

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30..06..2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

Contempt Petition Nos.643, 644 & 1221 to 1238 of 2015

1.M.DASTHAGEER
2.K.THANVEER AHMED

(PETITIONERS IN CONTEMPT PETITION NO.643 OF 2015)

R.KURUNJIMUTHU

(PETITIONER IN CONT P No.644 of 2015)

1.E.PARANTHAMAN
2 K.MURUGAN
3 S.DELHI BABU
4 KUMARASAMY
5 G.PANEERSELVAM
6 M.NANDAGOPAL
7 S.VENUGOPAL
8 G.NOYAL

[PETITIONER IN CONT P No.1221 of 2015]

1 K.MONOKARAN
2 V.RAGHU
3 DICKSONRAJ

[PETITIONER IN CONT P No.1222 of 2015]

1 S.KANNAN
2 J.VASUDEVAN
3 A.PANNEER

[PETITIONER IN CONT P No.1223 of 2015]

1 D.VEEARAGHAVAN
2 K.EZHILMARAN
3 G.DEENADHAYALAN
4 M.ARULKUMAR
5 C.B.V.GOPINATH
6 P.VINAYAGA MOORTHY
7 V.PURUSHOTHAMAN
8 P.MOTHISH
9 P.JEYAKUMAR
10 V.P.MADURAIVEERAN
11 D.YESURATHINAM
12 K.RAVI

13 D.GEORGE
14 D.RAMESH
15 S.LOGANATHAN
16 K.DHANANJAYAN
17 M.RAMESHKUMAR

[PETITIONER IN CONT P No.1224 of 2015]

1 T.SURESH
2 C.P.SRINIVASALU
3 M.PALANIVEL
4 K.NARASIMMAN
5 M.VIGNESWARAN
6 N.V.PRASAD RAO
7 K.DHANASEKARAN
8 M.PARASU PADMAIAH
9 P.UMAPATHY
10 G.KUMARAGURU
11 V.RAMESH
12 V.SIVABALAN
13 A.JAYAKUMAR
14 D.JEGADEESAN
15 K.V.JEYACHANDRAN
16 M.BALAJI

[PETITIONER IN CONT P No.1225 of 2015]

1 J.MAHENDRAN
2 K.KRISHNA RAO
3 S.PALANI
4 D.JAYAKUMAR
5 V.C.MURUGESAN
6 T.P.SASI
7 N.RADHAKRISHNAN
8 B.MUTHUKRISHNAN
9 B.HARIKRISHNAN
10.K.A.STALIN
11.T.V.SATHYANARAYANAMURTHY
12 N.GANESH
13 T.P.SURENDRAN
14 J.BABU
15 K.NESDAMANI
16.V.ALBERT JESUDOSS
17 N.T.NITHYANANDAM
18 R.JAMES ANTHONY
19 T.PERUMAL

[PETITIONER IN CONT P No.1226 of 2015]

M.MUTHU

[PETITIONER IN CONT P No.1227 of 2015]

G.TAMILARASAN

[PETITIONER IN CONT P No.1228 of 2015]

1 S.SOUNDERRAJAN

2 D.RAVI
3 L.VENKATACHALAM
4 M.J.VINOD
5 C.RAVINDRAN
6 G.JAYASEELAN
7 K.KUMARAN
8 K.DINAKARAN
9 D.SAGAYAM
10 A.ALEX
11 K.ARIAVEERAN
12 S.KAMALRAJ KAMESH
13 C.MOSES
14 V.SUNDAR
15 L.MURUGAN
16 R.ARULDAS
17 V.PUSHPARAJ
18 D.VIJAYAKUMAR
19 J.PANDIYAN
20 B.ARUN
21 A.SUKUMAR

[PETITIONER IN CONT P No.1229 of 2015]

A.KAMALAKANNAN

[PETITIONER IN CONT P No.1230 of 2015]

1 S.L.JAYAPRAKASH
2 M.MURUGESAN
3 B.R.PRABHUKUMAR
4 R.VENKATESAN
5 P.RAVICHANDRAN
6 M.KANNAN
7 S.BASKARAN
8 N.NARASIMHALU
9 P.R.SAMPATHKUMAR

[PETITIONER IN CONT P No.1231 of 2015]

1 D.MURALIDHARAN
2 K.PANNEERSELVAM
3 A.YUVAKUMAR
4 A.MOHAMED RAFI

[PETITIONER IN CONT P No.1232 of 2015]

1 M.RAVEENDRAN
2 P.PENCHALIAH
3 N.RAMANAIAH

[PETITIONER IN CONT P No.1233 of 2015]

