

IN THE HIGH COURT AT CALCUTTA

Special Civil Jurisdiction

(Appellate Side)

CPAN/982/2022

in FMA 767 of 2022

with COT/64/2022

+

IA NO: CAN/2/2024

Modern Construction

..... Petitioner

Vs.

Smt. Bandana Pokhriyal,

..... Contemnor

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Rai Chattopadhyay

For the petitioner : Mr. Ayan Banerjee, Adv.,
Mr. Arindom Chatterjee, Adv

for HMC/ alleged : Mr. Jayanta Kumar Mitra, Ld. Sr. Adv. (Bar-
contemnor at-law),
Mr. Sandipan Banerjee, Adv.,
Mr. Ankit Sureka, Adv.,

Judgment on : 17.09.2025

Arijit Banerjee, J.:

1. This contempt application has been filed alleging wilful violation by the alleged contemnor, of a judgment and order dated July 25, 2022, whereby we had disposed of FMA 767 of 2022 along with COT 64 of 2022. FMA 767 of 2022 was an

appeal filed by the Howrah Municipal Corporation (in short HMC) against the judgment and order dated February 3, 2022, whereby a learned Judge of this Court had disposed of WPA 557 of 2022, being a writ petition filed by the present petitioner against HMC and others. COT 64 of 2022 was a cross objection filed by the present petitioner against the same judgment and order of the learned Single Judge.

2. The present petitioner (in short “Modern”) participated in a tender floated by HMC and emerged as the successful bidder. Accordingly, the contract was awarded to Modern. The work related to improvement of a road in Howrah District. Modern says that it completed the work to the satisfaction of HMC way back in 2015. Form A as well as completion certificate were issued by HMC. The bills raised by Modern were certified by the concerned officer in HMC. However, the bills have not been paid.

3. With the above grievance, Modern approached a learned Judge of this Court by filing WPA no. 10112 of 2020. By an order dated January 18, 2021, the learned Judge disposed of the writ petition with the following observations:-

“The petitioner has performed its part of the work and it is the duty of the Howrah Municipal Corporation to pay the bills in respect of the work done by the petitioner.

In view of the above, the instant writ petition is disposed of by directing the Howrah Municipal Corporation to take steps for clearing the dues of the petitioner strictly in accordance with law, within a period of four months from the date of communication of a copy of this order.

In the event the Howrah Municipal Corporation disputes the bills which have been raised by the petitioner, the same shall also be intimated to the petitioner immediately.”

4. Subsequent thereto, a hearing appears to have been held before the Controller of Finance, HMC, wherein Modern participated. The Controller of Finance passed an order dated November 29, 2021, rejecting Modern's claim. Several grounds were mentioned in such rejection order. One of the grounds was that the subject contract was awarded to Modern without following the process of e-tender as was mandatory under the applicable Government Orders.

5. Challenging the said order of the Controller of Finance, HMC, Modern approached the learned Single Judge in the present round of litigation, by filing WPA 557 of 2022. By a judgment and order dated February 3, 2022, the learned Judge set aside the order dated November 29, 2021, passed by the Controller of Finance. The matter was sent back for being considered afresh "by the Commissioner or his delegate above the rank of the Controller of Finance to decide the issues afresh in terms of the order dated January 18, 2021, passed by a Hon'ble Judge of this Court." The operative portion of the order dated February 3, 2022, reads as follows:-

"The only issue to be decided in this case is whether the work was completed or to what extent was the work completed by the petitioner and what amounts should be released to the petitioner on the basis of the bills raised pursuant to the work done by the petitioner. Illegality in the tendering process detected subsequent to the work being completed, cannot be a ground for non-payment of the dues of the petitioner.

The legitimate dues of the petitioner as per the work completed by the petitioner must be released by the authority. Sanction or grant of the government cannot be a relevant issue.

This court has not gone into the merits of the claims of the petitioner and the Commissioner and/or his delegatee of the corporation shall decide the

issue afresh without being influenced by the order of the Controller of Finance and strictly on the basis of the records.

