

M.L. SACHDEV
v.
UNION OF INDIA AND ANR.

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NOVEMBER 5, 1990

[RANGANATH MISRA, CJ AND KULDIP SINGH, J.]

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Contempt of Courts Act, 1971: Section 2—M.R.T.P. Commission—Filling up posts of Chairman and Members—Direction regarding—Default of by Union of India—Secretary, Ministry of Industry—Held guilty of contempt.

Monopolies and Restrictive Trade Practices Act, 1969: Section 5—Chairman and Members of Commission—Filling up posts of—Direction regarding—Default of by Union of India—Secretary, Ministry of Industry—Held guilty of contempt.

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Article 144 of the Constitution requires all authorities, civil and judicial, in the territory of India to act in aid of the Supreme Court.

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Section 5 of the Monopolies and Restrictive Trade Practices Act, 1969 provides that the Commission shall consist of a Chairman and not less than two and not more than eight other members. The said Commission having been rendered non-functional with the death of its Chairman in December, 1989 and retirement of three out of four members by March, 1990 the petitioner sought a direction to the Union of India to fill up the said posts. By its order dated April 20, 1990 the Court directed that the Commission be appropriately constituted within three weeks. By a subsequent order dated May 25, 1990 the Vacation Judge extended the time to comply with the said direction till 7th July, 1990. The respondent-Union having failed to comply with the order by the said date the petitioner moved a petition for contempt. In its order dated 12th October, 1990 the Court held that by not constituting the Commission on or before 7th July, 1990 its direction had been violated and directed issue of notice on the contempt petition.

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In the affidavit filed on October 22, 1990, the Secretary, Department of Company Affairs, Ministry of Industries of the Union Government averred that he did his best to obtain orders of appointment of Chairman and the Members of the Commission as per directions of the Court, that there has been no wilful negligence or intention to disobey the orders and that further reasonable time may be granted for completing the procedure of appointment.

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A Allowing the contempt petition, the Court,

HELD: 1. The respondent-Union in the Ministry of Industries represented by the Secretary was guilty of contempt of the Court.

B 2.1 It was the obligation of the Union of India to constitute the Commission in the manner prescribed under Section 5 of the M.R.T.P. Act, 1969 and when it failed to do so the Court had given the direction comply with the requirements of law.

C 2.2 Once it was found that before the extended date direction was not being complied with, it was the obligation of the respondent-contemner to approach the Court for further extension of time or to receive such direction as the Court in its discretion thought it appropriate to make. No such petition was ever filed before or after 7th of July, 1990 and even after notice of contempt was served, such step was not considered necessary and the Union Government remained satisfied by indicating in the affidavit of the contemner that extension should be given. **D** Since the mandamus had been addressed to the respondent Union, it could not keep away from the Court in such a way without complying with the direction. The fact that some attempt was made to reconstitute the Commission does not constitute an extenuating circumstance.

E 3.1 By invoking the power of contempt, the Court seeks only to ensure that the majesty of the institution may not be lowered and the functional utility of the constitutional edifice may not be rendered ineffective. It expects the Union of India to exhibit the most ideal conduct for others to emulate.

F 3.2 In view of the offer of unqualified apology and the fact that the Chairman and a Member have in the meantime been appointed and the Commission in terms of s. 5 of the Act has been reconstituted the Court does not propose to impose any punishment in the hope and trust that there would be no recurrence of the conduct.

G ORIGINAL JURISDICTION: Contempt Petition (Civil) No. 172 of 1990.

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Writ Petition (Civil) No. 297 of 1990.

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

Sanjay Parekh for the Petitioner.

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Ashok H. Desai, Solicitor General and Miss A. Subhashini for the Respondents.

The Judgment of the Court was delivered by

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RANGANATH MISRA, CJ. A three Judge Bench of this Court in Writ Petition No. 297 of 1990 made an order on April 20, 1990 to the following effect:

“This is an application under Article 32 filed as a public interest litigation for a direction to the Union of India to fill up the posts of Chairman and Members of the Commission under the Monopolies and Restrictive Trade Practices Act, 1969. Notice was issued on this petition on 28th February, 1990 and service had been effected before 26th of March, 1990. The Writ Petition was adjourned on 28th of March, 1990 till 9th of April, 1990 to enable Union of India to file its counter-affidavit. Such affidavit has, however, not been filed till today. When the matter was listed yesterday we were told that if the matter be called today a statement could be made as to when the posts shall be filled up. Counsel for the Union of India says that within a month’s time these appointments are likely to be made.

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It is not disputed that the Chairman of the Commission died in harness on 11.12.1989. One of its members retired on 31.12.1989. The third member has retired on 28.2.1990. Mr. Manchanda, the other member who was acting Chairman retired on 22.3.1990. It is said that the term of one member only has been extended after notice was issued in the case.

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Under the Act the Commission becomes functional with a Bench of two members and in view of the fact that it has only one existing member for some time, the Commission has not been functioning.

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It is not disputed that the Commission is the king-pin for the functioning of the MRTP Act and is the statutory mechanism for enforcing the law brought about for public benefit. Its provisions are intended to provide protection to

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A consumers and control monopolies. In these circumstances we have not been able to appreciate why the Commission has been rendered non-functional by keeping the various posts vacant. We direct that the Commission shall be appropriately constituted within three weeks from today. The Writ Petition is disposed of accordingly. No costs.

B At the instance of the Union of India the learned Vacation Judge on 25.5.90 extended the time to comply with the direction given in the Writ Petition till 7th of July, 1990.

