IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.288 OF 2015

Sanjay Subhash Sangle ...Petitioner

WITH
CONTEMPT PETITION NO.239 OF 2015

Alka Tukaram Pandav ...Petitioner

WITH
CONTEMPT PETITION NO.248 OF 2015

Mangala Bajirao Potre ...Petitioner

WITH
CONTEMPT PETITION NO.249 OF 2015

Shaila Shantaram Chavan ...Petitioner

WITH
CONTEMPT PETITION NO.259 OF 2015

Rajashree Rajendra Palkar ...Petitioner

WITH
CONTEMPT PETITION NO.290 OF 2015

Manjula Kashinath Jamdade ...Petitioner

WITH
CONTEMPT PETITION NO.292 OF 2015

Arun Tanaji Thanage ...Petitioner

WITH
CONTEMPT PETITION NO.296 OF 2015

Amol Kisan Sangle ...Petitioner

vs.
The Education Officer (Primary),
Zilla Parishad, Alibag and Others ...Respondents

Mr. Chandrakant Bidkar, for the Petitioners
Mr. P.P. More, AGP for the Respondent No. 2-State.
Dr. Birendra Saraf a/w. Ms. Melanix D'Souza i/b. A.S. Dayal & Associates, for Respondent Nos. 3 and 4.

CORAM : SHANTANU S. KEMKAR &
M. S. SONAK, JJ.

DATE : **JULY 13, 2017**

P.C.:

. Alleging non compliance of the order passed by the Division Bench of this Court on 12th March, 2012 in Writ Petition No. 1265 of 2012 decided with connected Writ Petitions, the Petitioners have filed these Contempt Petitions.

2. Following was the order passed by the Division Bench of this Court on 12th March, 2012 in Writ Petition No. 1265 of 2012 with other connected matters:

> *"1. The grievance of the petitioners in these matters is that although they are working as peons i.e. the non-teaching staff in the school of Respondent Nos.1 and 2, they have not been paid their dues/salary in accordance with the provisions of the MEPS Act. It is not in dispute that the respondent school is a recognised unaided school. Nevertheless, by virtue of section 3(1) of the MEPS Act, the provisions of the said Act are applicable to the respondent school. To get over this position, the respondent school through Counsel contends that the petitioners in each of these petitions were appointed on*

contract basis to do job work and not as employees of the school as such. It is however not in dispute that the petitioners were employed to discharge the work of peon. The fact whether the petitioners would be covered by the definition of "employee" u/s 2(7) of the MEPS Act or otherwise is a matter which will have to be addressed in first place and if so, the consequential question to be considered would be whether the petitioners have been paid their dues in accordance with the provisions of MEPS Act. Both these issues can be enquired into by the Education Officer of the area, Respondent No.3 herein.

2. In the circumstances, we dispose off these petitions on the following terms:
i) the Education Officer i.e. the Respondent No.3 shall enquire into the two questions referred to above on the basis of representation made by the petitioners after giving opportunity to all concerned.
ii) All questions in that behalf are left open to be decided by respondent No.3.
iii) The enquiry shall be conducted by the Education Officer as expeditiously as possible and in any case to be completed within six weeks from today.
iv) The petitioners as well as the representative of the respondent school shall participate in the said proceedings and extend full cooperation for early disposal thereafter.
v) They shall appear in the Office of the Respondent No.3 Education Officer on 19.3.2012 at 11 am on which date, the Education Officer may call upon the parties to submit all the relevant material in support of their respective stand and assign suitable date when the parties can be heard so as to finally conclude the enquiry within the specified time.
3. The Petitions are disposed off on the above terms."

3. Thereafter various Contempt Petitions including Contempt Petition No. 70 of 2013 were filed by Petitioners alleging non compliance of the aforesaid order. Those Petitions were disposed of by a Division Bench of this Court on 22nd April, 2013 by observing thus :

1. The first matter was on board. The learned counsel appearing on behalf of the petitioners states that there are seven other matters which are identical. With the consent of the parties the same are also placed on board and heard finally.

