

The Aligarh Municipal Board and Others

Vs

Ekka Tonga Mazdoor Union and Others

Criminal Appeal No. 188 of 1966

(S. M. Sikri, I. D. Dua JJ)

04.08.1970

JUDGMENT

DUA, J. -

1. In this appeal by special leave (1) The Aligarh Municipal Board, (2) The Executive Officer of the Board, (3) Shri Kanhaiyalal, Demand Inspector of the Board, (4) Ahmad Khan, peon and (5) Hoti Lal, Munshi of the Board, challenge the order of the Allahabad High Court, dated 7th December, 1965, holding them guilty of contempt of that Court for having disobeyed the stay order passed by it on the 29th of March, 1965.

2. It appears that there was some dispute in regard to the realisation of fees claimed by the Municipal Board of Aligarh from Ekkawalas and Tongawalas for the use of the use of the Municipal stands at various places in Aligarh city. The two suits filed by the Ekka Tonga Mazdoor Union in this connection had been decided in its favour. As the Board still persisted in realising the fees the said union along with six of its members filed a writ petition against the Board in the Allahabad High Court. This petition was admitted on the 29th January, 1965. The Court also made an interim order of stay on that date.

That order reads :

"During the pendency of the application the respondent shall not realise any fees for the use of stands of Rathras Road, Bannadevi Road, Shri Sikandra Rao Road and Chatari Road from petitioners Nos. 2 to 7."

According to the version given by Bhagwan Das, Secretary of the Union which has been accepted by the High Court and in our opinion rightly, a certified copy of the said order was obtained by him from the High Court on the same day i.e., 29th March, 1965. Bhagwan Das reached Aligarh on the 30th March with that copy. On 31st March, 1965, he went to the office of the Board and handed over to the office a letter addressed to the Officer-in-charge stating that the High Court had stayed the realisation of stand fees in W.P. No. 621 of 1964 but that order was not being obeyed. With that letter he annexed an uncertified copy of the stay order. Bhagwan Das secured from the office of the Board a memorandum acknowledging receipt of his letter. He also showed the certified copy of the stay order to the Executive Officer, the Demand Inspector and the receiving Clerk, before filing with the office of the municipal Board his letter and the uncertified copy of the order. These papers reached the Executive Officer the same day, that is, 31st March, 1965, at about 4 p.m. The Executive Officer directed the Demand Inspector as follows :

"D.I.

Please to report in the matter (O.C.) may also kindly see."

The Officer-in-charge passed the following order on 1st April, 1965 :

"Seen. Orders of the High Court should be obeyed."

When this Order went back to the Executive Officer with Bhagwan Das's letter and a copy of the stay order annexed therewith, he directed :

"D.I. to note and comply"

and sent the papers to be placed forthwith before the Demand Inspector Kanhaiyala Sharma. Those papers reached the Demand Inspector on the 2nd April, 1965, at 4 p.m. On the night of 1st April the Executive Officer went away to Lucknow on official work and returned to Aligarh on 5th April. In his absence the Medical Officer of Health acted as Executive Officer. The Demand Inspector, instead of complying with the directness of the Executive Officer and the Officer-in-charge, recorded a note on 3rd April addressed to the Executive Officer, pointing out that the copy of the order of the High Court was not a certified copy and suggesting that if considered proper the opinion of the Municipal counsel on the point be obtained. These papers were placed before the Executive Officer on 5th April and not before the Health Officer acting as Executive Officer during his absence. On the morning of 5th April the Executive Officer recorded the following order :

"Today D.I.

The orders of O.C. and the High Court are clear and need compliance at once. Municipal counsel be also please apprised and his report and advice taken."

In spite of these clear directions, the Demand Inspector again, instead of immediately complying with them, passed on the papers to the Municipal Counsel who also expressed his opinion that the order of the High Court had to be obeyed. The Counsel further advised that the Board's lawyer at Allahabad should be asked to move the High Court for getting the stay order vacated. This opinion was given on that very day. Curiously the Demand Inspector even then did not feel satisfied. He again sought the directions of the Executive Officer whether on perusal of the opinion of the Municipal Counsel the realisation of the stand fee had to be stopped. The Executive Officer reminded the Demand Inspector of his earlier directions by recording on 5th April, 1965 :

"There are orders already on page overleaf, that the orders of the High Court be obeyed. That be done forthwith."