C On the allegation that the order of this Court of April 20, 1990, was not complied with by 7th of July, 1990, a petition for contempt was filed in this Court on 7th of August, 1990. On 21.9.90 notice was issued on the petition and on 12.10.90 the following order was made:

D “Issue notice on the Contempt Petition to Mr. A.N. Verma, Secretary of Industry and Company Affairs to appear and show cause on 22.10.1990 why he should not be convicted for Contempt of Court for non-compliance of the Court’s order dated 20.4.1990. We are satisfied that contempt has been committed, therefore, no preliminary notice has been issued.”

E An affidavit was filed on 22.10.90 by the contemner Shri A.N. Verma, Secretary, Department of Company Affairs, Ministry of Industries of the Union Government where it was averred that certain steps were taken for the re-constitution of the Monopolies and Restrictive Trade Practices Commission set up under the Monopolies and Restrictive Trade Practices Act, 1969, (hereinafter referred to as ‘the Act’) but the appointment of the Chairman could not be finalised as the Judge to whom the offer had been made ultimately declined. It was pleaded:

G “It will be seen from the above facts and circumstances that the Deponent did his best to obtain orders of appointments of Chairman and the Members of the M.R.T.P. Commission as per directions of this Hon’ble Court, but the appointments could not be made despite all efforts and due diligence. There has also been no wilful negligence or intention to disobey the orders of this Hon’ble Court in the matter.

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The Deponent accordingly seeks the indulgence of this Hon'ble Court and submits that in special circumstances of the case, the Deponent or the Respondent may not be held guilty of disobedience of the directions of this Hon'ble Court and that further reasonable time may be granted for completing the procedure of appointment of the Chairman and the Members."

At the hearing of the motion for contempt learned Solicitor General appeared for the contemner and the contemner was also present in the Court. Counsel fairly conceded that this Court has rightly held in its order dated 12th October, 1990, that by not constituting the Commission by appointment of the Chairman and Members of the Commission on or before 7th July, 1990, the Court's direction has been violated. He, however, maintained that steps were taken for constituting the Commission as detailed in the affidavit and they constitute extenuating circumstances; and, therefore, no serious view should be taken of the lapse.

The Act, as the Statement of Objects and Reasons shows, is a statute to ensure that the operation of the economic system does not result in the concentration of economic power to the common detriment and to prohibit such monopolistic and restrictive trade practices as are prejudicial to public interest. The Commission is the kingpin for the operation of the statutory scheme. Section 5 of the Act provides that the Commission shall consist of a Chairman and not less than two and not more than eight other members. By non filling of the post of Chairman and members at the time of the original order was made, the Commission then left with a single member, in view of the statutory procedure, was not able to act as the Commission.

The order of this Court made on the 20th of April, 1990, fixing three weeks' time for compliance should have sufficiently conveyed to the Union of India that immediacy is involved in the matter. The Central Government was aware of the position that compliance within the specified time was important and, therefore, had approached this Court for extension of time and time had been extended upto 7th of July, 1990. It was the obligation of the Union of India to comply with the direction on or before the expiry of the fresh date. It is conceded that no further extension was obtained, though there was no compliance. In fact no petition for extension of time was ever filed before or after 7th of July, 1990 and even after notice of contempt was served, such step was not considered necessary and the Union Government

A remained satisfied by indicating in the affidavit of the contemner that extension should be given.

B The Union of India being the party against whom the direction had been made was bound by the order and it was its obligation to see that the direction was properly implemented. Under Article 144 of the
C Constitution all authorities, civil and judicial in the territory of India are required to act in aid of the Supreme Court. Once it was found that before the extended date the direction was not being complied with, it was the obligation of the respondent-contempt to approach the court for further extension of time or to receive such direction as the court in its discretion thought it appropriate to make. The mandamus in this case required the Union of India to comply with it in a specific manner and the Union of India as respondent in the writ petition to whom the mandamus had been addressed could not keep away from the court without complying with the direction.

D We have not been able to find any extenuating circumstances in the affidavit of the contemner Shri A.N. Verma, Secretary in the Ministry of Industries and since he does not plead ignorance of the direction of this Court he should be imputed with the knowledge of the consequences of failure of compliance. We are not in a position to accept the submission of the learned Solicitor General that in the matter of compliance of the order of the court beyond the time indicated, the fact that some attempt was made to reconstitute the Commission constitutes an extenuating circumstances.
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F It was the obligation of the Union of India to constitute the Commission in the manner prescribed under section 5 of the Act and when it failed to do so this Court had given the direction to comply with the requirements of the law. The conduct of the Union of India in these circumstances must be taken as one of indifference to the Court's direction. Therefore, no conclusion other than one holding the respondent guilty of contempt can be reached.

G As we have pointed out, Shri A.N. Verma is a senior administrative officer and should have taken appropriate care to strictly comply with the direction of this Court. This Court on an earlier occasion pointed out that Courts constitute an inbuilt mechanism within the framework of the Constitution for purposes of social audit and to ensure compliance of the Rule of Law. In enforcing compliance of orders of this Court and in punishing for lapses in the matter of compliance by invoking the power of contempt, this Court seeks only to
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ensure that the majesty of this institution may not be lowered and the functional utility of the constitutional edifice may not be rendered ineffective. This Court expects the Union of India to exhibit the most ideal conduct for others to emulate. A

We have, therefore, come to the conclusion that the respondent—Union of India in the Ministry of Industries represented by Shri A.N. Verma, Secretary in the same Ministry is guilty of contempt of this Court. B

In recent times, instances of non-compliance with Court's directions have multiplied and it is necessary to curb such tendency of litigating parties. We, however, do not propose to impose any punishment in view of the offer of unqualified apology offered in paragraph 8 of the affidavit but hope and trust that there would be no recurrence of the conduct. C

We take judicial notice of the fact that the Chairman and a Member have in the meantime been appointed and the Commission in terms of section 5 of the Act has been reconstituted. D

P.S.S.

Petition allowed.