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BIGYAN KUMAR & ORS.

v.

UNION OF INDIA & ORS.

MARCH 18, 1988

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[RANGANATH MISRA AND MURARI MOHON DUTT, JJ.]

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Contempt of Courts Act, 1971: Sections 2 and 12—Obedience to Court orders—Necessity for—On failure—Rod of justice to descend down to punish—Growing conduct of parties and public officers, in particular, of ignoring Court orders—Deprecated.

Practice and Procedure: Orders of Court—Everyone to render due obedience—Failure should be punished.

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The Supreme Court issued certain directions in respect of petitioner No. 9 regarding accommodation and reinstatement in service in a writ petition filed on behalf of forty petitioners, working in Pension Paying Office, Pokhara, in Nepal, praying for directions to the Union of India, regarding their permanency and other benefits applicable to similar Union Government employees.

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In the petition for contempt, it was alleged that these directions were not implemented, and that consequent to the filing of the writ petition, the authorities, especially local officers, were ill-treating the petitioners.

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On notice being issued, affidavit on behalf of respondents Nos. 1 to 3 and 5 were filed tendering unconditional apology, and explaining their positions regarding the implementation of the Court's orders.

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Respondent No. 6, who was the officer-in-charge of the Pension Paying Office and who was responsible for the implementation of the Court's orders, also tendered an unconditional apology and stated, in his affidavit, that petitioner No. 9 was dispossessed of the residential accommodation on 14th August, 1987, by which time the Court's orders of 7th August, 1987 had not been received by him, and the accommodation had already been given to another person, that petitioner No. 9 was later restored to service and given possession of similar accommodation and that the rent paid by the petitioner for the private accommodation

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will be paid out of Government account, and requested for condonation

of delay in implementing the orders of this Court.

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Disposing of the Petition,

HELD: This Court records its serious concern and disapproval of the growing conduct of parties and public officers, in particular, of ignoring the directions of the Court and the multiplying instances of confrontation. [285F]

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The Court, including the apex one, is a part of the State and is a built-in mechanism of the Constitution to administer justice in accordance with law. For discharging that duty, the Court has got to adopt an attitude of critical assessment of situations connected with litigation brought before it for adjudication. The manner of functioning of the Court in accord with the Rule of Law has to be dispassionate, objective and analytical. The Judges who preside over these courts do not act with a sense of superiority; nor do they look down upon others in the community. [285F-G]

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In order that the system may efficiently work and the purpose for which the courts are established is duly served, it is necessary that everyone within the framework of the Rule of Law must accept the system, render due obedience to orders made and in the event of failure of compliance, the rod of justice must descend down to punish. Everyone within the system must realise this situation and should not unnecessarily get into a confrontation. [285H; 286A-B]

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In the instant case, there is some material which if probed into further, might have established that respondent No. 6 had notice of the order of this Court before physical dispossession of the petitioner was effected. There is allegation of adoption of an attitude of resentment by respondent No. 6 or for the matter of that the local officers, when the writ petition was filed in this Court. That backdrop could supply the motive for the delay in complying with the directions of this Court. It is, however, not considered expedient to probe further into the matter on account of the fact that there has been compliance and each of the respondents has tendered unqualified apology which is accepted and the contempt notice is discharged. [285D-E; 286B]

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ORIGINAL JURISDICTION: Contempt Petition (Civil)
No. 27860 of 1987.

In
Writ Petition (Civil) No. 591 of 1987.

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A (Under Article 32 of the Constitution of India).

Pankaj Kalra for the Petitioners.

B M.K. Banerjee, Solicitor General, A.K. Ganguli, Ms. A. Subhashini, P. Parmeshwaran and B. Parthasarathi for the Respondents.

The following Order of the Court was delivered:

ORDER

C An application under Article 32 of the Constitution being Writ Petition No. 591 of 1987 has been filed in this Court on behalf of 40 employees working in the Pension Paying Office, Pokhara in Nepal asking for a direction to the Union of India to make the services of the petitioners permanent and for further directions in the matter of payment of allowances and other material benefits as payable to similar employees under the Union Government. Notice was ordered on the application on 14th July, 1987, and two weeks' time was allowed to the respondents for filing their counter affidavit. On 3rd August, 1987, the court directed as follows:

E "Two weeks are allowed to the respondents for filing a counter affidavit. No further time will be allowed. One week thereafter is allowed for filing rejoinder. Put up this matter after three weeks. *Meanwhile, status quo as on today shall be maintained.*"
(underlining is ours).

F On 7th August, 1987, the Court made the following further order:

"Issue notice returnable on August 14, 1987. Mr. B. Parathasarathy accepts the notice for Union of India.

G Respondent is directed to file counter affidavit within one week from today.

In the meanwhile petitioner No. 9 will not be evicted from the quarter now occupied by him."

H Again on 14th August, 1987, the Court further directed:

“..... Petitioner No.9 will be put back in possession of the government quarter if he has already been evicted.”

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Ultimately on 11th September, 1987, a three-Judge Bench of this Court directed:

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“Petitioner No. 9 will be reinstated in service and he will also have to be put in possession of his quarter forthwith.”

On the allegation that the directions of this Court in regard to petitioner No. 9 were not implemented, the present contempt proceeding has been initiated on behalf of the petitioners.

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Petitioners have alleged that with the filing of the writ petition, the treatment provided to the petitioners by the establishment has undergone a change and those of the respondents who have local base in Nepal have started ill-treating the petitioners. Several allegations have been made in support of the aforesaid plea. After notice was issued on this petition, the different respondents have filed separate affidavits in return.

