

THE HON'BLE DR.JUSTICE K. MANMADHA RAO

CONTEMPT CASE No.4259 of 2022

ORDER:

This Contempt Case is filed under Section 10 to 12 of Contempt of Courts Act, 1971 to punish the respondents/ contemnors for Contempt of Court for willful and deliberate disobedience in not comply the orders passed by this Court dated 01.08.2022 passed in W.P.No.19927 of 2020.

2. This Court, vide order, dated 01.08.2022, in W.P.No.19927 of 2020, while allowed the writ petition, passed order, as under:

“...Accordingly, the Writ Petition is allowed, directing the respondents to regularize the services of the petitioners on par with petitioners’ juniors namely V. Venkataramana and others and further directing the respondents to pay difference of salary and all attendant and consequential benefits up to date with interest at 7% p.a. within six (06) weeks from the date of receipt of a copy of this order...”

3. Heard Sri M. Pitchaiah, learned counsel appearing for the petitioners and Sri M. Solomon Raju, learned Standing Counsel appearing for the respondents/contemnors.

4. Learned counsel for the petitioners would contend that the petitioners submitted a representation dated 25.08.2022 with a request to implement the orders of this Court dated 01.08.2022.

But the respondents did not take any action for regularization of the services of the petitioners so far and failed to comply with the orders of this Court willfully and deliberately. Hence this Contempt Case came to be filed.

5. *Per contra*, the 3rd respondent, who is Regional Manager, APSRTC filed counter-affidavit denying all material averments made in the petition and mainly contended that as against the orders of this Court dated 01.08.2022 in W.P.No.19227 of 2020, the respondents have preferred Writ Appeal No. 987 of 2022 on 28.11.2022 before this Court, which is pending consideration. In view of pendency of said Appeal, the respondents have not been complied with the order of this court. Normally, under the Writ Rules, if no time limit is fixed for implementation of any order passed by this Court, it is stipulated that two months time will be available for implementing any Court Order. Therefore two months period available for implementation of the orders of this Court was to expire on 01.10.2022. The Contempt Case was filed in the month of November 2022, after expiry of two months period. It is further stated that as per settled law, an order obtained by playing fraud is non est in the eye of law. Therefore, the order of this Court by considering that V. Venataramana and others were

regularized is also on account of such fraud. Thus, prayed to dismiss the contempt case with exemplary costs.

6. Learned counsel for the petitioners vehemently contended that the respondents deliberately disobeying the orders of this Court. Therefore the respondents are liable to be punished under Contempt of Courts Act, 1971.

7. Learned Standing Counsel appearing for the respondents would contend that a Writ Appeal No. 987 of 2022 is pending against the orders of this Court in Writ Petition No.19227 of 2020, dated 01.08.2022. During pendency of the said Appeal, normally this Court will not initiate or adjudicate any Contempt proceedings in which it is alleged that the impugned order in the said appeal has not been complied with. In view of the same the respondents not guilty of any willful disobedience or negligent to implement the orders of this Court.

8. It is settled law unless and until stay of the proceedings by the Division Bench in the appeal, this Court has to proceed further in the contempt proceedings.

9. In a case of “**Modern Food Industries (India) Limited and Another Vs. Sachidanand Dass and Another**”¹ wherein it the Hon’ble Apex Court held as follows:

“4.If, without considering the prayer for stay, obedience to the Single Judge’s order was insisted upon at the pain of committal for contempt, the appellants may find, as has now happened, the very purpose of appeal and the prayer for interlocutory stay infructuous. It is true that a mere filing of an appeal and an application for stay do not by themselves absolve the appellants from obeying the order under appeal and that any compliance with the learned Single Judge’s order would be subject to the final result of the appeal. But then the changes brought about in the interregnum in obedience of the order under appeal might themselves be a cause and source of prejudice. Wherever the order whose disobedience is complained about is appealed against and stay of its operation is pending before the Court, it will be appropriate to take up for consideration the prayer for stay either earlier or at least simultaneously with the complaint for contempt. To keep the prayer for stay stand-by and to insist upon proceeding with the complaint for contempt might in many conceivable cases, as here, cause serious prejudice. This is the view taken in State of J & K V.Mohd. Yaqyoob Khan².

