

High Court of Judicature at Allahabad
(Lucknow)

Neutral Citation No. 2024:AHC-LKO:40982-DB

Reserved on: 27.05.2024

Delivered on: 30.05.2024

Court No. - 2

Case :- SPECIAL APPEAL No. - 125 of 2024

Appellant :- Prof. Soniya Nityanand And Others

Respondent :- Prof. Ashish Wakhlu

Counsel for Appellant :- Lalta Prasad Misra, Shubham Tripathi

Counsel for Respondent :- Sandeep Kumar Ojha

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

(Per: Rajan Roy, J.)

(1) Heard Dr. L.P. Mishra, learned Senior Counsel assisted by Sri Shubham Tripathi, learned counsel for the appellants and Sri Sandeep Dixit, learned Senior Counsel assisted by Sri Sandeep Kumar Ojha, learned counsel for the respondent.

(2) This is an appeal by the Vice-Chancellor and Members of the Executive Council of King George's Medical University, Lucknow under Chapter VIII Rule V of the Allahabad High Court Rules, 1952 challenging an order passed by the Contempt Court on 08.05.2024 in Contempt Application (Civil) No.963 of 2020 [Prof. Ashish Wakhlu vs. Prof. M.L. Bhatt Vice-Chancellor, K.G.M.C., Lucknow & Ors.] In fact an application filed by the respondent for impleadment of the appellants herein has been

allowed and then notices have been issued to them. The said impugned order reads as under:-

"(Order on Impleadment Application i.e. I.A./26/2024)

- 1. Heard Shri Sandeep Dixit, learned Senior Advocate assisted by Shri Sandeep Kumar Ojha, learned counsel for the applicant.*
- 2. This is an application filed for seeking impleadment.*
- 3. Cause shown in the affidavit filed in support of the impleadment application is sufficient.*
- 4. Accordingly, the impleadment application is allowed.*
- 5. Learned counsel for the applicant is permitted to carry out necessary impleadment, forthwith.*

(Order on Contempt Application)

- 1. Let notice be issued to newly impleaded respondents i.e. respondent nos. 11 to 23 within a week to show cause as to why they should not be punished for wilfull disobedience of the directions of this Court, returnable within two weeks failing which the charges may be framed after summoning the contemnors.*
- 2. Office is directed to send a copy of this order along with the notice.*
- 3. List this case on 09.07.2024 within top ten cases. "*

(3) The contention of learned counsel for the appellant is that jurisdictional facts which have to necessarily preexist the issuance of any notice in a contempt proceedings were absolutely absent in the case at hand yet learned Single Judge without satisfying himself, *prima facie*, about any civil contempt having been committed by the appellants has not only allowed the application for impleadment but also issued notice to them for showing the cause as to why they should not be punished for willful disobedience of this Court, failing which, charges may be framed after summoning the contemnors. The contention is that the contempt petition was filed in the year 2020 alleging that

the Executive Council of the University by passing a Resolution dated 08.06.2020 had violated an interim order passed on 01.12.2018 in Writ Petition No.35784 (S/S) of 2018 filed by the respondent. The appellants whose impleadment has been allowed and notices have been issued by the impugned order were not Members of the Executive Council on 08.06.2020. In fact, appellant no.1 has been appointed as Vice-Chancellor much later, that is, in August, 2023. The other appellants have become Members of the Executive Council much after 08.06.2020 and none of these appellants had any role to play in the passing of the Resolution dated 08.06.2020 which according to the respondent was contemptuous. In fact, in the affidavit in support of the application for impleadment, there is no averment whatsoever as to how the appellants herein had committed civil contempt but ignoring all these facts and without recording any *prima facie* satisfaction, the Contempt Court has passed the impugned order in the absence of jurisdictional facts which would give jurisdiction to the learned Single Judge to initiate contempt proceedings against the appellants and in the absence of any *prima facie* satisfaction recorded by the Contempt Court regarding existence of such jurisdictional facts. The contempt Court has, thus, committed a jurisdictional error.

