

In the High Court of Judicature at Madras

(Orders reserved on 22.09.2016)

Dated : 21.10.2016

Coram

The Honourable Mr. Justice R. SUBBIAH

Contempt Petition No.1501 of 2016

Dr. Joseph Varghese Petitioner

..vs..

1. S. Murugaia,
Inspector General of Registration,
O/o. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 028.

2. R. Ravindranath,
District Registrar,
O/o. The Registrar of Societies,
Vellore Region, Vellore Fort,
Vellore -632 004.

3. Dr. C. Deepak,
Indian Orthodontic Society,
Rep. By its Secretary,
Sree Balaji Dental College,
Velachery Road, Narayanapuram,
Pallikaranai, Chennai-600 100.

4. Dr. K. Gangadhara Prasad,
President,
Indian Orthodontic Society,
Sree Balaji Dental College,
Velachery Road,
Narayanapuram,
Pallikaranai, Chennai-600 100.

5.Dr.C.Deepak,
Secretary,
Indian Orthodontic Society,
Sree Balaji Dental College,
Velachery Road,
Narayanapuram,
Palikaranai, Chennai-600 100.

6.Dr.K.Balaji,
Treasurer,
Indian Orthodontic Society,
Sree Balaji Dental College,
Velachery Road,
Narayanapuram,
Pallikaranai, Chennai-600 100. ... Respondents

Contempt Petition has been filed under Section 11
of Contempt of Court Act, to punish the respondents for
having violated the orders of this Court dated
12.04.2016 passed in W.P.No.13474 of 2016.

For Petitioner :Mr.S.Haja Mohindeen Gisthi

For Respondents :Mr.R.Rajeswaran, Spl PP (For R1 & R2)
Mr.V.Gautham (For R3 & R5)
Mr.V.Anil Kumar (for R6)
Mr.V.T.Gopalan, Senior Counsel
for M/s.B.Saraswati (for R4)

ORDER

This Contempt Petition has been filed by the
petitioner seeking to punish the respondents for willful
disobedience of the orders passed by this Court in

2.In the affidavit filed in support of this petition, it has been averred by the petitioner as follows:-

2-1.The petitioner is a Member of the Indian Orthodontic Society (in short 'IOS') from the year 1988 and he was also an Executive Committee Member in 1999-2000, 2005-2006, 2009-2010, 2011-2012 and Ex Officio EC Member (IBO Chairman) in 2004-2005. He was also elected as President-Elect in the Election conducted on 01.12.2012 for the year 2012-2013 and continued to be President for the year 2013-2014 (from 24.11.2013 till 23.11.2014) and Immediate past President (EC Member) for the year 2014-2015.

2-2.The IOS was established, *inter alia*, to popularize and promote the study of Orthodontics and to educate the Indian public about its importance. The IOS has remained after 2009 without much activity and hence, the statutory filings were not being done. As a result, the District Registrar, Vellore passed an order of cancellation of registration on 14.12.2010 and the IOS was struck off from the register of the Registrar of Societies and dissolved as per G.O.No.10 of 2011.

Thereafter, an identical IOS was formed as per the Karnataka Societies Registration Act, with registered officer at Davangere, Karnataka. Even that Society also, after effective functioning till 2015, decided to close down and the Registrar of Societies, Danvanger also passed an order to that effect. As a result, there is no registered society in the name and style of Indian Orthodontic Society as on date, which is evident from the Gazette publications effecting closure and thus, there can be no process or proceedings in respect of the said Society.

2-3. While so, some persons including the respondents herein unlawfully impersonated as Officer Bearers of the said Society and they are conducting elections and executive committee meetings as if the Society is in force, which action is clearly unlawful and against law. Though the Society had been dissolved as early as on 02.12.2015, the Annual General meeting was conducted on 12.12.2015 and the Vice President as well as 25 Executive Members were elected, which is not valid under law as the meeting was held after the Society had become defunct. It was further resolved in that meeting to revive the registration of the IOS.

However, the fact remains that the IOS continued to be defunct. One such EC Meeting was also held on 05.03.2016 at Amritsar under the chairmanship of the so called President and Secretary, the respondents 4 & 5 herein respectively, and it was decided therein to debar the petitioner from any activity or positions of the Society. The Society itself having become defunct, the meeting held on 05.03.2016 is illegal and whatever decisions taken therein are null and void ab initio, much less a decision to debar the petitioner for a period of one year is unsustainable in law. When the Society itself has been dissolved, the assets and liabilities of the Society belongs to all the then members and as such, no individual or group of individuals can have an authority in managing the assets or liabilities. While so, the respondents, have made huge budgetary proposals for over one crore rupees, especially when the budget for the previous years was merely 40 lakh rupees, which clearly shows that the impersonating persons are planning to siphon off the assets and increase the liabilities of the Society for their personal gains.

