

SUPREME COURT OF INDIA

Maninderjit Singh Bitta

Vs.

Union of India & Ors.

W.P.(Civil)No.510 of 2005

(S.H.Kapadia,CJI., K.S. Radhakrishnan and Swatanter Kumar,JJ.,)

13.10.2011

ORDER

1. Government of India, on 28th March, 2001, issued a notification under the provisions of Section 41(6) of the Motor Vehicles Act, 1988 (for short, 'the Act') read with Rule 50 of the Motor Vehicles Rules, 1989 (for short, 'the Rules') for implementation of the provisions of the Act. This notification sought to introduce a new scheme regulating issuance and fixation of High Security Number Plates. In terms of sub-section (3) of Section 109 of the Act, the Central Government issued an order dated 22nd August, 2001 which dealt with various facets of manufacture, supply and fixation of new High Security Registration Plates (HSRP). The Central Government also issued a notification dated 16th October, 2001 for further implementation of the said order and the HSRP Scheme. Various States had invited tenders in order to implement this Scheme.

2. A writ petition being Writ Petition (C) No.41 of 2003 was filed in this Court challenging the Central Government's power to issue such notification as well as the terms and conditions of the tender process. In addition to the above writ petition before this Court, various other writ petitions were filed in different High Courts raising the same challenge. These writ petitions came to be transferred to this Court. All the transferred cases along with Writ Petition (C) No. 41 of 2003 were referred to a larger Bench of three Judges of this Court by order of reference dated 26th May, 2005 in the case of *Association of Registration Plates v. Union of India*¹ as there was a difference of opinion between the learned Members of the Bench dealing with the case. The three Judge Bench finally disposed of the writ petitions vide its order dated 30th November, 2004 reported in *Association of Registration Plates v. Union of India* *Association of Registration Plates v. Union of India*² While dismissing the writ petition and the connected matters, the Bench rejected the challenge made to the provisions of the Rules, statutory order issued by the Central Government and the tender conditions and also issued certain directions for appropriate implementation of the Scheme.

3. The matter did not rest there. Different States did not comply with the Rules, scheme and/or statutory order which resulted in filing of the present writ petition, being Writ Petition (C) No.510 of 2005. This writ petition also came to be disposed of by a three Judge Bench of

this Court vide its judgment titled as *Maninderjit Singh Bitta v. Union of India*³ It will be appropriate to refer to the operative part of the said judgment:

"5. Grievance of the petitioner and the intervener i.e. All India Motor Vehicles Security Association is that subsequent to the judgment the scheme of HSRP is yet not implemented in any State except the State of Meghalaya and other States are still repeating the processing of the tender. The prayer therefore is that the purpose of introducing the scheme should be fulfilled (sic- in) letter and spirit. The objective being public safety and security there should not be any lethargy. It is pointed out that most of the States floated the tenders and thereafter without any reason the process has been slowed down...

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9. Needless to say the scheme appears to have been introduced keeping in view the public safety and security of the citizens. Let necessary decisions be taken, if not already taken, within a period of six months from today. While taking the decision the aspects highlighted by this Court in the earlier decision needless to say shall be kept in view."

4. Despite the above judgment of this Court, most of the States have failed to implement the scheme and the directions contained in the judgments of this Court. The matter remained pending before this Court for a considerable time and various orders passed by this Court directing implementation of the scheme, were not complied with. On 7th April, 2011, by a detailed order, we had taken note of the intervening events and the fact that a large number of States had not even implemented the scheme and the directions contained in the judgments of this Court. Before invoking the extraordinary jurisdiction of this Court for initiation of contempt proceedings against the concerned authorities of the respective defaulting States, this Court considered it necessary to require only presence of officers in Court and provided them with another opportunity to ensure compliance of the directions issued by this Court. Despite assurance of an effective implementation of the Court's orders, nothing substantial was done within the time of six weeks granted by this Court vide its Order dated 7th April, 2011. Certain Interim Applications (I.A.s) were filed by some of the States for extension of time and in view of the assurance given in court, this Court had also dispensed with the personal appearance of the senior officers of those State Governments. However, with some regret, we noticed that still a few states had not complied with the directions of this Court and the casual attitude of the State Government of these States was obvious from their very conduct, inside and outside the court. This attitude compelled us to pass a very detailed Order on 30th August, 2011 classifying the States into different categories. The first category of the states had taken steps and even awarded the contract for supplying 'High Security Registration Plates' (HSRP). The second category was of the States/U.T.s which had not followed the correct procedure for selection and had approved all private vendors with 'Type Approval Certificate' (TAC) from the Central Government to affix the 'HSRP' at their own premises or at the Office of the RTO. The third category was of the defaulting States who had filed affidavits, assuring the Court of taking steps and finalising the tender allotment