The inquiry will be restricted to ascertaining whether the work order was issued to the petitioner, whether such work was completed by the petitioner and whether the bills raised by the petitioner were correct and commensurated with the work done by the petitioner. If there are reasons for not allowing the payment, such reasons shall be recorded in the order. The petitioner shall be paid in proportion to the work done.

A hearing shall be given to the petitioner. A reasoned order shall be passed and communicated to the petitioner.

The entire exercise shall be completed within a period of two months from the date of communication of this order. The court has not decided on the quantum. The question of payment of interest is also not decided. Such points can be agitated at the appropriate stage.”

6. HMC challenged the said order by filing FMA 767 of 2022. Modern also challenged the order by filing COT 64 of 2022.

7. While disposing of the appeal and the cross objection, by a judgment and order dated July 25, 2022, affirming the order of the learned Single Judge, we had observed as follows:-

“The learned Judge was also right in restricting the scope of the reference to the Commissioner. We reiterate that the Commissioner will only consider the following questions:

- i. Whether the work was awarded to Modern;
- ii. Whether Modern completed the work;

iii. Whether Form-A has been issued by the concerned Engineer;

iv. Whether the bills of Modern have been certified by the Competent Authority.

If the answers to the above questions are in favour of Modern, there can be no legitimate reason for withholding Modern's bills, unless of course, the Commissioner comes to a finding, supported by reasons and requisite details that Modern did not perform the work as per tender specifications. The Commissioner shall pass a reasoned order after giving an opportunity of hearing to the writ petitioner i.e. Modern Construction, in accordance with law, within a period of six weeks from the date of a copy of this order being placed before the Commissioner. We have not gone into the merits of the claim of the writ petitioner. The Commissioner shall take an informed decision in accordance+ with law. Needless to say, if the Commissioner finds that there is no legitimate ground not to release the bills of the writ petitioner, immediately he will pass appropriate directions so that the writ petitioner receives payment at the earliest.

The Commissioner shall also consider the eligibility of the writ petitioner to receive interest on delayed payment of his bills as per applicable law including Statutes.”

8. This contempt application has been filed for alleged wilful violation of the said judgment and order dated July 25, 2022.

9. In response to the contempt application, an affidavit of compliance, affirmed on February 16, 2023, was filed by the then Commissioner of HMC. To such affidavit was annexed a copy of an order dated February 15, 2023, passed by the

Commissioner of HMC in compliance with the order dated July 25, 2022. The relevant portion of the said order is set out hereunder:-

“That as the Hon’ble Court has restricted the scope of the reasoned order to be passed by the Commissioner of the Howrah Municipal Corporation following the said guidelines while deciding the claims of Modern Construction, the same has been dealt with as under: -

(i) Whether the work order was awarded to Modern?

As per the records available in this department, the work was awarded to Modern in the year 2015, during the tenure of the then Commissioner. However, it is pertinent to mention here that the work of Rupees Twenty Lakhs and above were awarded without e-tender in contravention to GO 2254-F(Y) dated 24.04.2014 which mandates that work above Rupees Five lakhs has to be by e-tender. Apart from that the minimum days for submission of tender from the date of publication in newspaper, for a value of work above ten lakhs was kept at 2 days in contravention to mandatory gap of 14 days.

(ii) Whether Modern completed the work?

As per the official record available and from the report of the inspection committee, it is difficult to comment after a gap of such time as to whether Modern has completed the work satisfactorily or not by maintaining the estimates and schedules as laid down in the tender. However, a part of the road was further imposed by “Mastic Asphalt” which further brings the work quality into question. Both the committees have suggested that they are unable to compare the specifications of BOQ during site inspection after a lapse of 7 years. Therefore, the undersigned cannot comment as to

whether the work was completed or not or whether the work was satisfactorily completed or not.

(iii) Whether Form A has been issued by the concerned Engineer?

As per the records available in the department, Form A has been issued but not by the competent authority. Be it mentioned here that the competent authority to issue the Form A is the Executive Engineer, Roads but the Form A was issued by the Assistant Engineer, Roads which is again in contravention to GO No.5458-F(Y) dated 27.06.2012.

