



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

COPC No. 406 of 2023

Reserved on: 10.05.2024

Decided on: 16.05.2024

M/s Vardhman Ispat Udyog

...Petitioner

Versus

Kamlesh Saklani

...Respondent/Contemnor

Coram:

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? ¹ Yes.

For the Petitioner : Mr. Shrawan Dogra, Sr. Advocate with
Mr. Manik Sethi, Advocate.

For the Respondent: Mr. Sanjeev Bhushan, Sr. Advocate with
Mr. Rajesh Kumar, Advocate.

Tarlok Singh Chauhan, J.

The instant petition has been filed for initiating contempt proceedings against the respondent for willfully neglecting and disobeying the directions passed by this Court on 19.08.2023.

2. The petitioner filed CMPMO No. 449 of 2023 wherein it assailed the order dated 27.07.2023 passed by the Ombudsman in Complaint No. 18 of 2023. On 19.08.2023, this Court passed an interim order and stayed the operation of the order dated 27.07.2023.

3. According to the petitioner, the respondent-contemnor, who is an authorised representative and Law Officer

¹ Whether reporters of the local papers may be allowed to see the judgment? yes

of HPSEB Ltd. (Respondent in CMPMO No. 440 of 2023), was having knowledge about the passing of the order dated 19.08.2023, intentionally violated the order passed by this Court by proceeding further with arguments before the HPERC by not disclosing that there was a stay order passed by this Court.

4. The facts which are essential for the adjudication of this case have been set out in para-2 of the petition, which are as under:-

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| 28.07.2023 | Impugned order is passed by the Ld. Ombudsman, whereby a reference was made to HPERC in Review Proceedings. Next date fixed for 22.08.2023 | Ann. R-1 to this petition |
| 10.08.2023 | HPSEBL filed a petition before the HPERC on the basis of the impugned order dated 28.07.2023 | Ann. R-2 to this Petition. |
| 19.08.2023 | This Hon'ble Court granted a stay on the operation of the impugned order dated 28.07.2023 passed by the Ld. Ombudsman | Ann. R-3 to this petition |

The same was passed in the presence of HPSEBL.

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| 22.08.2023 | The matter was listed before the ombudsman. Recorded that the Hon'ble High Court granted a stay alongwith the details and particulars of proceedings before | Ann. R-4 to this petition |
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High Court.

Sh. Kamlesh Saklani represented the HPSEBL. In his presence the order of Ombudsman is passed.

17.10.2023 Petition in due course was also for **Ann. R-5 to this petition** the first time before HPERC and notice was issued to the petitioner.

HPSEBL is represented by the same authorised representative. Intentionally not disclosed the stay order dated 19.08.2023 passed by this Hon'ble Court. Ex-parte argued the matter and got the proceedings initiated despite the stay order by this Hon'ble Court.

18.11.2023 Petitioner addressed a detailed **Ann. R-6 to this petition** communication to the HPERC.

5. On the basis of the aforesaid facts, it is claimed that the respondent-contemnor has committed fraud upon the HPERC by intentionally violating the order passed by this Court which independently amounts to the Contempt of the Court.

6. It is lastly averred that when this Court passed the order on 19.08.2023, the same was passed in presence of the Standing Counsel of the HPSEBL. Thereafter, when the review petition was listed before the Ombudsman on 22.07.2023, the same was adjourned *sine die* because of the pendency of the subject

matter before this Court and this was so recorded in the order passed by the Ombudsman and this all was done in presence of the respondent-contemnor, whose attendance has been marked in the order. Yet the respondent-contemnor appeared before the HPERC on 17.10.2023 and addressed arguments by intentionally not disclosing the fact of the stay being granted. As a result whereof, the HPERC initiated proceedings in terms of the Ombudsman order dated 28.07.2023, the operation of which had already been stayed by this Court on 19.08.2023.

7. It is in this background that the present proceedings came to be initiated against the respondent-contemnor.

8. The respondent-contemnor contested the contempt proceedings by filing a reply wherein in para 1 of the preliminary submissions, it has been averred as under:-

"1. That the replying respondent is a law-abiding citizen and more so is associated with the legal profession being a Law Graduate and is perform his duties as authorized representative and is assisting the Standing Counsels for prosecuting and defending the cases of Himachal Pradesh State Electricity Board Ltd, Himachal Pradesh Electricity Regulatory Commission and Consumer Grievances Redressal Forum, before the Electricity Ombudsman. Being a person associated with er to Registrar the legal profession and more so as had actively practiced also before various Courts including this Hon'ble Court, cannot even dream of flouting any order of any Court and what to call of flouting the orders passed by this Hon'ble Court. It is submitted that the replying respondent keeps the dignity and majesty of the Courts in highest esteem,

therefore, submits his unqualified and unconditional apology before this Hon'ble Court."

