

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 17.11.2016

CORAM

**THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE N.AUTHINATHAN**

Cont.P.No.1994 of 2016

Dr.S.Ambikakumari .. Petitioner

Versus

1. Thiru.Manoj Parida,
Secretary to Government,
Union of India, through the
Union Territory of Puducherry,
Chief Secretariat, Puducherry.

2. Thiru.Arun L.Desai,
Secretary to Government,
Department of Education,
Chief Secretariat, Puducherry.

3. Thiru.G.Sendil Kumar,
Secretary to Government,
Department of Law, Chief Secretariat,
Government of Puducherry,
Puducherry.

.. Respondent

Prayer: This Contempt Petition filed under Section 11 of the Contempt of Court Act, 70/71 to punish the respondents for having committed contempt of Court for disobeying the order, dated 06.03.2013, made in W.P.No.31800 of 2012.

For Petitioner : Mr.N.Vijayanarayanan, Sr. Counsel
Mr.K.Mahendran

For Respondents : Mr.R.Syed Mustafa
Addl. Government Pleader
(Pondicherry)

O R D E R

(Order of this Court was delivered by **S.MANIKUMAR, J.**)

Alleging disobedience of the order made in W.P.No.31800 of 2012, dated 06.03.2013, contempt petition is filed.

2. Petitioner has joined as lecturer in Dr.Ambedkar Government Law College, Puducherry, on 15.07.1992. According to the petitioner, she came to know that her date of birth in the school register, was different, from the date of birth entered in the birth extract. In the school record, the Date of Birth is 01.12.1954, whereas, in the birth extract, it is 16.08.1955. Within five years from the entry into service, she made a representation, dated 15.03.1993 to the Secretary to the Government, Education Department, Government of Puducherry, for effecting necessary corrections in service records. She also made a further representation on 22.08.1995.

3. As there was no response, she filed O.A.No.829 of 2012, before the Central Administrative Tribunal, Madras Bench, Chennai, for a direction to the respondents therein, to correct the date of birth of the petitioner, in her service register as 16.08.1955 and in all other connected service records of the petitioner, instead of 01.12.1954.

The Tribunal, after hearing the learned counsel for the

parties, vide order, dated 10.10.2012, dismissed the Original Application, stating that even after making representations, dated 15.03.1993 and 22.08.1995, the petitioner had slept over the matter and did not approach the appropriate forum for correction of her date of birth or to file a case before the Tribunal. Observing that the plea is hit by laches, the Tribunal has dismissed the Original Application.

4. Being aggrieved by the abovesaid decision, the petitioner has filed W.P.No.31800 of 2012, seeking for a Writ of Certiorarified Mandamus, to quash the order of the Tribunal, dated 10.10.2012, made in O.A.No.829 of 2012 and consequently, to direct respondents 1 and 2 to correct the date of birth of the petitioner in her Service Register as 16.08.1955 and in all other service records, instead of 01.12.1954. By filing a detailed counter affidavit, the respondents have opposed the prayer sought for. Adverting to the rival submissions and material on record, a Hon'ble Division Bench of this Court, while setting aside the order of the Tribunal made in O.A.No.829 of 2012, dated 10.10.2012, at Paragraphs 19 to 22, ordered as follows:

"19. A Government Servant, after entering into service, acquires a valuable right to continue in service till the age of retirement, as determined by the State in exercise of its powers regulating the conditions of service, unless the

services are dispensed with on other grounds specified in the relevant service rules after following the procedure prescribed therein. A Government Servant, who has declared his age at the time of his appointment, is, of course, not prevented from making request subsequently for correcting his age. It is open to a Government Servant/Civil Servant to claim correction of his date of birth if he/she is in possession of irrefutable proof relating to his/her date of birth as different from one earlier recorded. It is well within the domain of the Government to determine a time limit in the service rules, beyond which no application for correction of date of birth of a Government Servant can be changed. Till, the date of birth so recorded is altered, his/her date of birth as recorded earlier would decide the date of superannuation notwithstanding the fact that it amounts to curtailing his/her right to continue in service on the basis of his/her actual age.

