

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

+ CONTEMPT CASE No.150 of 2016

% 01-09-2017

Between

\$ G. Naganna, S/o. Savaranna
Occ: Sub Divisional Police Officer (under suspension)
Gudivada, Krishna District, R/o 2-2-12/B/1,
Flat No.G1, Daffodil's Apartments,
Durgabai Deshmukh Colony, Baghamberpet,
Hyderabad – 500 013.

... Petitioner

Vs.

\$ 1. Dr. Manmohan Singh, IAS, S/o. not known, Occ: Principal Secretary,
Home Department, Sate of Andhra Pradesh, Secretariat Buildings,
Hyderabad.
2. Jasthi Venkata Ramudu, DGP, S/o. Not known, Occ: Director
General
of Police, State of Andhra Pradesh, Lakadikapool, Hyderabad.

... Respondents

! Counsel for the Petitioner : Mr. T. Koteswara Rao

^Counsel for Respondents 1&2 : Advocate General

< Gist:

> Head Note:

? Cases referred:

1. (2014) 3 MLJ 1
2. (1992) 4 SCC 167

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**CONTEMPT CASE NO.150 OF 2016****JUDGMENT:**

This contempt petition stands posted before me on a reference made by a Division Bench of this Court, after the two learned Judges constituting the Division Bench found themselves unable to agree with the conclusions reached by each other. By an order dated 16-6-2017, the Division Bench has referred the following points for determination by a 3rd Judge, in terms of Clause 36 of the Letters Patent:

i) Whether the second respondent is guilty of willful and deliberate disobedience to the order dated 22-12-2015 passed by this Court in W.P.M.P.No.53654 of 2015 in W.P.No.41555 of 2015 in terms of Section 2(b) of the Contempt of Courts Act, 1971? and

ii) Whether the disposal of W.P.No.41555 of 2015 by a final order dated 24-6-2016 recording that miscellaneous petitions, pending if any, stand disposed of as infructuous would have any impact upon the interim order dated 22-12-2015 in relation to which these contempt proceedings were initiated?

2. I have heard Mr. T.Koteswara Rao, learned counsel appearing for the petitioner and the learned Advocate General for the State of Andhra Pradesh.

3. A brief background of facts may be necessary for answering the points referred to me for an opinion. They are as follows:

(i) The petitioner who was working as a Sub Divisional Police Officer was served with two orders, both dated 07-10-2014, transferring him to a different place and placing him under suspension.

(ii) The petitioner challenged the order of suspension before the A.P. Administrative Tribunal in O.A.No.6108 of 2014. While ordering notice in the application, the Tribunal granted an interim stay of the order of suspension.

(iii) When the State filed an application for vacating the interim order and the petitioner filed a contempt application alleging wilful disobedience of the order of interim stay, the Tribunal thought fit to take up the original application itself for disposal. Accordingly, by an order dated 01-10-2015, the Tribunal disposed of the said application merely with a direction to the respondents to review the suspension of the applicant and to pass appropriate orders for his reinstatement within six weeks.

(iv) Not satisfied with the said order of the Tribunal, the petitioner filed a writ petition in W.P.No.41555 of 2015 on the file of this Court, challenging merely the order of the Tribunal. But along with the writ petition, the petitioner filed a miscellaneous application seeking an interim suspension not only of the order of the Tribunal but also of the order of suspension and further seeking a direction to the respondents to reinstate him into service.

(v) While ordering notice in the writ petition, a Division Bench of this Court passed an *ex parte* interim order on 22-12-2015 to the following effect:

“Interim suspension as prayer for”.

(vi) Contending that the interim order passed on 22-12-2015 was not obeyed, the petitioner filed the above contempt petition in C.C.No.150 of 2016. The contempt petition appears to have been filed on 25-01-2016 as seen from the rubber stamp on the docket sheet.

(vii) The State came up with a petition for vacation of the interim order in W.V.M.P.No.452 of 2016. It appears that the vacate stay petition was filed on 08-02-2016.

(viii) Though an endeavour is said to have been made, to have the stay petition, the vacate stay petition as well as the contempt petition heard together, it was not successful. Therefore, the writ petition, the stay

petition and the vacate stay petition proceeded on one track and the contempt petition proceeded on a different track.

(ix) Eventually, the main writ petition itself was disposed of by a final order dated 24-6-2016, on the basis of the submission made by the learned Advocate General that the suspension of the petitioner will be revoked, on the understanding that the petitioner will participate in the enquiry.