9. Noticeably, the petition has been vehemently contested by the respondent-contemnor by levelling serious allegations against the HPERC as would be evident from the averments as contained in latter part of the reply on merits, which reads as under:-

"It is submitted that the present clarificatory petition was listed before HPERC as first case on the said date under heading 'For Admission'. The replying respondent submits before this Hon'ble Court honestly and truly that t the outset the factum of passing of the stay order by this Hon'ble Court was brought to the notice of HPERC and not even a single argument was advanced, because neither the replying respondent nor the Board was going to gain anything out of the same, more so importantly, when the proceedings before the Ombudsman were already kept in abeyance till further orders of the Hon'ble High Court. It is also important that no order was passed by HPERC after the information supplied by the replying respondent in the open Court. The replying respondent completely 1 astonished that the HPERC on a subsequent date i.e. 29.11.2023, more particularly after the issuance of notice on the present contempt petition by this Hon'ble Court on 24.11.2023 made an observation that the aspect of staying of the order of Ombudsman dated 27.7.2023 was not brought to the notice of the Commission and consequently a notice was issued to the respondents on 17.10.2023 by the Commission. It is humbly submitted that the replying respondent has moved an application before HPERC bringing the present aspect in its

knowledge so that the present observation is clarified. In these circumstances, the present petition is just an attempt on the part of petitioner taking advantage of confusion and circumstances just to unnecessary and unduly pressurize the replying respondent."

10. It would be evident from the aforesaid reply that the respondent-contemnor would still maintain that:

(i) the factum of passing of the stay order was brought to the notice of the HPERC;

(ii) not even a single argument was advanced because neither the respondent nor the Board was going to gain anything out of the same;

(iii) no order was passed by the HPERC after the information supplied by the respondent in the open Court;

(iv) that the respondent is completely astonished that the HPERC on the subsequent date i.e. 29.11.2023, more particularly, after issuance of notice on the present contempt petition by this Court on 24.11.2023 made an observation that the aspect of staying of the order of Ombudsman dated 27.07.2023 was not brought to the notice of the Commission, hence, consequently notice was issued to the respondents on 17.10.2023 by the Commission.

11. Likewise, all the aforesaid averments have been subsequently reiterated in the reply to the other paragraphs of the petition.

12. When the matter came up before the Court on 29.12.2023, learned counsel for the respondent-contemnor stated that he may be permitted to withdraw the affidavit with liberty to file fresh affidavit. However, the permission was declined as would be evident from the order dated 29.12.2023, relevant portion whereof reads as under:-

“COPC No. 406 of 2023.

Learned counsel for the respondent states that he may be permitted to withdraw the affidavit with liberty to file a fresh affidavit. However, given the fact that there are certain averments made in the reply which are relevant to look into the bonafides of the respondent, the prayer is declined. However, the respondent is permitted to file a supplementary affidavit within a week.”

13. In compliance to the aforesaid order, the respondent-contemnor filed a supplementary affidavit, the relevant portion whereof reads as under:-

“1.That the deponent tenders an unconditional and unqualified apology before this Hon'ble Court without offering any justification of any kind whatsoever. It is stated that the deponent is at his threshold of his career and more so is a law abiding citizen and, as such, cannot even think of flouting or dis-obeying any orders of any Hon'ble Court including this Hon'ble Court knowing fully and willfully. The deponent once again submits and tenders his unconditional and unqualified apology with the prayer that the same may kindly be accepted in the interest of law and justice.”

14. The petitioner thereafter filed counter affidavit to the supplementary affidavit wherein it was averred that the supplementary affidavit filed by the respondent-contemnor dated 02.01.2024 deserves to be rejected as the same is a paper apology and the respondent-contemnor is using the same as a defence to purge the contempt. It was further averred that the apology is made to escape the consequences of deliberate and willful disobedience of the order of the Court. It was also averred that the contentions made in the reply by the respondent-contemnor are to mislead this Court and also to level false allegations against the statutory authority i.e. HPERC. It is further stated that the conduct of the respondent-contemnor is such that it does not deserve. It is pointed out that in the affidavit there is a specific averments to the following effect:-

(I) It was informed to the HPERC about the stay order at the beginning of the case.

