

Conscientious Group

Vs

Mohammed Yunus and Others

Criminal Miscellaneous Petitions Nos. 944 and 945 of 1987

(G. L. Oza, V. B. Eradi JJ)

08.05.1987

JUDGMENT

BALAKRISHNA ERADI, J. -

1. By Criminal Miscellaneous Petition No. 944 of 1987 the petitioner has approached this Court with the prayer to revive a contempt petition which had been previously withdrawn by him on December 12, 1986. It is necessary to set out the previous history of these proceedings in order to understand the factual back ground against which the said prayer has been made.

2. The petitioner is the Secretary of an association of individuals called the "Conscientious Group". He filed Contempt Petition No. 4210 of 1986 alleging that the conduct of the first respondent in making certain adverse comments about the Judges who delivered the judgment of this Court in Civil Appeal No. 860 of 1986 (National Anthem case (Bijou Emmanuel v. State of Kerala, (1986) 3 SCC 615)) constitutes criminal contempt and that the first respondent as well as respondents 2 to 5 who were responsible for publishing the said statement in certain newspapers should be punished by taking action against them under Section 15 of the Contempt of Courts Act (70 of 1971) read with Rules framed by this Court for regulating the proceedings taken under the Act for contempt of this Court. When the said petition came up before a Bench of this Court on September 26, 1986, the Bench directed to issue notice to respondent 1 returnable on October 14, 1986. The order passed by the Bench was in the following terms :

Issue notice to the first respondent only, returnable on October 14, 1986, in regards to the following statement alleged to have been made by the first respondent as reported in the issue of "Indian Express" dated September 15, 1986 in its Dak Edition.

Mr. Mohammed Yunus, Chairman, Trade Fair Authority of India said here that the Supreme Court Judge who held that the singing of the National Anthem was not compulsory had no right to be called either an Indian or a Judge.

3. Notice of the petition was accordingly issued to the first respondent. When the matter subsequently came up before a Bench of three Judges consisting of Bhagwati, C.J., Oza, J. and K. N. Singh, J., the contemnor filed a reply raising the objection that the petition was not maintainable inasmuch as the petitioner had not obtained the consent in writing of the Attorney General as required by Section 15 of the Act. According to the averment contained in paragraph 2 of the petition now filed before us, the petitioner was directed by the Division Bench by order dated December 3, 1986 to move the Attorney General for his consent and the petition was adjourned to

December 12, 1986 for that purpose. The Attorney General on being moved by the petitioner for the grant of consent sent a reply to the petitioner stating that since he was himself a party in his capacity as Attorney General in the National Anthem case, it was not appropriate for him to deal with the petitioner's application and hence the application was being returned to the petitioner. When the case later on came up before the same three Judge Bench on December 12, 1986, the fact that such a reply had been received from the Attorney General seems to have been brought to the notice of the learned Judges, whereupon the Bench passed the following order :

Mr. Birla states that in view of the fact that the Attorney General has stated that he is not in a position to consider this matter for the time being since he is a petitioner in the National Anthem case, he applies for leave to withdraw. Hence the criminal miscellaneous petition is allowed to be withdrawn with liberty to him to re-file the applications after obtaining consent of the Attorney General as soon as the National Anthem case is over. While allowing the application to be withdrawn, we must express our view that everyone is entitled to criticise the judgment of the court but no one should attack the Judges who delivered the judgment as that denigrates the judicial institution and in the long term impairs the democratic process. That is something which must be avoided at all costs.

4. Subsequently, the petitioner filed Criminal Miscellaneous Petition No. 5244 of 1986 praying for recalling the aforesaid order dated December 12, 1986 on the ground that at the time when he applied to the court for withdrawal of the petition he was not aware that under Rule 3(c) of the Rules framed by this Court, the contempt petition could be maintained with the consent of the Solicitor General, if the Attorney General was, for any reason, not in a position to give consent to the filing of the petition. That application for recalling the order came up before the same Bench on December 19, 1987 and it was disposed of by the following order :

The petitioner has made the present application for recalling the order made by us on December 12, 1986 on the ground that at the date when he applied for withdrawal of the petition for contempt, he was not aware that under Rule 3(c) of the Rules made by this Court to regulate proceedings for contempt of the Supreme Court, if the Attorney General was for any reason not in a position to give consent to the filing of the petition for contempt, he, that is, the petitioner could obtain the consent of the Solicitor General and maintain the petition for contempt. Now it is no doubt true that under Rule 3(c) a petitioner can file a petition for contempt with the consent either of the Attorney General or of the Solicitor General and the petitioner could have therefore obtained the consent of the Solicitor General and sustained the petition. But obviously he was not aware of this provision and indeed we too were not aware of it. If the petitioner had stated that in view of the stand taken by the Attorney General, he would like to approach the Solicitor General for the consent, we would have certainly adjourned the petition in order to enable the petitioner to approach the Solicitor General with a view to obtaining his consent. But no such application was made by the petitioner and we were also not aware that the consent of the Solicitor General would be enough to initiate the petition for contempt and we had therefore no occasion to adjourn the petition. We accordingly allow the petitioner to withdraw the petition for contempt with the observation that the petitioner may revive the petition after obtaining the consent of the Attorney General as soon as the National Anthem case is over.