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The Indian Embassy for Nepal is located at Kathmandu. The Pension Paying Office is maintained at some distance at a place called Pokhara. It is the common case of the parties that the necessity to maintain such an office is linked up with the historical fact that several inhabitants of Nepal worked in the Indian Army under the Gorkha Regiment. Mainly for their convenience this extra territorial establishment is being maintained. Some of the petitioners are India-based while others are residents of Nepal. The establishment at Pokhara is under the direct control of an Officer attached to the Indian Embassy styled as Officer-in-Charge, Indian Embassy, Pension Paying Office, Pokhara. The Ambassador of the Indian Embassy at Kathmandu, being the head of Indian Government establishments in Nepal, has also supervisory jurisdiction over the Pay Office. Respondent No. 5, the Military and Air Attache of the Indian Embassy is the link between the Embassy establishment at Kathmandu and the said Officer-in-Charge at Pokhara. Respondent No. 3 is the Controller of Defence Accounts who *inter alia* oversees the disbursement of the pension of the ex-Army personnel. Respondent No. 1 is the Union of India through its Defence Secretary and respondent No. 2 is the Secretary of the Ministry of External Affairs. Admittedly both these respondents

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A are based in Delhi and have been impleaded being in overall charge of their establishments.

B Shri S.K. Bhatnagar, Defence Secretary, in his affidavit has taken the stand that he was not personally impleaded in the writ petition. Only when he was served with notice in the contempt matter he came to know about Court's directions and realised the full implication of the situation when he had a conference with his senior counsel on December 6, 1987. Immediate action was taken to ensure appropriate compliance. Shri K.P.S. Menon, Foreign Secretary in the Ministry of External Affairs has also taken the plea that he was not personally impleaded as a party in the writ petition and came to know about the Court's order at the same conference with senior counsel on December 6, 1987, and ensured immediate compliance with Court's directions. Both these Secretaries to the Government have tendered unconditional apology. The third respondent is the Controller of Defence Accounts, Central Command, Meerut. He has taken the stand that petitioner No. 9, Shri C.N. Dubey, is not an employee of the establishment of the Controller of Defence Accounts at Meerut nor is he an employee under his administrative control. According to him, he has no concern with any executive or administrative matter relating to the Pension Paying Office at Pokhara. Respondent No. 4, the Ambassador, was not subjected to the contempt proceedings. Respondent No. 5 is the Military and Air Attache of the Indian Embassy at Kathmandu and is in charge of the general administration of the military wing. Apart from offering unconditional apology, he has indicated that Dubey has been restored to service and he has been provided with residential accommodation and for the period he was out of possession of the official residence, rent by way of compensation has already been ordered to be paid to him.

F It is clear from the orders made by this Court and the facts appearing on the record that the responsibility for implementation of the Court's orders in regard to petitioner No. 9 squarely rested with respondent No. 6, the Officer-in-Charge of the Pension Paying Office. He, in his affidavit, has stated that Dubey was dispossessed from his residential accommodation on 14th August, 1987, and by then the order of this Court dated 7th August, 1987 had not been received by him. That accommodation was given to one Krishna Bahadur. Later Dubey has been restored to service, given possession of a similar accommodation as the one from which he was displaced and with a view to giving effect to the spirit of the order of this Court, the rent which Dubey had paid for private accommodation has been decided to

be borne out of Government account. His affidavit explains the delay in implementation thus:

“There has been delay in implementation of the orders of this Hon’ble Court due to delay in communication, administrative bottlenecks and for security reasons. It is further stated that we had no intention to flout or disobey the orders of this Hon’ble Court but for the reasons beyond our control, the same could not be implemented notwithstanding the fact that we had all intentions to implement the same in the right earnest. The orders have since been implemented, the petitioner has since been reinstated and also given accommodation. The delay in implementing the same may kindly be condoned and we be excused for such delay for which we have tendered an unconditional apology at the outset of this affidavit.”

There is some material which, if probed into further, might have established that respondent No. 6 had the notice of the order of this Court before physical dispossession of Dubey was effected. As already noticed, there is allegation of adoption of an attitude of resentment by respondent No. 6 or for the matter of that the local officers, when the writ petition was filed in this Court. That backdrop, as contended by counsel for the petitioners, perhaps could be taken to supply the motive for the delay in complying with the directions of this Court. We have not considered it expedient to probe into the matter further on account of the fact that there has been compliance and each of the respondents has tendered unqualified apology.

We would part with the matter by recording our serious concern and disapproval of the growing conduct of parties and public officers in particular of ignoring the directions of the Courts and the multiplying instances of confrontation. The Court, including the apex one, is a part of the State and is a built-in mechanism of the Constitution to administer justice in accordance with law. For discharging that duty, the Court has got to adopt an attitude of critical assessment of situations connected with litigation brought before it for adjudication. The manner of functioning of the Court in accord with the Rule of Law has to be dispassionate, objective and analytical. The Judges who preside over these courts do not act with a sense of superiority; nor do they look down upon others in the community. In order that the system may efficiently work and the purpose for which the courts are established is duly served, it is necessary that everyone within the framework of the

A Rule of Law must accept the system, render due obedience to orders made and in the event of failure of compliance, the rod of justice must descend down to punish. We hope and trust that everyone within the system realises this situation and does not unnecessarily get into a confrontation.

B The apologies tendered by the respondents are accepted and the contempt notice is discharged. Respondent No. 6 is directed to pay to the petitioners the costs of the proceedings which are assessed at Rs.2,000 within one month.

N.P.V.

Petition disposed of.