20. As far as the present case is concerned, the Petitioner/ Applicant, on 15.03.1993, has addressed a communication to the Secretary to Government, Education Department, Government of Puducherry, (through proper channel) bringing it to their notice that her date of birth in her School Register is different from the Original Register and in that School Register, the date of birth is mentioned as 01.12.1954, whereas the Original date of birth is 16.08.1955 and therefore, requested for necessary corrections to be made in her Service Records. **This**

the Government, Education Department, Government of Puducherry, has not been specifically denied on the part of the Respondents to say that they have not received the said letter. Inasmuch as they have not specifically denied about the letter dated 15.03.1993 of the Applicant, it is to be construed in Law that she has, in fact, made a claim for alteration of her date of birth as per letter dated 15.03.1993 and that too, when the 2nd Respondent (Secretary to Government, Department of Education, Chief Secretariat, Puducherry) in his counter in Paragraph 12 has, in fact, tacitly admitted that the Petitioner/Applicant represented to the Authorities of the Education Department in 1993 and 1995. Even going by her own version. Again, the Petitioner/Applicant made a representation on 22.09.1995 to the Secretary to Government, Education Department, Government of Puducherry, wherein she made a specific mention about the submission of her representation on 15.03.1993 for correction of her date of birth as given in her Birth Certificate and further, she has stated that no reply has been given to her in this regard. On 30.11.2011, she also made a correction of date of birth in the Service Register by addressing a communication to the Secretary to Government, Law Department, Government of Puducherry.

21. No doubt, it is well within the powers of the Government to fix a time frame in the Service Rules for correction of a Government Servant's date of birth, after which no application for correction of date of birth can be entertained. Unless the correction of date of birth is made,

his/her date of birth as entered in the records would determine his/her date of retirement notwithstanding the fact that it amounts to curtailing his/her right to continue in service on the basis of the actual age.

22. On a careful consideration of respective contentions and in view of the uncontroverted facts that the Petitioner/Applicant after joining service on 15.07.1992 as Lecturer in Dr.Ambedkar Government Law College, Puducherry, had made first representation on 15.03.1993 to the Secretary to Government, Law Department, Government of Puducherry, i.e. well within the period of five years of entering into service (i.e., on 15.07.1992) and the subsequent reminders made on 22.08.1995 and 30.11.2011, had also not evoked any response from the Authorities concerned. Therefore, this Court, on the basis of Equity, Fair Play, Good Conscience and even as a matter of prudence, directs the Respondents to apply their mind judiciously in a dispassionate manner to the materials furnished by the Petitioner/Applicant in support of her claim in regard to her actual date of birth 16.08.1955 (instead of the date of birth 01.12.1954 entered in the Service Register) and to pass appropriate orders, within a period four weeks from the date of receipt of a copy of this order. Viewed in that perspective, the Writ Petition succeeds."

Ultimately, the Hon'ble Division Bench of this Court also granted liberty to the petitioner to furnish the respondents therein, with all the particulars, like copies of all her representations with relevant enclosures, through a fresh

representation (if situation so warrants/if she so desires), and the authorities concerned were directed to pass appropriate orders, with due regard to the observations made by the Hon'ble Division Bench, in the preceding paragraphs, within a period of four weeks, from the date of receipt of passing of the order, without fail.

5. Pursuant to the directions, stated supra, Secretary to the Government (Education), Chief Secretariat (Education), Government of Puducherry, in his Office Memo, dated 14.11.2013, disposed of the representation, dated 22.08.2013, stating that the request for alteration of Date of Birth, cannot be accepted. The Under Secretary to the Government, Higher and Technical Education, Chief Secretariat (Education), Government of Puducherry, has passed an order, dated 25.05.2016, disposing of the further representation of the petitioner, dated 09.03.2016, stating that no fresh documents/proof of evidence, in support of claim for alteration of date of birth, were produced by the writ petitioner and that the earlier representation of the petitioner has already been disposed of, on 14.11.2013.

6. Contending inter alia that the order of the Educational Department, Government of Puducherry, amounts to intentional and deliberate violation of the order of the Hon'ble Division Bench in W.P.No.31800 of 2012, dated

06.03.2013, contempt petition has been filed to punish the alleged contemnors/respondents.