1 A.MURUGAN
2 S.PARTHEEPAN
3 V.RAVI
4 G.KUMARESAN
5 G.SARAVANAKUMAR

6 R.MURUGAN

[PETITIONER IN CONT P No.1234 of 2015]

C.R.LAKSHMIPATHY

[PETITIONER IN CONT P No.1235 of 2015]

1 R.SATHYAMOORTHY

2 M.SELVAM

3 I.SARANGAN

4 P.JAYAKUMAR

5 K.SAMUEL

[PETITIONER IN CONT P No.1236 of 2015]

V.CHANDRASEKARAN

[PETITIONER IN CONT P No.1237 of 2015]

B.N.SWAMINATHAN

[PETITIONER IN CONT P No.1238 of 2015]

Vs

1 ROHIT NANDAN

THE CHAIRMAN AND MANAGING DIRECTOR
AIR INDIA LIMITED
AIR INDIA LINES HOUSE
NO 113, GURUTHWARA RAKA BUNCH RD
NEW DELHI

2 MANAGEMANT OF AIR INDIA LTD.

AIR INDIA LINES HOUSE
NO 113 GURUTHWARA RAKA BUNCH RD
NEW DELHI

[RESPONDENTS IN ALL CONTEMPT PETITIONS]

Petitions filed Under Section 11 of Contempt of Courts Act, 1971 prayed that this Court may be pleased to punish the respondents herein for having wilfully disobeyed the order of this Court in

1.W.P.No.10633/2000,pronounced on 2.8.2007 in Cont.P.643/15

2.W.P.No.26859/2005,pronounced on 2.8.2007 in Cont.P.644/15

3.W.P.No.399/2001,pronounced on 10.7.07 in Cont.P.1221/15

4.W.P.No.400/2001,pronounced on 10.7.07 in Cont.P.1222/15

5.W.P.No.401/2001,pronounced on 10.7.07 in Cont.P.1223/15
 6.W.P.No.403/2001,pronounced on 10.7.07 in Cont.P.1224/15
 7.W.P.No.404/2001,pronounced on 10.7.07 in Cont.P.1225/15
 8.W.P.No.405/2001,pronounced on 10.7.07 in Cont.P.1226/15
 9.W.P.No.406/2001,pronounced on 10.7.07 in Cont.P.1227/15
 10.W.P.No.407/2001,pronounced on 10.7.07 in Cont.P.1228/15
 11.W.P.No.409/2001,pronounced on 10.7.07 in Cont.P.1229/15
 12.W.P.No.408/2001,pronounced on 10.7.07 in Cont.P.1230/15
 13.W.P.No.412/2001,pronounced on 10.7.07 in Cont.P.1231/15
 14.W.P.No.413/2001,pronounced on 10.7.07 in Cont.P.1232/15
 15.W.P.No.414/2001,pronounced on 10.7.07 in Cont.P.1233/15
 16.W.P.No.416/2001,pronounced on 10.7.07 in Cont.P.1234/15
 17.W.P.No.417/2001,pronounced on 10.7.07 in Cont.P.1235/15
 18.W.P.No.418/2001,pronounced on 10.7.07 in Cont.P.1236/15
 19.W.P.No.419/2001,pronounced on 10.7.07 in Cont.P.1237/15
 20.W.P.No.421/2001,pronounced on 10.7.07 in Cont.P.1238/15
 respectively and award costs.

For Petitioners : Mr.V.Prakash Senior Counsel for
 Mr.K.Sudalai Kannu in all Cont.Ps.

COMMON ORDER
(Order of the Court was made by T.S.SIVAGNANAM,J.)

These Contempt Petitions have been filed alleging wilful disobedience of the order and direction issued by the Division Bench in W.A.Nos.392 to 421 of 2001 etc., batch dated 10.07.2007 and W.P.No.10633 of 2000 dated

appellants/petitioners in the batch of cases before the Division Bench wherein varied prayers were sought for and the sum and substance of the relief was to regularise the services of the petitioners. The Division Bench while allowing the batch of cases vide order dated 10.07.2007, directed the respondent Management to frame a scheme as prayed for in the Writ Petitions and Writ Appeals within a time frame. The petitioners earlier raised an industrial dispute which was referred by the Government of India vide order dated 27.03.1991, under Section 10(1)(d) of the Industrial Disputes Act to the Industrial Tribunal Madras for adjudicating the issue as to whether the action of the Management, Air India, Southern Region, Madras in not regularising and terminating the services of the workmen is justified, if not, to what relief the workmen are entitled to. The Labour Court by award dated 15.05.1997, taking into consideration the engagement of the workmen and to avoid hardship to them directed to evolve a scheme to fit in the workmen in the list of regularised workmen apart from other related directions. It is submitted that the respondent Management had challenged the award passed by the Industrial Tribunal by filing a Writ Petition, which was subsequently withdrawn. As the award of the Industrial Tribunal was not implemented the workmen sought for a direction to implement the award and frame a scheme for regularisation. These Writ Petitions along with connected