within the specified dates. On the basis of the affidavits filed by them, they were granted further time and were required to file affidavits of compliance. The last category was of the States which had been persisting with the default and had not taken any effective steps to comply with the directions of this Court. Thus, vide Order dated 30th August 2011 we had passed the following directions in relation to this category:

"9. From the record before us, it is clear that there is apparent and intentional default on the part of the concerned officers of these defaulting States. Consequently, we issue notice to show cause why proceedings under the Contempt of Courts Act, 1971 be not initiated, if found guilty, why they be not punished in accordance with law and why exemplary costs, personally recoverable from the erring officers/officials, be not imposed. Notice shall be issued to:

- a. Secretary (Transport) of the defaulting States.
- b. Commissioner, State Transport Authority of the respective States."

5. The State of Haryana is one such state which has hardly taken any step to implement the scheme. For their intentional violation of the Court's Order, we were compelled to issue notice as to why proceedings under the Contempt of Courts Act of 1971 (for short 'the 1971 Act') as well as costs, exemplary or otherwise, be not imposed upon the States or its officers, responsible for such inordinate delay in complying with the orders of the Court.

6. In the affidavits filed on behalf of the State of Haryana, it was stated that a notice for inviting tender was published on 29th October 2002 which was challenged before the court and finally, this Court vide its Order dated 13th November 2004, had dismissed the petition raising challenge to the tender process. Thereafter, draft 'Request for Proposals' was prepared only on 28th April, 2011 and the notice inviting tender was published on 12th May, 2011. Pre-bid meeting was held and amendments to the terms of the tender were made on 30th June, 2011. The constituted committee held a meeting thereafter and apprised the concerned of the pre-qualification bids. On 30th August, 2011, the bids were received and evaluated. The technical bids were opened on 5th September, 2011 and financial bids were to be opened thereafter in the month of September 2011 itself which, unfortunately, have not been opened till date and the tender has not been awarded to any bidder.

7. Let us now examine the conduct of the State and its officers, responsible for not carrying out the directions of this Court. It is undisputable from the record produced before us that initially the steps were taken by the State of Haryana in the year 2002 which could not be finalised because of court's intervention and the said challenge was finally dismissed and all controversies came to an end by the Order of this Court dated 30th November, 2004. Admittedly, from the year 2004 till 2011, for a long period of seven years, no steps were taken by the State of Haryana in compliance with the directions of this Court and the statutory scheme under the provisions of Rule 50 of the Rules. It was only with the pronouncement of the Order dated 7th April, 2011 by this Court that the State of Haryana appears to have woken up from slumber and made a feeble attempt, which completely lacked

