

Vineet Kumar Mathur

Vs

Union of India and Others

Writ Petition (C) No. 327 of 1990

(B. P. Jeevan Reddy, G. T. Nanavati JJ)

23.01.1996

ORDER

1. This order may be read in continuation of our order dated 8-11-1995 [Vineet Kumar Mathur v. Union of India, (1996) 1 SCC 119].
2. Two contempt notices have been issued to the respondents herein, Brig. Kapil Mohan and Shri Yogesh Kumar, Managing Director and Chief Executive Officer respectively of Mohan Meakins Limited. The first pertains to their operating the plant between 7th and 11th April, 1993 in contravention of the orders of this Court dated 15-1-1993 while the second notice concern their obtaining the 'consent' from the Uttar Pradesh Pollution Control Board (UPPCB) on 21-4-1993 and operating their plant on that basis in contravention of the said order dated 15-1-1993. The arguments on the first notice were heard on the previous day of hearing when the contempt case against the ex officio Chairman and Member-Secretary of UPPCB was heard. On the second notice, we have now heard Shri F.S. Nariman for the contemnors. Shri P.H. Parekh again assisted us as amicus curiae.
3. We shall deal with the first notice in the first instance. In terms of the order dated 15-1-1993. Mohan Meakin's plant was closed on and with effect from 1-4-1993 since the PCB refused to certify that the said plant has attained the prescribed level of anti-pollution standards. There was no order from this Court or from the PCB permitting the said plant to operate. It is an admitted fact that the said plant was operated between 7th and 11th April, 1993. The explanation offered by the contemnors for it is contained in the affidavit filed by Shri Yogesh Kumar on 27-4-1993 and the affidavit filed by Brig. Kapil Mohan on 1-5-1993. Their case is that the running of the plant between the said two dates was necessary to avoid danger to public health and safety. It is stated that according to the advice of the technical experts, if the plant had remained closed for more than seven days, process of destabilisation would set in which could have been very harmful to the general public. It is in view of the said advice, they stated, they started the plant just to avoid the process of destabilisation from setting in. They also asserted that before starting the plant, Shri Yogesh Kumar filed an affidavit in this Court stating the correct facts and the compulsions under which the unit had to work for a short period. Brig. Kapil Mohan, Managing Director, stated in addition that he is not directly concerned with the functioning and working of Mohan Meakins plant which, according to him, is in the hands of Shri Yogesh Kumar and other officials. He has however, accepted his overall responsibility as the Managing Director for what has been done. He fully supported and reiterated the reason assigned by Shri Yogesh Kumar for running the plant between the said two dates.
4. The reason given by the respondent for operating the plant on those days is not acceptable for more than one reason. Firstly, the correctness of the reason assigned by them is disputed by PCB.

Secondly, in their application dated 2-4-1993 addressed to the PCB, Mohan Meakins did never say that it is necessary to run the plant for the aforesaid reasons nor was any permission sought for operating the plant a few days. It was a regular application for grant of consent on the ground that they have since attained the prescribed level of anti-pollution measures. Thirdly, no application was made to his Court for according such permission. Filing of a mere affidavit on 6-4-1993 and 7-4-1993, stating the said reason, did not by itself amount to granting such permission by this Court, nor could it operated to suspend the operation of the order dated 15-1-1993. More important is the fact the according to the order of this Court dated 15-1-1993 the industries which did not remove the deficiencies by 21-3-1993 had to close down with effect from 31-3-1993. The Mohan Meakins plant was inspected by the PCB officials sometime in March 1993 who found that the plant had not achieved the required level of anti-pollution standards. A formal order of closure was served upon Mohan Meakins on 31-3-1993 to close down the plant. If the reason given by Mohan Meakins is really true, one would expect Mohan Meakins to approach the PCB immediately for permission to run the plant for a few days to eliminate the alleged causes of destabilisation of the plant. Indeed, once Mohan Meakins could not achieve the prescribed level of anti-pollution measures by 21-3-1993, they should have known that they will have to close down the plant with effect from 31-3-1993 in terms of the order dated 15-1-1993. As prudent persons managing such a plant, they ought to have started winding down operations so as to close it altogether on and with effect from 31-3-1993. If they had done so, the alleged hazard from a sudden closure would not have arisen. The contemners cannot say that until the formal order of closure was served upon them by the PCB on 31-12-1993, they did not know that they would have to close down with effect from 31-3-1993, for the PCB's order was only in terms of the order of this Court. For all the above reasons, we are unable to accept the reasons put forward by the contemners for running the plant between 7-4-1993 and 11-4-1993. We are of the opinion that the said act on their part is in clear violation of the order dated 15-1-1993. They are guilty of violating the said order of this Court.

5. Now, coming to the second charge of contempt comprised in obtaining of consent on 21-4-1993 and running the plant on and with effect from 21st/23rd April, 1993, the case against the contemners is that they obtained 'consent' from the PCB on 21-4-1993 and started operating their plant on that basis in violation of the order dated 15-1-1993.

