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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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CC No.2063 of 2014

Between:

K. Hanimi Reddy S/o. Brahmananda Reddy

....Petitioner

And

Sri Anjaneyulu and another

...

Respondents

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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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CC No.2063 of 2014

ORDER ::

This contempt case is filed alleging violation of the order passed by this Court in WP No.6645 of 2014, wherein this Court disposed of the said writ petition following a matter covered by order dated 11-02-2014 passed in WP No.3760 of 2014, which was disposed of with certain directions by this Court.

2. Brief facts in writ petition No.6645 of 2014 filed by the petitioner are:-

3. The 2nd respondent-APSPDCL was engaging Contractors to undertake operation and maintenance work including watch and ward at 33/11 KV Sub-stations of APSPDCL. The petitioner being a licensed Contractor, applied pursuant to the tender notification issued for operation and maintenance work including watch and ward at 33/11 KV Sub-stations of Muppala and Peesapadu of Narasaraopet Division, Guntur District, and emerged as successful tenderer. That he entered agreement with respondents 2 to 4 to carry out the operation and maintenance of the said sub-stations of Muppala and Peesapadu. The case of the petitioner is that, as per the

agreement entered into with the respondents, he has choice to appoint the persons with qualifications mentioned in the scheduled specifications, but the right to examine the eligibility and suitability of the contract workers appointed by him, for the purpose of manning the said 33/11KV Sub-station vests with respondents and their decision is final. It is stated that while matters stood thus, in the month of January 2014, three shift workers, appointed by the petitioner, were appointed as junior linemen in regular service of APSPDCL, due to which three vacancies arose at Muppala 33/11KV Sub-station. It is stated that the petitioner appointed three new qualified shift operators in place of workers who were regularly absorbed in the service of APSPDCL. Grievance of the petitioner is that respondents are insisting him to engage workers suggested and nominated by them, rather than leaving the choice to him to appoint suitable workers with required qualifications as per the terms of the agreement. Under those circumstances, petitioner sought for issuance of a *Mandamus* declaring the action of the respondents in insisting to engage workers indicated by them in carrying out operation and maintenance including watch and ward at 33/11 KV Sub-stations of Muppala of Narasaraopet Division, Guntur District, as being illegal, arbitrary and unconstitutional.

4. Writ petition, out of which the present contempt case arise, was disposed of following the reasons given and in terms of the order in WP No.3760 of 2014, dated 11-02-2014.

Operative portion of the order, relevant for the purpose of this case reads thus:-

“Sri P. Vinod Kumar, learned Standing Counsel for respondents on instructions submits that as per condition 25(A), the Contractor can appoint persons with minimum qualification specified in Annexure-II and they will be tested for their knowledge for various operations in the sub-stations. He further submits that respondents are not making any appointments where petitioners contract operations are going on and that regarding the same, they have not issued any orders of appointment or any letters appointing persons to work.

Recording the above submissions made by the learned Standing Counsel for respondents, writ petition is disposed of. However, petitioners shall continue their works by engaging operators as per terms and conditions of the agreement. Further, it is made clear that if there is any violation of terms and conditions of the agreement, it is open for the respondents to take steps as per the agreement.”

5. Now, the petitioner, in this contempt case, allege that the respondents in gross violation of the order passed in the above writ petition, appointed one M. Ramesh as shift operator, though the petitioner appointed one O.Narasimha Rao to work as shift operator in 33/11KV Sub-station. It is also alleged that respondents are not allowing O. Narasimha Rao to work as

shift operator and thus, they have willfully and deliberately violated the order passed by this Court in the writ petition.

6. Counter affidavit is filed by 1st respondent on his behalf and also on behalf of the 2nd respondent.

7. It is stated in the counter affidavit that in the month of January, 2014, three shift operators who were working as contract workers, appointed by the petitioner, were absorbed as junior Linemen in regular service of APSPDCL due to which three vacancies arose at Muppala Sub-station. As per the terms of the agreement, petitioner appointed two workers as shift operators to work in Muppala Sub-station on 23-01-2014 by names 1. SK Jhani Basha and 2. SK Noorulla and the respondents have also subjected them to eligibility test and after getting through the eligibility test, they were sent for one month training and, thereafter, they were allowed to work in Muppala Sub-station. That the petitioner has not sent the 3rd worker's name to fill up the vacant post in the said Sub-station and it was vacant upto 31-05-2014. That the contract period of the petitioner was over by 31-03-2014 and the extended period of contract was also concluded by 31-05-2014 and, therefore, a fresh tender notification was issued in advance on 18-02-2014 for carrying out operation and maintenance

including watch and ward at 33/11 KV Sub-stations of Muppala of Narasaraopet Division, Guntur District. Due to Election Code coming into force it was kept in abeyance, however, the tender was opened on 17-05-2014 and the petitioner again became successful bidder and authorization was issued to him on 27-05-2014 for the period from 1-06-2014 to 31-03-2015 vide LS agreement No.10/2014-15.