both will and sincerity, to comply with the orders of this Court. The authorities were expected to comply with the directions and implement the scheme effectively and expeditiously. Despite the lapse of more than 5 months, tenders have still not been awarded to any party. It is evident from the record that the matters of public safety and urgent nature were taken as routine files of the Department. This conduct of the Department and its officers demonstrates a complete callous attitude on their part, as they failed to take note of the mandatory and self-contained directions of this Court in the Order dated 7th April, 2011. Besides noticing that such functioning of the departments was reprehensible, this Court while recording a note of caution, required the authorities to comply with such orders in future. Despite specific orders, it has taken months for the State hierarchy to open the financial bids and award the contract. In the Order dated 30th August, 2011, the State of Haryana was named amongst the states which had taken no action or had merely initiated the process without any effective steps and/or final results. They were issued notice because the conduct of these States reflected callousness and lack of will to obey the orders of this Court. Their attitude was found to be one of disobedience and the situation has hardly changed, not for the better in any case. Not taking any steps, whatsoever, to implement the Scheme and the orders of this Court for years together and now inaction for months together in not opening the financial bids and awarding the contract, is a glaring and flagrant violation of the orders of this Court by the State and its responsible officers.

8. Now, we would examine certain principles of law which would normally guide the exercise of judicial discretion in the realm of contempt jurisdiction. 'Contempt' is an extraordinary jurisdiction of the Courts. Normally, the courts are reluctant to initiate contempt proceedings under the provisions of the 1971 Act. This jurisdiction, at least suo moto, is invoked by the courts sparingly and in compelling circumstances, as it is one of the foremost duty of the courts to ensure compliance of its orders. The law relating to contempt is primarily dissected into two main heads of jurisdiction under the Indian Law: (a) Criminal Contempt, and (b) Civil Contempt. It is now well settled and explained principle under the Indian contempt jurisdiction that features, ingredients, procedure, attendant circumstances of the case and the quantum of punishment are the relevant and deciphering factors. Section 12 of the 1971 Act deals with the contempt of court and its punishment while Section 15 deals with cognizance of criminal contempt. Civil contempt would be wilful breach of an undertaking given to the court or wilful disobedience of any judgment or order of the court, while criminal contempt would deal with the cases where by words, spoken or written, signs or any matter or doing of any act which scandalises, prejudices or interferes, obstructs or even tends to obstruct the due course of any judicial proceedings, any court and the administration of justice in any other manner. Under the English Law, the distinction between criminal and civil contempt is stated to be very little and that too of academic significance. However, under both the English and Indian Law these are proceedings sui generis. While referring to Justice J.D. Kapoor's Law of Contempt of Court, Second Edition, 2010 which mentioned the Phillimore Committee Report - Report of the Committee on Contempt of Court, of which importantly the following passage can be noticed:

"4. In England and Wales most forms of contempt have been regarded as of criminal character, and as such, are called "criminal contempts". In Scotland contempt of court

is not a crime nor is a distinction between "criminal" and "civil" contempts recognised. Scots law regards contempt of court as a chapter of a law sui generis. This difference of approach is of little more than academic significance in modern practice, but the Scottish explain certain peculiar elements in its operation and procedure. What is of particular importance is that it is branch of the law in which breaches are investigated by a special and summary procedure and where, once established, they may be severely punished."

9. Under the Indian Law the conduct of the parties, the act of disobedience and the attendant circumstances are relevant to consider whether a case would fall under civil contempt or a criminal contempt. For example, disobedience of an order of a court simplicitor would be civil contempt but when it is coupled with conduct of the parties which is contemptuous, prejudicial and is in flagrant violation of the law of the land, it may be treated as a criminal contempt. Even under the English Law, the courts have the power to enforce its judgment and orders against the recalcitrant parties.

10. In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and wilful violation of the orders of the court, even to constitute a civil contempt. Every party to lis before the court, and even otherwise, is expected to obey the orders of the court in its true spirit and substance. Every person is required to respect and obey the orders of the court with due dignity for the institution. The Government Departments are no exception to it. The departments or instrumentalities of the State must act expeditiously as per orders of the court and if such orders postulate any schedule, then it must be adhered to. Whenever there are obstructions or difficulties in compliance with the orders of the court, least that is expected of the Government Department or its functionaries is to approach the court for extension of time or clarifications, if called for. But, where the party neither obeys the orders of the court nor approaches the court making appropriate prayers for extension of time or variation of order, the only possible inference in law is that such party disobeys the orders of the court. In other words, it is intentionally not carrying out the orders of the court. Flagrant violation of the court's orders would reflect the attitude of the concerned party to undermine the authority of the courts, its dignity and the administration of justice. In the case of *Re: Vinay Chandra Mishra* [(1995) 2 SCC 584], this Court held that 'judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. Dignity and authority of the Courts have to be respected and protected at all costs'.

