

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CONTEMPT PETITION NO.4 OF 2015**

Vikas Baburao Patil - Shirgaonkar ... Petitioner
vs.
State of Maharashtra ... Respondents
and Ors.

.....

Mr. Abhay Anturkar i/b. Mr. Rushikesh C. Barge for Petitioner.
Mr. S. K. Shinde, PP a/w. Dr. F.R. Shaikh, APP for State.

.....

**CORAM : A.S. OKA &
A.K. MENON, JJ.
DATE : 5th APRIL, 2017**

P.C.

1. Heard learned Counsel appearing for the petitioner. By this petition, the petitioner is seeking action against the Hon'ble Chief Minister who is the Cabinet Minister for the Department of Law and Judiciary, Hon'ble Minister of State for the Department of Law and Judiciary, the learned Principal Secretary for the Law and Judiciary Department and Shri Ashwin Mudgal, District Collector of Satara.

2. The allegation of contempt is founded on the observations made in a decision of the Division Bench at Aurangabad dated 5th May, 2015 in Writ Petition No. 3258 of 2015 and in particular paragraphs 34 and 35 of the said judgment. The relevant part of paragraphs 34 and 35 reads thus :

34.However, at the concluding stage of the hearing, in reply to a query, as to whether the Law Officers, who would be appearing before the Selection Panel, would be issued with the order of continuation with a view to enable them to complete their existing tenure or would be appointed afresh, it was replied that the existing Law Officers, pursuant to the selection process, if selected, shall be appointed afresh. The communication dated 19.04.2015 signed by the Joint Secretary-cum-Legal Advisor is placed on record. It is, thus, clear that engagement of the existing Law Officers, who do not appear before the Interview panel, although they were selected in observance of the procedure prescribed at the time of their selection and whose tenure is yet to come to an end, would be discontinued. Such of those Law Officers who would appear before the Interview Panel would be issued appointment orders afresh meaning thereby tenure of their existing engagement, although has not come to an end and is likely to come to an end in 2016 would be terminated.

35. This aspect of the matter was not disclosed to the Division Bench at Mumbai, which has resulted in drawing a conclusion that the State Government does not propose to terminate engagement of Law Officers enblock. The Division Bench at Mumbai, though referred to the judgment in the matter of Shrilekha (supra) as well as in the matter of Johri Mal (supra), has not dealt with the issue in respect of observance of procedure prescribed under the Rules while terminating engagement of the existing Law Officers before completion of their tenure. Though Rule 30 has been

reproduced in the judgment, the action of the State Government in respect of discontinuance of engagement of existing Law Officers in breach of Rule 30(6) of the Law Officers Rules, has not been dealt with in the judgment. The Division Bench at Mumbai was misinformed as regards intention of the State Government to continue the engagement of existing Law Officers enblock.

..(emphasis supplied)

3. The contention of the learned Counsel appearing for the petitioner is that there is a categorical finding recorded by the Division Bench that while deciding Writ Petition No. 3015 of 2015 [Shri Vikas Baburao Patil vs. The State of Maharashtra and Ors.], the aspects which are set out in paragraph 34 of the judgment of the Division Bench at Aurangabad were not disclosed to the Division Bench at the Principal Seat at Mumbai. Secondly, there is a categorical finding that the Division Bench at Mumbai was mis-informed.

4. We may note here that in one of the earlier orders we have recorded the statement of the respondents, that they intend to move the Bench at Aurangabad for necessary clarification. On the earlier date, learned Public prosecutor stated that respondents do not desire to move the Bench at Aurangabad for clarification. He has produced for the perusal of the Court the relevant file.

5. The learned Counsel appearing for the petitioner submitted that the State Government has moved neither the concerned Bench at Principal Seat at Mumbai nor the concerned Bench at Aurangabad for seeking the necessary clarification and therefore as of today, the findings recorded in paragraph 35 have become final. If the said findings are taken correct, a clear case of committing Criminal Contempt is made out.

6. We have carefully perused the judgment and order dated 25th March, 2015 rendered by a Division Bench at Principal Seat of Mumbai. Perusal of the judgment shows that the factual submissions made by the learned Advocate General on behalf of the State Government before the Division Bench have not been reproduced in the judgment. Therefore, it is not possible for us to come to a conclusion and even a prima facie conclusion that a particular fact was not disclosed to the Division Bench at Principal Seat or that the Division Bench was mis-informed about the factual aspects.

7. We have carefully perused the judgment of the Aurangabad Bench. Paragraph 31 shows that the State relied upon the said decision dated 25th March, 2015. It was contended that the challenge to the notifications/notices dated 19th March, 2015 and 3rd February, 2015 / 13th February, 2015 has been turned down by the said judgment. In

paragraph 33, the Division Bench at Aurangabad has noted that the Division Bench at the Principal Seat did not accept the case of the petitioner therein in respect of abrupt enblock termination of services of Law Officers. In paragraph 34, the Division Bench at Aurangabad has referred to the failure of the State Government to file an affidavit in reply. The Division Bench then referred to the communication dated 19th April, 2015 signed by Joint Secretary-cum-Legal Advisor. We may note here that the said communication is issued subsequent to the decision of the Division Bench at the Principal Seat at Mumbai. The observation made in paragraph 35 which we have underlined are in the context of the discussion in paragraph 34.

8. Therefore, no case is made for initiating action for Criminal Contempt under the Contempt of Courts Act, 1971 or Article 215 of the Constitution of India. We may, however, make it clear that we have considered the findings recorded by the Bench at Aurangabad only for the limited purpose of considering the question whether a case of commission of Criminal Contempt is made out and therefore, none of the observations shall be construed as any observation made on the merits of the controversy before the Bench at Aurangabad.

9. Subject to what is said above, the petition is disposed of.

(A.K. MENON, J.)

(A.S. OKA, J.)