

SUPREME COURT OF INDIA

Subramanian Swamy

Vs.

Hari Bhaskar

(N S Hegde and B Singh JJ.)

18.12.2002

ORDER

Santosh Hedge, J.

1. This Contempt Petition was filed alleging disobedience of an undertaking given by the State of Tamil Nadu in CA No. 5605/95 on 28.7.1995. The appellant who appeared in person has complained that during the pendency of CA No. 5605/95 before this Court, he had expressed an apprehension that the documents which were necessary for the prosecution of the persons involved in Special Calender Case No. 10/1997 before the Court of Special Judge No. II/XII Additional Judge, Chennai, may be tampered with or destroyed, and in view of the said apprehension, the learned counsel appearing for the State of Tamil Nadu had given an undertaking in that Civil Appeal that the said documents as well as their originals will be kept in safe custody. The petitioner herein also contends that at that relevant time, respondent was the Chief Secretary of the State of Tamil Nadu therefore he was bound by the said undertaking. The further complaint of the petitioner in this petition is that contrary to the undertaking given, the documents in regard to which he had expressed apprehension were in fact tampered with. For this purpose the petitioner relies upon the findings of the Special Judge in the abovesaid case wherein it is noticed by the Special Judge that "Therefore, the argument of the Learned Public Prosecutor that the lower half page containing his endorsement relating to missing of pages in current file and Note File is torn and removed is correct." It is on the basis of this finding of the Special Judge and certain other observations in that judgment the petitioner contends that the respondent is guilty of violating the undertaking given to this Court which amounts to contempt of the Court.

2. The respondent has filed a reply to the above contempt petition and in the said reply he has stated that when the State of Tamil Nadu had given an undertaking in the civil appeal all documents relating to the case were in possession of the Energy Department which is the successor department to the Public Work Department and the respondent had nothing to do with the same. The respondent has further stated that the Special Judge himself in his judgment dt. 27.12.2001 on which the petitioner relies, has given a specific finding to the effect "So there is no material on record to show when the papers were removed, whether before 10.07.1993 or after 10.07.1993 and before 12.07.1993, and who removed it. There is also no admissible and reliable record to show whether the pages were actually removed."

Relying on this Observation of the Special Judge wherein it is stated that there is no material to show whether the removal of papers was done before 10.7.1993, the respondent contends that there is a possibility of the tampering if at all has taken place, having taken place even prior to the undertaking given by the learned counsel for the State of Tamil Nadu to this Court which was on 28.7.1995--a date subsequent to 10.7.1993 referred to by the learned Judge.

3. The petitioner, however, contends that it is immaterial who was responsible for removal of the papers or for tampering of the documents because the onus was on the respondent State to have protected these documents and since the respondent was the Chief Secretary of the State at that point of time, he should be held liable for this tampering and proceeded against under the provisions of the Contempt of Court Act.

4. We have heard the petitioner and learned counsel for the parties and perused the documents. Though there is some justification in the complaint made by the petitioner as to tampering and removal of the documents as could be found from the judgment of the Special Judge, there is serious dispute in regard to the time and the manner in which these acts were done i.e. whether the same were done prior to the date of the undertaking or subsequent thereto. There is also some dispute as to who actually was in custody of the documents. In such a situation in a contempt petition we find it difficult to arrive at a definite conclusion that any act of omission or commission of the respondent was responsible for such tampering more so because there is serious doubt as to the date on which such act has taken place. In the absence of any material to conclusively establish the time when such tampering had taken place, we think it not safe to come to the conclusion that there has been a violation of the undertaking given by the State of Tamil Nadu for which act the respondent can be held guilty.

5. In the said view of the matter we do not think it necessary to proceed with this contempt petition hence the same is dismissed.