6. Apart from reiterating the apology tendered by them, the main contention of Shri F.S. Nariman is : Mohan Meakins plant was closed on and with effect from 1-4-1993 pursuant to the order of this Court dated 15-1-1993; the said order did not, however, preclude or bar Mohan Meakins from applying afresh for consent and from running their plant if they attained the desired level of anti-pollution standards; when their plant was inspected by the Pollution Control Board (PCB) officials in March 1993, the pollution levels were said to be slightly higher than those prescribed by the rules; that was rectified by 2-4-1993; accordingly they applied to the PCB for grant of consent stating that they have now attained the desired standards of anti-pollution; in response to the said application, the PCB granted consent on 21-4-1993; it is true that PCB stipulated in their order of consent that Mohan Meakins plant shall attain the prescribed level of anti-pollution standards by 31-12-1993 but for that Mohan Meakins cannot be held responsible since they themselves never applied for consent subject to such a condition nor does the order of 'consent' say that they had not achieved the desired level of effluent treatment. Shri Nariman contended that in the above circumstances, Mohan Meakins or its officials cannot be said to have disobeyed or acted in violation of this Court's order dated 15-1-1993. Learned counsel further contended that so far as the last para of the order of 'consent' dated 21-4-1993 is concerned, it was in Hindi and they bona fide understood the word 'adheen' to mean 'under'. Even if the said word is construed as "subject to", even then the official of Mohan cannot be held guilty of violating this Court's order though it is possible to suggest that it

would have been desirable for Mohan Meakins to apply to this Court for appropriate directions before starting their plant under and in pursuance of the aforesaid consent. This argument, no doubt, appears attractive at first sight but it does not stand a closer scrutiny. We may elaborate.

7. The order dated 15-1-1993 was not passed abruptly. It is the culmination of a series of orders made by this Court. On the basis of a letter written by Shri Vineet Kumar, this Court had issued notice to industries concerned including Mohan Meakins. In response to the notice, Mohan Meakins filed an affidavit on 17-7-1990 stating that they have installed an effective effluent treatment plant and that they are not polluting River Gomti in any manner. However, according to the affidavit filed by PCB, Mohan Meakins was also responsible for seriously polluting the water in the river. They stated (affidavit filed on 31-7-1990) that according to the latest analysis, Mohan Meakins has not achieved the prescribed standards. On 6-2-1991 this Court passed an order asking the PCB to verify all the relevant facts and file a fresh affidavit. On 20-3-1991 the Board filed an affidavit stating that the samples taken from Mohan Meakins plant were sent for analysis to Central Laboratories, Lucknow and that their report is awaited. On 2-11-1992 the Board filed an affidavit stating that though Mohan Meakins along with certain other industries has been discharged from prosecution on account of their installing an effluent treatment plant, the analysis of their discharge established that they have not achieved the prescribed standards. For that reason, it was stated, the consent applied for by Mohan Meakins was refused. On 11-1-1993 the Board filed a further affidavit stating that in spite of the fact that the Board has refused consent to Mohan Meakins, they are continuing to operate their plant and are discharging effluents into Gomti River in utter violation of the pollution control laws. (On 14-1-1993 Mohan Meakins filed an affidavit stating inter alia that the revised standards prescribed by the Pollution Control Board are unrealistic and impracticable and that even so they are making every effort to reach those standards.) It is in the context of the above circumstances that the order dated 15-1-1993 was passed. (The order has been reproduced in the order dated 8-11-1995 and need not be repeated over again here.)

8. The facts aforesaid indicate that notwithstanding the refusal of consent by the PCB, Mohan Meakins has been running their plant and discharging effluents into Gomti River in a brazen manner. They also disclose that Mohan Meakins had not achieved the prescribed level of anti-pollution standards - not even by 21-3-1993, though they were given time till 21-3-1993 avowedly to enable them to achieve the prescribed standards. Since they could not attain the prescribed standards, their plant was ordered to be closed on and with effect from 31-3-1993. Having closed down the plant with effect from 1-4-1993 they came forward with an application on the very next day (on 2-4-1993) addressed to the PCB that they have achieved the prescribed standards and must, therefore, be granted the 'consent' to enable them to restart their operations. Curiously enough, the PCB granted the consent on 21-4-1993 with a condition that Mohan Meakins should achieve the prescribed standards by 31-12-1993. The PCB did not inspect or verify the claim of Mohan Meakins that they have already achieved those standards nor did Mohan Meakins protest that since they have already attained the prescribed standards, the said stipulation was meaningless. As pointed out in our order dated 8-11-1995, this order of 'consent' was in clear and direct violation of the order dated 15-1-1993 and that the addition of words that the 'consent' granted was subject to the orders of this Court was a mere ploy. Be that as it may, the plea of the contemners that they understood the word 'adheen' in the said order to mean 'under' is ex facie unacceptable. The said consent order with the aforesaid stipulation was in total violation of this Court's order dated 15-1-1993 (to which Mohan Meakins was also a party). It is inconceivable that the contemners could understand the said consent order as having been granted under the aforesaid order of this Court. In the circumstances, the minimum that should have been done by the contemners was to apply to this Court for appropriate directions or clarification, as the case may be, in the light of the said 'consent' and not to go ahead