(x) Pursuant to the disposal of the writ petition on 24-6-2016 in the manner as aforesaid, on the basis of a consensus reached between the parties, the petitioner was also reinstated on 27-6-2016.

(xi) Nevertheless, the above contempt was pursued by the petitioner on the ground that the *ex parte* interim order granted 22.12.2015 was not obeyed and the pay and allowances for the period from 22-12-2015 till the date of reinstatement, namely, 27-6-2016 were not paid.

(xii) The above contempt petition was heard by two Hon'ble Judges, one of whom namely Sri Justice U.Durga Prasad Rao was actually a party to the *ex parte* interim order passed on 22-12-2015.

(xiii) While the Senior Judge constituting the Bench, who was not a party to the *ex parte* interim order which led to the above contempt case, held the 2nd respondent guilty of contumacious conduct, Sri Justice U.Durga Prasad Rao who was a party to the *ex parte* interim order held the respondents not guilty of contempt. In view of such divergence of opinion, the matter has been referred to me under Clause 36 of the Letters Patent, on the questions which I have extracted earlier.

4. Since specific questions have been referred to me by the Division Bench for my opinion, it is enough if I confine the discussion to the questions referred.

Question No.1:

5. The first question referred for my opinion is whether the 2nd respondent is guilty of wilful disobedience of the order dated 22.12.2015 in terms of Section 2(b) of the Contempt of Courts Act, 1971.

6. Section 2(b) of the Contempt of Courts Act, 1971 defines civil contempt to mean wilful disobedience to any judgement, decree, direction, order, writ or other process of Court or wilful breach of an undertaking given to a Court. The wilful disobedience alleged against the 2nd respondent is the failure to reinstate the petitioner into service pursuant to the interim order passed on 22.12.2015. Since the interim order cannot be seen in isolation, it is necessary to see (1) the relief prayed for in the writ petition; (2) the relief sought in the miscellaneous petition; and (3) the interim order passed on 22.12.2015.

7. As I have pointed out earlier, the relief sought in the writ petition was only to set aside the order of the Tribunal. The prayer in W.P.No.41555 of 2015 reads as follows:

“For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon’ble Court may be pleased to issue any writ, order or direction more particularly in the nature of CERTIORARI calling the records in connection with the order dated 01.10.2015 in the O.A.No.6108 of 2014 on the file of the Hon’ble Andhra Pradesh Administrative Tribunal at Hyderabad, after examining the same declare the said orders are not sustainable in law as the Hon’ble Tribunal gravely erred in disposing the OA without considering the material averments of the petitioner and also disposed the OA without giving reasons in support of their decision and by setting aside the same, allow the OA as prayed for and to pass such other order or orders as this Hon’ble Court may deems fit just and proper in the circumstances of the case.”

8. Since the only prayer made in the main writ petition is to quash the order of the Tribunal, let me see what the order of the Tribunal was. The operative portion of the order of the Tribunal reads as follows:

“Keeping in view the grave allegations against the applicant and keeping in view the fact that the impugned orders of suspension were issued on 07.10.2014, the respondents are directed to review the suspension of the applicant and pass appropriate orders for his reinstatement, within a period of six weeks from the date of receipt of a copy of this order.”

9. Therefore, even if we assume that the writ petition would have been allowed in favour of the petitioner herein, the same would have resulted only in the aforesaid order of the Tribunal being set aside and the Original Application being allowed. The allowing of the Original Application would have meant the setting aside of the order of suspension. Therefore, till the writ petition was allowed as prayed for and the order of the Tribunal set aside and the Original Application being allowed as a consequence, the right of the petitioner to seek reinstatement could not be said to have fructified in absolute terms.

10. Having seen the prayer made in the main writ petition, let me now take a look at the interim relief sought in the W.P.M.P.No.53654 of 2015 in W.P.No.41555 of 2015. The prayer made in this miscellaneous petition is as follows:

“Petition under Section 151 of C.P.C. praying that in the circumstances stated in the affidavit filed in the W.P., the High Court may be pleased to suspend the orders of the Hon’ble Andhra Pradesh Administrative Tribunal dated 01.10.2015 in the O.A.No.6108 of 2014 along with suspension orders Rc.No.384/02/2014, dated 07.10.2014 impugned in the O.A.No.6108 of 2014 with a direction to the respondents to reinstate the petitioner immediately in the post which he was holding prior to the issuance of suspension orders with all consequential benefits pending disposal of W.P.No.41555 of 2015 on the file of the High Court.”