Even after this note the Demand Inspector did not realise the urgency of the matter and did not consider it proper to send forthwith and without avoidable delay directions to the relevant octroi posts to stop realisation of stand fees. Such directions were only sent in the afternoon of 6th April, with the result that the stay order made by the High Court on 29th March, 1965, was acted upon only with effect from 7th April, 1965. The stand fee thus continued to be realised as usual till 7th April, 1965 though, the Municipal Board and the concerned officers of the Board had been apprised of the orders as early as 31st March, 1965, and the Officer-in-charge as also, the Executive Officer had expressly directed that the orders of the High Court be obeyed.

3. On behalf of the appellants it was contended that Bhagwan Das had not annexed with his letter the certified copy of the stay order and the appellants were, therefore fully justified in verifying and assuring themselves of the authenticity of the stay order before issuing directions stopping realisation of stand-fees from the six respondents (Nos. 2 to 7). It was further contended that there is no evidence of stand fees having actually been collected from them. This was in substance the main submission raised by Mr. Rana on behalf of the appellants. It was added that Bhagwan Das had without any material made an allegation on 31st march, 1965, that the stay order was not being obeyed. The conduct of the appellants in not taking on their face value that averment contained in Bhagwan Das's letter, was bona fide and reasonable said the counsel. It was strongly argued that the appellants were not guilty of contempt of court because they had not been officially served with the order and they were not sure if any stay order had in fact been made; and also about its exact terms; in any event they had offered in unqualified apology which should have been accepted.

4. The High Court had accepted Bhagwan Das's version as already noticed by us. We have not been persuaded to disagree with that view. It is, therefore, clear that the certified copy was in fact with Bhagwan Das on 31st March, 1965, and the same in our view must have been shown to the officers concerned as stated by him on oath. According to the evidence the Executive Officer, Mr. G. B. Mathur, recorded in the High Court on 19th October, 1965, the Officer-in-charge was his superior officer and at all orders made by the Officer-in-charge demanded immediate obedience by all subordinate officers. He also accepted the correctness of the order of the Officer-in-charge dated 1st April, 1965, directing every one concerned to obey the order of the High Court. This evidence in our view concludes the matter and it is futile on the part of the appellants to seek shelter behind the argument based on the omission on the part of Bhagwan Das to annex with his letter the certified copy of the stay order. When the copy of the order attached with Bhagwan Das's letter was accepted by the Officer-in-charge as authentic and when he had considered it proper to direct that the order be obeyed and when thereafter the Executive Officer had also endorsed that direction, we find it extremely difficult to appreciate the attitude adopted by Shri Kanhaiya Lal Sharma, the Demand Inspector, the attitude in which he persisted till 6th April. Such an attitude cannot be considered bona fide or reasonable on the facts and circumstances of this case. The submission that the stay order is not shown to have been disobeyed because no receipts of realisation of stand-fee from Respondents 2 to 7 have been proved is also difficult to accept in face of the evidence of the Executive Officer. He has stated on oath in the High Court, to quote his own words, "During the period 1-4-65 and 5-4-65 realisation of taxes must have been as was being done from before."

5. In view of this statement of the realisation of stand fee from respondents Nos. 2 to 7 even after intimation of the stay order was given to the Demand Inspector must be considered to have been rightly upheld by the High Court. As a matter of fact the affidavit of Pannalal, Respondent No. 7 in this Court which we have no reason to disbelieve also supports this conclusion. It may also be pointed out that in order to justify action for contempt of court for breach of a prohibitive order it is not necessary that the order should have been officially served on the party against whom it is granted if it is proved that he has notice of the order aliunde and he knew that it was intended to be enforced. Official communication is not a condition precedent, provided here is no valid reason to doubt the authenticity of the order conveyed to him. In the present case we are not at all satisfied that the Demand Inspector Shri Kanhaiyalal Sharma had any real justification for doubting the authenticity of the order conveyed to him and to the other officers of the Board by Bhagwan Das. Indeed, we are also of the view that the certified copy of the order had actually been shown to him. We have, therefore, no doubt that the Demand Inspector is guilty of contempt of court by knowingly and deliberately disobeying the order of the High Court. It was, however, contended that the sentence imposed on him is too severe. We are unable to agree. contempt proceeding against a