(4) The submission was that contempt proceedings are quasi criminal in nature and the standard of proof is beyond reasonable doubt. These are very harsh proceedings and therefore, their initiation should not be a casual act as has happened in this case. This was not a case where proceedings could have been initiated against the appellants without even recording any satisfaction as to how, even *prima facie*, they

have committed any civil contempt. In the facts of the case, apparently, no contempt has been committed by them as they were not part of the Executive Council when the Resolution dated 08.06.2020 was passed.

(5) It was also submitted that, in fact, the Resolution dated 08.06.2020 has been challenged by the respondent by means of a separate Writ Petition bearing No.3840 (S/S) of 2021 along with a challenge to the order terminating his services dated 10.06.2020 but there is no interim order therein. Now, by impleadment of the appellants, the respondent veritably wants to arm twist them and secure his reinstatement in contempt proceedings, thereby, seeking relief which he has not yet got in the writ proceedings. In any case, so far as contempt by the appellant is concerned, even *prima facie*, the same is not made out by any stretch of imagination.

(6) In fact, learned counsel for the respondent submitted that on 06.05.2024 an application was submitted before the Vice-Chancellor i.e. appellant no.1. On the aforesaid application, the Vice-Chancellor informed the respondent on 06.05.2024 itself that the above matter will be placed before the Executive Council of the University at the earliest since it is the appointing authority. But on that very date i.e. on 06.05.2024, the respondent filed the application for impleadment which was allowed within three days i.e. on 08.05.2024. The respondent acted in haste just as the order impugned was passed.

(7) It was further submitted that as far as dismissal of Civil Appeal No (S).5455-5456/2022 on 24.04.2024, the same was filed by Prof. Lt. General (Retd.) Dr. Bipin Puri & Anr. and the said

appeal does not decide any issue *qua* the appellants herein, at best, the said order would bind the appellants of the said appeal who were the other opposite parties in the contempt proceedings and the said order cannot be used against the appellants to make a case for contempt which has to be considered independently especially as contempt proceedings are against the person who is alleged to have committed the contempt.

(8) It was also contented that it is not a case where some direction was issued and it remained uncomplied and in the meantime, the person holding the post demitted office as, in such case one who succeeds will be bound to comply the said order but it is a case where contempt alleged is against certain Members of the Executive Council who had passed the Resolution dated 08.06.2020 which according to the respondent is in the teeth of the interim order passed by this Court in a writ petition which is still pending wherein a stay vacation application is also pending. Now, in this scenario, as none of the appellants were Members of the Executive Council at the relevant time when the Resolution dated 08.06.2020 was passed nor did they have any role to play in that regard, on the face of it, they could not have been subjected to the rigour of contempt proceedings. None of this has been seen and a jurisdictional error has committed in passing the impugned order. It was contended that the right course for the contempt court was to issue notice on the impleadment application to the proposed opposite parties/ alleged contemnors whereupon the correct facts would have been placed before the Contempt Court and this situation would have been avoided. The appellants have been subjected to initiation of contempt proceedings unjustifiably.

(9) On the other hand, Sri Sandeep Dixit, learned counsel for the respondent submitted that the special appeal itself is not maintainable as the impugned order did not qualify within the meaning of the term 'judgment' used in Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952. He placed reliance on a Supreme Court's judgment rendered in the case of '**Midnapore Peoples' Coop. Bank Ltd. & Ors. vs. Chunilal Nanda & Ors.**' reported in (2006) 5 SCC 399 and certain other decisions. His submission was that the appellants were under an obligation to rectify the contempt already committed by the predecessors and not having done so they are liable to be prosecuted for contempt. We pointedly asked Sri Dixit to point out any order of the writ court in any of the writ petitions pending between the parties wherein the Resolution dated 08.06.2020 or the order terminating the services of the respondent on 10.08.2020 may have been stayed or for that matter any direction may have been issued to the University to reinstate the respondent or for that matter to withdraw the Resolution dated 08.06.2020 and the order of termination from service, he could not point out any such order.

(10) He referred to the earlier proceedings before the Contempt Court wherein an application for deferment of hearing by the earlier Vice-Chancellors was rejected against which a Special Leave Petition bearing No.6899-6900 of 2022 was filed after framing of charge on 08.02.2022 by the then Vice-Chancellor and others and though, initially interim orders were passed by Hon'ble the Supreme Court but ultimately, the special leave petition after being converted into Civil Appeal No(s).5455-5456/2022 was dismissed. This aspect of the matter has already

been addressed by Dr. L.P. Mishra, learned counsel appearing for the appellants as noticed earlier.