7. Supporting the prayer sought for, Mr.N.Vijayanarayanan, learned Senior Counsel for the petitioner submitted that when the Hon'ble Division Bench of this Court has already recorded a categorical finding that the respondents have not controverted the submission of the petitioner that the representation of the petitioner, dated 15.03.1993, has not been acknowledged and not specifically denied and therefore, it has to be construed in law, as "acknowledged", contrary to the said finding, the Secretary to Government (Education), Government of Puducherry, has rejected the case of the petitioner, solely taking note of the representation, submitted in the year 2011 and on the grounds of delay and latches.

8. Learned Senior Counsel for the petitioner submitted that in the light of the above finding on fact, the observation of the Secretary to the Government (Education), Government of Puducherry that the writ petitioner had completed 21 years of continuous service and when she was due for retirement on superannuation on 31.12.2016 and she is estopped from raising a plea that she was born on 16.08.1955, at the fag end of her services, is nothing but an act of overlooking the finding of the Hon'ble Division,

recorded at Paragraph 20 of the order.

9. Learned Senior Counsel appearing for the petitioner also submitted that when the Hon'ble Division Bench of this Court has taken note of the birth certificate and directed the respondents therein, to apply their mind judiciously, in a dispassionate manner to the materials furnished by the petitioner, in support of her claim, as regards her actual date of birth, 16.08.1955, instead of 01.12.1954, date of birth entered in the Service Register and also granted liberty to the petitioner to furnish the respondents therein, all the particulars, like copies of all her representations, with relevant enclosures, through a fresh representation and further directed to pass appropriate orders, with due regard to the observations made by the Hon'ble Division Bench judgment, the Secretary to the Government has failed to consider the contents of the Birth Certificate issued by the Taluk Panchayat Officer, Nedumangad, submitted by the petitioner.

10. Referring to the reasons contained at Paragraph 18 of the order, dated 14.11.2013, passed by the Secretary to the Government, Education Department, Government of Puducherry that as per admission policy of the Government, if 16.08.1955, is taken as the date of birth, then the writ petitioner would not be eligible to take up

SSLC, learned Senior Counsel for the petitioner submitted that if 16.08.1955 is taken as Date of Birth, then the writ petitioner would have completed four years and ten months, at the time of admission to 1st Standard, and he also added that, in those days, children would be admitted to schools, even if they are short of few months of qualifying age of five years.

11. Inviting the attention of this Court to Paragraphs 27 to 29 in **All Bengal Excise Licencees' Association v. Raghabendra Singh** reported in 2007 (11) SCC 374, learned Senior Counsel appearing for the petitioner submitted that the action of the respondents in rejecting the case of the writ petitioner, for alteration of date of birth, amounts to contempt.

12. Inviting the attention of this Court to the averments made in the counter affidavit, denying the receipt of representations given in the years 1993 and 1995 and further contention of the respondents that the petitioner had not applied, within five years, from the date of entry into service, learned Senior Counsel for the petitioner submitted that the averments are contumacious in nature. He further submitted that the further averments, extracting the views of the learned counsel on record, who appeared for the respondents, before the Hon'ble Supreme Court, are wholly

unwarranted.

13. Defending the contempt and inviting the attention of this Court to the counter affidavit filed in W.P.No.31800 of 2012, Mr.R.Syed Mustafa, learned Additional Government Pleader (Pondicherry), submitted that submission of the representation, dated 15.03.1993, was categorically denied. He further submitted that in the said writ petition, a contention has been made by the respondents that the petitioner had merely included a handwritten representation, stating that she had submitted the same on 15.03.1993, but it was not authenticated by the educational department. He further submitted that the observation of the Hon'ble Division Bench in the order, dated 06.03.2013, is not factually correct.

14. On the observation of the Hon'ble Division, with reference to the averments made in Paragraph 12 of the counter affidavit in W.P.No.31800 of 2012, learned Additional Government Pleader (Pondicherry), submitted that there was no admission by Government of Pondicherry. He further submitted that the directions of the Tribunal made in O.A.No.829 of 2012, dated 10.10.2012, have been considered, with reference to the Government of India's guidelines, dated 19.05.1993 and in particular, Paragraph 3, which states that,

"An alteration of date of birth can be made, with the sanction of the Ministry/Department or the Comptroller and Auditor General of India, in the case Indian Audit and Accounts Department or an Administrator of a Union Territory, if-

(a) an employee makes a request in this regard within five years of his entry into Government service;

(b) it is clearly established that a genuine bona fide mistake had occurred; and

(c) the date of birth so altered would not make him ineligible to appear in any school or university or UPSC examination in which he had appeared or for entry into Government service on the date on which he first appeared at such examination or on the date of entry into Government service."

