

Bigyan Kumar and Others

Vs

Union of India and Others

Contempt Petition (Civil) No. 27860 of 1987

(Ranganath Misra, M. M. Dutt JJ)

18.03.1988

ORDER

1. An application under Article 32 of the Constitution being Writ Petition No. 591 of 1987 has been filed in this Court on behalf of 40 employees working in the Pension Paying Office, Pokhara in Nepal asking for a direction to the Union of India to make the services of the petitioners permanent and for further directions in the matter of payment of allowances and other material benefits as payable to similar employees under the Union Government. Notice was ordered on the application on July 14, 1987, and two weeks' time was allowed to the respondents for filing their counter-affidavit. On August 3, 1987, the court directed as follows :

Two weeks are allowed to the respondents for filing a counter-affidavit. No further time will be allowed. One week thereafter is allowed for filing rejoinder. Put up this matter after three weeks. Meanwhile, status quo as on today shall be maintained.

On August 7, 1987, the court made the following further order :

Issue notice returnable on August 14, 1987. Mr B. Parthasarathy accepts the notice for Union of India.

Respondent is directed to file counter-affidavit within one week from today.

In the meanwhile petitioner 9 will not be evicted from the quarter now occupied by him.

Again on August 14, 1987, the court further directed :

Petitioner 9 will be put back in possession of the government quarter if he has already been evicted.

Ultimately on September 11, 1987, a three Judge Bench of this Court directed :

Petitioner 9 will be reinstated in service and he will also have to be put in possession of his quarter forthwith.

On the allegation that the directions of this Court in regard to petitioner 9 were not implemented, the present contempt proceeding has been initiated on behalf of the petitioners.

2. Petitioners have alleged that with the filing of the writ petition, the treatment provided to the petitioners by the establishment has undergone a change and those of the respondents who have local base in Nepal have started ill-treating the petitioners. Several allegations have been made in

support of the aforesaid plea. After notice was issued on this petition, the different respondents have filed separate affidavits in return.

3. The Indian Embassy for Nepal is located at Kathmandu. The Pension Paying Office is maintained at some distance at a place called Pokhara. It is the common case of the parties that the necessity to maintain such an office is linked up with the historical fact that several inhabitants of Nepal worked in the Indian Army under the Gorkha Regiment. Mainly for their convenience this extra-territorial establishment is being maintained. Some of the petitioners are India-based while others are residents of Nepal. The establishment at Pokhara is under the direct control of an officer attached to the Indian Embassy styled as Officer-in-Charge, Indian Embassy, Pension Paying Office, Pokhara. The Ambassador of the Indian Embassy at Kathmandu, being the head of Indian Government establishments in Nepal, has also supervisory jurisdiction over the Pay Office. Respondent 5, the Military and Air Attache of the Indian Embassy is the link between the Embassy establishment at Kathmandu and the said Officer-in-Charge at Pokhara. Respondent 3 is the Controller of Defence Accounts who inter alia oversees the disbursement of the pension of the ex-Army personnel. Respondent 1 is the Union of India through its Defence Secretary and respondent 2 is the Secretary of the Ministry of External Affairs. Admittedly both these respondents are based in Delhi and have been impleaded being in overall charge of their establishments.

4. Shri S. K. Bhatnagar, Defence Secretary in his affidavit has taken the stand that he was not personally impleaded in the writ petition. Only when he was served with notice in the contempt matter he came to know about court's directions and realised the full implication of the situation when he had a conference with his senior counsel on December 6, 1987. Immediate action was taken to ensure appropriate compliance. Shri K. P. S. Menon, Foreign Secretary in the Ministry of External Affairs has also taken the plea that he was not personally impleaded as a party in the writ petition and came to know about the court's order at the same conference with senior counsel on December 6, 1987, and ensured immediate compliance with court's directions. Both these Secretaries to the government have tendered unconditional apology. The third respondent is the Collector of Defence Accounts, Central Command, Meerut. He has taken the stand that petitioner 9, Shri C. N. Dubey, is not an employee of the establishment of the Controller of Defence Accounts at Meerut nor is he an employee under his administrative control. According to him, he has no concern with any executive or administrative matter relating to the Pension Paying Office at Pokhara. Respondent 4, the Ambassador, was not subjected to the contempt proceedings. Respondent 5 is the Military and Air Attache of the Indian Embassy at Kathmandu and is in charge of the general administration of the military wing. Apart from offering unconditional apology, he has indicated that Dubey has been restored to service and he has been provided with residential accommodation and for the period he was out of possession of the official residence, rent by way of compensation has already been ordered to be paid to him.

5. It is clear from the orders made by this Court and the facts appearing on the record that the responsibility for implementation of the court's orders in regard to petitioner 9 squarely rested with respondent 6, the Officer-in-Charge of the Pension Paying Office. He, in his affidavit, has stated that Dubey was dispossessed from his residential accommodation on August 14, 1987, and by then the order of this Court dated August 7, 1987, had not been received by him. That accommodation was given to one Krishna Bahadur. Late Dubey has been restored to service, given possession of a similar accommodation as the one from which he was displaced and with a view to giving effect to the spirit of the order of this Court, the rent which Dubey had paid for private accommodation has been decided to be borne out of government account. His affidavit explains the delay in implementation thus :

There has been delay in implementation of the orders of this Hon'ble Court due to delay in communication, administrative bottlenecks and for security reasons. It is further stated that we had no intention to flout or disobey the orders of this Hon'ble Court but for the reasons beyond our control the same could not be implemented notwithstanding the fact that we had all intentions to implement the same in the right earnest. The orders have since been implemented, the petitioner has since been reinstated and also given accommodation. The delay in implementing the same may kindly be condoned and we be excused for such delay for which we have tendered an unconditional apology at the outset of this affidavit.

6. There is some material which, if probed into further, might have established that respondent 6 had the notice of the order of this Court before physical dispossession of Dubey was effected. As already noticed, there is allegation of adoption of an attitude of resentment by respondent 6 or for the matter of that the local officers, when the writ petition was filed in this Court. That backdrop, as contended by counsel for the petitioners, perhaps could be taken to supply the motive for the delay in complying with the directions of this Court. We have not considered it expedient to probe into the matter further on account of the that there has been compliance and each of the respondents has tendered unqualified apology.

7. We would part with the matter by recording out serious concern and disapproval of the growing conduct of parties and public officers in particular of ignoring the directions of the courts and the multiplying instances of confrontation. The court, including the apex one, is a part of the State and is a built-in mechanism of the Constitution to administer justice in accordance with law. For discharging that duty, the court has got to adopt an attitude of critical assessment of situations connected with litigation brought before it for adjudication. The manner of functioning of the court in accord with the Rule of Law has to be dispassionate, objective and analytical. The judges who preside over these courts do not act with a sense of superiority; nor do they look down upon others in the community. In order that the system may efficiently work and the purpose for which the courts are established is duly served, it is necessary that everyone within the framework of the Rule of Law must accept the system, render due obedience to orders made and in the event of failure of compliance, the rod of justice must descend down to punish. We hope and trust that everyone within the system realises this situation and does not unnecessarily get into a confrontation.

8. The apologies tendered by the respondents are accepted and the contempt notice is discharged. Respondent 6 is directed to pay to the petitioners the costs of the proceedings which are assessed at Rs. 2000 within one month.

</html