Now that our attention has been drawn by the petitioner in the review application that the petition for contempt can be maintained even with the consent of the Solicitor General, we would make it clear that it would be open to the petitioner to approach the Solicitor General and to revive the petition after obtaining the consent of the Solicitor General under Rule 3(c). Since this remedy is available to the petitioner for reviving the petition for contempt, we do not propose to recall the order permitting withdrawal of the petition. The petition can be revived by the petitioner after obtaining the consent of the Solicitor General. We may point out that the petitioner will not be without remedy, if the Solicitor General refuses his consent on any irrelevant ground.

5. Thereafter the petitioner applied to the Solicitor General of India by letter dated January 9, 1987 requesting for the grant of his consent to the filing of the contempt petition.

6. As on the date of the drawing up of the present petition the petitioner had not received any reply from the Solicitor General and hence this petition for revival was filed on the basis that the non-consideration of the application by the Solicitor General amounted to a denial of the forum of this Court to the petitioner and he should therefore be allowed to revive the contempt petition. Subsequently, however, the Solicitor-General by his letter dated February 14, 1987 informed the petitioner that after taking all facts and circumstances of the case into consideration he was of the view that it will not be in the public interest to give his consent to the initiation of the contempt proceedings as requested for in the petitioner's letter. The request for grant of consent was accordingly declined. The petitioner has appended a copy of the said letter of the Solicitor General as an Annexure to the additional affidavit dated February 25, 1987 filed by him with Criminal M.P. No. 945 of 1987. In the said additional affidavit and the criminal miscellaneous petition the petitioner has raised the contention that the Solicitor General has rejected his request for consent without relevant grounds.

7. From the above narration of events and the contents of the orders passed by the Bench which heard the original application for contempt as well as the petition for recalling the order permitting the withdrawal of the said application, it is clear that though initially the Bench did issue a notice to the first respondent in the contempt petition, it subsequently took the view that the petition could be maintained only if the requirement of Section 15 of the Act regarding the obtaining of the consent of the Attorney General or the Solicitor General was complied with. This view was taken by the Bench after the first respondent had appeared through his counsel and raised objections that the petition was not maintainable inasmuch as there was no written consent of the Attorney General as required by Section 15 of the Act. It was perfectly open to the Bench to treat the contempt petition as information furnished to the court and to initiate suo motu proceedings against the respondents under Section 15 of the Act if the Bench was inclined to adopt such a course. However, it is manifest from the two orders passed by the Bench that the Bench did not think it fit to take such suo motu proceedings and was, on the other hand, disinclined to entertain the application unless the petitioner complied with the condition regarding the obtaining of the written consent of the Attorney General or the Solicitor General. Both at the stage when the petition was withdrawn by him on December 12, 1986 as well as at the stage when the motion was made for recalling the order dated December 12, 1986, the petitioner had clearly proceeded on the aforesaid basis that the application could be maintained only after his obtaining the written consent of the Attorney General or the Solicitor General. In fact, the liberty to revive the petition was granted subject to the specific condition that the petitioner could do so only after obtaining the consent of the Solicitor General under Rule 3(c). No doubt, by the last of the sentence of the said order, the Bench has also observed that "the petitioner will not be without remedy, if the Solicitor General refuses his consent on any irrelevant ground" but this only means that such a refusal can be called in question before this Court

by the petitioner by appropriate process.

8. Thus, as matters now stand, in the light of the events that have transpired and the prior orders aforesaid passed in the matter by the Bench of three Judges, the position is that the prayer for revival will be maintainable only in case the petitioner has obtained the written consent of the Solicitor General or in case he is able to make out that the refusal of consent by the Solicitor General was on any irrelevant ground. As already stated, the Solicitor General by his letter dated February 14, 1987 has declined to grant consent to institution of the contempt proceedings in question. Elaborate reasons have been stated by the learned Solicitor General in support of his conclusion that it would not be in the public interest to give his consent to the initiation of the contempt proceedings. After scrutinising the reasons given by the learned Solicitor General, we are of opinion that the grounds stated by the Solicitor General for declining to grant consent cannot be said to be irrelevant in the eye of law; nor can the view expressed by the Solicitor General be characterised as arbitrary, illegal and unreasonable.

9. In the circumstances it has to be held that the petitioner is not entitled to succeed in his prayer for revival of the contempt petition since neither of the conditions precedent specified in the order dated December 19, 1986 for maintainability of the prayer for revival can be said to be fulfilled. We accordingly dismiss these applications.

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