In this context, he also referred to Paragraph 18 of the Office Memorandum, dated 14.11.2013, rejecting the request of the petitioner, which reads as hereunder:

"18. And whereas, as per admission policy of the Government, if a child is admitted in Ist Std., on completion of 5 years of age, Xth Std., could be completed at 15+ years by the child, if the child was not detained in any class. On this analogy, if we take into consideration that the date of birth of Dr.S.Ambikakumari was 16.08.1955, she completes only 14+ years in 1969-70, at which, time she completed Xth Std., as per

the school Transfer certificate produced by her and affixed in the Service Book, which she actually took up the examination. The same logic is also applicable for her Pre-Degree course and the degree course of B.Sc. Therefore, she fails miserably to substantiate her claim for alteration of her date of birth."

Heard the learned counsel appearing for the parties and perused the materials available on record.

15. At Paragraph 20 of the order made in W.P.No.31800 of 2012, dated 06.03.2013, the Hon'ble Division Bench of this Court has stated that the Secretary to the Government, Education Department, Government of Puducherry, 2nd respondent herein, has not specifically denied the letter, dated 15.03.1993 of the petitioner and therefore, it has to be construed in law, that she has made a claim for alteration of her date of birth, as per letter, dated 15.03.1993. Being aggrieved by the directions issued in W.P.No.31800 of 2012, dated 06.03.2013 and the observations set out in the foregoing paragraphs, Government of Pondicherry have challenged the order, before the Hon'ble Supreme Court in SLP(Civil) No.17981 of 2013, which came to be dismissed on 02.07.2013.

the Hon'ble Division Bench of this Court in W.P.No.31800 of 2012, dated 06.03.2013, have reached finality and subsequently, the Secretary to the Government (Education), Government of Puducherry, vide Office Memorandum, dated 14.11.2013, has passed orders, rejecting the case of the petitioner, on the ground that it is hit by delay and laches. After the dismissal of SLP., on 02.07.2013, the factual finding recorded by the Hon'ble Division Bench of this Court, has not been tested by the Department, by filing any review petition.

17. Now, at the stage of contempt petition, we are of the view that it is not open to contend that there was denial of the submission and receipt of the representations, made in the years 1993 and 1995 respectively. Respondents are estopped from raising the said plea. In such view of the matter, rejection of the representation of the writ petitioner, on the ground of delay and laches, is not correct.

18. This Court, while issuing the directions, dated 06.03.2013, stated supra, has categorically stated that the respondents should apply their mind judiciously in a dispassionate manner to the materials furnished by the petitioner, with due regard to the observations made.

take note of the observations and directions of the Hon'ble Division Bench of this Court, on the aspect of submission of the representations in the year 1993 and 1995 respectively, in proper perspective.

19. In **A.P.SRTC and Others v. G.Srinivas Reddy and Others** reported in (2006) 3 SCC 674, the Hon'ble Supreme Court has considered an issue, as to how administrative authorities, have to take decisions in a matter, which requires consideration, on facts or legal questions involved. The Hon'ble Supreme Court has also explained, as to how an authority has to consider, if the Court directs him to consider, when observations or findings are recorded. How to consider a case, as explained by the Hon'ble Supreme Court, at Paragraphs 14 to 20, are as follows:

"14. We may, in this context, examine the significance and meaning of a direction given by the court to "consider" a case. When a court directs an authority to "consider", it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. There is a reason for a large number of writ petitions filed in the High Courts being disposed of with a direction to "consider" the claim/case/representation of the petitioner(s) in the writ petitions.

15. Where an order or action of the State or an authority is found to be illegal, or in contravention of the prescribed procedure, or in

breach of the rules of natural justice, or arbitrary/unreasonable/irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as that will amount to exercising appellate power, but require the authority to "consider" and decide the matter again. The power of judicial review under Article 226 concentrates and lays emphasis on the decision-making process, rather than the decision itself.

16. The High Courts also direct the authorities to "consider", in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of the power of judicial review, directs the authority to "consider" and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs "consideration" without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to "consider" afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, the High Court may not examine the

validity or tenability of the claim on merits, but require the authority to do so.

17. Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to "consider" the matter, the authority will have to consider and decide the matter in the light of its findings or observations of the court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to "consider" the matter, the authority will have to consider the matter in accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the court.

18. We may also note that sometimes the High Courts dispose of the matter merely with a direction to the authority to "consider" the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to "consider" the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of "pliable" authorities have misused the direction "to consider" issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the

authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to "consider" and dispose of the representation. When the court disposes of the petition with a direction to "consider", the authority grants the relief, taking shelter under the order of the court directing him to "consider" the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order "to consider" as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to "consider", may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction to "consider" the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption into regular service is a species of cases, where there has been a large-scale misuse of the orders "to consider".

20. Therefore, while disposing of the writ petitions with a direction to "consider", there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of

the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time-frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

20. We are of the view that the order of the Hon'ble Division Bench in W.P.No.31800 of 2012, dated 06.03.2013, ought to have been considered, in terms of the decision of the Hon'ble Supreme Court in **A.P.SRTC and Others v. G.Srinivas Reddy and Others** reported in (2006) 3 SCC 674 and that has not been done.

21. Yet another aspect to be taken note of, by this Court is that when the birth extract contains the date of birth as 16.08.1955 and when this Court has given directions to consider all the materials furnished, along with the fresh representation to be made, as rightly pointed out by the learned Senior Counsel that there is absolutely no reference to the birth extract, in the rejection order,

dated 14.11.2013.

22. Reasoning of the Secretary to the Government (Education), Government of Puducherry that the representation of the writ petitioner was considered, in terms of Paragraph 3(c) of the Government of India's guidelines, dated 19.05.1993, cannot be countenanced. As rightly pointed that in those days, children would be admitted to schools, even if they are short of few months of qualifying age of five years. In the year 1955, the petitioner was aged four years and ten months, and she was short of only two months of qualifying age.

23. In **All Bengal Excise Licencees' Association v. Raghabendra Singh** reported in 2007 (11) SCC 374, paragraphs 27 to 29 and 32(8) & (9), referred to by the learned Senior Counsel for the petitioner, are extracted hereunder,

"27. Even assuming that there was any scope for bona fide misunderstanding on the part of the respondents, once it was found that the respondent had disobeyed the specific order passed earlier by the Court, the High Court should have directed the contemnors to undo the wrong committed by them which was done in clear breach of the order of the Court by restoring the status quo ante by canceling the lottery wrongfully held by them. The learned Judge found that the respondent-contemnors had held the lottery in violation of the Court's order and the results of the said lottery should not be permitted to take effect and should be treated as unlawful and invalid for the purpose of grant of license. The learned Single Judge for the

purpose of upholding the majesty of law and the sanctity of the solemn order of the court of law which cannot be violated by the executive authority either deliberately or unwittingly should have set aside the lottery held and should not have allowed the respondents to gain a wrongful advantage thereby.

28. In our opinion, a party to the litigation cannot be allowed to take an unfair advantage by committing breach of an interim order and escape the consequences thereof. By pleading misunderstanding and thereafter retaining the said advantage gained in breach of the order of the Court and the wrong perpetrated by the respondent-contemnors in contumacious disregard of the order of the High Court should not be permitted to hold good. In our opinion, the impugned order passed by the High court is not sustainable in law and should not be allowed to operate as a precedent and the wrong perpetrated by the respondent-contemnors in utter disregard of the order of the High Court should not be permitted to hold good.

29. The High Court has committed a grievous error of law in holding that failure to understand the implication and consequences of the order passed by the High Court by highly placed government officers cannot be construed as an act of contempt. The High Court has failed to understand that the highly educated and highly placed government officials have competent legal advisors and it was not open to them to allege and contend that the respondent-contemnors did not understand the implication of the order dated 04.01.2005. In our opinion, such officers are required to be dealt with effectively to uphold

the dignity of the High Court and the efficiency of the system itself.