11. As rightly pointed out by the learned Advocate General, the prayer in W.P.M.P.No.53654 of 2015 comprises of three parts, viz., (1) to

suspend the final order of the Tribunal dated 01.10.2015; (2) to suspend the order of suspension dated 07.10.2015; and (3) to direct the respondents to reinstate the petitioner “***immediately in the post which he was holding***”.

12. Despite the fact that there were three components to the interim relief sought by the petitioner, the only order passed *ex parte* on 22.12.2015 was “interim suspension as prayed for”. There was no interim direction to reinstate. In a contempt petition a person cannot be heard to contend that the respondents are obliged to understand the true spirit of the interim order by going beyond the language used in the petition itself. If an interim order gives scope for two different views or at least a scope for some degree of lack of clarity, it is not open to the Court to invoke the contempt jurisdiction.

13. As I have indicated in the timeline of events, the interim order was granted by this Court on 22.12.2015, the Contempt petition was filed on 25.01.2016 and a vacate stay petition was filed on 08.02.2016. In all fairness, the vacate stay petition should have been taken up first before deciding the contempt. No party to a proceeding can be held to ransom with *ex parte* interim orders, especially when an application for vacating the interim order was already on file.

14. As a matter of fact, clause (3) of Article 226 of the Constitution imposes an obligation upon the High Court to dispose of an application for vacation of an interim order within two weeks failing which, the interim order will stand automatically vacated. Clause (3) of Article 226 reads as follows:

“Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without –

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard,

Makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

15. Though the High Courts of Kerala, Allahabad and Gujarat have taken the view that Article 226 (3) is mandatory and I have had an occasion to hold it only as directory, in a decision reported in **Dr. T. Gnanasambanthan v. Board of Governors**¹, the principle behind Article 226 (3) has to be kept in mind while dealing with a contempt petition. To tell the respondent in a writ petition that his vacate stay petition will not be heard unless and until the contempt is purged, would tantamount to wielding a stick beyond the permissible limits.

16. The learned Advocate General rightly relied upon the decision of the Supreme Court in **State of J & K v. Mohd. Yaqoob Khan**², wherein the Supreme Court held that the High Court should have first taken up the stay matter without any threat to the respondents of being punished for contempt. The learned Judge, who held the 2nd respondent guilty of contumacious conduct, distinguished the decision in *Mohd Yaqoob Khan* on the ground that the reinstatement of the petitioner pursuant to the

¹ (2014) 3 MLJ 1

² (1992) 4 SCC 167

interim order dated 22.12.2015 would not have become either final or irreversible. But I do not think that *Yaqoob Khan* allows of such a distinction.

17. In fact, if an order of suspension passed by an employer is suspended by a Court by way of an *ex parte* interim order, the enforcement of the said *ex parte* interim order would actually become irreversible. This is for the reason that if the employee is reinstated pursuant to the interim order, he can at the most be placed again under suspension, after the interim order is vacated or the writ petition is dismissed. But the salary paid to the employee during the interregnum, cannot be recovered, as the employee would have worked and earned his salary. Therefore, in a way, the enforcement of an *ex parte* interim stay/suspension of an order of suspension, is prone to result in irreversible consequences and the learned Senior Judge may not be right in holding that the decision in *Yaqoob Khan* may hold good only in cases where they become irreversible.

18. Another important aspect is that if an interim order had attained finality then the question of hearing the vacate stay petition does not arise. Therefore, the distinction sought to be made to the decision in *Yaqoob Khan* cannot be accepted. Hence, on the first question referred to me for consideration, I am of the considered view that the 2nd respondent cannot be held to be guilty of wilful disobedience of the order dated 22.12.2015.

Question No.2:

19. The second question that was referred to me for opinion is whether the disposal of the main writ petition by a final order, recording an opinion that miscellaneous petitions will stand disposed of as infructuous, would have any impact upon the interim order dated 22.12.2015 in relation to which these contempt proceedings arise.

20. In order to find an answer to this question, it is necessary to take note of the manner in which the main writ petition was disposed of. The main writ petition W.P.No.41555 of 2015 was disposed of by a final order dated 24.06.2016, along with another writ petition arising out of the dismissal of a challenge to the charge memo. The common order dated 24.06.2016 passed in both the writ petitions reads as follows:

"These two writ petitions arise out of Common Order, dated 01.10.2015, in O.A.Nos.6108 of 2014 and 1685 of 2015, on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal).

