

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION No.39482 OF 2015

ORDER

The petitioner calls in question the letter bearing Dis.No.916 dated 30.06.2014 of the learned I Additional Judicial Magistrate of First Class, Kothagudem, Khammam District, (*hereinafter*, 'the learned Magistrate'). He seeks a mandamus to declare this letter as illegal, arbitrary and unconstitutional. By the said letter, the learned Magistrate directed the General Manager, Singareni Collieries Company Limited, Manuguru, the petitioner's employer, to withhold his retirement benefits to the tune of Rs.7,00,000/- until further orders of the Court.

This communication was in consequence of the order dated 27.06.2014 passed by the learned Magistrate in CrI.M.P.No.278 of 2013 in D.V.C.No.12 of 2012. The said case was filed by the petitioner's daughter-in-law claiming monetary compensation for mental torture, domestic violence and emotional disturbance. Thereupon, the learned Magistrate passed a garnishee order on 27.06.2014 directing the petitioner's employer not to release his retirement benefits and effected attachment thereof.

Admittedly, the petitioner challenged the validity of the aforesaid order dated 27.06.2014 in Criminal Petition No.8639 of 2014 before this Court, which is still pending consideration. In the present case, his challenge is only to the communication dated 30.06.2014.

Given the aforesaid facts, Sri Ch.V.Prasad Babu, learned counsel for the petitioner, was asked to explain as to how the writ petition is maintainable. Thereupon, the learned counsel filed written submissions dated 14.12.2015 in support of his contention that this Court should entertain the writ petition and pass appropriate orders to protect the petitioner's interests.

According to the learned counsel, the impugned letter dated 30.06.2014 does not partake of a judicial character and a writ petition would lie against the same. He would contend that this non-judicial order passed by the learned Magistrate attaching the retirement benefits of the petitioner was violative of his fundamental rights and therefore, a mandamus could be issued. Learned counsel would further

contend that as the cause title of the basic order and the consequential letter were different, the letter would lose the status of being consequential in nature and may be called a 'para-consequential non-judicial order'. He would further submit that this order is in the nature of an executive action and in that capacity, the learned Magistrate would fall within the ambit of 'other authorities' in Article 12 of the Constitution and this writ petition would be maintainable against his executive action.

Reference was made by the learned counsel to the observations of the Supreme Court in ***HIS HOLINESS KESAVANANDA BHARATI SRIPADAGALVARU V/s. STATE OF KERALA*** to the effect that the judiciary would also fall within the ambit of 'State' in Article 12 of the Constitution. Reference was also made to ***BINDU K.B. V/s. THE STATE OF KERALA***, wherein the Kerala High Court held that a writ under Article 226 of the Constitution would lie against a body of persons when such body has a public duty to perform or its acts are supported by the State or public officials. Learned counsel also relied upon ***J.K.INDUSTRIES LIMITED V/s. UNION OF INDIA***, wherein the Rajasthan High Court affirmed that writs of prohibition and certiorari would lie against inferior courts or tribunals to restrain them from exercising jurisdiction which did not vest in them and/or to correct errors apparent on the face of the record, while a writ of mandamus is a command to protect to any person, corporation, inferior court or the government requiring him/it to do something particular which is in the nature of a public duty or to forebear from doing something which is prohibited by law. It was further observed therein that a mandamus would be available against any public authority, executive, administrative or local body or any person who was under a duty imposed by the State or by common law to do a particular act and if that person or authority refrained from doing such act or exercising the power which it was his/its duty to exercise.

Surprisingly, the learned counsel also referred to ***SUSHILA CHITRA MANDIR V/s. STATE OF U.P.***, wherein the Allahabad High Court affirmed that challenge to a consequential order without challenging the basic order was impermissible. The Allahabad High Court relied on the observations of the Supreme Court to the same effect in ***P.CHITRANJAN MENON V/s. A.BALAKRISHNAN*** and ***ROSHAN LAL V/s. INTERNATIONAL AIRPORT AUTHORITY OF INDIA***.

Though the learned counsel would quibble over the status of the impugned missive dated 30.06.2014, this Court opines that it was only a communication and

not an order. Further, there is no escaping the fact that this letter was merely consequential to the judicial order dated 27.06.2014 passed by the learned Magistrate in CrI.M.P.No.278 of 2013 in D.V.C.No.12 of 2012. Unless the said judicial order ceases to operate, the petitioner can have no legally redressable grievance against the impugned letter dated 30.06.2014, which only seeks to give effect to it. Criminal Petition No.8639 of 2014 filed by the petitioner challenging the judicial order dated 27.06.2014 is still pending consideration. It is therefore not for this Court to go into the validity of the said judicial order in this writ petition. In all fairness, the petitioner does not even seek to call in question the correctness of the said order presently.

That apart, in the light of the law laid down by the Supreme Court in ***RADHEY SHYAM V/s. CHHABI NATH***, which is an affirmation of the view expressed by a Division Bench of this Court in ***GUNTUR UNITED CRICKET CLUB, GUNTUR V/s. III ADDITIONAL DISTRICT COURT, GUNTUR***, this Court cannot examine the correctness of a judicial order passed by a civil court in exercise of certiorari jurisdiction. As the petitioner does not even seek such an exercise and his challenge is only to the consequential letter dated 30.06.2014, this Court need not belabor this point any further.

Though the learned counsel would contend that the impugned letter does not partake of a judicial character and must be treated as an independent executive action, this Court is not persuaded to agree. When the impugned communication was a direct consequence of the judicial order and is inextricably linked therewith, it cannot be stated to be an independent action. Further, as the learned Magistrate was only giving effect to the judicial order, it cannot be termed to be an executive action.

In that view of the matter and in the light of the law laid down by the Supreme Court in ***P.CHITRANJAN MENON***⁵ and ***ROSHAN LAL***⁶, this writ petition would not lie against the consequential letter dated 30.06.2014 so long as the judicial order dated 27.06.2014, which was the basis thereof, remains alive and in operation.

The Writ Petition is therefore not maintainable and is accordingly dismissed as such. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

29th DECEMBER, 2015

PGS