(11) In response, learned counsel for the appellants submitted that the respondent is resorting to arm-twisting measures by filing an application for impleadment with intent to intimidate the Members of the Executive Council and brow beat them into doing something and granting such relief to him which in fact he has not been able to secure through the process of law in the writ petition wherein the Resolution dated 08.06.2020 and the order of termination of his service has been challenged. According to him, the impugned order amounts to an interim judgment as it virtually decides the jurisdiction of the Contempt Court to proceed and initiate the contempt proceedings against the appellants, therefore, the appeal is maintainable.

(12) We have heard learned counsel for the parties and perused the records.

(13) The power to punish for contempt is vested in the High Court as an inherent power and it flows from a constitutional provision contained in Article 215 of the Constitution of India by virtue of which it is a court of record having plenary powers including the power to punish for its contempt. The Contempt of Courts Act, 1971 does not supersede or abrogate the inherent powers vested in it under Article 215 of the Constitution of India and legal position in this regard is well settled. Reference may be made to a decision reported in (1997) 3 SCC 11 '**High Court of Judicature at Allahabad Through its Registrar vs. Raj Kishore Yadav and Ors**' in this regard wherein vires contained in Chapter XXXV-E of the Allahabad High Court Rules, 1952

pertaining to contempt proceedings were under challenge. The said Chapter of the Rules, 1952 contains rules framed under Section 23 of the Contempt of Courts Act, 1971. But before referring to the said Rules, we may refer to the definition of 'civil contempt' contained in Section 2 (a) and (b) of the Contempt of Courts Act, 1971 which reads as under:-

"(a) "contempt of court" means civil contempt or criminal contempt;

(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;"

(14) As per Rule 1 of Chapter XXXV-E of the Rules, 1952, the Rules contained in the said Chapter shall govern presentation and hearing of Contempt of Court cases coming to the High Court under the Contempt of Courts Act, 1971. The impugned order has been passed in proceedings for civil contempt and there is no dispute about it. In this context, Rule 5 of Chapter-XXXV-E of the Rules, 1952 is relevant which reads as under:-

"5. Issuance of notice :- Such allegations contained in the petition as appears to the Court to make out a prima facie case of contempt of Court against the person concerned, shall be reduced into charge or charges by the Court against such person, and notice shall be issued only with respect to those charges :

Provided that the Court shall not issue notice if more than a year has elapsed from the alleged act of contempt of court. "

(15) On a bare reading of Rule 5, it is evident that there have to be allegations contained in the petition making out a *prima facie* case of contempt of court against the person concerned, meaning thereby, the person who is arrayed as an

opposite party. This condition is also required to be satisfied in the case of an impleadment application if it is to be allowed because there have to be allegations in the application for impleadment making out a *prima facie* case for contempt of court against the proposed party only then it can be allowed.

(16) Rule 5 further provides that if there are such allegations in the contempt petition the same shall be reduced into charge or charges by the Court against such person, and notice shall be issued only with respect to those charges. Some flexibility in the procedure to be followed in this regard may be permissible but it has to be in consonance with the principles of natural justice and fairness keeping in mind the rigor of the proceedings. But existence of jurisdictional facts and prerequisites and due and proper application of mind to the same is a *sine qua non* at the stage of issuance of notice under Rule 5.

(17) In the case at hand apart from impleadment of the appellants being allowed as opposite parties/ alleged contemnors, the writ court has also issued notice for initiation of contempt proceedings.

(18) As per Rule 5, the Court has to be *prima facie* satisfied about contempt having been committed by alleged contemnors. It is then required to issue notice on such satisfaction.

(19) In this context, the contention of learned counsel for the appellants is that on a bare reading of the affidavit in support of the application for impleadment, no allegation as to how the appellants herein have committed any civil contempt is made out. He further contended that no satisfaction was arrived

at nor recorded as is required at the time of issuance of notice as per Rule 5.