person who has failed to comply with the court's order serves a dual purpose : (1) vindication of public interest by punishment of contemptuous conduct and (2) coercion to compel the contemner to do what the law requires of him. The sentence imposed should effectuate both these purposes. It must also be clearly understood in this connection that to employ a subterfuge to avoid compliance of a Courts order about which there could be no reasonable doubt may in certain circumstances aggravate the contempt. The Demand Inspector in the present case, as is clear from his counter-affidavit and the material on the record, has attempt to employ such as subterfuge. And finally he has all through stuck to his insistance on justification without any expression of regret, leave along apology. We have accordingly no hesitation in upholding the order against him.

6. In regard to the appeal by the Municipal Board it was contended that the Board being a corporation it acts through natural persons and therefore, it cannot convicted of contempt of court. This submission is unacceptable. The law as it exists today admits of no doubt that a Corporation is liable to be punished by imposition of fine and by sequestration for contempt for disobeying orders of competent courts directed against them. A command to a Corporation is in fact a command to those who are officially responsible for the conduct of it affairs. If they, after being apprised of the order directed to the Corporation, prevent compliance or fail to take appropriate action, within their power, for the performance of the duty of obeying those order, they and the corporate body are both guilty of disobedience and may be punished for contempt. The appeal on behalf of the Municipal Board thus also fails and is dismissed.

7. In regard to the Executive Officer, he seems to have directed the Demand Inspector, who was responsible for collecting the fees, to obey the stay order. His direction seem to us to be clear and unambiguous. After recording his order on 1st April he had to go out of town on official duty and he returned only on 5th April. On his return again he recorded clear instructions categorically directing obedience of the High Court's order. His case is thus clearly distinguishable from that of the Demand Inspector and we are inclined to allow his appeal. He has also offered an unqualified apology.

8. The case against Ahmad Khan, peon, and Hoti Lal, Muharrir or Munshi of the Board, also seems to us to be distinguishable. They were not included the array of alleged contemnners in the original application but were added subsequently by means of an application dated 14th September, 1965. They were duty bound to obey the orders of their superior officers and in the absence of any order from the Demand Inspector who was apparently the immediate superior officer in charge of the realisation of stand fees and particularly when they are not shown to be aware of the stay orders issued by the High Court, they could not be expected to stay their hands in the matter of realisation of stand-fees. It is common case of the parties that no direction had been sent by any superior officer to the octroi post or to these persons to stay realisation of stand fees from respondents Nos. 2 to 7. It is true that these respondents have alleged that they had informed these appellants as well about the existence of the High Court's order but we are inclined to think that assuming this allegation to be correct Ahmad Khan and Hoti Lal were both justified on the facts and circumstances of this case in not taking this oral information on its face value and accepting it as conclusive. In order to bring home a charge of contempt of Court for disobeying orders of Courts those who assert that the alleged contemnners had knowledge of the order must prove this fact beyond reasonable doubt. As observed earlier it is of course not necessary to prove formal service of the order by official routine and knowledge of the exact order aliunde would suffice. In case of doubt, however, benefit ought to go to the person charged. We are far from satisfied that these two appellants are shown to have been aware of the exact terms of the stay order, which they were bound to obey even in the absence of a direction to that effect from their superior officers. They have also offered unqualified apology.

Their appeals are allowed and the order of fine imposed on them set aside.

9. In the final result the appeal on behalf of the Executive officer, Appellant No. 2 and of Ahmad Khan and Hoti Lal, Appellants Nos. 4 and 5 are allowed and their conviction and sentence set side. The fines, if paid, will be refunded. The appeal on behalf of the Municipal Board, Appellant No. 1, and of Shri Kanhaiyalal Sharma, Demand Inspector, Appellant No. 3, are dismissed.

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