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32. Law on the subject

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(8) Delhi Development Authority vs. Skipper Construction Co. (P) Ltd. and Anr. (1996) 4 SCC 622,

"17. The principle that a contemnor ought not to be permitted to enjoy and/or keep the fruits of his contempt is well-settled. In Mohd. Idris v. R.J. Babuji, this Court held clearly that undergoing the punishment for contempt does not mean that the Court is not entitled to give appropriate directions for remedying and rectifying the things done in violation of its Orders. The petitioners therein had given an undertaking to the Bombay High Court. They acted in breach of it. A learned Single Judge held them guilty of contempt and imposed a sentence of one month's imprisonment. In addition thereto, the learned Single Judge made appropriate directions to remedy the breach of undertaking. It was contended before this Court that the learned Judge was not justified in giving the aforesaid directions in addition to punishing the petitioners for contempt of court. The argument was rejected holding that "the Single Judge was quite right in giving appropriate directions to close the breach (of undertaking)".

18. The above principle has been applied even in the case of violation of orders of injunction issued by Civil Courts. In Clarke v. Chadburn [1985] 1 All. E.R. 211, Sir Robert Megarry V-C observed :

I need not cite authority for the proposition that it is of high importance that orders of the court should be obeyed. Willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal. If by such disobedience the persons enjoined claim that they have validly effected some charge in the rights and liabilities of others, I cannot see why it should be said that although they are liable to penalties for contempt of court for doing what they did, nevertheless those acts were validly done. Of course, if an act is done, it is not undone merely by pointing out that it was done in breach of law. If a meeting is held in breach of an injunction, it cannot be said that the meeting has not been held. But the legal consequences of what has been done in breach of the law may plainly be very much affected by the illegality. It seems to me on principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them." 9)

Vidya Charan Shukla vs. Tamil Nadu Olympic Assn. & Anr. AIR 1991 Madras 323 (FB) "56-57.

Adverting to the facts of this case, we knew that the main relief in the suit to declare that the notice dated 26-5-1990 issued by the first and second defendants on the basis of the requisition notices convening a Special General Meeting of the Association on 15-6-1990 is illegal, null and void cannot be said to have become infructuous merely because the Court instead of granting an injunction to hold the meeting on 15-6-1990, gave a direction to consider an agenda of no-confidence

against the Executive Council and election of new President and members of the Council in a particular manner. It can still be found in the suit that the notice was illegal, null and void and as a consequence, the Court may suitably modulate the relief or permit the plaintiffs to amend the relief. Besides this the trial Court will have jurisdiction to consider the grant of a mandatory injunction even in a suit which stood disposed of if its decree is found to have been violated or frustrated. The trial Court being a Court of Record will have special jurisdiction/inherent power to pass such orders as are deemed necessary to meet the ends of justice since this power is saved for it under Sections 4 and 151 of the Code of Civil Procedure and Articles 215 and 225 of the Constitution. The instant suit which is still pending, shall give to the Court power to consider the desirability to grant a mandatory injunction, for the reason of its interim injunction having been violated, to remove the violation and until the suit is finally decided to preserve the property in dispute in Status Quo."

24. Though the Secretary to the Government

(Education), Government of Puducherry, has passed an order, rejecting the case of the petitioner for alteration of date of birth, on the grounds, stated supra, and that the petitioner has sought for an order, to punish the respondents, alleging willful and deliberate contempt, after considering the order, averments made in the counter

affidavit and the submissions advanced by the learned Additional Government Pleader (Pondicherry), this Court is not inclined to proceed against the alleged contemnors, but reiterating the views expressed by the Hon'ble Division Bench of this Court, we direct the respondents to pass a reasoned order, taking note of the above decisions and the views expressed. The petitioner is due to retire shortly, considering the same, the respondents are directed to pass appropriate orders, within a period of one week, from the date of receipt of a copy of this order.

25. Mr.R.Syed Mustafa, learned Additional Government Pleader (Pondicherry), is directed to communicate the orders of this Court.

26. With the above directions, the Contempt Petition is closed. No costs.

Skm

SD/
सत्यमेव जयते JOINT REGISTRAR(OS)

//Certified to be true copy//

Dated at Madras this the day of 2016.

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

CO/21/11/2016

One CC to Government Pleader, SR.14900/2016

Two CC's to Mr.K.Mahendran, Advocate, SR.14928/2016

To

1. The Secretary to Government,
Union Territory of Puducherry,
Union of India,
Chief Secretariat, Puducherry.
2. The Secretary to Government,
Department of Education,
Chief Secretariat, Puducherry.
3. The Secretary to Government,
Department of Law, Chief Secretariat,
Government of Puducherry,
Puducherry.



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