

Sri K. Ramadas Shenoy

Vs

The Chief Officer, Town Municipal Council, Udipi and Others

Civil Miscellaneous Petition No. 7217 of 1974

(CJI A.N. Ray, K.K. Mathew, V.V. Chandrachud JJ)

19.08.1975

JUDGMENT

MATHEW J. -

1. This is an application to take proceedings in contempt against the four respondents on the ground that they have disobeyed a judgment passed by this Court on August 9, 1974 in C A No. 2232 of 1973 (K. Ramdas Shenoy v. Chief Officer, Town Municipal Council, Udipi, (1974) 2 SCC 506). That judgment was rendered in an appeal from the decision of the High Court of Mysore in a writ petition filed by the petitioner challenging the validity of certain resolutions passed by the municipality of Udipi. The High Court quashed three of the resolutions impugned in the writ petition but held that the resolution passed by the municipality allowing the conversion of the Kalyana Mantap-cum-lecture hall in question into a cinema hall was valid and dismissed the writ petition to that extent. The appeal to this Court was directed against that order and respondents Nos. 1 to 3 in this application were parties to that appeal.

2. This Court found that the resolution allowing the conversion of Kalyana Mantap-cum-lecture hall into a cinema hall was bad for the reason that the conversion contravened the Town Planning Scheme and allowed the appeal. Against the order dated March 14, 1973 granting a licence to third respondent for exhibiting film in the hall in question the petitioner had filed a writ petition before the High Court of Karnataka (Writ Petition No. 755 of 1973) praying for a writ of certiorari quashing the same. When the writ petition came up for hearing before the High Court on August 27, 1974, the third respondent applied for adjournment of the case in order to enable him to file a petition in this Court for review of the judgment of this Court. The Court allowed the adjournment and passed an order as follows :

The respondent No. 2 (respondent No. 3 here) should not however exhibit the cinema shows in the building in question beyond September 5, 1974, unless Supreme Court issues an order permitting them to do so beyond September 5, 1974. The above order is passed without prejudice to the rights of the petitioner to move the Supreme Court to take action against respondent No. 2 for contempt of court and also without prejudice to the powers of the District Magistrate under law.

On August 12, 1974, the petitioner wrote a letter to respondent No. 4, who was then the District Magistrate enclosing a photostat of a copy of the judgment of this Court and praying for revocation of the licence granted under the Cinematograph Act to exhibit films in the hall. On August 23, 1974, the respondent No. 3 applied to the District Magistrate to renew the licence under the Cinematograph Act and the District Magistrate granted a renewal of the licence from September 2, 1974 till September 5, 1974. On August 23, 1974, the first and second respondents (i.e. Chief

Officer and President respectively of Town Municipal Council; the Council) met and passed a resolution recommending to Government that the Town Planning Scheme may be revoked. The scheme was actually revoked by the Government on April 11, 1975.

3. In the petition for taking proceedings in contempt the allegation against respondents Nos. 1 and 2 was that they called a meeting of the municipal council and got a resolution passed recommending to Government the revocation of the Town Planning Scheme, and that they did not issue direction to the third respondent to stop the exhibition of films in the hall. The case against the third respondent was that he wilfully disobeyed the judgment of this Court by exhibiting films in cinema theatre. And as against the fourth respondent the allegation was that even in spite of the fact that a photostat of a copy of the judgment of this Court was given to him, he refused to take necessary action prohibiting the exhibition of films in the hall.

4. All the respondents have filed counter affidavits in this Court denying that they have committed any contempt.

5. So far as respondents Nos. 1 and 2 are concerned, we do not think that they have committed any contempt in calling a meeting of the municipal council and the council passing a resolution recommending to Government to revoke the Town Planning Scheme. Nor do we think that they committed any contempt in not issuing a directive to respondent No. 3 to stop exhibition of films in the hall, as they had no power to do so.

6. As regards the third respondent, it is clear that he was aware of the judgment of this Court as he was a party to it. But he submitted that a licence under the Cinematograph Act was granted to him on March 14, 1973 which authorized him to exhibit films in the hall and that he bona fide thought that he could do so notwithstanding the judgment of this Court. Respondent No. 3 contended that this Court only quashed the resolution of the municipal council authorizing the conversion of Kalyana Mantap-cum-lecture hall into a theatre but that did not in any way affect the validity of the licence granted to him under the Cinematograph Act to exhibit films in that building. We think that the effect of the judgment of this Court was that the building in question could not be used as a cinema theatre and that the third respondent should therefore have stopped the exhibition of films in the hall. The licence under the Cinematograph Act to exhibit films in the hall was granted on the basis of the validity of the resolution authorizing the conversion of the building into a cinema hall. When that resolution was quashed, we think the third respondent was not justified in exhibiting films in the building and therefore he was guilty of contempt. But, at the same time he bona fide thought he could exhibit films in the hall on the basis of the licence granted to him under the Cinematograph Act as nothing was said by this Court about its validity in the High Court and that was pending when this Court passed the judgment. If the third respondent thought that quashing the resolution converting the building into a theatre would not ipso facto cancel the licence granted under the Cinematograph Act, we are not prepared to hold that he was lacking bona fide in entertaining that belief. The third respondent has also tendered a conditional apology stating that in case it is found that he has committed any contempt, he may be pardoned. We think that the apology tendered, though conditional, is sufficient in view of the explanation to Section 12 of the Contempt of Courts Act, 1971 which reads :

An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

We accept the apology and discharge the rule nisi.

7. As regards the fourth respondent, when the petitioner filed the petition to revoke the licence with a photostat copy of a copy of the judgment, the petitioner was told that a certified copy of the judgment must be produced so that respondent No. 4 might take further action on his petition. The petitioner agreed that he would produce a certified copy of the judgment; but he never did so. In the counter affidavit filed by respondent No. 4, he has categorically asserted that :

It has been the practice of procedure in Karnataka State not to act on true copies or the alleged true copies or the photostat copies of any order unless it is duly certified by the competent authorities as the order of the Supreme Court of there has been a direct communication from the concerned courts in regard thereto. In the instant case, at the relevant time no such certified copy was produced before me nor was there any intimation to that effect from the Supreme Court.

We cannot, therefore, legally hold that he has been guilty of contempt of court in not acting upon an uncertified copy of the judgment. Nor do we think that he is guilty of contempt of merely because he granted a renewal of the licence to exhibit films under the Cinematograph Act from September 2, 1974 to September 5, 1974. The order of the High Court only prohibited the third respondent to exhibit films after September 5, 1974. And that was without prejudice to the right of the petitioner to move this Court for contempt and without prejudice to the right and the powers of the District Magistrate under law. The fourth respondent's plea is that he bona fide thought that the High Court had permitted the third respondent to exhibit films in the hall upto September 5, 1974 and it was on that basis that he granted a renewal of the licence from September 2, 1974 to September 5, 1974. We do not think that in the circumstances the fourth respondent wilfully disobeyed the judgment of this Court and committed contempt.

8. We dispose of the petition as above but make no order as to costs.

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