

STATE OF BIHAR AND ORS.
v.
RAJENDRA SINGH AND ANR.

A

AUGUST 24, 2004

[ARIJIT PASAYAT AND D.M. DHARMADHIKARI, JJ.]

B

Contempt of Court :

Application for contempt—Contempt jurisdiction—Exercise of—Held: While dealing with such application Court is concerned whether earlier decision which has attained finality has been complied with or not—It cannot traverse beyond the order—It is impermissible to examine the rightness or wrongness of the order or to give additional direction or delete any direction which would amount to exercise of review jurisdiction—If the party is aggrieved by the order, it can either approach the Court that passed the order or invoke jurisdiction of Appellate Court.

C

D

An order was passed in compliance with the direction of High Court. The same was not complied with. Respondent filed an application for initiation of contempt proceedings against the appellant-State. Single Judge of High Court held that there was violation of the Court's order and directed re-consideration of the order. Hence the present appeal.

E

Appellant-State contended that there was no violation of High Court's order and as such the finding recorded and the direction for re-consideration are not sustainable in law.

F

Respondent contended that High Court was justified in holding that there was violation of the Court's order but should not have directed for re-consideration instead punished the contemnor.

G

Partly allowing the appeal, the Court.

HELD : 1.1. While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision, which has received its finality, had been complied with or not.

H

A The Court cannot traverse beyond the order, non-compliance of which is alleged. Rightness or wrongness of the order cannot be urged in contempt proceedings. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. [739-A-B]

B 1.2. In a given case, even if ultimately the interim order is vacated or relief in the main proceeding is not granted to a party, the other side cannot take that as a ground for dis-obedience of any interim order passed by the Court. Right or wrong the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach to the Court that passed the order or invoke jurisdiction of the Appellate Court. [739-C; 738-H; 739-A; 738-G-H]

C 1.3. In the instant case, after having arrived at a conclusion that there was violation of the Court's order, the Court should have focused its attention to the issue as to what further was done consequentially. Instead it went on to give further directions for re-consideration in the line of views expressed by it which is clearly impermissible. In some cases Court may grant opportunity to the contemnors to purge the contempt. This is not a case of that nature. In fact Single Judge has held on merits that the decision of the Board was proper and as such directed reconsideration. Thus, the order of the High Court is set aside and the matter is remitted for fresh consideration. [739-C-E]

D *K.G. Derasari and Anr. v. Union of India and Ors.*, [2001] 10 SCC 496; *T.R. Dhananjaya v. J. Vasudevan*, [1995] 5 SCC 619 and *Mohd. Iqbal Khandav v. Abdul Majid Rather*, AIR (1994) SC 2252, referred to.

E *Niaz Mohammad and Ors. v. State of Haryana and Ors.*, [1994] 6 SCC 352, distinguished.

F CIVIL APPELLATE JURISDCITION : Civil Appeal No. 6356 of H 2000.

From the Judgment and Order dated 23.6.2000 of the Patna High Court in M.J.C. No. 1739 of 1999. A

B.B. Singh for the Appellant.

Raju Ramachandran, Zaiki Ahmed Khan and Irshad Ahmed for the Respondents. B

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : The State of Bihar is in appeal against the order of the learned Single Judge who by the same held that there was violation of the Court's order. Without indicating as to what was the consequence of such violation, it directed re-consideration of the order purported to have been passed in compliance with the direction of the High Court. According to the learned counsel for the appellant-State there was no violation of the High Court's order and as such the finding recorded and the direction for re-consideration are not sustainable in law. C D

Per contra, learned counsel for the respondent, who was the applicant before the High Court, for initiation of contempt proceedings submitted that learned Single Judge was justified in holding that there was violation of the Court's order but having said so, should not have directed for re-consideration and on the other hand should have punished the contemnor. E

While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision, which has received its finality, had been complied with or not. It would not be permissible for a Court to examine the correctness of the earlier decision which had not been assailed and to take the view different than what was taken in the earlier decision. A similar view was taken in *K.G. Derasari and Anr. v. Union of India and Ors.*, [2001] 10 SCC 496. The Court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the concerned party to approach the higher Court if according to him the same is not legally H

A tenable. Such a question has necessarily to be agitated before the higher Court. The Court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the Court passing the judgment or order. Though strong reliance was placed by learned counsel for the State of Bihar on a three-Judge Bench decision in *Niaz Mohammad and Ors. v. State of Haryana and Ors.*, [1994] 6 SCC 352, we find that the same has no application to the facts of the present case. In that case the question arose about the impossibility to obey the order. If that was the stand of the State, the least it could have done was to assail correctness of the judgment before the higher Court. State took diametrically opposite stands before this Court. One was that there was no specific direction to do anything in particular and, second was what was required to be done has been done. If what was to be done has been done, it cannot certainly be said that there was impossibility to carry out the orders. In any event, the High Court has not recorded a finding that the direction given earlier was impossible to be carried out or that the direction given has been complied with.

On the question of impossibility to carry out the direction, the views expressed in *T.R. Dhananjaya v. J. Vasudevan*, [1995] 5 SCC 619 need to be noted. It was held that when the claim inter se had been adjudicated and had attained finality, it is not open to the respondent to go behind the orders and truncate the effect thereof by hovering over the rules to get round the result, to legitimize legal alibi to circumvent the order passed by a Court.

In *Mohd. Iqbal Khanday v. Abdul Majid Rather*, AIR (1994) SC 2252, it was held that if a party is aggrieved by the order, he should take prompt steps to invoke appellate proceedings and cannot ignore the order and plead about the difficulties of implementation at the time contempt proceedings are initiated.

If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach to the Court that passed the order or invoke jurisdiction of the Appellate Court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong the order has to be obeyed. Flouting an order of the Court would render the

party liable for contempt. While dealing with an application for contempt the Court cannot traverse beyond the order, non-compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible.

In a given case, even if ultimately the interim order is vacated or relief in the main proceeding is not granted to a party, the other side cannot take that as a ground for dis-obedience of any interim order passed by the Court.

After having arrived at a conclusion that there was violation of the Court's order, the Court should have focused its attention to the issue as to what further was done consequentially. Instead it went on to give further directions for re-consideration in the line of views expressed by it. That is clearly impermissible. In some cases Court may grant opportunity to the contemnors to purge the contempt. This is not a case of that nature. In fact learned Single Judge has held on merits that the decision of the D.G. Board was not proper and therefore remitted the matter for reconsideration.

In above view of the matter, the order of the High Court is set aside and the matter is remitted for fresh consideration. It shall deal with the application in its proper perspective in accordance with law afresh. We make it clear that we have not expressed any opinion regarding acceptability or otherwise of the application for initiation of contempt proceedings.

Appeal is allowed to the aforesaid extent with no orders as to costs.

N.J.

Appeal partly allowed.