2. The petitioners have alleged contempt of an order dated 12th March, 2012, the operative part whereof reads as under :-

> "2. In the circumstances, we dispose off these petitions on the following terms:
>
> i) The Education Officer i.e. the Respondent No.3 shall enquire into the two questions referred to above on the basis of representation made by the petitioners after giving opportunity to all concerned.
>
> ii) All questions in that behalf are left open to be decided by respondent No.3.
>
> iii) The enquiry shall be conducted by the Education Officer as expeditiously as possible and in any case to be completed within six weeks from today.
>
> iv) The petitioners as well as the representative of the respondent school shall participate in the said proceedings and extend full cooperation for early disposal thereafter.
>
> v) They shall appear in the Office of the Respondent No.3 Education Officer on 19.3.2012 at 11 am on which date, the Education Officer may call upon the parties to submit all the relevant material in support of their respective stand and assign suitable date when the parties can be heard so as to finally conclude the enquiry within the specified time.
>
> 3. The Petitions are disposed of on the above terms."

3. Mr. Sathe, the learned senior counsel appearing on behalf of respondent Nos.3 and 4 relied upon separate letters all dated 25th May, 2012, addressed by the advocate of the petitioners who had filed the Writ Petitions in which the said order, of which contempt is alleged, was passed. The same advocate appears before us for the petitioners in these Contempt Petitions. The petitioners, under cover of the said letter dated 25th May, 2012, forwarded copies of the minutes of the

meeting held on 10th May, 2012 between the petitioners and the Management and receipts of Rs.3,00,000/- issued by each of the petitioners. Mr. Sathe also relied upon the order/communication of the Education Officer dated 26th May, 2012, addressed to this Court recording that a compromise was arrived at between the petitioners and the Management. The fact that a compromise was arrived at is, therefore, not disputed. The petitioners, however, contended that the said compromise was brought about by coercion and undue influence on the part of the Management as well as by the Education Officer.

4. The said letter dated 25th May, 2012, addressed by the petitioners advocate as well as the enclosures thereto and the fact of receipt of the amount of Rs.3,00,000/- is, however, not mentioned in the contempt petitions. These facts ought to have been mentioned.

5. We do not intend expressing any view on the correctness of the petitioners said contention regarding the validity of the compromise which is taken only during the course of arguments. It is not raised in the petition.

6. Even assuming that the order/communication of the Education Officer is wrong for any reason, including on account of the alleged coercion or undue influence, the petitioners ought to adopt proceedings for having the same set aside. There is no warrant for taking any action for contempt, at least at this stage. In the event of there being a finding to the effect that the order was passed due to coercion or undue influence, the petitioners are at liberty to file a fresh petition for contempt.
7. The Contempt Petitions are, accordingly, disposed of."

4. The present Contempt Petitions have been filed by the Petitioners once again alleging non compliance of the order dated 12th March, 2012 passed by the Division Bench of this Court in Writ Petition No. 1265 of 2012 with other connected matters:

5. Having considered the submissions made by the learned counsel for the parties and having gone through the order dated 22nd April, 2013 passed in Contempt Petitions more particularly Para 5 and 6 of the said order, we are of the view that the present Contempt Petitions are wholly misconceived. It is not in dispute that there is no finding given by Competent Authority holding that the order of the Education Officer recording compromise entered into by the Petitioners is on the basis of "alleged coercion or undue influence".

6. In the circumstances, in view of the observation contained in paragraph Nos. 5 and 6 of the aforesaid order dated 22nd April, 2013 in our considered view, it is not open for the Petitioners to file a fresh Contempt Petition without there being any findings of any Competent Authority as mentioned in paragraph 6 of the order.

7. In the circumstances, all the Contempt Petitions are dismissed.

(M. S. SONAK, J.) (SHANTANU S. KEMKAR, J.)