

SUPREME COURT OF INDIA

S.K. Dasgupta

Vs.

Vijay Singh Sengar

C.A.Nos.6794, 6795 and 6796 of 2003

(H.S.Bedi and K.S.Panicker Radhakrishnan JJ.)

05.05.2010

ORDER

1. These appeals arise out of a contempt petition wherein a Single Judge of the Madhya Pradesh High Court, Gwalior Bench, in his order dated 1st April, 2003 has ordered an enquiry against some officials and members of the M.P. State Electricity Board by the Central Bureau of Investigation and arrayed some senior Members of the Board and others as contemners as well.

2. The facts are as under:

“The respondent, Vijay Singh Sengar, a practising Advocate at Jabalpur, filed a writ petition in public interest pointing out that patients in Government hospitals were suffering great agony on account of un-scheduled load-shedding from 6.30 a.m. to 8.30 a.m. and 7.00 p.m. to 8.00 p.m. and that the entire State was plunged into darkness taking the State back to the 'Stone Age Days'. Alongwith the writ petition a large number of newspaper cuttings were also appended, to substantiate the pleas that had been raised. During the hearing of the petition several senior officers of the Board were summoned to Court including Mr. R.N. Mishra, the Chief Engineer (O & M). It was also observed in an interim order made by the Court that the Board had undertaken to take all measures to supply electricity for street lights and that in a democratic set up it was the responsibility of the State to maintain all essential services and the basic amenities of life. It was also observed that it was a matter of common knowledge that the absence of the power supply to Government hospitals caused great discomfort, pain and constituted a danger to the patients who were admitted therein. By an order dated 13th September, 2001, a direction was accordingly given in the following terms:

We, therefore, as an interim measure, direct respondents 1 and 2 to maintain round the clock electricity supply in the Government Hospitals throughout the State. We

further direct that the street lights shall be kept on throughout the State between sunset and sunrise.

The above directions be carried out in letter and spirit forthwith, even at the cost of discontinuing with the scheduled load shedding as a whole with the only exception in the event of the Madhya Pradesh Electricity Board itself not getting the power supply, or a 'Grid Failure' beyond their control It is further being made clear that any breach of the above directions would be viewed seriously.

List for further orders on 27/9/2001.

Let a copy of this order be supplied to Shri Sanjay Seth, Additional Advocate General, today for necessary compliance.

It appears that a special leave petition was filed against the aforesaid order but the same was dismissed in view of the fact that the M.P. Electricity Regulatory Commission had passed certain effective orders and no orders were thus thought to be called from the Court. It appears that another public interest litigation was subsequently filed and an order was made on 17th March, 2003 while issuing notice that "there shall be no power cut during night time until further orders."

Another petition was filed before the Indore Bench, highlighting the difficulties being faced in the State due to interrupted supply of electricity by the Board and by an interim order officers of the M.P. Electricity Regulatory Commission were also directed to be present so that some method could be devised to reduce the rigour of the power cuts in force."

3. The matter was thereafter adjourned time and again to see if the directions given by the Court from time to time were effectively complied with. It was also observed during the course of the proceedings before the Indore Bench that the Court could not be a mere spectator to the miseries being felt by the public and that the arguments made on behalf of the staff, Board and State agencies that the Court could not interfere in policy matters, could be ignored as it was the bounden duty of the Court to ensure the welfare of the State citizens. The Court accordingly observed that it appeared that the officials of the Electricity Board and the Regulatory Commission were not serious in implementing the directions of the Court and they were prima facie guilty of having committed contempt of Court. Contempt notices were accordingly issued on 26th March, 2003. The officers of the Board appeared before the Court and pointed out that the situation was beyond their control but they were sternly warned that any further neglect of the Court's orders would be viewed seriously. The Court also felt that the Court's direction to the concerned officer that if a power cut could not be avoided they were to intimate to the Registrar of the Court (as to why the power cuts had been imposed) had been flouted and the Courts interference was thus essential on which further directions were issued on Ist April, 2003 in the following terms

“Accordingly, the Director, C.B.I., New Delhi, shall constitute a team of officers not associated with the State of M.P. to be headed by an officer not below the rank of Joint Director to conduct an impartial enquiry with the help of the experts of the Central Electricity Authority on the following terms of reference.