(ii) There was not even a single argument addressed before the HPERC; and

(iii) There was no order passed and the order dated 17.05.2023 (Annexure P-5) was not passed in the open Court and behind the back of the respondent.

15. It is further averred that it is the HPERC, which has taken note of all these facts and thereafter vide its order dated 29.11.2023 specifically observed that the HPERC has never been

informed by the respondent-contemnor about the passing of this order. The order reads as under:-

"The Hon'ble High Court in CMP MO No. 449/2023 has stayed the proceedings before the Commission vide order dated 24.11.2023.

Sh. Manik Sethi, Ld. Counsel of the Respondent has also placed on record a copy of order dated 19.08.2023 passed by the Hon'ble High Court vide which the Hon'ble High Court had stayed the operation of order dated 27.07.2023 passed by the Respondent No. 2 (The Electricity Ombudsman), however this aspect was not brought to the knowledge of the Commission and consequently a notice was issued to the Respondent on 17.10.2023 by this Commission.

Since the proceedings have been stayed by the Hon'ble High Court on 24.11.2023, the matter is adjourned sine die till vacation of the stay by the Hon'ble High Court."

16. The petitioner has further referred to the communication sent to the respondent-contemnor by HPERC on 10.01.2024, the relevant portion whereof reads as under:-

"This is with reference to your application dated 27.11.2023 (received on 28.12.2023) on the subject cited above.

In this regard, I have been directed to convey that you had not disclosed the factum of stay Order passed by the Hon'ble High Court on 19.08.2023, on 17.10.2023 before the Commission during the course of hearing of the case. Had this fact been disclosed by you on 17.10.2023 in the Court, the question of issuance of notice to the Respondent would have not been arised and the case would have been adjourned sine die. You have, therefore,

made vague, false, frivolous and afterthought averments in 8 2024 your application presented before the Commission, a multi member statutory body, discharging its statutory functions under the Electricity Act, 2003. Since the proceedings before the Commission have been stayed by the Hon'ble High Court, I have been directed to convey that the Commission has reserved its rights to deal with this aspect on disposal of CMPMO No. 449 of 2023 by the Hon'ble High Court."

17. Lastly, it is pointed out that even though the respondent-contemnor in his reply dated 26.12.2023 has stated on affidavit that he had moved an application for reviewing the order dated 29.11.2023 passed by the HPERC. However, yet again such averments have been made to mislead this Court because the respondent-contemnor had moved this application only on 28.12.2023 before the HPERC and whereas the reply had been filed before this Court on 26.12.2023 i.e. two days prior to the application having actually been filed before the HPERC.

18. The respondent-contemnor has filed reply to the counter affidavit and it shall be apt to reproduce para-3 thereof, which reads as under:-

"3. That the contents of this para of the counter affidavit are wrong and hence are emphatically denied. It is submitted that the contempt proceedings are between the court and the alleged contemnor and, therefore, it is the prerogative of this Hon'ble Court to accept/reject the apology. It is stated that it is wrong on the part of the petitioner who is an interested party to pray before this

Hon'ble Court for rejection of apology. It is further submitted that raising all such issues which the replying respondent does not at all intends to join, is not fair on the part of the petitioner. It is further submitted that without joining any issue, the replying respondent had submitted unconditional apology. Therefore, the contents of this counter affidavit are liable to be rejected. It is further submitted that the replying respondent has not at misled this Hon'ble Court. However, in the reply which was prepared on 26.12.2023 and was filed on 28.12.2023, only the averment with respect to filing of an application before HPERC was made. It is submitted that the petitioner is trying to take advantage of the grammatical mistake since the only thing which the replying resident wanted to communicate is the factum of moving an application before HPERC. However, once again, it is submitted that since the replying respondent do not have any personal interest at all in this issue, so he wants to bury everything for which an unconditional apology has been tendered before this Hon'ble Court. It is once again submitted that the unconditional apology of the replying respondent may very kindly be accepted. It is submitted that the replying respondent assures this Hon'ble Court that he will be always conscious in future.”