10. The respondents counsel vehemently raised an issue with regard to Section 8 and 13(b) of Contempt of Courts Act.

Section 8 of Contempt of Courts Act, 1971, reads as under:

“other defenses not affected – Nothing contained in this Act shall be construed as implying that any other defence which would have been a valid defence in any proceedings for contempt of Court has ceased to be available merely by reason of the provisions of this Act.”

¹ 1995 Supp (4) SCC 465

² (1992) 4 SCC 167

Section 13(b) of Contempt of Courts Act 1971, reads as under:

“the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide.”

11. In view of the submissions made by the respondent counsel, this Court observed that while hearing the main writ petition No.19927 of 2020, the Court has given ample opportunity to the respondents to argue their case and also to file their counters. Nowhere the respondents are argued and nowhere mentioned in their counter alleging fraud. Now, first time, the respondents are raised this issue in this contempt proceedings. Though the Sections 8 and 13(b) of the Contempt of Courts Act are permitted and considered to the extent of 8 and 13(b), if it is satisfied that it is in public interest and request for invoking the said defence is bona fide. If it is so, as per the Contempt of Courts Act, the respondents may raise and it may presume that it is a valid defence, if the same defence was raised in the main writ petition itself, it is valid defence. But without taking any such defence in the main writ petition, by taking the plea in the contempt proceedings restrains the scope of the contempt. The Scope of Contempt petition cannot be expanded for the purpose of adjudication of the issues on merits. The orders passed by the

Courts alone are to be considered for the purpose of invoking provisions of the Contempt of the Courts Act. So in view of the above the order passed in the main writ petition No.19927 of 2020 is on contest and on merits of the case.

12. On verifying the proceeding sheet, on 03.04.2023, when the matter was taken up for hearing, this Court directed the respondents to comply with the order of this Court by 10.04.2023, failing which, the respondents shall appear before this Court. Thereafter, when the matter was listed on 11.04.2023, except 2nd respondent, other respondents were absent. Then this Court directed the respondents No.1, 3 to 5 to appear before this Court, failing which, Non-Bailable warrants will be issued. Thereafter, the matter was listed on 12.04.2023. On that day, it is noticed that, pursuant to the order of this Court dated 03.04.2023, the respondents No.1, 3 to 5 were present and their presence has been dispensed with. Mr. Narsi Reddy, learned counsel appearing for the respondent No.5 submitted that they have preferred Writ Appeal against the order of this Court and sought two weeks time for compliance of the order of this Court. However, so far, the respondents have not complied with the order of this Court.

13. On a perusal of the material available on record, it is also noticed that this Court passed an order Writ Petition

No.19227 of 2020, dated 01.08.2022. Assailing the said order, the respondents preferred Writ Appeal No. 987 of 2022 in the month of November 2022 and the same is pending. It is contended by learned Standing Counsel for the respondents in the counter-affidavit that normally under the Writ Rules, if no time limit is fixed for implementation of any order passed by this Court, it is stipulated that two months time will be available for implementing any Court Order. In fact the Writ Appeal has been filed in the month of November 2022. Further two months period was to expire on 01.10.2022 as contended by the respondents. This Contempt Case was filed in the month of November 2022. Which shows that the respondents deliberately dodging the matter without compliance of the orders of this Court even after expiry of two months. Though Writ Appeal has been filed, wherein there is no stay of further proceedings in the matter and further since six months the respondents contended that the Writ Appeal is filed and the said appeal was heard and orders are reserved without any stay of contempt proceedings. This Court observed that the respondents did not take steps to proceed with the writ appeal to get finality and simply gaining time. Therefore the act of the respondents is vitiated on the face of the record itself.