(1) As to reasons leading to violation of this Court's order directing not to resort to power cuts after 8.30 in the night.

(2) As to justification being in the nature of situation beyond control, if any, for power cuts in violation of this Court's order after 8.30 in the night:

(3) As to individual liability of the contemners or any other person for deliberate violation of this Court's orders in the absence of a justification as such:

(4) As to veracity of claims of the Broad and the Govt. regarding non-availability of surplus electricity from any source for purchase at any cost:

(5) As to willful disobedience by the M.P.S.E.B., Headquarters, Jabalpur, if any, by ignoring request of the Board's establishment at Gwalior to strictly adhere to this Court's directions on power cuts in the night:

(6) As to fabrication and manipulation of records, if any, for justification of the Board/the Government's actions in resorting to power cuts; and

(7) As to any other area of enquiry, which the Director, C.B.I. thinks appropriate for proper adjudication of this Contempt Petition.

(10) We would like to indicate that, in view of prima facie deliberate violations of this Court's order the only way, we are left with to reiterate the rule of law is to punish the contemners or persons responsible for such violation by warding exemplary punishments even by involving our powers under Article 215 of the Constitution of impose punishments proportionate to damage caused to the credibility of this Institution, irrespective of the quantum of sentence prescribed under the Contempt of Courts Act. Besides, as there has been incidents of suicide by the students, due to power cuts during crucial periods of examinations and as there is commotion in the society on that count, C.B.I., shall take up the inquiry at the earliest and shall exercise all such powers as are enshrined in the Cr.P.C. and other relevant statues.

(11) As it is submitted that (i) Shri Baleshwar Sharma, chief Managing Director, (ii) Shri R.K. Verma, Chief managing Director and (iii) Shri R.S. Yadav, Chief Engineer, have been inadvertently left out from the array of contemners, they are directed to be so added and be issued with notices of contempt today itself.

(12) the C.B.I. Shall also record all the power cuts henceforth and incorporate the same in its report, keeping in view the fact, that each power cut shall constitute an independent offence of the Contempt of this Court.

(13) A copy of this order be immediately sent by a special messenger and also by fax to the Director, C.B.I., New Delhi.

(14) The C.B.I. shall submit an interim report within one month and final report within two months.”

4. It is against the order dated 1st April, 2003 that a special leave petition was filed and while after issuing notice, proceedings before the High Court had been stayed as well. The respondents though served have not put in appearance on which leave has also been granted. We have accordingly gone through the matter with the assistance of the learned Counsel for the appellant.

5. We are of the opinion that the directions made by the High Court in the impugned judgment are clearly beyond the Courts jurisdiction in a Public Interest Litigation as they interfere with the functioning of independent State agencies in matters which are beyond their control insofar as uninterrupted supply of electricity is concerned. We cannot ignore that a shortage of power is a phenomena common to the entire country and to single out Members of the Board or the Regulatory Commission for failure to comply with the directions of the Court, which are incapable of compliance, is not called for.

“The direction that the matter should be referred to Central Bureau of Investigation for enquiry is to our mind completely misplaced. There is no finding of the Court or even a suggestion of any misconduct on any attempt to forestall the uninterrupted supply of electricity to the State or Government hospitals. We, thus do not find any justification in the direction that the CBI investigates matters which are purely technical and administrative in nature. We must emphasize once again that a Public Interest Litigation is to be invoked sparingly and with rectitude and any order made in this situation must be reasonable and must not reflect the pique of the Court more particularly as it is not the Courts business to attempt to run the Government in a manner which the Court thinks is the proper way. The officers of the Board had repeatedly come to Court to explain that the situation was beyond their control and that the short fall in the supply of electric power was not of their making or in their control. The High court ignored this basic fact and passed orders which were incapable of compliance.”

6. We therefore allow these appeals and set aside the order dated 1st April 2003 and discharge the contempt proceeding.