I have heard learned counsel for the parties and have gone through the record of the case.

19. Shri Shrawan Dogra, learned counsel for the petitioner submits that this is a perfect case where the respondent-contemnor has blatantly violated the orders of the Court.

20. On the other hand, Shri Sanjeev Bhushan, learned counsel for the respondent-contemnor submits that the respondent-contemnor has tendered his unconditional and unqualified apology and, therefore, the instant proceedings should be dropped.

21. Civil contempt is punishable with imprisonment as well as fine. Disobedience of the Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is a foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Court have to be respected and protected at all costs. Otherwise, the very cornerstone of the Constitution scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that the Courts orders are to be followed and complied with. **(Ref:- T. N. Godavarman Thirumulpad vs. Ashok Khot, 2006 (5) SCC 1).**

22. In **Major Genl. B. M. Bhattacharjee & Anr. vs. Russel Estate Corporation & Anr., 1993 (2) SCC 533**, it was observed by the Hon'ble Supreme Court that "all the officers of the government must be presumed to know that under the

Constitutional scheme obtaining in this country, orders of the Courts have to be obeyed implicitly and that orders of the Apex Court-for that matter any Court-should not be trifled with.

23. It is not in dispute that the respondent-contemnor is a Law Officer of the HPSEB Ltd. and is, therefore, expected to conduct himself in a manner that behoves his privilege position in the Court. An Advocate being a Law Officer is required to conduct himself at all times as a gentleman and this conduct assumes greater significance before any authority vested with adjudicatory powers, when he/she stands to assist that authority. It is expected that he would stand to augment the process of justice instead of acting in a manner which tends to obstruct the functioning of the authorities and administration of justice.

24. The rule of law is the foundation of a democratic society and the 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 has to be respected and protected at all costs. It is for this reason that the Courts are entrusted with the extraordinary power of punishing those for contempt of court who indulge in acts whether inside or outside the Courts, which tend to undermine the authority of the Courts and bring them in disrepute and disrespect thereby obstructing them to discharge their official duties without fear or favour.

25. According to the respondent-contemnor, he has already tendered his unqualified and unconditional apology. It needs to be noticed that the same was not at the first instance but is rather clearly an after thought.

26. How the respondent/contemnor would purge himself of the contempt has been clearly laid down by the Hon'ble Supreme Court in **Pravin C. Shah vs. K. A. Mohd. Ali and another, 2001 (8) SCC 650**, wherein, it has been observed as under:

"23. Now we have to consider the crucial question - How can a contemnor purge himself of the contempt? According to the Disciplinary Committee of the Bar Council of India, purging oneself of contempt can be done by apologising to the court. The said opinion of the Bar Council of India can be seen from the following portion of the impugned order:

Purging oneself of contempt can be only by regretting or apologising in the case of a completed action of criminal contempt. If it is a case of civil contempt, by subsequent compliance with the orders or directions the contempt can be purged off. There is no procedural provision in law to get purged of contempt by an order of an appropriate court.

24. Purging is a process by which an undesirable element is expelled either from ones own self or from a society. It is a cleansing process. Purge is a word which acquired implications first in theological connotations. In the case of a sin, purging of such sin is made through the expression of sincere remorse coupled with doing the

penance required. In the case of a guilt, purging means to get himself cleared of the guilt. The concept of purgatory was evolved from the word purge, which is a state of suffering after this life in which those souls, who depart this life with their deadly sins, are purified and render fit to enter into heaven where nothing defiled enters. (vide *Words and Phrases, Permanent Edn., Vol.35A, page 307*). In *Blacks Law Dictionary* the word purge is given the following meaning: To cleanse; to clear or exonerate from some charge or imputation of guilt, or from a contempt. It is preposterous to suggest that if the convicted person undergoes punishment or if he tenders the fine amount imposed on him the purge would be completed.

25. We are told that a learned single Judge of the Allahabad High Court has expressed a view that purging process would be completed when the contemnor undergoes the penalty (vide *Dr. Madan Gopal Gupta vs. The Agra University and ors., AIR 1974 Allahabad 39*). This is what the learned single Judge said about it:

In my opinion a party in contempt purged its contempt by obeying the orders of the court or by undergoing the penalty imposed by the court.

