

SUPREME COURT OF INDIA

R.S.Sehrawat

Vs.

Rajeev Malhotra

Crl.A.No.684 of 2006

(Dipak Misra,CJI., A.M.Khanwilkar,JJ.,)

05.09.2018

JUDGMENT

A.M. Khanwilkar,J.,

1. The instant appeal under Section 19 (1) (b) of the Contempt of Courts Act, 1971, assails the judgment and orders passed by the Division Bench of the High Court of Delhi at New Delhi in C.M. No.820 of 2001 in C.W.P. No.6734 of 2000 dated 1st June, 2001 and in R.A. No.6600 of 2001 in C.W.P. No.6734 of 2000 dated 10th May, 2006 whereby the appellant has been found guilty of filing false affidavit and attempting to mislead the Court, thus committing contempt of court by his acts which were of such a nature that they tended to substantially interfere with the due course of justice. The appellant has been sentenced to undergo simple imprisonment for a period of 30 (Thirty) days and to pay a fine of Rs.25,000/- (Twenty Five Thousand Only). Review petition against the said decision came to be dismissed on 10th May, 2006.

2. Briefly stated, the appellant was working as a Junior Engineer in Municipal Corporation of Delhi (MCD). The writ petitioner (respondent No.1 herein) had alleged that the appellant and other officials, including police officials had, by their act of commission and omission, first permitted the writ petitioner to carry on unauthorised construction on the property bearing Plot No.37-C measuring 834 square yards at Asoka Avenue, Sainik Farms, New Delhi and later on unilaterally demolished the said structure. This was the grievance made in Civil Writ Petition No.6734 of 2000 filed by respondent No.1. Respondent No.1 had prayed for taking action against the appellant and other officials including police officials involved in the alleged incident of demolition of the structure. The Division Bench of the High Court advertent to the direction issued in Public Interest Litigation bearing C.W.P. No.7441 of 1993 dated November 3, 1997 restraining unauthorised constructions in unauthorised colonies, issued notice on 6th December, 2000 in the present writ petition to the officers of the MCD and the police personnel who were posted during the time the construction was raised on the plot belonging to respondent No.1, to show cause as to why proceedings for contempt of court should not be initiated against them.

3. After receipt of notice, the appellant, as well as other officials, filed their respective affidavits. The appellant filed his detailed affidavit on 3rd January, 2001 inter alia pointing out the primary responsibility of the officials who were expected to comply with the directions issued on November 3, 1997 by the High Court. As regards his role in the capacity of Junior Engineer, the appellant asserted that he discharged the task assigned to him from time to time by his superior officers and submitted compliance reports to them in that behalf. He further asserted that he had undertaken 14 major demolition actions in Sainik Farms alone between 7th March, 2000 and 27th September, 2000 and razed these constructions to the ground. It was asserted that the writ petitioner illegally constructed the building at the same location inspite of the demolition action taken on the earlier occasions. In support of the contention that he had resorted to the demolition of concerned structure, he placed reliance on the office submission made by him to his superiors as well as the photographs of the structures taken before and after the demolition drive. The stand taken by the appellant was contested by respondent No.1. To verify the factual position, the High Court vide order dated 12th January, 2001 appointed a Committee of advocates to inspect the site and submit a fact finding report. That report was submitted to the High Court by the Committee of advocates on 23rd January, 2001.

4. The High Court vide order dated 24th January, 2001 after recording its prima facie opinion issued show cause notice to the concerned officials including the appellant as to why they should not be convicted and punished for contempt of court. After the said order, the appellant filed a further affidavit dated 8th February, 2001 and reiterated the stand taken in the earlier affidavit as also explained the position of possibility of reconstruction on the same location after the demolition was done on 7th June, 2000 and 14th/15th September, 2000. The appellant also relied on contemporaneous evidence such as the report and photographs of the demolition. The High Court, however, was not impressed by the explanation offered by the appellant and proceeded to record finding of guilt against the appellant for filing false affidavit on January 3, 2001. The appellant preferred a review petition which was dismissed on 10th May, 2006. As a result, the appellant has challenged both the orders by way of the present appeal.

