas Kanti Dutta one year extension with effect from 4th October, 2024, one year extension to Smt. Anita Roy with effect from 20th August, 2024 and one year extension to Sri Shshil Chandra with effect from 19th August, 2024.

4. The petitioners say that these three employees have been prevented from entering the office or recording their attendance in the biometric device by the alleged contemnor in violation of the order dated 4th October, 2021. The petitioners, therefor, seek an interim order in the contempt application to permit the said three employees to enter the office premises, record their

attendance and perform their duties as usual to maintain the *status quo* situation which prevailed as on 4th October, 2021. The petitioners have relied upon a Judgment reported in **(2006)1 CLT 355 (Ranjit Kumar Halder –Vs.- State of West Bengal & Ors.)** in support of their contention. Relying upon paragraph 68 of the said Judgment it is submitted that the Court even without reaching a finding on contempt can issue an order of injunction.

5. On behalf of the alleged contemnor it is submitted that the funds for operation and management of the Asiatic Society is received from Government of India, Ministry of Culture. The Ministry has issued a circular on 9th July, 2024 wherein under Clause X it is stated “extension of services of the employees beyond 60 years should be stopped immediately. The instruction issued by the Ministry in this regard has to be strictly followed” as the salary/remuneration to be paid to the employees under extension will come from the Ministry and as such the funds will not be released for paying the remuneration or salary of the employees under extension. In view of such circular it is submitted by the alleged contemnor that the three persons, namely, Sri Palas Kanti Dutta, Smt. Anita Roy and Sri Sushil Chandra are beyond the age of 60 years cannot be

permitted to continue with work. That apart and in any event, the tenure of the extended period of each of the three persons named hereinabove has expired on 31st August, 2024. It is further submitted on behalf of the alleged contemnor that if these persons are allowed to work then their remuneration cannot be disbursed in view of the specific stipulation in the notification/circular dated 9th July, 2024. These three persons, therefor, were not allowed to enter the office after 31st August, 2024.

6. After perusing the minutes of the Council held on 26th July, 2024 it is apparent that the circular/notification dated 9th July, 2024 was placed before the Council. The Council took note of such circular and thereafter extended the tenure in respect of Sri Palas Kanti Dutta, Smt. Anita Roy and Sri Sushil Chandra subject to, however, approval of the Ministry.
7. This Court is apprised that the minutes of the Council dated 26th July, 2024 has been sent to the Ministry and till date there is no approval as to the extension granted to above three persons. Unless there is specific approval to the extension of the tenure these three persons cannot be allowed to work at the Asiatic Society. There is as such no violation of the order

dated 4th October, 2021 as per the alleged contemnor and no contempt proceedings also lies in respect thereof.

8. It is well settled principle of law that in contempt jurisdiction no fresh order can be passed if it is found that the same relates to fresh cause of action. However, to preserve the dignity of the Court orders may be passed so that settled position directed to be maintained by the order under contempt cannot be altered unless the subsequent events compel variation of the order under contempt. In the instant case, if the facts are chronologically noted it will appear that at the time when the order dated 4th October, 2021 was passed all the three persons, namely, Sri Palas Kanti Dutta, Smt. Anita Roy and Sri Sushil Chandra were on extension. This will be clear from the minutes of the Council dated 26th July, 2024 where Sri Palas Kanti Dutta is on his fifth and final year of extension, Smt. Anita Roy is on her fourth year of extension and Sri Sushil Chandra is on his third year of extension. The three persons, therefor, subsequent to the order dated 4th October, 2021 continued to work in Asiatic Society under the extended tenure which is permissible in view of VI B – SR 13(6) of the Bye Laws of Asiatic Society. There is no dispute that the Council on 26th July, 2024 was competent to grant the extension. The Council

has taken note of the circular notification dated 9th July, 2024 and as such has provided for a caveat that the extensions are subject to approval by the Ministry. The approval for extension has not yet been either allowed or refused. It is also not in dispute that Asiatic Society functions through its Council. The discussion of the Council, therefor, cannot be over ruled by the administrator appointed on the Council having been defunct. In the event, the three persons, namely, Sri Palas Kanti Dutta, Smt. Anita Roy and Sri Sushil Chandra are not allowed to work as per the extension granted to them by the Council in its meeting held on 26th July, 2024 has to be carried out till the same is expressly over-ruled by a competent authority. The decision of the Council after taking note of the circular dated 9th July, 2024, therefor, cannot be ignored. The ministry is competent to issue circulars but the ministry cannot sit on appeal over the decision of the Council. Moreover, the decision to grant extension taken by the Council in its meeting dated 26th July, 2024 has also not been disapproved by the ministry. Their claim for remuneration will not be there if they are not allowed to work. The administrator in this factual matrix cannot prevent the three persons from entering the office or perform their duties to bye-pass the order dated 4th October, 2021 by

which a status quo position was directed to be maintained in the context of a particular state of affairs. None of the three persons have been given extension beyond the period permissible under the by-laws of the Society. Even if the said three persons received their remuneration for the period they rendered their services on the extended period they will not be receiving remuneration without performing their duties. The said three persons were employees of Asiatic Society prior to reaching their age of superannuation. So, the Asiatic Society or the Ministry for that matter will not be prejudiced as they can pray for appropriate steps against the three persons in the writ petition which is pending final disposal.

9. In the light of the discussion hereinabove, I hold that these three persons should not be prevented from entering the office of Asiatic Society on and from 1st October, 2024 till the extension period as granted by the Council in its meeting held on 26th July, 2024 expires or till such time the extension is interjected by a decision of a competent authority.
10. Since the alleged contemnor has appeared and elaborate submissions have been made on his behalf and considering the same I do not find that there has been a deliberate violation of the order dated 4th October, 2021. It may be at the highest an

act as per his interpretation of the circular of the ministry dated 9th July, 2024 which has not fallen for scrutiny of a competent authority as yet. For the reasons recorded hereinabove the contempt petition is disposed of.

Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties on priority basis after compliance with all necessary formalities.

(Arindam Mukherjee, J.)

**Srimanta
A.R.(Court).**