(iv) Whether the bills of the Modern have been certified by the competent authority?

As per the record available in the department and opinion of the Controller of Finance, the bills have not been certified by the competent authority. The competent authority, is the Executive Engineer, Roads as per order NO.5458-F(Y) dated 27.06.2012 of the Finance Department.

A photocopy of the GO 2254-F(Y) dated 24.04.2014 and Memo No.5458-F(Y) dated Kolkata, 27.06.2012 issued by the Secretary, Government of West Bengal, Finance Department, Audit Branch, Writers' Building, Kolkata 700 001, is Annexed herewith.

That Modern Construction appeared before the undersigned and claimed to have completed the work and prayed for release of payment.

That, from the above I arrive at the following:

(i) Though the work was awarded to Modern but the same was awarded without following the financial rules and administrative guidelines and it

can never be the case of the Modern that it was unaware of such rules as Modern claims to have worked previously in Government Department.

(ii) As the inspection was conducted after a lapse of around 7 years. the undersigned cannot comment as to whether Modern completed the work or not or whether the work was satisfactorily completed by Modern or not.

(iii) As per the records available in the department, Form A has been issued but not by the competent authority., therefore, the said Form A is invalid.

(iv) As per the record available in the department and opinion of the Controller of Finance, the bills have not been certified by the competent authority.

That in the light of above, the undersigned being the present Commissioner, HMC, is not in a position to release the bills of the Modern Construction. Hence, the claim of the Petitioner is rejected.”

10. Modern filed an exception to the said affidavit of compliance. In such exception it was stated, inter alia, as follows:-

“(b) The Hon'ble Court has passed specific directions in the order dated 25.07.2022. However, such directions have not been followed by the Contemnor while passing the order dated 15.02.2023. In view of such non-compliance, the said order dated 15.02.2023 is a further act of Contempt for which the contemnor should be suitably dealt with.

(c) In spite of specific direction that satisfactory completion of work cannot be taken into consideration at such a belated stage, the Contemnor has deliberately ventured into the aspect of satisfactory completion of the work which is against the order dated 25.07.2022.

(d) In spite of specific direction that violation of internal rules of Howrah Municipal Corporation are not to be gone into, the Contemnor has deliberately gone into internal violations in awarding the tender which is a further act of Contempt.

(e) The Contemnor has deliberately take a plea that Form-A has not been issued by the Competent Authority with a view to mislead the Hon'ble Court. The concerned tender document does not define Competent Authority. However, the designation of the authorised engineer for execution of the work is provided under the said Tender document from which it would appear that the Form -A was issued by the concerned engineer. The bills were also certified by the concerned engineer.

(f) The Contemnor has relied on G.O. No. 5458-F(Y) dated 27.06.2012 although the said G.O. has no applicability to the present case. While deciding the issue, the Contemnor has deliberately relied upon the circulars which are not applicable to Howrah Municipal Corporation by ignoring the specific directions that the internal violations of Howrah Municipal Corporation cannot be considered.

(g) The Contemnor has made an incorrect statement that the bills of the Petitioner has not been certified by the Competent Authority although the said bills have been certified by the Assistant Engineer who had issued the work order and is the Engineer-in-Charge of the said work as per the Tender document.

A copy of the Tender document is annexed hereto and marked as Annexure P-1.

A copy of Form - A duly certified by the Assistant Engineer is annexed hereto and marked as Annexure P-2.

(h) The Contemnor has completely deviated from the stand disclosed in the Reply to R.T.I. application, dated 30.09.2020 where it was disclosed that the reason for non-payment was non-receipt of the Government grant and sanction.

A copy of the R.T.I. reply is annexed hereto and marked as Annexure P-3.”

11. From time to time, various orders were passed on this contempt application. On February 6, 2025, we had recorded an order to the following effect: -

“1. We are not satisfied with the reports filed by the alleged contemnor from time to time. It is no excuse or explanation to say that the concerned project was not sanctioned by the Government or that the Corporation has no funds.