26. Obeying the orders of the court would be a mode by which one can make the purging process in a substantial manner when it is a civil contempt. Even for such a civil contempt the purging process would not be treated as completed merely by the contemnor undergoing the penalty imposed on him unless he has obeyed the order of the court or he has undone the wrong. If that is the position in regard to civil contempt the position regarding criminal contempt must be stronger. Section 2 of the Contempt of Courts Act categorises contempt of court

into two categories. The first category is civil contempt which is the willful disobedience of the order of the court including breach of an undertaking given to the court. But criminal contempt includes doing any act whatsoever which tends to scandalise or lowers the authority of any court, or tends to interfere with the due course of a judicial proceeding or interferes with, or obstructs the administration of justice in any other manner.

27. We cannot therefore approve the view that merely undergoing the penalty imposed on a contemnor is sufficient to complete the process of purging himself of the contempt, particularly in a case where the contemnor is convicted of criminal contempt. The danger in giving accord to the said view of the learned single Judge in the afore-cited decision is that if a contemnor is sentenced to a fine he can immediately pay it and continue to commit contempt in the same court, and then again pay the fine and persist with his contemptuous conduct. There must be something more to be done to get oneself purged of the contempt when it is a case of criminal contempt.

27. A narration of the sequence of events, as set out in paras 8 to 18 (supra), clearly goes to indicate that the respondent-contemnor has not only levelled serious allegations against the HPERC but would also like to stick to his ground to be true that it is the HPERC that is at fault and not the respondent-contemnor, little realising that even the affidavit filed before this Court on 26.12.2023 has factually been proved to be wrong as is evident from para 17 (supra).

28. Therefore, in such circumstances, I really do not find any remorse or regret on the part of the respondent-contemnor. Therefore, the apology at this stage cannot be accepted. Apology is an act of contrition. Unless apology is offered in good grace, the apology is shorn off penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the court is going to an act of a cringing coward.

29. Apology is not a weapon of defence to purge the guilty of their offence nor is it intended to operate as universal panacea, but it is intended to be evidence of real contriteness.

30. As was noted by the Hon'ble Supreme Court in **L.D. Jaikwal Vs. State of U.P. (1984) 3 SCC 405.**

"We are sorry to say we cannot subscribe to the "slap-say sorry-and forget" school of thought in administration of contempt jurisprudence. Saying "sorry" does not make the slapper, poorer, nor does the cheek which has taken the slap smart less upon the said hypocritical word being uttered through those very slaps. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to "say" sorry-it is another to "feel" sorry ."

In (T.N. Godavarman Thirumulpad Vs. Ashok Khot & Another, AIR 2006 SC 2007)."

31. Even otherwise, it is more than settled that an apology for contempt of court must be offered at the earliest

since a belated apology hardly shows the "*contrition which is the essence of the purging of contempt*". Of course, an apology must be offered and that too clearly and at the earliest opportunity. However, even if the apology is not belated but the court finds it to be without real contrition and remorse, and finds that it was merely tendered as a weapon of defence, the Court may refuse to accept it. Even otherwise, the apology is to be accepted as a matter of course and the court is not bound to accept the same.

32. Apart from there being no any remorse or regret, I have already observed, that the apology is conditional, because admittedly the respondent-contemnor is still contesting his claim before the HPERC that he had informed it about the order passed by this Court. No steps whatsoever have been taken by the respondent-contemnor to give quiteus to this aspect of the matter before the HPERC, which is not only a statutory authority but is also an adjudicatory authority and any order which records what transpired in the Court has to be taken to be correct because judicial order attach presumption of correctness and have sanctity.

33. This is not a matter which was required to be stretched so far by the respondent-contemnor and the apology tendered here is nothing but a paper apology, which in the given facts and circumstances cannot be accepted. Had the respondent-contemnor been sincere and honest, then he would

have made all endeavour to firstly to have given quietus to the proceedings before the HPERC and thereafter express his remorse and regret and it is only at best to escape the rigors of law.

34. For the reasons stated above, I convict the contemnor under Article 215 of the Constitution read with Section 12(1) of the Contempt of Courts Act, 1971 and sentence him to civil imprisonment till the rising of the Court and to pay a fine of Rs.2000/-.

35. The petition stands disposed of in the aforesaid terms, so also pending applications, if any.

(Tarlok Singh Chauhan)
Judge

16th May, 2024
(sanjeev)