

In Re:Arundhati Roy... .. vs – Contempnor – Case Analysis

Appellants: Arundhati Roy

Respondent: Contemnor

Decided on: 06.03.2022

Citation: AIR 2002 SC 1375 : 2002 Cri LJ 1792

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INTRODUCTION :

Contempt : In order to secure obedience to the judgements ,to prevent interference with the proceedings and to ensure a fair trial to the parties, the court administers contempt.

Courts are provided with this power :

In order for any legal system to be maintained and to flourish , rules must be enforced to protect the status,authority ,integrity and fairness of the courts . A citizen's right to fair trial depends upon the existence of mechanisms which operate in various ways ; to protect the courts, judges and juries from verbal or physical attack ; to prevent the disclosure or publication of material , truthful or otherwise ; which might prejudice a court case or otherwise harm the parties , to allow civil and criminal cases to proceed through the court in the manner prescribed in law , to protect the reputation of the legal system, its components and personnel from being brought into disrepute . In order for the judiciary

to perform its duties and functions properly, the dignity and the authority of the courts have to be respected and protected at all costs^[1]. It is for this purpose that the courts are entrusted with the powers of contempt.

Difference between Criminal and Civil contempt :

Civil contempt of court is committed by breaching orders of the court or undertakings made to the court. Examples are breaking the terms of an order of an injunction which has been obtained from a civil court. Punishments are imprisonment or fine in the same way as in a criminal contempt, which differs in the rationale of such punishment. Civil contempt is punished in order to create or compel compliance with the court order concerned.

Criminal contempt is concerned with the interference with the administration of justice. Examples are when a publication is made of the previous convictions of the defendant during trial, standing up in a civil or criminal court and making abusive comments about the judge, threatening a witness, refusing to give evidence once on the witness stand. It is punishable because the conduct involved poses a serious threat to the administration of justice and is reprehensible.

FACTS :

An organisation namely, NARMADA BACHAO ANDOLAN filed a petition under Article 32 of the constitution of India, being writ petition no:319 of 1994 in this court. The petitioner was a movement or andolan, whose leaders and members were concerned about the alleged adverse environmental impact of the construction of the SARDAR SAROVAR RESERVOIR DAM in Gujarat and the far reaching and tragic consequences of the displacement of hundreds of thousands of people from their ancestral homes that would result from the submerging of vast extents of land, to make the reservoir. During the pendency of

the writ petition this court passed various orders. By one of the orders the court permitted to increase the height of the dam to RL85 metres which was resented to and protest by the writ petitioners and others including the respondent herein. Respondent Arundhati Roy, who is not a party to the writ proceedings, published an article entitled "The Greater Common Good" which was published in the OUTLOOK magazine and in some portion of a book written by her. Two judges of this court forming the three judge bench felt that the comments made by her were, prima facie, a judicial process and institution cannot be permitted to be scandalised or subjected to contumacious violation in such a blatant manner, as had been done by her. The action of the respondent had caused the court much anguish and when the court expressed its displeasure on the action of the respondent in making distorted writings or manner in which leaders of the petitioner, Ms Medha Patkar and one Dharmadhikari despite giving assurance to the Court acted in breach of the injunction, the court observed^[2]: [SCC p. 313, para 8]

" we are unhappy at the way the leaders of NBA and Ms Arundhati Roy have attempted to undermine the dignity of the Court. We expected better behaviour from them."

Showing its magnanimity, the court declared : [SCCp.314, para 9]

" After giving this matter our thoughtful consideration and keeping in view the importance of the issue of resettlement and rehabilitation of PAFs, which we have been monitoring for the last five years, we are not inclined to initiate proceedings against the petitioner, its leaders or Ms Arundhati Roy. We are of the opinion, in the larger interest of the issues pending before us, that we need not pursue the matter any further. We, however, hope that what we have said above would hereafter desist from acting in a manner which has the tendency to interfere with the due administration of justice which violates the injunctions issued by this court

from time to time.”

Respondent merely a writer without any study regarding working of judiciary, in such circumstances respondent held guilty of criminal contempt of Supreme Court by scandalising its authority with mala fide intention punishable under s.12 of contempt of courts act . Constitution of India, Art.129 and 125.

ISSUES :

Whether the given set of circumstances warrants for a condition wherein the respondent is show caused and contempt proceedings be initiated against her.

The action on the part of Arundhati Roy in relation to Narmada Bachao Andolan also the Article written by her in various magazines namely OUTLOOK EXPRESS where she expressed her views and critiqued the judgement given by the honorable Supreme Court . In addition to this she also demonstrated before Supreme Court of India and was as a consequence of this accused for contempt proceedings.

Now Arundhati Roy questions the contempt proceedings initiated against her.

ARGUMENTS:

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1. Arundhati Roy claims relief on grounds that in P.N. DUDA V. P.SHIV SHANKAR [\[3\]](#) this court had held that administration of justice and judges are open to public criticism and public scrutiny. Judges have their accountability to the society and their accountability must be judged by the conscience and oath to their office i.e to defend and uphold the Constitution and the laws without fear and favour. Thus the judges must do ,

in the light given to them to determine , what is right.