11. Another very important aspect even of the Civil Contempt is, 'what is the attribution of the contemnor?' There may be cases of disobedience where the respondent commits acts and deeds leading to actual disobedience of the orders of the court. Such contemnor may flout the orders of the court openly, intentionally and with no respect for the rule of law. While in some other cases of civil contempt, disobedience is the consequence or inference of a dormant or passive behaviour on the part of the contemnor. Such would be the cases where

the contemnor does not take steps and just remains unmoved by the directions of the court. As such, even in cases where no positive/active role is directly attributable to a person, still, his passive and dormant attitude of inaction may result in violation of the orders of the court and may render him liable for an action of contempt.

12. It is not the offence of contempt which gets altered by a passive/negative or an active/positive behaviour of a contemnor but at best, it can be a relevant consideration for imposition of punishment, wherever the contemnor is found guilty of contempt of court. With reference to Government officers, this Court in the case of *E.T. Sunup v. Canss Employees Assoc.*⁴. took the view that it has become a tendency with the Government officers to somehow or the other circumvent the orders of the Court by taking recourse to one justification or the other even if ex-facie they are unsustainable. The tendency of undermining the court orders cannot be countenanced. Deprecating practice of undue delay in compliance with the orders of the court, this Court again in the case of *M.C. Mehta v. Union of India and Ors*⁵. observed :

".....clear lapse on the part of NCT and Municipal Corporation. Even if there was not deliberate or wilful disregard for the court orders, there has clearly been a lackadaisical attitude and approach towards them. Though no further action in this matter need be taken for now, but such lethargic attitude if continues may soon become contumacious."

13. It is also of some relevancy to note that disobedience of court orders by positive or active contribution or non-obedience by a passive and dormant conduct leads to the same result. Disobedience of orders of the court strikes at the very root of rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the Judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs (refer T.N. Godavarman Thirumulpad's case The proceedings before the highest court of the land in a public interest litigation, attain even more significance. These are the cases which come up for hearing before the court on a grievance raised by the public at large or public spirited persons. The State itself places matters before the Court for determination which would fall, statutorily or otherwise, in the domain of the executive authority. It is where the State and its instrumentalities have failed to discharge its statutory functions or have acted adversely to the larger public interest that the courts are called upon to interfere in exercise of their extraordinary jurisdiction, to ensure maintenance of the rule of law. These are the cases which have impact in rem or on larger section of the society and not in personam simplicitor. Courts are called upon to exercise jurisdiction with twin objects in mind. Firstly, to punish the persons who have disobeyed or not carried out orders of the court i.e. for their past conduct. Secondly, to pass such orders, including imprisonment and use the contempt jurisdiction as a tool for compliance of its orders in future. This principle has been applied in the United States and Australia as well. For execution of the orders of the court even committal for an indefinite term has been accepted under Australian law [*Australasian Meat Industry Employees Union v. Mudginberri Station Pty. Ltd*⁶. (Australian High Court)] and

American law, though this is no longer permissible under English Law. While referring to detention of a person for a long period to ensure execution of the orders in *Re Nevitt* [117 F. 448, 461 (1902)] Judge Sanborn observed that the person subjected to such a term 'carries the keys of his prison in his own pocket.' Lethargy, ignorance, official delays and absence of motivation can hardly be offered as any defence in an action for contempt. Inordinate delay in complying with the orders of the courts has also received judicial criticism. It is inappropriate for the parties concerned to keep the execution of the court's orders in abeyance for an inordinate period. Inaction or even dormant behaviour by the officers in highest echelons in the hierarchy of the Government in complying with the directions/orders of this Court certainly amounts to disobedience. Inordinate delay of years in complying with the orders of the court or in complying with the directed stipulations within the prescribed time, has been viewed by this Court seriously and held to be the contempt of court, as it undermines the dignity of the court. Reference in this regard can be made to *Maniyeri Madhavan v. Inspector of Police, Cannanore*⁷ and *Anil Ratan Sarkar and Ors. v. Hirak Ghosh and Ors*⁸. Even a lackadaisical attitude, which itself may not be deliberate or wilful, have not been held to be a sufficient ground of defence in a contempt proceeding. Obviously, the purpose is to ensure compliance of the orders of the court at the earliest and within stipulated period.