5. The principal grievance of the appellant is that no proper charge was framed and conveyed to the appellant. The first show cause notice issued to the appellant in terms of order dated 6th December, 2000 was presumably for non-compliance of the direction given on November 3, 1997 in C.W.P. No.7441 of 1993; whereas the second show cause notice issued to the appellant pursuant to order dated 24th January, 2001 was for filing an incorrect and misleading affidavit dated 3rd January, 2001. The appellant had revealed the factual position in his affidavit dated 3rd January, 2001 and further affidavit dated 8th February, 2001. The factual position stated in the said affidavits has not been analysed by the High Court at all, much less in its proper perspective. On the contrary, the High Court, proceeded to record a finding of guilt, being swayed away by the factual position recorded in the report submitted by the Committee of advocates, completely overlooking the plausible explanation offered by the appellant that the unauthorised structure in question was demolished on 7th June, 2000 and again on 14th/15th September, 2000. The contemporaneous record regarding the extent of demolition in the form of office submission, press reports and photographs was also

brought to the notice of the High Court. However, that has been overlooked. The grievance of the appellant is that in the affidavit dated 8th February, 2001 a specific disclosure was made about the video recording done by news channels and liberty to play the video clippings was sought but the High Court did not deal with this request of the appellant at all. The time period between the demolition and the inspection by the Committee of advocates being quite substantial, the possibility of reconstruction of the structures in question could not be ruled out. However, the High Court has not dealt with this aspect.

6. The respondent No.1 and the Amicus Curiae espousing the cause of the respondent No.1, would, however, contend that there is no error in the approach or the conclusion recorded by the High Court.

7. We have heard Mr. Ashok Mathur advocate for the appellant, Mr. K. Radhakrishnan, learned senior counsel appearing as amicus curiae and Mr. Ashok Kumar Panda, learned senior counsel for the respondent.

8. As noted earlier, action against the appellant and other officials was initiated by the High Court in terms of order dated 6th December, 2000. The relevant portion of the said order reads thus:

In the instant petition, unauthorized construction was carried out in Sainik Farm which happens to be an unauthorized colony. It is not disputed that the petitioner started construction on Plot No.37C measuring 834 Sq. Yds. At Ashoka Avenue, Sainik Farm, New Delhi, in July 2000. The building was allowed to come up and when it was nearing completion the same was demolished on 30.10.2000. We fail to understand as to how the building activity could be permitted/allowed from July 2000 till October 2000 when order of this court dated November 3, 1997 was in force. It prima facie appears to us that the building in question could not have come up unless the concerned officers of the MCD and the Police connived with the petitioner. The allegation of the petitioner is that he paid bribes to various offices for raising the construction. He has named those officers.

In the circumstances, we consider it appropriate to issue notices to the following officers of the MCD and the Police, who were posted during the time the construction was raised on the plot in question, to show cause why proceedings for contempt of court be not initiated against them:

1. Mr. R.S. Sherawat (JE) MCD
2. Mr. U.S. Chowhan (JE) MCD
3. Mr. S.R. Bhardwaj, A.E. South zone Building Department MCD.
4. Mr. Puran Singh Rawat, Baildar, MCD
5. Mr. Rakesh Baildar, MCD
6. Mr. Man Mohan, S.I. Chowki Incharge, Sainik Farms
7. Mr. V.K. Malhotra, Ex. Engineer MCD
8. Mr. Vir Singh, SHO.

The aforesaid officers are present and they accept notice. They are granted two weeks time to file affidavits in reply to the show cause notice. Pleadings in the writ petition be completed before the next date.”

