

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION N. NO.93/2016
IN
CONTEMPT PETITION NO.13/2016 (D)
IN
WRIT PETITION NO.1356/2014 (D)

Sacchidanand Laxminarayan Malani

...Versus...

Shri Anand Kulkarni IAS, Additional Chief Secretary, Public Works Department,
Mantralaya, Mumbai – 400032 and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Anjan De, Advocate for applicant
Ms Tajwar Khan, AGP for respondents

CORAM : SMT. VASANTI A NAIK AND
KUM. INDIRA JAIN, JJ.
DATE : 22.09.2016

By this civil application, the applicant seeks a modification of the order, dated 27.6.2016 by which this Court has disposed of the contempt petition after holding that the contempt has been purged and that the order was complied with.

The applicant had filed Writ Petition No.1356/2014 seeking a declaration that the petitioner was entitled to registration as contractor in Category 1-A from 31.10.2013. The petitioner had sought a direction against the respondent – Executive Engineer, Public Works Division to renew the registration certificate w.e.f. 16.2.2013 and grant Category 1-A to the petitioner. The petitioner has also sought a direction for

issuance of registration certificate for a period of five years. This Court had after hearing the parties by the order, dated 10.2.2015, partly allowed the writ petition. This Court held as under :-

“In this situation, we direct the respondents to take a suitable decision on the application of the petitioner for renewal of registration, which is pending since October, 2014, within a period of four weeks from today. If necessary, an opportunity of hearing shall also be extended to the petitioner. While considering the said request for renewal, the fact that the petitioner was earlier registered as Class I Contractor shall also be taken into account and his request, if any, for upgrading him or for restoration of said category shall also be evaluated. While evaluating such request for restoration of status of Class 1A Contractor, the impugned orders dt. 31.10.2013 shall not come in the way of respondents. Needless to mention that the said order dt. 31.10.2013 by itself shall not be used to the prejudice of petitioner.”

It is apparent from the order of this Court that this Court had only directed the respondents to take a suitable decision on the application of the petitioner for renewal of registration that was pending since October, 2014 within a period of four weeks. While considering the said request, this Court directed the respondents that the fact that the petitioner was earlier registered as Class I Contractor shall also be taken into

account and the petitioner's prayer for upgrading him or for restoration of the said category shall also be evaluated. Since nothing was done in the matter by the respondents within a period of four weeks, the contempt petition was filed. On 27.6.2016, when the contempt petition was heard, the learned Assistant Government Pleader appearing for the respondents stated that during the pendency of the contempt petition, the respondents had renewed the licence of the petitioner from 31.10.2013 to 30.10.2016 as Category 1-A contractor. By accepting the statement made by the learned Assistant Government Pleader that showed that the application of the petitioner was decided and renewal was granted to him as Category 1-A contractor for a period of three years, the contempt petition was disposed of.

It is canvassed on behalf of the applicant that when the contempt petition was heard on 27.6.2016, the learned Counsel, who was holding for the learned Counsel for the petitioner, was not able to point out that by the renewal of the licence for a period of three years as Category 1-A contractor, the contempt could not have been purged. It is stated that as per the rules, whenever an application for renewal of licence is made, the renewal needs to be granted for a period of five years. It is stated that since the renewal is not granted for a period of five years as Category 1-A contractor, it is clear that the order of which the contempt is alleged, was not complied with. It is submitted that since the renewal was not granted for a period of five years, as was prayed by the petitioner in the writ petition, it would be necessary to modify the order, dated 27.6.2016, by which the

contempt petition was disposed of and it would be necessary to rehear the contempt petition for punishing the respondents for wilful disobedience of the order of which the contempt is alleged. The learned Counsel for the applicant has relied on the judgments of the Hon'ble Supreme Court, reported in **AIR 2000 SC 540** and **AIR 2005 SC 592**. It is stated that it is held in the judgment of the Hon'ble Supreme Court, reported in **AIR 2005 SC 592** that when a mistake is committed by a Court, an application for review may be necessitated by invoking the doctrine of *actus curiae neminem gravabit*. It is stated that the word sufficient reason in Order 47, Rule 1 of the Code of Civil Procedure is wide enough to include a misconception of fact or law by a Court or even an Advocate. It is stated that the Hon'ble Supreme Court has held in the judgment, reported in **AIR 2000 SC 540** that the High Court being a Court of Record has inherent powers to correct the records. It is stated that when any apparent error is noticed by the High Court in respect of any order passed by it, it would be the duty of the Court to correct it.