2. The writ petition of the present petitioner was allowed by a learned Single Judge directing the Howrah Municipal Corporation (HMC) to take a decision on the claim raised by the petitioner herein within the parameters indicated in the order of the learned Single Judge. The Corporation’s appeal from that order failed and was dismissed by this Bench. The order of this Bench was not carried to the Hon’ble Supreme Court. That order read with the learned Single Judge’s order has attained finality.

3. We were minded to issue a contempt Rule against the alleged contemnor today itself. It is the eloquence of learned Senior Counsel for the alleged contemnor that dissuades us from doing so and we give one more opportunity to the alleged contemnor to comply with the order in question.

4. List this matter once again on March 6, 2025.”

12. On March 6, 2025, we passed the following order: -

“1. Mr. Mitra, learned Senior Advocate, representing the alleged contemnor, says that the alleged contemnor has engaged a highly reputed professor by the name of Dr. Sudip Kumar Roy of Indian Institute of Engineering Science and Technology, Shibpur, to go into the matter and submit a report as regards the claim of the petitioner. Mr. Mitra tells us that the alleged contemnor has assured that if Dr. Roy says that the claim of the petitioner should be paid, the same shall be done forthwith.

2. List this matter once again on April 22, 2025, when this Bench is likely to assemble again. Dr. Roy’s report should be placed before us on the next date with advance copy to the petitioner.”

13. On June 24, 2025, we took on record the report of Dr. Sudip Kumar Roy, Professor in the Civil Engineering Department of IEST, Shibpur, dated April 21, 2025, and also Modern’s exception to the said report.

14. In the aforesaid factual matrix, we have to decide whether or not the alleged contemnor has committed contempt of Court by wilfully violating our order dated July 25, 2022, referred to above.

15. Section 2 (a) of Contempt of Courts Act 1971, defines “Contempt of Court” as civil contempt or criminal contempt. Section 2(b) defines civil contempt as “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”.

16. “Criminal Contempt” is defined in Section 2(c) of the 1971 Act. However, we are not concerned with criminal contempt in this case.

17. Before proceeding to decide whether or not the alleged contemnor is guilty of Contempt of Court in the facts of the present case, it may be helpful to note a few decisions of the Hon'ble Supreme Court on the scope and ambit of the contempt jurisdiction of the High Court and the principles of law that the Court should bear in mind while deciding that issue.

18. The subject work pertains to improvement of a road in Liluah Zone under HMC. The contract was awarded to Modern in 2015. The work appears to have been completed by March 2016. A satisfactory completion certificate appears to have been issued by the Assistant Engineer, HMC on March 14, 2016. Approximately 4 years later, Modern approached a learned Judge of this Court by filing a writ petition which resulted in the order dated January 18, 2021, referred to above. The order that was passed by the Controller of Finance, HMC pursuant to the Court's order dated January 18, 2021 was challenged in the present round of litigation. The learned Single Judge quashed that order. The Division Bench affirmed learned Single Judge's order and laid down guidelines/parameters following which the Commissioner, HMC was to take a decision regarding the payment of the bills raised by Modern.

19. This contempt petition was affirmed in September, 2022. Till that date no final decision had been taken by the alleged contemnor. Along with an affidavit, an order of the alleged contemnor, dated February 15, 2023, was filed in Court.

20. In the case of **Anil Ratan Sarkar v. Hirak Ghosh, reported at (2022) 4 SCC 21**, the Apex Court observed that the Contempt of Courts Act has been introduced in the statute book for securing confidence of people in the administration of justice. If an order passed by a competent Court is clear and unambiguous and not capable of more than one interpretation, disobedience to or breach of such order would amount to contempt of Court. There can be no laxity in

such a situation as otherwise the Court orders would become the subject of mockery.

21. In *Kapildeo Prasad Sah v. State of Bihar, reported at (1999) 7 SCC 569*. It was held that for holding a person guilty of contempt, it must be established that there was wilful violation of the judgment or order of Court. However, it was indicated that even negligence and carelessness may amount to contempt.