9. On a bare perusal of this order, it is evident that the High Court took suo motu action as it was prima facie convinced that unauthorised construction was carried out in Sainik Farms despite the direction contained in order dated November 3, 1997 in C.W.P. No.7441 of 1993. The order also records that the show cause notice was accepted by the officers present in Court. The appellant, like other officers, filed his affidavit revealing the relevant facts concerning him vide affidavit dated 3rd January, 2001. The appellant had explained the factual position as to the action of demolition of unauthorised structures in Sainik Farms during the relevant period as per the task assigned to him by his superior officers and reporting of that fact to his superiors by way of contemporaneous office submission. The correctness of the said contemporaneous office reports could not be and has not been questioned or doubted as such. The reply affidavit makes it amply clear that the Commissioner of the Corporation was personally supervising the demolition work of unauthorised constructions and, therefore, there was no reason to doubt the contemporaneous record in the form of office submissions and photographs reinforcing the fact of demolition. The report of the Committee of advocates, however, was based on the site visit made in January, 2001 after a gap of more than 6 months from 7th June, 2000 and 3 months from 14th September, 2000 when the demolition was actually carried out. The factual position stated in the said report, therefore, may not be the actual position as obtained on the date of demolition i.e. 7th June, 2000 and 14th September, 2000. It is not unknown that such unauthorised structures could be and were reconstructed overnight after the demolition work is undertaken by the officials. That was done by unscrupulous persons clandestinely and without notice. The factual position stated in the reply affidavit filed by the appellant also reveals that continuous follow-up action was being taken in respect of unauthorised structures including those which were demolished. Furthermore, the appellant was transferred from the concerned ward w.e.f. 27th September, 2000 and any development or illegal activity unfolding after that date cannot be attributed to the appellant. All these aspects have not been considered by the High Court.

10. During the pendency of this appeal the appellant has also brought on record a fact that he had faced departmental action on the basis of same set of facts regarding his acts of commission and omission for the following three charges:

“Shri R.S. Sehrawat while functioning as JE (B) in Building Department, South Zone and remained incharge of the area of Sainik Farm w.e.f. 07.03.2000 to 27.09.2000, committed gross misconduct on the following counts:

1. He is connivance with the owner/builders allowed them to carry out and complete the unauthorized construction in P.Nos 37-C, 49, H-541, Sainik Farms unabatedly and did not take effective action to stop/demolish the same at its initial/ongoing stage.

2. He also did not book the said unauthorized construction in Sainik Farm just to avoid demolition action u/s 343/344 of the DMC Act.

3. He also submitted wrong affidavit in the High Court mentioning therein that unauthorized construction in P.No.49 and H-541, Sainik Farms were demolished but the same were found still existing at site. Thus, he misled the Hon'ble High Court. He, thereby contravened Rule 3 (I) (i) (ii) & (iii) of the CCS (Conduct) Rules, 1964 as made applicable to the employees of the MCD.”

Notably, the appellant has been exonerated in the said enquiry by a detailed report analysing all the official records supporting the stand of the appellant.

11. Be that as it may, the law relating to contempt proceedings has been restated in the case of *Sahdeo Alias Sahdeo Singh Versus State of Uttar Pradesh and Others*¹ in paragraph 27 as follows:

“27. In view of the above, the law can be summarised that the High Court has a power to initiate the contempt proceedings suo motu for ensuring the compliance with the orders passed by the Court. However, contempt proceedings being quasi-criminal in nature, the same standard of proof is required in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The alleged contemnor is to be informed as to what is the charge, he has to meet. Thus, specific charge has to be framed in precision. The alleged contemnor may ask the Court to permit him to cross-examine the witnesses i.e. the deponents of affidavits, who have deposed against him. In spite of the fact that contempt proceedings are quasi-criminal in nature, provisions of the Code of Criminal Procedure, 1973 (hereinafter called “CrPC”) and the Evidence Act are not attracted for the reason that proceedings have to be concluded expeditiously. Thus, the trial has to be concluded as early as possible. The case should not rest only on surmises and conjectures. There must be clear and reliable evidence to substantiate the allegations against the alleged contemnor. The proceedings must be concluded giving strict adherence to the statutory rules framed for the purpose.”

