

Anuj Maheshwari

Vs

Ramesh Yadav and Another

Contempt Petition (C) No. 589 of 1996 In SLP (C) No. 17014 of 1996

(M. Jagannadha Rao, S. P. Bharucha JJ)

28.04.1997

ORDER

1. The following orders adequately explain the circumstances in which a suo motu contempt notice was issued to Mrs. Sumita Kandpal. Principal Secretary of the Medical Health, Family Welfare and Medical Education Department, Government of Uttar Pradesh.

Order dated 27th January, 1997 :

"Adjourned for 2 weeks. The State of Uttar Pradesh shall file an appropriate affidavit explaining how the impugned order came to be passed and why the counsel was not appropriately instructed at that stage. The Principal Secretary of the Medical Health and Medical Education Ministry shall remain present in Court on the next date of hearing."

Order dated 10th February, 1997 :

"On 27th January, 1997, this Court directed the Principal Secretary of the Medical Health and Medical Education Ministry to remain present in Court on the next date of hearing, the contempt petition having been adjourned for two weeks.

Mr. Dhingra, learned counsel for the State, on being asked, tells us that the said Principal Secretary is not present in Court. He states that she is in USA. He states that her programme to go to USA had been fixed as far back as July 1996, that the order dated 27th January, 1997 was received in the office of the said officer on 7th February, 1997 when she was in Delhi and that she flew out of Delhi on 8th February, 1997. The learned counsel states that the said officer could not be contacted before she flew out of Delhi.

An Affidavit shall be filed by the officer(s) concerned who is supposed to have attempted to contact the said officer (Mrs. Sumita Kandpal) at Delhi, stating the day and time at which intimation of the fact of the said order was first received in the officer of Mrs. Sumita Kandpal, the day and time(s) at which he attempted to contact her and where. We shall decide whether or not to issue suo motu notice of contempt for breach of the order dated 27th January, 1997, to Mrs. Sumita Kandpal after we have perused the affidavit(s).

The matter shall be listed on 3rd March, 1997, by which time Mrs. Sumita Kandpal, it is stated, will be back in India. She shall be present in Court on that day.

Mr. Dhingra states that it shall be ensured that a copy of this order is served on Mrs. Sumita Kandpal when she arrives in Delhi.

Order dated 3rd March, 1997 :

"1. On 27th January, 1997, the Principal Secretary of the Medical Health and Medical Education Ministry of the State of U.P. was ordered to remain present on the next date of hearing. On 10th February, 1997 which was the next date of hearing, we were told that she had gone abroad, flying out of Delhi on 8th February, 1997. We thereupon directed the matter to be listed today ordering that she (Mrs. Sumita Kandpal) should be present in Court.

2. The said officer is present. It is stated on her behalf by Mr. Sorabjee that she had, before leaving Delhi on 8th February, 1997, filed an application for exempting her from personal appearance and for fixing another date for the appearance. That application was, apparently, never filed.

3. The counsel, on being asked, stated that the said officer had left the country without finding out whether the Court had passed an order exempting her from appearance as required by the order dated 27th January, 1997 and fixing another date for her appearance.

4. There can be no doubt, in the circumstances, that the said officer, knowing that there was an order of this Court that required her presence, flew out of the country before the date thereof and was, therefore, not present as directed.

5. We, therefore, do not, at this stage at least, accept the apology tendered on behalf of the said officer. We issued notice to her to show cause why suo motu proceedings for contempt should not be taken against her."

2. Mrs. Sumita Kandpal has now filed an affidavit dated 4-4-1997. She reiterates therein the unqualified apology tendered in her earlier affidavit dated 27-2-1997. She states that on receiving the order of this Court dated 27-1-1997, she ensured full and complete compliance thereof on the next day. In view of her official programme to attend a conference in the United States of America, which had already been finalised, she consulted the then Additional Advocate General, U.P., Shri G. K. Mehrotra. She was advised by him that she could go to the United States "as the order of this Honourable Court has been complied with and in view of the affidavit for exemption sworn on 6-2-1997, as per legal advice given. The deponent admits that there has been an error on her part in not ascertaining from her counsel as to whether the affidavit of exemption had been filed and presented before this Hon'ble Court with a prayer for exemption and whether this Hon'ble Court has been pleased to pass an order exempting the deponent from appearance on 10-2-1997. The deponent expresses her deep regret and apology for this error The mistake on her part was on account of legal advice she received and which she bona fide believed to be correct". Her affidavit states that Mrs. Kandpal is a senior IAS officer with an excellent and clean service record.

3. The learned counsel appearing for Mrs. Kandpal reiterated the unqualified apology contained in her affidavit. He drew attention to the circumstances in which Mrs. Kandpal was not present in Court on 10-2-1997. He submitted that the lapse was unintentional and due to erroneous legal advice. He asked this Court magnanimously to accept the unqualified apology Mrs. Kandpal had

tendered.

4. We shall assume that Mrs. Kandpal was advised that she could go to the United States and not attend this Court on 10-2-1997, in view of the fact that the order in connection with which her attendance was required had been complied with and in view of the affidavit for exemption that she had made, but Mrs. Kandpal, as she herself states, is a senior IAS officer. A senior IAS officer should know better than to presume that she need not obey the order of the Court because the purpose for which her presence was required no longer survived or that the exemption that she had sought would be given. It seems to us that Mrs. Kandpal put the order requiring her presence in Court on 10-2-1997, out of her mind in her keenness to go abroad. It is only this which can explain the admitted fact that she did not even bother to find out whether this Court had in fact exempted her from appearance.

5. As against the patent disobedience of the order of this Court there are three factors which we must take into account. First, had Mrs. Kandpal's exemption application been filed and moved, there is little doubt that it would have been granted. Secondly, to find Mrs. Kandpal guilty of contempt and punish her would blight her future career. Thirdly, Mrs. Kandpal has tendered an unqualified apology at earliest.

6. Taking these factors into account, we accept the unqualified apology tendered by Mrs. Kandpal. At the same time, we sternly caution her to be more heedful of judicial orders in future.

7. The contempt notice issued to Mrs. Kandpal is discharged.