(20) We have also perused the affidavit in support of the application for impleadment. Without expressing any conclusive opinion on the issue, we do not find any such specific allegation as to how the appellants have committed willful contempt of the interim order dated 01.12.2018 passed in the concerned writ petition. We have also quoted the order passed by the Contempt Court. We say no more at this stage as the contempt proceedings are still pending and the application for impleadment has already been allowed and notices issued to the appellant.

(21) There are certain jurisdictional facts/ prerequisites which must exist prior to initiation of contempt proceedings against a person by issuance of notice in terms of Rule 5 of Chapter-XXXV-E of the Rules, 1952 as already discussed. They can be summarized as under:-

(a) There has to be an order of a Court or an undertaking before it whether it be the High Court or the subordinate court for proceedings under the Act, 1971 as contemplated in Section 2(b) of the said Act.

(b) Such order should have been communicated to the alleged contemnor calling upon him to comply the same.

(c) There has to be some action or inaction or undertaking which may amount to willful disobedience or flouting of such order or undertaking so as to constitute civil contempt.

(d) There have to be allegations in the contempt petition or in an application for impleadment mentioning the existence of

aforesaid jurisdictional facts/prerequisites making out a *prima facie* case of deliberate and willful disobedience or violation of the order or undertaking by the alleged contemnors/opposite parties or proposed opposite parties.

(e) The contempt court has to arrive at a *prima facie* satisfaction about existence of the aforesaid jurisdictional facts/prerequisites making out a *prima facie* case of contempt of court by the concerned persons, before issuing notice.

(22) Only on the aforesaid satisfaction, notices have to be issued to the alleged contemnors in terms of Rule 5 of Chapter-XXXV-E of the Rules, 1952. Same analogy applies while considering and allowing an application for impleadment in pending contempt proceedings.

(23) Issuance of notice in a contempt matter is not a causal or routine procedure. It requires due and proper application of mind to the aforesaid facts and issues. We must keep in mind that contempt proceedings are quasi criminal in nature and the standard of proof is beyond reasonable doubt. These proceedings carry a rigor much more than any other judicial proceedings for adjudication of disputes. These proceedings are in exercise of powers of the High Court to punish for its contempt and that of the subordinate courts. Therefore, they should be exercised with circumspection and due and proper application of mind even at the stage of initiation of such proceedings.

(24) This apart, ordinarily, when an application for impleadment is filed in a pending contempt proceedings, practice has been to issue notice to the proposed opposite party before considering it so that they may have an opportunity to inform

the contempt court about the correct facts, unless from the facts placed and documents annexed, an exceptional case is made out, *prima facie*. This is a time tested procedure and a procedural requirement which should ordinarily be adhered.

(25) This appeal raises important questions as to initiation of such proceedings and whether, at least in the facts of this case. There are jurisdictional issues involved, whether the jurisdictional facts/prerequisites for initiation of such proceedings against the appellants did exist or they did not, and whether the Contempt Court without due and proper application of mind not only allowed the application for impleadment without notice to the proposed opposite parties but even issued the contempt notices which are impugned herein. We were tempted to enter into and adjudicate these important issues raised by the appellants and the respondent but considering the fact that contempt proceedings are still pending and the appellants have an opportunity to seek discharge of the notices issued to them taking all such pleas as have been raised herein, we are of the opinion that it is the Contempt Court itself which should first take a call on these issues and thereafter, if the occasion so arises we can consider the same at the appropriate stage as per law.

(26) In these circumstances, we find it appropriate to request the Contempt Judge to kindly consider the pleas of the appellants on an application for discharge being moved by them and take a considered decision in this regard as per law. If after such decision is taken on the question as to whether the appellants are liable to be proceeded for contempt of court in

the facts of the case, the appellants still have a cause, they can avail the remedies prescribed in law.

(27) We accordingly *dispose of* this appeal with liberty to the appellants to move an application for discharge of notices issued to them to which respondent shall have a right to respond and we request the Contempt Judge to consider relevant aspects of the matter as to whether the appellants are liable to be proceeded under the Act, 1971 and the inherent powers of the High Court for having committed civil contempt.

(28) All pleas are open for being raised before the Contempt Judge and they are open for being considered by the Contempt Court.

(29) This order shall be placed before the learned Contempt Court.

(Om Prakash Shukla,J.) (Rajan Roy,J.)

Order Date :- 30.05.2024

Shanu/-