We may usefully refer to two other decisions dealing with the issue under consideration. In *Muthu Karuppan, Commissioner of Police, Chennai Vs. Parithi Ilamvazhuthi and Anr.*,² this Court observed thus:

“15. Giving false evidence by filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a prima facie case of ‘deliberate falsehood’ on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge.”

“17. The contempt proceedings being quasi-criminal in nature, burden and standard of proof is the same as required in criminal cases. The charges have to be framed as per the statutory rules framed for the purpose and proved beyond reasonable doubt keeping in mind that the alleged contemnor is entitled to the benefit of doubt. Law does not permit imposing any punishment in contempt proceedings on mere probabilities, equally, the court cannot punish the alleged contemnor without any foundation merely on conjectures and surmises. As observed above, the contempt proceeding being quasi-criminal in nature require strict adherence to the procedure prescribed under the rules applicable in such proceedings.”

In *Mrityunjoy Das and Anr. Vs. Syed Hasibur Rahaman and Ors*³, this Court observed thus:

“14. The other aspect of the matter ought also to be noticed at this juncture, viz., the burden of standard of proof. The common English phrase ‘he who asserts must prove’ has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the ‘standard of proof’, be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt ”

12. In the present case, going by the material on record it is not possible to conclude beyond reasonable doubt that the appellant had contributed to the reconstruction of the unauthorised structure before or after 27th September, 2000. Furthermore, the appellant was not served with any charges muchless specific charge which he was expected to meet. Yet, the final conclusion in the impugned judgment is that the acts of the appellant tended to substantially interfere with the due course of justice and amounted to committing criminal contempt of court for having filed incorrect affidavit. The High Court made no attempt to verify or examine the contemporaneous record relied upon by the appellant in support of his plea that the factual position stated in the affidavit filed by him was borne out and reinforced from the said record. The affidavit so filed cannot be termed as incorrect or misleading by relying on the report of the advocates’ committee, which was prepared after a gap of 6 months from the date of first demolition (7th June, 2000) and 3 months from the second demolition (14th September, 2000).

13. The finding recorded by the High Court that the property was not razed to the ground based on the report prepared in January, 2001, therefore, is not the correct approach and is manifestly wrong. The High Court ought to have tested the authenticity and veracity of the contemporaneous record in the form of office submissions, Misel Band register, office files, notices, photograph and press reports etc. relied upon by the appellant. It would be a different matter if the contemporaneous record did not support the stand taken by the appellant in the affidavits filed by him dated 3rd January, 2001 and 8th February, 2001 respectively. As a matter of fact, the appellant has already faced departmental enquiry in which the matter in issue has been exhaustively dealt with and the plea taken by the appellant has been found to be correct.

14. Be that as it may, the appellant has been found guilty in reference to the notice issued in terms of order dated 24th January, 2001, the relevant portion whereof reads thus:

“Learned counsel for the petitioner also pointed out in the affidavit of Mr. R.S. Sehrawat, it is mentioned that property Nos.49 and H-541 were demolished on 7th June, 2000 and 14th September, 2000 respectively. Mr. Awasthy has shown photographs of these properties. From the photographs, it appears that the properties are intact and were not demolished, therefore we are prima facie of the opinion that even Mr. Sehrawat has taken liberties with truth. Issue notices to Mr. U.S. Chauhan and Mr. R.S. Sehrawat, Junior Engineers, MCD, to show cause why they should not be convicted and punished for contempt of Court. Let the affidavits in response be filed by 6th February, 2001.”

15. In response to the second notice given to the appellant, he filed a further affidavit dated 8th February, 2001 to urge as under:

“3. That the deponent submits that the deponent had not filed any false affidavit, nor did the deponent take liberties with truth while filing the affidavit on 3.1.2001 before this Hon’ble Court. I state that in the order dated 24.1.2001, qua the deponent it has been recorded that properties No.49 and H-541, which were demolished by the deponent on 7.6.2000 and on 14.9.2000/15.9.2000 were not demolished as per the report of the committee appointed by this Hon’ble Court and the photographs of these properties.

