

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.10.2015 & Pronounced on : 07.4.2016

Coram:

The Hon'ble Mr.Justice V.RAMASUBRAMANIAN
and
The Hon'ble Mr.Justice T.MATHIVANAN

Contempt Petition Nos.157 and 158 of 2015

The Workmen rep. by
Kovai Periyar Mavatta Dravida Panchalai
Thozhilalar Munnetra Sangam
Through its General Secretary
Mr.S.Duraisamy, Coimbatore - 641 012. ... Petitioner

Vs.

N.Senthamarai,
D/o Nataraja Chettiyar,
New No.230, Old No.331,
Salem Main Road,
Kumarapalayam- 638 183,
Namakkal District. ... Respondent

Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, seeking to punish the respondent herein for having committed civil contempt by willful disobedience of the order in M.P.Nos.2 of 2013 in W.A.Nos.286 and 287 of 2013 pronounced on 25.06.2014.

For Petitioner .. Mr.V.Prakash, Senior Counsel for
Mr.K.Sudalai Kannu.
For Respondent .. Mr.R.Muthukumaraswamy,
Senior Counsel for Mr.A.Jenasenan

ORDER

V.RAMASUBRAMANIAN, J

These Contempt Petitions arise out of a common order passed by the Division Bench, in two Miscellaneous Petitions in two Writ Appeals.

2. We have heard Mr.V.Prakash, learned Senior Counsel for the petitioner and Mr.R.Muthukumaraswamy, learned Senior Counsel for the respondent.

3. The petitioner union raised an Industrial Dispute in I.D.No.48 of 2004. The question referred by the Government to the

Tribunal was whether the demand of the Union for revocation of the illegal cessation of operation of the factory from 2.5.2003 by the Management and the payment of back-wages with continuity of service was justified or not. By an award dated 23.7.2008, the Industrial Tribunal held that the demand of the Union was justified. As against the said award, the Management filed writ petition in W.P.No.29877 of 2008.

4. The Union raised yet another dispute in I.D.No.25 of 2004, which also resulted in an award dated 24.7.2008 in favour of the Union. Challenging the said award, the Management filed another writ petition in W.P.No.29878 of 2008.

5. Both the writ petitions were dismissed by a learned Judge by a common order dated 5.10.2012.

6. Aggrieved by the common order passed by the learned Judge, the Management came up with two writ appeals in W.A.Nos.286 and 287 of 2013. After notice was ordered in the writ appeals, the Trade Union filed one Miscellaneous Petition in each of the two writ appeals, seeking a direction to the Management to pay the members of the Union, their last drawn wages during the pendency of the writ appeals. By an order dated 25.06.2014, a Division Bench of this Court, issued a direction in those Miscellaneous Petitions directing the Management to deposit the last drawn wages payable to 138 Workmen in C.P.No.129 of 2012 and 105 Workmen in C.P.No.130 of 2012, from the date of the writ petition namely 6.12.2008 till the end of May 2014. The deposit was directed to be made within six weeks. Paragraph 18 of the order of this Court dated 25.06.2014 reads as follows:-

¹⁸ In the result, these Miscellaneous
<https://hcservices.ecourts.gov.in/hcservices/>
 Petitions are disposed of with a direction to

the respondent/ Management to deposit the last drawn wages payable to 138 workmen/petitioners in C.P.No.129/2012 and 105 workmen/petitioners in C.P.No.130/2012 on the file of the Labour Court, Salem, from the date of the writ petition i.e., 6.12.2008 till the end of May 2014, to the credit of I.D.Nos.48/2004 and 25/2004 on the file of the Industrial Tribunal, Chennai within a period of six weeks from the date of receipt of a copy of this order and on such deposit, the Industrial Tribunal Chennai shall permit the petitioners/workmen to withdraw 50% of the last drawn wages payable to them and the rest of the amount shall be deposited in a Nationalised Bank in interest bearing recurring deposits and it shall continue to remain till the disposal of the writ appeals and the Management shall pay last drawn wages to such of the workmen, who have not reached the age of retirement and not terminated or suspended and not dismissed, from June 2014 every month on or before 10th of every succeeding month and the said payment is also subject to the result of the writ appeals."

7. It appears that the Management filed applications for a review of the order passed in the Miscellaneous Petitions. The Review Applications were dismissed on 22.8.2014. The Management filed Special Leave Petitions in SLP (Civil) Nos.27613 and 27614 of 2014. But both of them were dismissed by the Supreme Court by an order dated 13.10.2014.

8. However, the interim orders dated 25.06.2014 were not complied with by the Management, forcing the Union to come up with the above Contempt Petitions.

9. On 19.3.2015, statutory notice was ordered in the Contempt Petitions. But notice could not be served on the
<https://hcservices.ecourts.gov.in/hcservices/>

respondent. Thereafter, the Trade Union filed a Sub Application, pointing out that the Management has shifted to another place. Therefore, the Sub Application was ordered and the cause title amended. Thereafter, fresh statutory notice was ordered on 12.6.2015. It is only thereafter that the respondent appeared through counsel and filed a reply affidavit.

10. In the reply affidavit originally filed on 17.8.2015, the respondent has contended (i) that despite their valid objections, the Miscellaneous Petitions for payment of last drawn wages was allowed; (ii) that therefore, the Management filed Review Applications but the same were dismissed; (iii) that the Special Leave Petitions filed by the Management were dismissed with liberty to the Management to approach the High Court for expeditious disposal; (iv) that from 1995, the mill was leased to third-parties, but from 26.9.2011 even third-parties were not interested; (v) that from the year 2003-04, the Management suffered financial losses continuously every year up to 2013-14; (vi) that only in the year 2008-09 they received a compensation for the land and building acquired by the Government, resulting in a profit of Rs.24,77,672/-; (vii) that due to non-payment of EPF contribution by one of the lessees, the Assistant Provident Fund Commissioner locked and sealed the mill, but the Management filed a writ petition and obtained stay; (viii) that the Recovery Officer of ESI Corporation has also passed an order of attachment in respect of the office and factory building; (ix) that on and from 20.9.2011, electricity supply to the mill has been disconnected due to non-payment of charges by the lessee; (x) that the workmen have already filed claim petitions and hence during the pendency of the same they cannot seek last drawn

wages; and (xi) that the Management is willing for an early hearing of the appeals.