and restart the plant on the basis of the said consent. If they had applied to this Court for directions, this Court could have immediately pointed out that the grant of 'consent' with the stipulation that the plant should achieve the prescribed standards by 31-12-1993 was plainly opposed to the order dated 15-1-1993 and cannot stand. This Court could have also verified the claim of Mohan Meakins (about achieving the prescribed standards by 2-4-1993) by ordering an inspection. Evidently, the contemnors wanted to avoid all this. They did not wish to lose the illegitimate benefit conferred upon them by the PCB. This inference becomes reinforced when we look to the conduct of both Mohan Meakins and the PCB in trying to keep the fact of grant of 'consent' on 21-4-1993 concealed from this Court. The following facts establish the said attempt.

9. Shri Yogesh Kumar and Brig. Kapil Mohan filed their affidavits in this Court on 27-4-1993 and 1-5-1993 respectively. But in neither affidavit was the fact of consent granted by the PCB on 21-4-1993 mentioned. It is interesting to note that on 4-5-1993 an affidavit was filed on behalf of the PCB in reply to the affidavit of Shri Yogesh Kumar. In this affidavit, the Board denied the correctness and validity of the reason given by Shri Yogesh Kumar for running the plant between 7-4-1993 and 11-4-1993, but there was no reference to the order of consent. In view of the lack of clarity in the aforesaid affidavits, Shri P.H. Parekh, Advocate, who was appointed as amicus curiae in this matter, addressed a letter dated 8-5-1993 to the learned advocate for Mohan Meakins asking him to clarify on what basis Mohan Meakins have restarted the plant and to supply him with the orders, if any, passed by the Board in that behalf. There was no reply, Hence, Shri Parekh sent a reminder on 14-5-1993. On 8-10-1993 this Court passed an order noticing the grievance of Shri Parekh that in spite of his two letters, Mohan Meakins have not supplied to him the necessary information and ordering Mohan Meakins to supply the same. A cost of Rs 10,000 was also imposed upon the company. It is only then that an affidavit was filed on behalf of Mohan Meakins on 24-10-1993 disclosing the order of consent dated 21-4-1993. A copy of the 'consent' was enclosed with the affidavit. The anxiety to conceal the 'consent' from this Court is not without significance. They knew that it was granted in plain violation of this Court's order dated 15-1-1993 and were wary about disclosing it to this Court. Until forced by this Court to come out with it, they did not disclose it.

10. In all the above circumstances, we cannot accept the plea that Mohan Meakins did not violate the order dated 15-1-1993 by obtaining the 'consent' on 21-4-1993 and by running their plant on that basis. It is obvious that Mohan Meakins (and some other industries) and UPPCB together enacted a charade - one saying within one day of closure that it had achieved the prescribed standards and the other granting the consent with a stipulation that the prescribed standards shall be achieved by the end of the year 1993. For this purpose, the PCB relied upon a government order, which it could not, for reasons assigned in our order dated 8-11-1995. We have already found the ex officio Chairman and Member-Secretary of the Board guilty of contempt. In the light of the facts aforesaid, we hold both the contemnors guilty of violation of this Court's order dated 15-1-1993. We cannot also accept the unconditional apology tendered by the respondents. The violation is a knowing one, deliberate and pre-planned. It indicates a certain defiant attitude on the part Mohan Meakins, i.e., contemnors. Accordingly, the unconditional apology tendered by the contemnors is rejected.

11. Question then arises as to the punishment to be awarded to the respondents-contemnors. While contending that the respondents are not guilty of contempt and that at the most it may be a case of error of judgment, Shri Nariman suggested that even in case the respondents are found technically guilty of contempt of court, this Court may consider directing the respondents to pay an amount of about rupees one lakh to a particular charity or for some other public purpose and that the respondents would be glad to do so. We have now found the respondents guilty of contempt of court

not merely in a technical sense but in a real sense and on two counts. It may also be noticed that the running of Mohan Meakins plant after 21-4-1993 pursuant to the consent obtained from the UPPCB was a continuing violation of this Court's order and it continued over a long period - at least till 31-12-1993, if not beyond. Invoking this Court's power to punish for contempt under Article 129 of the Constitution and taking into consideration the suggestion, or the offer, as it may be called of Shri Nariman, and keeping in view all the facts and circumstances of the case, we impose a compensatory fine of rupees five lakhs to be deposited in this Court within a period of four weeks from today. On such deposit being made, the contempt proceedings shall stand dropped. In default of such deposit, each of the respondents shall undergo simple imprisonment for a period of one month. The amount, if deposited, shall be utilised for purposes connected with the cleaning of Gomi River, for which orders will be passed by us after the deposit is made.

12. The contempt notices are accordingly disposed of. The respondents shall pay a sum of Rs 10,000 by way of costs which shall be paid over to the Supreme Court Middle Income Legal Aid Society.