14. Reverting back to the facts of the present case, it is undisputed that for years together the State of Haryana has failed to comply with the directions of this Court and implement the scheme. It has not only caused prejudice to the public at large but has even undermined the dignity of this Court. The attitude of the State of Haryana and the respective officers has been lackadaisical and of wilful disregard. Despite repeated orders they have failed to take effective steps and whatever steps were taken the same are not in conformity with law. The repeated Orders of this Court have failed to bring any results from the recalcitrant State. The repeated opportunities and extension of time did not help in expeditious progress in the matter. On the contrary, there is apparent disobedience of the Orders of this Court and no compliance with the Orders of this court, by their completely passive and dormant behaviour. This behaviour, besides causing serious problems in the effective implementation of statutory scheme, has even undermined the dignity of this Court and impinged upon the basic rule of law. At the cost of repetition, we may notice that there is not even a word of explanation as to why no steps were taken by the State of Haryana for a long period of seven years and why tender has not been awarded till date. The vague averments made in the affidavit are nothing but a lame excuse to somehow avoid the present proceedings. The State of Haryana and the concerned officers, namely, the Secretary, Transport and the Commissioner, State Transport Authority have violated the Orders of this Court and are liable for the consequences of such disobedience.

15. It was expected of the officers in-charge and particularly the Secretary, Transport and Commissioner, State Transport Authority of the State of Haryana to at least carefully read the orders of this Court and ensure their implementation in their correct perspective. We would have expected such high officers of the State to act fairly, expeditiously and in accordance with the orders of this Court. If the concerned State would have taken timely and appropriate steps in accordance with the law and the orders of this Court, it would have not

only saved the time of the Court, which it had spent on repeated hearings, but would have also saved the public money that it had spent so far.

16. We have no hesitation in coming to the conclusion that the Secretary, Transport and the Commissioner, State Transport Authority of the State of Haryana is guilty of wilful disobedience/non-compliance of the orders of this Court, particularly the orders dated 30th November 2004, 7th April 2011 and 30th August 2011. Having found them guilty under the provisions of the 1971 Act and under Article 129 of the Constitution of India, we punish the Secretary, Transport and Commissioner, State Road Transport Authority of the State of Haryana as under :

“i) They are punished to pay a fine of Rs.2,000/- each and in default, they shall be liable to undergo simple imprisonment for a period of fifteen days;

ii) We impose exemplary cost of Rs.50,000/- on the State of Haryana, which amount, at the first instance, shall be paid by the State but would be recovered from the salaries of the erring officers/officials of the State in accordance with law and such recovery proceedings be concluded within six months. The costs would be payable to the Supreme Court Legal Services Committee.

iii) In view of the principle that the courts also invoke contempt jurisdiction as a tool for compliance of its orders in future, we hereby direct the State Government and the respondent/contemner herein now to positively comply with the orders and implement the scheme within eight weeks from today. Copy of this order be circulated to the Chief Secretary/Competent Authority of all the States/U.T.s.

It is ordered accordingly.

Judgment Referred.

¹(2004) 5 SCC 0364

²(2005) 1 SCC 0679

³(2008) 7 SCC 0328

⁴(2004) 8 SCC 0683

⁵(2001) 5 SCC 0309

⁶(1986) 161 CLR 0098

⁷AIR 1993 SC 0356

⁸(2002) 4 SCC 0021