

A

KASHINATH KHER AND ORS.

v.

SHRI DINESH KUMAR BHAGAT AND ORS.

MAY 2, 1997

B

[K. RAMASWAMY AND D.P. WADHWA, JJ.]

*Contempt of Court :*

C

*Non-compliance of Court's order—Contempt petition—Allegation that despite specific directions given, respondents did not implement judgment of this Court in its true spirit and purport—Counsel for respondents taking responsibility for the advice on which the respondents were said to have acted—Held, the officers have not willfully or deliberately disobeyed the implementation of the orders of the Court—Time given to respondents to implement the judgment in its full spirit.*

D

*State Bank of India & Ors. v. Kashinath Kher & Ors., [1996] 8 SCC 762, directions given to implement the judgment.*

CIVIL ORIGINAL JURISDICTION : Contempt Petition (C) Nos. 207-208 of 1997.

E

(Under Section 23 of the Contempt of Court Act, 1971.)

Dushyant Dave, Nisha Bagachi and Ms. Indu Malhotra for the Petitioners.

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Shanti Bhushan and R.N. Keshwani for the Respondent Nos. 1-3.

R.F. Nariman, R.V. Rangam, K. Samdani, R.N. Keshwani, A.V. Rangam and A. Ranganadhan for the Respondent No. 4.

G

The following Order of the Court was delivered :

H

These contempt petitions have been filed for non-compliance of the judgment of this Court in *State Bank of India & Ors. v. Kashinath Kher & Ors., [1996] 8 SCC 762*. The substratum of the complaint of the petitioners is that despite specific directions given and positive observations made in the judgment, the respondents have not implemented the judgment in its

true spirit and purport. On the other hand, they have put up the same interpretation of the provisions set up prior to the judgment as an excuse in promoting the officers, violating the judgment. Shri Shanti Bhushan, learned senior counsel appearing for the respondents, has stated that for the purpose of promotion from MMG Scale III to MMG Scale II and so on, as per the norms, five years' confidential reports and six year's appraisal reports are necessarily to be taken into consideration. Recording the C.Rs. after a lapse of 15 years would be an impossible task since the officers who had observed the conduct of the officers to be promoted would either have retired or would not be available. In that backdrop, he had advised the contemners to go by the existing reports and to consider them in accordance with the Rules for the promotion; therefore, they have not disregarded the directions of this Court.

It is seen from the judgment that specific and unequivocal directions have been given as to how and by whom C.Rs. are to be written. They relate to two items. One is that the respondents should identify such of the officers whom opportunity to line assignment of rural/semi-urban services was given but they did not avail of the same and to eliminate such of the officers who have not availed of the opportunity, they shall be omitted from the list; and such officers who availed of the opportunity but could not contemplate assignment but for no fault of theirs and those who have completed the line assignment should be included in Group A and their cases should be further considered for further promotion in accordance with the Rules. In the affidavit filed by Mr. S.S. Partoti AGM (Personal & HRD), he has stated that first part of the direction had been complied with and for the compliance of the second part of the directions, they came forward with the same justification in a different form. In substance, their contention is that it is not practicable to write the ACRs at this distance of time. They have also further stated that they have obtained the advice of the counsel and on the faith of that, they have come to that understanding. When put a question, Shri Shanti Bhushan has taken responsibility on himself for the advice and stated that he understood the judgment of this Court in a manner which is not inconsistent with its letter spirit. Therefore, the respondents have acted upon it.

In view of the personal responsibility taken by Shri Shanti Bhushan, his standing at the bar and his fairness and candid admission, we accept

A his statement. We do not think that the officers have wilfully or deliberately disobeyed the implementation of the orders of the Court. Accordingly, three months' time is now given to the respondents to do the exercise and implement the judgment in its full spirit.

B The Contempt Petitions are accordingly dismissed.

R.P.

Contempt Petitions dismissed.

C