Any criticism about the judicial system or the judges which hampers the administration of justice or which erodes the faith in the objective approach of the judges and brings administration of justice to ridicule must be prevented. The contempt of court proceedings arise out of that attempt. Judgments can be criticized. Motives of the judges need not be attributed. It brings the administration of justice into disrepute. Faith in the administration of justice is one of the pillars on which democratic institution functions and sustains. In the free market place of ideas criticism about the judicial system or judges should be welcome so long as such criticism does not impair or hamper the administration of justice. This is how the courts should exercise the powers vested in them and judges to punish a person for an alleged contempt by taking notice of the contempt suo motu or at the behest of the litigant or a lawyer . In the case the speech of the Law Minister in a seminar organised by the Bar Council and the offending portions therein were held not contemptuous and punishable under the act. In a democracy judges and courts alike are , therefore , subject to criticism and if reasonable argument or criticism in respectful language and tempered with moderation is offered against any judicial act as contrary to law or public good, no court would treat criticism as a contempt of court."

1. The respondent has not claimed to be possessing any special knowledge of law and the working of the institution of judiciary. She has only claimed to be a writer of repute. She has submitted that " as an ordinary citizen I cannot and could not have expected to make a distinction between the Registry and the court." It is also not denied that the respondent was directly or indirectly associated with the NARMADA BACHAO ANDOLAN and was, therefore, interested in the result of the

litigation . She has not claimed to have made any study regarding the working of this court or judiciary in the country and claims to have made the offending imputations in her proclaimed right of freedom of speech and expressions as a writer. The benefit to which Mr.P.Shiv Shankar , under the circumstances, was held entitled is, therefore not available to the respondent in the present proceedings.

2. The Constitution of India has guaranteed freedom of speech and expression to every citizen as a fundamental right. While guaranteeing such freedom , it has also provided under Article 129 that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. similar power has been conferred on the High Courts of the States under Article 215. Under the Constitution, there is no separate guarantee of the freedom of the press and it is the same freedom of expression , which is conferred on all citizens under Article 19(1). Any expression of opinion would , therefore, be not immune from the liability for exceeding the limits, either under the law of defamation or contempt of court or the other constitutional limitations under article 19(2). If a citizen, therefore, in the garb of exercising right of free expression under Article 19(1), tries to scandalise the court or undermines the dignity of the court, then the court would be entitled to exercise power under Article 129 or Article 215. In relation to a pending proceeding before the court, while showing cause to the notices issued, when is stated that the court displays a disturbing willingness to issue notice on an absurd,despicable, entirely unsubstantiated petition, it amounts to a destructive attack on the reputation and

the credibility of the institution and it undermines the public confidence in the judiciary as a whole and by no stretch of imagination, can be held to be a fair criticism of the court's proceedings. When a scurrilous attack is made in relation to a pending proceeding and the notice states that the issuance of notice to show cause was intended to silence criticism and muzzle dissent, to harass and intimidate those who disagree with it, is a direct attack on the institution itself, rather than the conduct of an individual judge.

PRINCIPLE OF THE CASE :

"POWER TO PUNISH FOR CONTEMPT"

1. Though as a Court of Record the Supreme Court have the power to punish for contempt of itself, Art.129 specifically mentions this power in order to remove any doubts[4].
2. The object of this power to punish is not the protection of the judges personally from imputations to which they may be exposed as individuals but the protection of the public themselves from the mischief they will incur if the authority of the tribunal is impaired[5].
3. Hence – the power to punish for scandalising the court is a weapon to be used sparingly and always with reference to the administration of justice[6] and not for vindicating personal insult to a judge, not affecting the administration of justice.

JUDGEMENT :

While convicting the respondent for the contempt of the Court, she is sentenced to simple imprisonment for one day and to pay a fine of Rs.2000. In case of default in the payment of fine, the respondent shall undergo simple imprisonment of three months.

CASE COMMENTS :

Arundhati Roy critically analysed and published the previous convictions of the case in Narmada Bachao Andolan v Union of India [1999 ,8 SCC 308]. This led to a publication of a previous conviction of the defendant during trial . Thus Arundhati Roy is liable for criminal contempt of court .

1. Vinny Chandra Misra, In re., [1995] 2 SCC 584 : AIR 1995 SC 2348 : [1995] 2 SCC 584.
2. Narmada Bachao Andolan v. Union of India (1999)8 scc 308
3. (1988) 3SCC 167 : 1988 SCC (Cri)589
4. Hiralal v. State of U.P., AIR 1954 SC 743 : (1955)1 SCR 677.
5. Brahma Prakask v. State of U.P., (1953) SCR 1169: AIR 1954 SC 10.
6. Bathina Ramakrishna v. State of Madras, (1952)SCR 425