PATNA HIGH COURT

Dipendra Nath Sarkar

Vs

State of Bihar

Misc Judl. Case No. 207 of 1961

(V. Ramaswami, C.J., R.K. Choudhary and K. Sahai, JJ.)

24.10.1961

JUDGMENT

V. Ramaswami, C.J.

1. In this case the petitioner is the Joint Secretary of the Bankipur Brahma Samaj hereinafter referred to as ("the Samaj") and has been authorised by a resolution dated the 28th January, 1961, passed by the Samaj to make this application. The claim of the petitioner is that the Samaj is a minority community based on religion and that the Samaj had established a school for girls in Patna in 1930 known as Balika Vidyalaya. For the year 1960-61 the Samaj appointed a Managing Committee for the School with Sri J. Kundu, Advocate, as its Secretary. Respondent No.4, who was the Acting Secretary of the Managing Committee, refused to hand over charge of the school to the new Secretary, Sri J. Kundu. It appears that respondent No.4 sought the direction of the Education Department of the Government of Bihar and also the Board of Secondary Education. On the 11th April, 1960, respondent No.3 wrote a letter to the petitioner, which is annexure-C to the application and reads as follows:

> "No.7863-64.
> From
> The Secretary,
> Board of Secondary Education,
> Bihar, Patna,
> To
> The District Inspectress of Schools.
> Dated Patna, the 11th April, 1960.
> Subject : The Managing Committee of the Balika Vidyalaya, Kadam Kuan, Patna.
> Madam,
> It appears from the letter of the Acting Secretary of the aforesaid High School on the subject noted above that the Brahmo Samaj has formed a new Managing Committee for this year but I am to inform you that the Bankipur Brahmo Samaj has no authority to

> constitute the Managing Committee in view of the Government Resolution laying down rules regarding management of High Schools.
>
> Therefore, until the Managing Committee is reconstituted according to the rules contained in the Government Resolution till then the existing Managing Committee will continue to function and its President Mr. Justice Ujjal Narain Sinha and the Acting Secretary Dr. Gopi Krishna Kohli will remain and continue in their office.
>
> Yours faithfully,
> Sd. J. Saran.
> Secretary,
> Board of Secondary Education,
> Bihar, Patna."

Against this order of respondent No.3 the petitioner moved the High Court for grant of a writ under Article 226 of the Constitution. The application was numbered as Miscellaneous Judicial Case No.358 of 1960 and was allowed by the High Court on the 8th November, 1960. The operative portion of the judgment of the High Court reads as follows :

> "For the reasons given above, it is manifest that the Vidyalaya was established and administered by the Samaj, which, being a minority based on religion, has a fundamental right to administer and manage the same as guaranteed to it under Article 30 of the Constitution, and that the resolutions of the State Government, dated the 28th September, 1954, and the 7th May, 1956, referred to above, so far as they infringe the right of the Samaj to administer the Vidayalaya, are unconstitutional, void and inoperative. Consequently, the order contained in letter No.7863-64, dated the 11th April, 1960, of the Board of Secondary Education which is annexure-L to the petition, is illegal and ultra vires, and thus not binding on the Vidyalaya. The petitioner is, therefore, entitled to the grant of a writ in the nature of mandamus commanding the respondents not to give effect to the said order."

2. On the 17th November, 1960, respondent No.3 addressed a letter to the Inspectress of Schools which is annexure-D to the application." In that letter respondent No.3 informed the Inspectress of Schools that the previous letter of the Board, dated the 11th April, 1960, should be deemed as cancelled. On the 29th November, 1960, the petitioner informed respondent No.4 that he would go to the school on the 1st December, 1960, along with Sri Kundu, for taking charge of the school. In accordance with that letter the petitioner and Sri Kundu went to the School at 11 a.m. on the 1st December, 1960, but respondents Nos.4 and 12 flatly refused to handover charge of the school stating that they were not parties to the writ application.

3. The petitioner has now obtained a rule from the High Court calling upon the respondents to show cause why they should not be committed for contempt. Cause has been shown by the learned Government Advocate on behalf of respondents Nos.1 to 3 and 14 and by Mr. Jaleshwar Prasad on behalf of respondents Nos.4 to 13.

4. In the course of argument Mr. P.R. Das, appearing on behalf of the petitioner, said that he

would press the application for contempt only with regard to respondents Nos.2, 4 and 14 and not against the other respondents.