22. In *Patel Rajnikant Dhulabhai and Anr v. Patel Chandrakant Dhulabhai, reported at (2008) 14 SCC 561*, the Hon'ble Supreme Court held that punishing a person for contempt of Court is indeed a drastic step and normally such action should not be taken. At the same time, however, it is not only the power but the duty of the Court to uphold and maintain the dignity of Courts and majesty of law which may call for such extreme step. If for proper administration of justice and to ensure due compliance with the orders passed by a Court, it is required to take strict view under the Act, it should not hesitate in wielding the potent weapon of contempt.

23. In the case of *M/s Sitaram Enterprises v. Prithviraj Vardichand Jain reported at 2024 INSC 685*, the Hon'ble Supreme Court's order started with the observation: "Disregarding a Court's order may seem bold, but the shadows of its consequences are long and cold." Then, in paragraphs 1 and 2 of the reported order, the Hon'ble Court observed as follows: -

"1. Contempt of court is a serious legal infraction that strikes at the very soul of justice and the sanctity of legal proceedings. It goes beyond from mere defiance of a Court's authority, but also denotes a profound challenge to the principles that underpin the rule of law. At its core, it is a profound disavowal of the respect and adherence to the judicial process, posing a concerning threat to integrity of judicial system. When a party engages in

contempt, it does more than simply refusing to comply with a Court's order. By failing to adhere to judicial directives, a contemnor not only disrespects the specific order, but also directly questions the Court's ability to uphold the rule of law. It erodes the public confidence in the judicial system and its ability to deliver justice impartially and effectively. Therefore, power to punish for Contempt of Court's order is vital to safeguard the authority and efficiency of the judicial system. By addressing and penalizing contemptuous conduct, the legal system reinforces its own legitimacy and ensures that judicial orders and proceedings are taken seriously. This deterrent effect helps to maintain the rule of law and reinforces public's faith in the judicial process, ensuring that Courts can function effectively without undue interference or disrespect.

2. Contempt powers are integral to maintaining the sanctity of judicial proceedings. The ability to address contempt ensures that the authority of the court is respected and that the administration of justice is not hampered by willful disobedience. In the said context, the power of this Court to punish for contempt is a cornerstone of its authority, integral to the administration of justice and the maintenance of its own dignity. Enshrined in Article 129 of the Constitution of India, this power is essential for upholding the rule of law and ensuring due compliance by addressing actions that undermine its authority, obstruct its proceedings, or diminish the public trust and confidence in the judicial system.”

24. The object of exercising the contempt jurisdiction is not only to uphold the majesty of law but also to ensure that orders passed by Courts are obeyed and implemented. If a person is allowed to flout a Court order with impunity, public confidence in the justice delivery system will dwindle and erode. When a Court of competent jurisdiction passes an order, even if the person against whom the order

is directed perceives the order to be erroneous, he is bound to obey the order so long as a higher forum does not set aside the order.

25. However, it must be borne in mind that the contempt jurisdiction of the High Court is quasi-criminal in nature. If a person is held guilty of contempt, penal consequences by way of imprisonment or fine or both, may follow for him. Hence, the jurisdiction must be exercised with due caution and circumspection.

26. Before holding a person to be guilty of contempt of Court, the Court must be reasonably sure that with full knowledge and understanding of an order or direction, that person has wilfully violated the same. Before punishing for contempt of Court, the Court should come to a conclusion that there is no acceptable reason or justification for non-compliance of the order of Court by the alleged contemnor. If an order is liable to more than one logical interpretation one of which the alleged contemnor has adopted, although the Court may not agree with such interpretation of the order, the Court should give benefit of doubt to the alleged contemnor.

27. The power to punish for contempt is inherent in the superior Courts. The power was recognized first by the Constitution of India (Article 129 in the case of Hon'ble Supreme Court and Article 215 in the case of High Courts) and then by the Contempt of Courts Act, 1971. The power is to be wielded not for upholding the honour or authority of any particular Judge but to preserve the majesty of Court and the sanctity of its orders.