2-4.Hence, the petitioner has sent representations dated 16.03.2016 and 30.03.2016 to the respondents 1 & 2, who are the statutory authorities, to act as per the Societies Registration Act. Since no action was taken by the respondents 1 & 2, the petitioner had filed a writ petition in W.P.No.13474 of 2016 before this Court seeking for issuance of a writ of mandamus to direct the respondents 1 & 2 to declare and to pass orders annulling all the meetings of the IOS conducted subsequent to the dissolution of the Society as published in the Government Gazettes of Tamil Nadu and Karnataka dated 16.3.2011 and 02.12.2015 respectively and also to pass orders for not conducting any future meeting in the name of the IOS. Along with the said writ petition, the petitioner has also filed Miscellaneous Petition in W.M.P.No.11832 to 11834 of 2016 seeking interim directions and injunction. When the said writ petition came up on 12. 4.2016, while ordering notice to the respondents, this Court has granted an interim order of Status-quo as on 12.04.2016, to be maintained by the parties, in W.M.P.No.11833/2016. Thereafter, the matter was listed on 20.04.2016 and on that date, the learned Special Government Pleader,

having already taken notice on 12.04.2016, the other respondents having been duly served and having chosen not to enter appearance through counsel, their names were printed in the cause list. On behalf of the 5th respondent alone, notice was taken by an Advocate and the matter was adjourned to 25.04.2016 for filing his counter and finally directed to be listed on 27.04.2016.

2-5. While so, despite the order of this Court dated 12.04.2016, directing status quo to be maintained by the parties, the respondents 4 to 6 have issued a communication on 18.04.2016 in respect of the III Executive Committee Meeting of the Society. The said act of the respondents in convening an Executive Committee Meeting, despite the Society having been dissolved much before and especially when this Court had issued a direction to maintain Status quo, and their attempts to re-register the Society, clearly amounts to willful disobedience of the order of this Court. The respondents 1 & 2 are allowing the other respondents to carry on with their further activities as Office bearers of the Society. Hence, , the petitioner issued a contempt notice to all the respondents calling upon them to desist from taking any further action. The 4th

respondent sent a reply stating that the order passed by this court only pertained to the prayer made in W.M.P.No.11833 of 2016 and there was an order only to maintain status quo by the parties and there was no order by this Court in respect of other W.M.Ps seeking a direction to restrain respondents 3, 4 & 5 from conducting any executive committee meeting. According to the petitioner, the action of the respondents clearly amounts to non-compliance of the directions issued by this court. Hence, the petitioner has filed the present contempt petition.

3. When the matter was taken up for consideration, the learned counsel appearing for the petitioner would submit that this Court has granted an interim order of status quo on 12.04.2016. Before passing the said interim order, the private respondents herein in the meeting held on 05.3.2016 at Amritsar decided to debar the petitioner from any activity or positions of the Society. In fact, the Society itself had become defunct and as such, the meeting held on 05.03.2016 is illegal. Further, even after passing the interim order of status quo on 12.04.2015, which was also duly communicated to the respondents, they had issued a communication dated

18.04.2016 in respect of III Executive Committee Meeting of the Society. The III Executive Committee Meeting was also held on 29.05.2016, in which steps were taken to revive the Society. When the respondents are duty to bound to maintain the order of status quo, any action taken subsequent thereto is clear violation of the order passed by this Court. The learned counsel for the petitioner has also submitted that the order of status quo was interpreted by the respondents according to their whims and fancies and they have violated the order of this Court. In this regard, the learned counsel for the petitioner has made a detailed argument by inviting the attention of this Court to various communication sent by the respondents.

4. But, the learned Senior Counsel appearing for the 4th respondent, by drawing the attention of this Court to the prayer made in the writ petition as well as in each of the Miscellaneous Petitions, W.M.P.Nos.11832 to 11834 of 2016, submitted that this court has granted an interim order of Status Quo in W.M.P.No.11833 of 2016. The prayer made in W.M.P.No.11833 of 2016 is for an interim direction to respondents 1 and 2 not to give effect to the AGM and elections conducted on 12.12.2015

and the consequent EC meetings conducted on 13.12.2015 and 05.03.2016 by respondents 3, 4 & 5. In fact, subsequently, the respondents have also sought for a clarification from this Court on 02.06.2016 to the order of this Court dated 12.04.2015 in W.M.P.No.11833 of 2016 and this Court by order dated 02.06.2016 has clarified the order dated 12.04.2017 as follows_

"Interim order of status quo is clarified and it operates insofar as debarment of the petitioner alone."