8. Petitioner appointed and sent the name of one M. Ramesh against the vacant post at Muppala Sub-station as shift operator on 01-06-2014 for his eligibility and suitability and on the same day the respondents have conducted the eligibility and suitability test and after giving required training allowed him to work as shift operator from 01-07-2014. That the respondents have sanctioned the bill amount and paid amount of Rs.47,449/- for four shift operators including the said M. Ramesh and one Watchman through RTGS payment and credited into the account of the petitioner. The respondents have received a representation from the above said workers stating that even though the amounts towards wages were paid by the respondent-Department for the months of August, September, and October, 2014, the petitioner has not paid them the wages. Based on the representation of the four workers, the respondents issued notice to the petitioner and required

him to submit the manning bills of 33/11KV Sub-station for the period from 8/2014 to 10/2014. The petitioner did not respond to the said notice issued by the respondents, but bore grudge on the workers and without informing the respondents, appointed O. Narasimha Rao and sent him for eligibility test and for performing duties at 33/11KV Sub-station at Muppala, when there was no vacancy. That the respondents did not allow O.Narasimha Rao to work as shift operator as there was no vacancy and as already a person by name M. Ramesh was working as shift operator in the said Sub-station from 01-06-2014. Thus, the respondents stated that there is no violation of order passed by this Court in WP No.6645 of 2014, dated 07-03-2014, as alleged by the petitioner, and that the contempt case may be dismissed.

9. The point that arises for consideration in this contempt case, is whether M. Ramesh was appointed by the petitioner or the respondents. The ground on which the respondents did not allow O. Narsimha Rao to work as shift of operator is that already M. Ramesh appointed by the petitioner was working with them. The petitioner denied that he has appointed M. Ramesh as shift operator muchless sending him to the

respondents for eligibility and suitability test to work in Muppala Sub-station.

10. This Court by order dated 14-8-2015 directed the petitioner to produce the record showing when he has appointed O. Narsimha Rao and also when he has sent him to the respondents for eligibility and suitability test. Likewise, the respondents were also directed to produce the record showing on which date M. Ramesh was appointed by the petitioner and the correspondence sent to them by the petitioner.

11. The records produced by the petitioner disclosed that the petitioner appointed O. Narsimha Rao on 30-06-2014 to work as shift operator in 33/11 KV substitution Muppala and he joined as such on 1-7-2014. It is further stated that O. Narsimha Rao signed in the Log book till he was not permitted to sign in the Log book by the respondent-authorities. A copy of the appointment letter dated 30-06-2014 given to O. Narsimha Rao and the letter dated 20-11-2014 addressed by the petitioner to the respondents to regularize the services of O.Narsimha Rao are produced before this Court. A perusal of the said correspondence clearly show that the petitioner has

not appointed M. Ramesh as shift operator, but he has appointed O. Narsimha Rao. The date of appointment of O. Narsimha Rao is 30-06-2014, but whereas the representation of M. Ramesh is dated 9-03-2015 which is admittedly after this Court passing orders in the writ petition on 07-03-2014. The respondents fail to produce any record showing any correspondence or appointment letter relating to M. Ramesh who is said to have been appointed by the petitioner except making a self serving statement that the petitioner has appointed him.

12. In the background of this factual aspects of the matter, it is clear that the respondents have misled the Court by making a false averment in the counter affidavit filed by them that M. Ramesh was appointed by the petitioner. Their action is also against the statement made before the Court by the learned Standing Counsel in the writ petition that the respondents are not making any appointments and as per condition 25(A) of the agreement, the petitioner can appoint workers of his choice with minimum qualifications specified in

the scheduled specifications. As such this Court is of the view that the respondents deliberately violated the orders passed by this Court and are liable to be sentenced to imprisonment under Section 12 of Contempt of Courts Act, 1971.

13. Section 12 (1) of the Act, and the Explanation thereto, enable the Court to remit the punishment awarded for committing contempt of Court on an apology being made to the satisfaction of the Court. The respondents have tendered unconditional apology and they also stated that they would rectify their lapses. Though such an apology can neither be a defence nor a justification for an act which tantamounts to contempt of Court, considering the facts and circumstances, Sri Anjaneyulu, Divisional Electrical Engineer (Operation), APSPDCL, Narasaraopet, Guntur District, Andhra Pradesh-1st respondent and Sri I. Prasada Rao, Assistant Divisional Engineer (Operation), APSPDCL, Sattenapalli, Guntur District, Andhra Pradesh-2nd respondent are imposed a fine of Rs.2,000/- each under Section 12 (1) of Contempt of Courts Act, 1971, in default, to suffer simple imprisonment for three

days each. The contempt case is accordingly allowed.

Miscellaneous petitions, if any pending in this case shall stand closed in view of the orders passed in the contempt case.

There shall be no order as to costs.

A.RAJASHEKER REDDY, J

Dated: 7th October, 2015
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THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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