28. When a Court directs a person to conduct an exercise and arrive at a decision on a particular point, that person is bound to do so, unless he successfully gets such order set aside by a higher forum. If by accepting the order that person conducts the exercise directed by the Court, but in an erroneous manner, arriving at a wrong decision, unless the Court finds that the erroneous procedure was deliberately adopted by the concerned person with a view to defy the Court's order, the Court should not hold that person guilty of contempt. There

should be an element of mens rea on the part of the alleged contemnor who is said to have violated the order of Court. Generally, what is required is a wilful or deliberate or adamant or obstinate disobedience. However, in some cases even negligent or reckless violation could amount to contempt of Court.

29. The facts of the case culminating in our order dated July 25, 2022, of which violation is alleged, have been recorded above. The relevant portion of that order has also been extracted above.

30. The alleged contemnor has filed an affidavit affirmed on February 16, 2023. Annexed to the said affidavit is the final order dated February 15, 2023, passed by the alleged contemnor. The relevant portion of that order has been reproduced above.

31. In our order we had formulated four questions which the Commissioner of HMC was to consider. As regards the first issue, it is admitted in the final order of the Commissioner that the concerned work was awarded to Modern although by not following the applicable procedure as per the relevant Government Orders. As regards the second issue, it was stated in the order that the Commissioner was not in a position to comment as to whether the work was completed or not or whether the work was satisfactorily completed or not. As regards the third issue, the Commissioner concluded that Form A was not issued by the competent authority. The Executive Engineer was the competent authority. However, the Assistant Engineer issued Form A. Finally the Commissioner opined that although the Executive Engineer was the competent authority for certifying the bills raised by Modern, it was the Assistant Engineer who issued such certificate. The Commissioner therefore recorded that in view of the aforesaid anomalies/irregularities, he was not in a position to clear the bills of Modern.

32. As regards the issue of non-compliance with the applicable procedure for awarding the subject work, the same is an internal matter of HMC. That does not concern Modern. That cannot be a ground for withholding Modern's bills.

33. As far as the second issue is concerned, the Commissioner has stated in his order that since 7 years have elapsed after the issuance of the work order to Modern, presently the Committees constituted by HMC could not say if the subject work was actually completed by Modern or completed satisfactorily. There may be some substance in this contention. Further, the expert report of Dr. Sudip Kumar Ray, Professor in the Civil Engineering Department of IEST, Shibpur, prima facie indicates some shortcoming in the quality of the work executed by Modern. The opinion of the Commissioner on the third and fourth issues, as recorded hereinbefore, may also be good grounds for not paying Modern's bills.

34. In other words, whether or not Modern completed the work satisfactorily, whether or not Form A was issued by the competent authority and whether or not Modern's bills were certified by the competent authority are contentious issues which cannot be decided in this contempt application. The more important thing is that I do not find any wilful violation of our order in question, by the Commissioner, HMC. The order does not wreak of defiance. It also does not appear that the Commissioner intentionally misdirected himself in conducting the exercise that we had directed, with the object of wriggling out of the rigors of the order in question.

35. We had directed payment of Modern's bills if the Commissioner's answer to all the four questions we had framed, were in the affirmative. Rightly or wrongly, the Commissioner has answered at least the third and fourth questions, in the negative. Therefore, I cannot say that the Commissioner has acted in contempt of Court by wilfully violating our order in question.

36. Hence, the contempt proceedings are closed. However, it will be open to Modern to approach the civil forum with its claim since the merits of its claim have never been examined by such forum. If it does so, it may seek benefit under Section 14 of the Limitation, Act 1963. Such claim for exemption under Section 14 as also Modern's money claim against HMC will be decided in accordance with law, on the basis of proper evidence and observing the principles of natural justice by the civil forum, without being influenced by any observation made in this order.

37. CPAN/982/2022 with IA No. CAN/2/2024 is accordingly disposed of.

38. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Arijit Banerjee, J.)

I agree.

(Rai Chattopadhyay, J.)