We find that the application for modification of the order is frivolous and is ill-founded. We have minutely perused the order of which the contempt is alleged. In the order, dated 10.2.2015 in Writ Petition No.1356/2014, there is no direction to the respondents to grant the renewal to the petitioner either as Category 1-A contractor or for a particular number of years. Since the grievance made by the petitioner, as could be seen in paragraph no.3 of the order of which the contempt is alleged, was that though the petitioner had completed all the formalities and applied for decision no decision was taken, this Court had

directed the respondents to take a suitable decision on the application of the petitioner for renewal of licence within four weeks. Though in the prayer made in the writ petition the petitioner has sought for renewal for a period of five years and that too as a Category 1-A contractor, no such direction was issued by this Court against the respondents. This Court only directed the respondents to take a decision on the application made by the petitioner within four weeks in accordance with law. We reiterate that we do not find anything in our order, dated 10.2.2015 that directs the respondents to grant renewal of the contractor's licence in favour of the petitioner for five years. If the petitioner is aggrieved by the renewal of the contractor's licence for three years instead of five years, the petitioner has other remedies, but the petitioner cannot effectively seek action against the respondents for wilful disobedience of the order of which the contempt is alleged, as we do not find any direction in the order, dated 10.2.2015 that the renewal of the licence should be for a period of five years. If the Court had desired to direct the renewal of licence for five years, the petition would have been allowed in its entirety. However, we find that the petition was partly allowed and the respondents were directed only to consider the application of the petitioner for renewal, in accordance with law, within four weeks. The question whether the application is decided in accordance with law or not would not be a matter that could be considered in a contempt proceedings. We have already recorded herein above that the petitioner was free to take appropriate steps, but instead, the petitioner has filed an application seeking modification of the order that was passed in a

contempt petition, by which the contempt petition was disposed of. It is well settled that in the contempt proceedings, the matter is between the Court and the contemnor. It would be for the Court to consider whether the action or inaction on the part of the respondent is contemptuous or not. All that, the petitioner is required to do is, to bring the fact in respect of the deliberate non-compliance of the order of which the contempt is alleged, to the notice of the Court. We are surprised that when a contempt petition is disposed of, we are required to consider the application for modification. More than 40 minutes are spent in hearing and passing the order on this application for modification of the order by which the contempt petition was disposed of. It is sheer waste of time when several urgent and old matters are pending.

Reliance placed by the learned Counsel for the applicant on the decisions, reported in *AIR 2000 SC 540* and *AIR 2005 SC 592* is ill-founded. We do not find that there is any error apparent of law in the order of which the applicant is seeking a modification. In a contempt matter, it would be for the Court to consider whether the action on the part of the respondent is contemptuous or not and when the Court finds that the action is not contemptuous, as alleged, it would be for the Court to dispose of the contempt petition. It would not be for a party to then canvass before the Court, by applying for modification of the order by which the contempt petition is disposed of, that there is an error apparent on record in perceiving the matter and considering whether the order of which the contempt is alleged is duly complied with by the respondent or not. The judgment, reported in *AIR 2000 SC 540* is

inapplicable to the facts of this case. In the said decision, the Hon'ble Supreme Court has only recorded that if any apparent error is noticed by the High Court in respect of any order passed by it, the Court would have the duty to correct it. In the judgment, reported in *AIR 2005 SC 592* the Hon'ble Supreme Court was dealing with the powers of a Court to review its order. The said judgment would not be applicable to the case in hand, where a modification of the order, disposing of the contempt petition is sought.

In the circumstances of the case, we reject the civil application with costs of Rs.1,000/- (Rupees One Thousand Only).

JUDGE

JUDGE

Wadkar

CERTIFICATE

I certify that this order uploaded is a true and correct copy of original signed order.

Uploaded by : S.S. Wadkar, P.S.

Uploaded on : 26/09/2016