5. On behalf of respondent No.14 submission was made by the learned Government Advocate that the judgment of the High Court in the previous case was delivered on the 8th November, 1960, and the writ was actually served on respondent No.14 on the 28th February, 1961. It was pointed out that the present application of the petitioner was made on the 27th February, 1961, even before the writ was actually served upon respondent No.14. The argument was stressed that the actual service of the writ was necessary before an application for attachment or committal for disobedience of an order can be made. In support of this proposition the learned Government Advocate referred to a decision of this High Court in *N. Bakshi v. O.K. Ghosh*[1], But the principle laid down in that case has no application to the present case. That was a case of a writ ordering payment of a certain sum of money. The principle is well settled that in a case of an affirmative order for payment of money or delivery or transfer of any property, actual service of notice is necessary in order to found an application for contempt, but in the case of a prohibitive order actual service of notice is not necessary and it is sufficient if there is proof that the party had knowledge of the order aliunde, as by a telegram, newspaper report or otherwise, and the party knew that it was intended to be enforced. This view is borne out by the decision of the Lord Chancellor in *M' Neil v. Garratt*[2], in which it was held that the party who had notice of an order of the Court was bound by it from the time the order was pronounced and if the order be for an injunction, and the party after notice be guilty of a breach of it, he may be committed for the contempt without the production of the writ of injunction, and although the writ had not actually issued. The same principle is reiterated in *United Telephone Co. v. Dale*[3]. It was pointed out by Pearson, J. in that case that in order to justify the committal of a defendant for breach of an injunction it is not necessary that the order granting the injunction should have been served upon him, if it is proved that he had notice of the order aliunde, and knew that the plaintiff intended to enforce it. At page 787 Pearson, J. stated as follows the course of his judgment: I think that the decision of my brother Mr. Justice Kay in *Avery v. Andrews*[4], was perfectly right. In that case it was not disputed that the defendants knew perfectly well that in what they were doing they were violating the order of the Court, and Mr. Justice Kay, therefore, refused to attend to the objection that the order had not been served. He said distinctly in so many words, when that objection was raised, 'but you did know of it' and I say the same thing here. The Court would be to a great extent in capable of doing its duty to itself, as well as to her Majesty's subjects, if it were to say, that, with perfectly accurate knowledge of the order of the Court, a defendant is at liberty to defy the Court's authority, and then come to the Court and say, "you cannot visit me for that breach of your order, because the order has not been served upon me." What is the necessity for serving an order upon a defendant, if he knows perfectly well without that service what it is which he is bound to obey?" The principle laid down in these authorities applies to the present case and I reject the argument of the learned Government Advocate on this point.

6. It was however submitted on behalf of respondents Nos.2 and 14 that by issuing the letter dated the 17th November, 1960, they had done all that they could do for obeying the writ of the High Court. In the letter dated the 17th November, 1960,
respondent No.14 informed the Inspectress of Schools that "according to the decision of the Patna High Court this office letter No.7863-64 dated the 11th April, 1960, be considered as cancelled." A copy of this letter was subsequently forwarded to the District Inspectress of Schools and to the Secretary, Balika Vidyalaya, for information and necessary action. In my

opinion the argument of the learned Government Advocate is correct and it is not possible to hold that respondents Nos.2 and 14 are guilty of contempt of court in this case.

7. With regard to respondent No.4 the argument put forward on behalf of the petitioner is that respondent No.4 was an agent of respondent No.2, and respondent No.4 was liable for contempt because he had full knowledge of the order of the High Court and had deliberately disobeyed it by refusing to hand over charge to the petitioner and to Sri Kundu, the Secretary of the new Managing Committee. I do not accept the argument of learned counsel that respondeat No.4 is an agent of the Board of Secondary Education and that he is liable to contempt as an agent. It was contended that respondent No.4 was appointed as Secretary of the ad-hoc Committee by a letter of the Board of Secondary Education dated the 11th April, 1960. But merely because respondent No.4 was appointed by the Board of Secondary Education it cannot be taken that he was the agent of the Board of Secondary Education or of respondent No.14. It was also alternatively argued on behalf of the petitioner that even if respondent No.4 was not the agent of respondent No.14, still respondent No.4 would be liable because he aided and abetted respondent No.14 in defying the writ of the High Court. In support of this proposition learned counsel referred to the decision of the Court of Chancery in (1882) 46 LT 279. I am unable to accept this argument as correct. It is true that respondent No.4 would be liable for being committed for contempt if he aided and abetted the Board of Secondary Education in defying the order of the High Court by refusing to surrender possession of the school. But in the present case I have already held that respondents Nos.2 and 14 were not guilty of contempt on the evidence produced in this case. If respondents Nos.2 and 14 had not broken the injunction, it is impossible to hold that any one else had aided or abetted in breaking it. This view is supported by the decision of the Judicial Committee in ***S.N.*** *Bannerjee v. Kuchwar Lime and Stone Co. Ltd*[5]*.,* It follows, therefore, in the present case that respondent No.4 also cannot be held guilty of contempt of court.

8. For these reasons I hold that this application must be dismissed and the rule discharged as against all the respondents. I do not propose to make any order as to costs.

Choudhary, J.

9. I agree.

Sahai, J.

10. I agree.

Rule discharged.

Cases Referred.

[1] AIR 1957 Pat 528
[2] (1841) 41. ER 427
[3] (1884) 25 Ch D 778
[4] (1882) 30 WR 564
[5] ILR 17 Pat 770 at p.782 : (AIR 1938 PC 295 at p.299)