The phraseology employed in the clarification order clearly indicates that the whole order dated 12.4.2016 would relate to debarment of the petitioner alone. The said clarification cannot be held to be prospective i.e, only from the date of such clarification. Hence, the present contempt petition is yet another attempt of the petitioner to browbeat the respondents. Thus, the learned senior counsel for the 4th respondent sought for dismissal of the contempt petition.

5.The learned counsel for the 5th respondent has also, by filing a detailed counter, submitted that absolutely there is no intention on the part of the 5th

respondent to commit any contempt of the order of this Court dated 12.04.2015. It is also submitted that the status of the 3rd respondent-IOS is still active and IOS has not been struck off from the Register of the Registrar of Societies. Hence, the Society is mandatorily required to conduct election, as such the meeting held by the Society is valid in the eyes of law. In fact, the respondents sought for clarification of the order from this Court, which would show that the respondents have no intention to commit any contempt and they are having high respect for the order of this Court. Thus, the learned counsel for the 5th respondent sought for dismissal of the contempt petition.

6.Keeping in view the submissions made on either side, I have carefully gone through the materials available on record.

7.It is the main submission of the learned counsel for the petitioner that in spite of the order passed by this Court on 12.04.2015 granting *status quo* to be maintained by the parties, the respondents continued to conduct the meeting of the Society, which has become defunct. Whether the society is defunct or not is a

subject matter in the main writ petition; on the other hand, the question that has to be decided in this contempt petition is that as to whether the respondents have violated the order of this Court or not.

8.The petitioner, along with the writ petition, has filed three Miscellaneous Petitions in W.M.P.No.11832 to 11834 of 2016. The prayers in the said Miscellaneous Petitions are as follows_

a)Interim Injunction restraining respondents 3, 4 & 5 from conducting any further executive meeting in the name of IOS;

b)interim direction to respondents 1 and 2 not to give effect to the AGM and elections conducted on 12.12.2015 and the consequent EC meetings conducted on 13.12.2015 and 05.03.2016 by respondents 3, 4 & 5;

c)interim direction to the 2nd respondent to regulate and look into the affairs of the Indian Orthodontic Society and manage its accounts and appoint a Retired Judge as Receiver and Administrator till the disposal of

the writ petition.

The prayer in W.M.P.No.11833 of 2016 is for interim direction to respondents 1 and 2 not to give effect to the AGM and elections conducted on 12.12.2015 and the consequent EC meetings conducted on 13.12.2015 and 05.03.2016 by respondents 3, 4 & 5. The said prayer is only as against the respondents 1 & 2. Similarly, the prayer in W.M.P.No.11835 of 2016 is also against the 2nd respondent only. This Court by order dated 12.04.2016 has granted interim order of status quo to be maintained by the parties as on 12.04.2016.

9.In fact, the learned Special Government Pleader has also filed a counter and submitted that the Society has not filed the annual returns for more than three consecutive years and notice dated 14.12.2010 under Section 44(3) of the Act was published in the Tamil Nadu Government Gazette on 16.03.2011. But, the notice under Section 44(4) of the Act has not been published in the Government Gazette. The Society shall be deemed to be dissolved and shall not function, only after publication of notice under Section 44(4) of the Act. Hence, no order of cancellation of the Society has been made and

as such, the Society has not been struck off from the register of the Registrar of Societies, as claimed by the petitioner. As the society has not so far been declared as defunct, the meeting held on 5.3.2016 cannot be considered as illegal. Further, the respondents 1 & 2 have also approved the AGM and elections conducted on 12.12.2015 and the consequent EC meetings conducted on 13.12.2015 and 05.03.2016 by respondents 3, 4 & 5.

10. From the contentions of the learned counsel for the petitioner, I find that this contempt petition has been filed mainly on the allegation that inspite of the interim order of status quo, the respondents 3 to 6 have conducted Executive Committee Meeting. But, this Court has no intention to restrain the respondents from conducting any meeting. Further, this Court has clarified the interim order to the effect that it operates insofar as debarment of the petitioner alone. Under such circumstances, absolutely there is no contempt of the order of this Court, on the part of the respondents. There is no merit in the present contempt petition and the same is liable to be dismissed.

Hence, the Contempt petition is dismissed.

SSV

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/04/11/2016

One CC to M/s.B.Saraswathi, Advocate, SR.13461/2016

One CC to Mr.S.Haja Mohideen Gisthi, Advocate,
SR.13487/2016

To

1.The Inspector General of Registration,
O/o.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai-600 028.

2.The District Registrar,
O/o.The Registrar of Societies,
Vellore Region, Vellore Fort,
Vellore -632 004.

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