4. That the deponent submits that property No.49 was demolished on 7.6.2000 and the photo copies of the photographs of the existing building before demolition and after demolition have already been filed by the deponent along with the deponent’s affidavit filed on 3.1.2001. The deponent is filing photocopies of further photographs of the demolished property. I further state that the press had prior information for the demolition to be carried out at Sainik Farms on 7.6.2000 and the press photographers and reporters were at Sainik Farms. The photograph of the demolished building at 49, Sainik Farm was taken by the photographers of some news papers. The times of India, edition dated 8.6.2000 showed the demolished structure. This is independent evidence which corroborates the stand of the deponent. I further state that the video team of the Doordarshan video taped the demolition of 49 Sainik Farms and the clippings were shown in the programme “Aaj Tak” on 7.6.2000 itself at 10 P.M. I crave indulgence of this Hon’ble Court to summon the video film from the Doordarshan Authorities prepared for the programme Aaj Tak telecasted on 7.6.2000. I state that the owner of the property has reconstructed the same after its earlier demolition. I state that as stated by me in the earlier affidavit filed by the deponent, I was no longer assigned the work of Junior engineer for Sainik Farms after 27.9.2000 and the structure has been re-erected, only thereafter. I state that during my tenure as Junior Engineer incharge of Sainik Farms only one property was bearing No.49 Sainik Farms, which was demolished by me.

5. That as regards property No. H-541, Sainik Farms, I state that the committee report has not referred to the same. However, 29.1.2001, I visited the site of the said property and state that the said property has also been reconstructed after the earlier demolition carried out by me. I state that the reconstructed property is still in the process of finishing and painting work is still going on in the property. I state that the committee members should be requested by this Hon'ble Court to immediately report whether the buildings are in the process of being painted or has been recently completed and painted as the same would show and prove its reconstruction. I have already filed the photographs showing the demolished property by me along with my earlier affidavit.

6. That I state that as already stated by me in my affidavit filed before this Hon'ble Court on 3.1.2001, the Commissioner of the Corporation was weekly reviewing the activities at Sainik Farms and the Zonal Engineer and the Executive Engineer of the Zone were also personally supervising the demolition operations carried out by me. The reports of the said Zonal Engineer and Executive Engineers should also be called.

7. That I state that I should be given an opportunity to lead evidence of the press photographers, Doordarshan team which video taped the demolitions on 7.6.2000 as also the evidence of the Zonal Engineer and Executive Engineer to prove that I had carried out the demolitions and have not filed any affidavit nor have taken liberties with truth."

16. This specific stand taken by the appellant has not been considered by the High Court at all. The appellant made this grievance in the review petition, but of no avail. In our opinion, it is not possible to hold that the demolition work undertaken on 7th June, 2000 and 14th September 2000 was not in conformity with the position reflected in the contemporaneous office submissions/record and photographs submitted by the appellant to his superior authority.

17. As a matter of fact, the appellant ought to succeed on the singular ground that the High Court unjustly proceeded against him without framing formal charges or furnishing such charges to him; and moreso because filing of affidavit by the appellant was supported by contemporaneous official record, which cannot be termed as an attempt to obstruct the due course of administration of justice. Accordingly, this appeal ought to succeed.

18. In view of the above, the impugned judgment and orders passed by the Division Bench of High Court of Delhi at New Delhi in C.M. No.820 of 2001 in C.W.P. No.6734 of 2000 dated 1st June, 2001 and in R.A. No.6600 of 2001 in C.W.P. No.6734 of 2000 dated 10th May, 2006 are quashed and set aside and the show cause notices issued to the appellant pursuant to the order of the Division Bench of the High Court dated 6th December, 2000 and dated 24th January, 2001 are hereby dropped. Appeal is allowed in the aforementioned terms.

Judgment Referred.

¹(2010) 3 SCC 0705

²(2011) 5 SCC 0496

³(2001) 3 SCC 0739