11. In response to the averments contained in the reply affidavit of the Contemnor, the petitioner filed a rejoinder affidavit. In the rejoinder it is stated that the plea of inability to pay and comply with the order of this order, is a bogey and that the Management of the respondent mill is running several educational institutions. The list of educational institutions run by the same Management are furnished in the rejoinder as follows:-

- (1) J.K.K.Nattraja Dental College and Hospital
- (2) J.K.K. Nattraja College of Pharmacy
- (3) J.K.K. Nattraja College of Engineering and Technology
- (4) J.K.K. Nattraja College of Arts and Science
- (5) J.K.K. Nattraja College of Nursing and Research
- (6) J.K.K. Nattraja Matric Higher Secondary School
- (7) Nattraja Vidhyalaya (Play School)
- (8) J.K.K. Rangammal Girls Higher Secondary School
- (9) J.K.K. Rangammal Elementary School
- (10) Senthuraja Oral Cancer Hospital and Research Center
- (11) J.K.K. Nattraja General Hospital
- (12) J.K.K. Nattraja Dental Hospital

12. However, the respondent filed a reply to the aforesaid rejoinder contending that she has nothing to do with the educational institutions and that the educational institutions are run by a public charitable trust. It is further claimed in the second reply affidavit that some of the workmen are gainfully

employed dis-entitling them to last drawn wages.

13. From the original reply affidavit as well as the reply to the rejoinder filed by the respondent, it is clear that the respondent has not complied with the orders passed by this Court. Therefore, there is no denial of the fact that there is disobedience, irrespective of whether such disobedience is willful or not.

14. Once it is found that even admittedly there is disobedience, the next question that falls for consideration is as to whether the disobedience is willful or not. The answer to this question depends upon the explanation offered by the respondent for the disobedience.

15. Three types of explanations are offered by the respondent, for non-compliance with the order passed by this Court. They are (i) that the workmen have already filed claim petitions in C.P.Nos.129 and 130 of 2012 for recovery of the amounts due and hence an adjudication should first take place; (ii) that many of the workmen are gainfully employed; and (iii) that the respondent is unable to pay money.

16. Out of the above explanations, the first two do not merit acceptance. The fact that the workmen have already filed claim petitions thereby initiating the process of recovery, was already taken note of by this Court in the order dated 25.6.2014. We have extracted para 18 of the order dated 25.06.2014 in para 6 above. Therefore, the Management, after having suffered an order, on the very same objections, cannot now raise it in the Contempt Proceedings. If we accept the first explanation offered by the Management, we will be reviewing the order dated 25.06.2014. This is not possible in Contempt proceedings, especially when a Review filed by the Management had already been dismissed on 22.8.2014

and the Special Leave Petitions arising therefrom have also been dismissed by the Supreme Court.

17. The second explanation offered by the respondent is that some of the workmen are gainfully employed. But this is a contention which the Management ought to have raised in their counter to the applications under Section 17-B. The provisions of Section 17-B mandate the Court to take into account the question as to whether the workmen are gainfully employed elsewhere or not. If the Management had not raised it in the applications under Section 17-B or if they have raised it and still suffered an order under Section 17-B, the Management cannot set up such a defence after the disposal of the applications under Section 17-B. Therefore, the second contention also does not merit acceptance.

18. The third contention is that the respondent is unable to pay the amounts. This contention cannot be accepted for two reasons. An inability to pay may not be to the full extent of the liability. A person can set up the defence of inability to pay only if he had taken some efforts to make payment and had in fact made some payments. The respondent has not demonstrated before us that she took any effort to make payment. The respondent has also not paid a single penny towards compliance with the order passed by this Court. A person who does not make any effort to comply with the order and a person who does not make even a part payment with a view to demonstrate his or her bona fides, cannot raise the plea of inability to pay.

19. The business establishments run by the respondent are stated to have suffered financial losses. But the educational establishments appear to be spinning money and doing business.

The respondent is none else than the daughter of one J.K.K. Nattrajan Chettiar. About 12 institutions whose names we have listed above are run by a trust managed and administered by the family members. J.K.K. Nattrajan Chettiar, the father of the respondent was once upon a time a Director of the respondent mill, as seen from the encumbrance certificate relating to one of the properties of the mill produced by the petitioners. Therefore, we do not believe that the respondent is unable to pay the amount as ordered by this Court.

20. In view of the above, we are of the considered opinion that the respondent is guilty of willful disobedience of the order passed by this Court. However, in view of the fact that the respondent is a lady and she has also tendered apology, we do not wish to impose any punishment on her. But, there will also be a charge on all the properties standing in her name or in the name of the Mill, namely Kandasamy Spinning Mills Private Limited, to the extent of the dues payable to the workers. The charge will be subject to any other pre-existing charge.

gr/kpl

SD/-
JOINT REGISTRAR(os)

//Certified to be true copy//

Dated at Madras this the day of 2016.

COURT OFFICER(O.S.)

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

CO/20/5/2016

<https://hcservices.ecourts.gov.in/hcservices/>

- 1) One CC to M/s.A.Jenasenan, Advocate, SR.4589/2016.
- 2) One CC to M/s.K.Sudalaikannu, Advocate, SR.4608/2016.