Appeals were clubbed together and disposed of by the Division Bench by order dated 10.07.2007. It is further submitted that the respondent Management preferred Special Leave Petitions before the Hon'ble Supreme Court, which were dismissed vide orders dated 09.08.2011 and 18.02.2014. It is not in dispute that the respondent Management has framed a scheme and communicated the same to the individual workmen vide communication dated 04.04.2014.

3. The learned Senior counsel appearing for the petitioner submitted that the scheme framed by the respondent Management is not in conformity with the letter and spirit of the award of the Industrial Tribunal nor the judgment of the Division Bench dated 10.07.2007. It is further submitted that instead of making the petitioners permanent workmen by framing a scheme for regularisation, the respondents have outsourced the persons for the same job and in the alleged scheme, the respondents have required the petitioners to await future vacancies and this conduct of the respondent is not bonafide and is in wilful violation of the orders of this Court and therefore, the respondents have to be punished.

4. We may point out at this juncture that a few of the petitioners, who were also parties to the order of the Division Bench, dated 10.07.2007, had filed Cont. Petition Nos.816, 1186 & 1187 of 2015 alleging disobedience and we heard the matter in detail and it was pointed out that if

the workmen are aggrieved by the scheme framed by the Management, then it is but appropriate for them to challenge the scheme framed or avail other remedies available to them. Thereupon the petitioners in those Contempt Petitions sought permission to withdraw the Contempt Petitions so as to avail different remedies qua challenging the scheme framed or any right which may be subsisting and enforceable arising from the award. The order passed by this Court in Cont. Petition Nos.816, 1186 & 1187 of 2015, dated 10.06.2015, was put to the learned Senior counsel appearing for the petitioners and was directed to address the Court, if there were any other submissions to be made.

5. The learned Senior counsel for the petitioners submitted that the scheme framed by the respondents is not in conformity with the letter and spirit of the order passed by the Division Bench and it amounts to wilfull disobedience of the order.

6. The Hon'ble Supreme Court in the case of **Ashok Paper Mills Kamgar Union vs. Dharam Godha** reported in (2003) 11 SCC 1, while considering the definition of 'Civil Contempt' as defined under Section 2(b) of the Contempt of Courts Act, held that 'Wilful' means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or disregard the law. It was further pointed out that in order to constitute contempt the order of the Court must

be of such a nature which is capable of execution by the person charged in normal circumstances, it should not require any extraordinary effort nor should be dependent, either wholly or in part, upon an act or omission of a third party for its compliance, this to be judged having regard to the facts and circumstances of each case.

7. In **Sudhir Vasudeva, Chairman & Ors. vs. M. George Ravishekar & Ors.**, reported in (2014) 3 SCC 373, the Hon'ble Supreme Court pointed out that the power vested in the High Courts as well the Apex Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971, it is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt, the very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. It was further pointed out that it is also necessary as, more often than not, adjudication of a contempt plea involves a process of self determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged, Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same.

8. With the above legal principle in mind, it has to be seen as to whether there has been any wilful disobedience of the order and direction issued by the Division Bench. It is not in dispute that the respondent Management has framed a scheme and communicated the same to the individual workmen. Therefore, it cannot be stated

that there has been wilful disobedience of the order and direction issued by the Division Bench in as much as a scheme has been put in place. If the workmen are dissatisfied with the terms and conditions of the scheme, then the remedy lies elsewhere to challenge the scheme, if so advised.

For all the above reasons we are not inclined to entertain these Contempt Petitions and accordingly, the same are closed. However, this will not prevent the petitioners from availing different remedies qua challenging the scheme framed or any right, which may be subsisting and enforceable arising from the award. No costs.

pbn

SD/ 1

DEPUTY REGISTRAR (CLAA)

//Certified to be true copy//

Dated at Madras this the day of 2015.

COURT OFFICER (O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

KMV/29/07/2015

To

1 ROHIT NANDAN

THE CHAIRMAN AND MANAGING DIRECTOR

AIR INDIA LIMITED

AIR INDIA LINES HOUSE

NO 113, GURUTHWARA RAKA BUNCH RD

NEW DELHI

2 MANAGEMENT OF AIR INDIA LTD.

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