14. In the case of **“M. Santhi Vs. Mr. Pradeep Yadav and Another”**³ wherein the Hon’ble Madras High Court held as follows:

“20. The purpose of law of contempt is to protect the machinery of justice and the interests of the public in order to protect these dual interests, unwarranted interference with administration of justice must be prevented. The power to punish for contempt is conferred on Courts for two reasons. Firstly, that the Courts may be armed with the power to enforce their orders, Secondly, they may be able to punish obstruction to the administration of justice. To ensure these objective, there are also constitutional provisions dealing with contempt of Courts, apart from Contempt of Courts Act. Under Article 215 of the Constitution of India a Court of record is a Court, the records of which are admitted to be evidentiary value and not to be questioned when produced before any Court. Such a Court enjoys a power to punish for contempt as its inherent jurisdiction. The impression created by the Court is that even if Article 129 and 215 were not there in Constitution the contempt powers of Courts of record would have been preserved. However the High Courts have to exercise his powers keeping in mind Section 20 of Contempt of Courts Act”.

The Hon’ble Madras High Court has clearly specified the purpose and object in filing the Contempt Case as cited supra.

15. The contents of the counter-affidavit would speak the volume of the conduct of the respondents in not implementing the orders of this Court. Moreover, in every adjournment in the contempt case, the respondents representing that the writ appeal is pending and seeks time. This Court has granted several adjournments in this case at the request of learned Standing Counsel for the respondents; so far, neither stay order is produced nor comply with the orders of this Court by the respondents/ contemnors. Therefore, the acts of the respondents in not comply with the order of this court amounts to contempt of courts.

³ Contempt Petition No. 377 of 2018, dated 11.04.2018 Madras High Court

16. In view of the facts and circumstances of the case, this Court is of the view that the conduct of the respondents/contemnors is such as would justify invocation of contempt jurisdiction of this Court. Not only have the contemnors unreasonably delayed and defaulted in compliance of the orders of this Court without explaining the cause for such default, or seeking extension of time for compliance; but they have also sought to avoid compliance of the order, even after taking benefit of the extended time period granted for compliance of the same.

17. I must express my inability to agree. It is incumbent upon the respondents, more particularly, those who are holding senior position in Government, to ensure that the Orders of this Court are complied with promptitude, and within the time stipulated for its compliance. Any difficulty which they may have in complying with the order of this Court would require them to invoke this Court jurisdiction seeking extension of time to comply with the orders. Admittedly, in the present case, no such efforts were made by the respondents, except representing that the writ appeal is pending since six months.

18. Under these circumstances, this Court of the firm view that even though the respondents have taken so many adjournments for complying with the order of this Court, they have

not complied with the same so far. It clearly shows that the respondents have willfully disobeyed the order passed by this Court dated 01.08.2022 in W.P.No.19227 of 2020 and thereby the respondents are guilty of contempt and have rendered themselves liable for suitable punishment under the provisions of Contempt of Courts Act, 1971. The respondents are hereby held guilty for the contempt of this Court for willful disobedience of the order of this Court dated 01.08.2022 in W.P.No.19227 of 2020 and are held liable to be punished suitably under the provisions of the Contempt of Court Act. The impugned order in this contempt case itself was passed on 01.08.2022 and six weeks time was granted to the respondents to comply with the order in true spirit. Thereafter, ample opportunity has been given to the respondents for compliance of the order, but simply they are dodging the matter. It is also observed that though the respondents are called for personal appearance and the Court has expressed and directed to comply with the order itself, but they did not come forward to comply with the same. So, in view of the above circumstances, this Court decided to interfere in the contempt proceedings.

19. Accordingly, the Contempt Case is allowed and the respondents/contemnors are sentenced to undergo simple imprisonment for a period of one (01) month each and to pay a fine

of Rs.1,000/- (Rupees One thousand only) each, in default of payment of fine, they shall undergo simple imprisonment for a period of one (01) week. The respondents/Contemnors are directed to surrender before the Registrar (Judicial) High Court of Andhra Pradesh on or before 16.05.2023; on such surrender, the Registrar (Judicial), is directed to remand them to jail for a period of one (01) month.

As a sequel, miscellaneous applications pending, if any, shall also stand closed.

DR.JUSTICE K. MANMADHA RAO

Date: 02. 05.2023

Note : C.C. day after tomorrow

(b/o)

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THE HON'BLE DR.JUSTICE K. MANMADHA RAO

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Date: 02.05.2023.

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