Having regard to the manner in which the Writ Petitions are proposed to be disposed of, it is not necessary to refer to the facts in detail. However, it will suffice to note that the above mentioned O.As were filed by the writ petitioner feeling aggrieved by the issuance of charge memo and the order of suspension in pursuance of the disciplinary proceedings initiated against him. While dismissing O.A.No.1685 of 2015, filed questioning the charge memo, the Tribunal has, however, issued direction to the respondents in O.A.No.6108 of 2014, filed questioning the suspension order, to pass appropriate orders for reinstatement of the petitioner.

After arguing the case at length, the learned Advocate General for the State of Andhra Pradesh fairly submitted that he ill advise the respondents to revoke the suspension order immediately and post the petitioner at appropriate place of their choice.

Mr. T. Koteswara Rao, learned Counsel for the petitioner, submitted that having regard to the submission made by the learned Advocate General the suspension order of his client will be immediately revoked, his client will participate in the enquiry as per the impugned charge memo.

Having regard to the above consensus arrived at between the parties the necessity of disposing of the Writ Petitions on merits is obviated.

The Writ Petitions are, accordingly, disposed of by placing on record the submissions of the learned Advocate General as well as the learned Counsel for the petitioner.”

21. A perusal of the aforesaid order would show that the writ petition arising out of the order of suspension, was not decided on merits, but decided on a concession given by the learned Advocate General, which was accepted by the learned counsel for the petitioner. In the penultimate paragraph of the order extracted above, the Bench has recorded the consensus arrived at between the parties.

22. The normal rule is that an interim order would merge with a final order. If an interim order is granted and the writ petition is allowed, the interim order becomes absolute or assumes larger connotations, as the case may be. If an interim order is granted and the writ petition is eventually dismissed, the interim order gets vacated. In cases where an interim order is enforced by invoking the contempt jurisdiction and the writ petition is eventually dismissed, the situation may become irreversible and the petitioner would have gained an advantage that he did not deserve. In cases where restitution is possible, the respondents could be compensated. But in service matters, restitution may not be possible in the sense that the employee cannot be asked to refund the pay and allowances received by him, upon the enforcement of the interim order. Therefore, the Courts may have to be cautious while invoking contempt jurisdiction in cases where the coercive implementation of *ex parte* interim orders would lead to irreversible consequences or consequences that may confer an unintended benefit upon the petitioner or an undue hardship to the respondents.

23. As I have pointed out earlier, the writ petition filed by the petitioner, challenging the order of the tribunal, was not allowed on merits, setting aside the order of suspension. The final order passed in the writ

petition, was based upon, a consensus reached between the parties. Once the parties to a litigation have arrived at a consensus at the time of final hearing of the suit or writ petition, it must be construed as a normal rule that the benefits arising out of the interim order if any, were foregone. If the beneficiary of an interim order wanted to retain the benefit of the interim order even while accepting a compromise, he should have made it clear. The consensus reached before the Division Bench at the time of final hearing of W.P.No.41555 of 2015, is final and conclusive between the parties and unless the petitioner had taken care to ensure that the final order dated 24.06.2016 ensured the release of pay and allowances for the period from 22.12.2015 upto 24.06.2016, the petitioner cannot fall back upon the ex-parte interim order and seek to derive an extra benefit through the contempt petition over and above what was agreed by consensus.

24. To allow the contempt petition, thereby enabling the petitioner to get the pay and allowances for the period from 22.12.2015 upto 24.06.2016 would tantamount to conferring a benefit that goes beyond the consensus reached at the time of final hearing. Therefore, I am of the considered view that the last paragraph of the order of the Division Bench dated 24.06.2016 holding that the "Miscellaneous Petitions pending if any, stand disposed of as infructuous", is a clear indication that the petitioner was not entitled to anything more than what was incorporated in the final order passed in the writ petition. The manner in which miscellaneous petitions were closed while disposing of the writ petition, certainly had the effect of annihilating the *ex parte* interim order dated 22.12.2015 and the benefits arising out of the same. Hence the 2nd respondent cannot be held guilty of wilful disobedience of the interim order dated 22.12.2015.

25. In fine the questions referred to me by the Division Bench are answered as follows:

1) The 2nd respondent is not guilty of wilful disobedience of the *ex parte* interim order dated 22.12.2015;

2) The final order dated 24.06.2016 passed on consensus in the writ petition, closing the miscellaneous petitions if any, as infructuous, had the effect of neutralising the interim order and the benefit arising therefrom;

26. As a result, the 2nd respondent should be discharged and accordingly he is discharged.

V.RAMASUBRAMANIAN, J.

1st September, 2017.
Ak/Js

L.R. Copy to be marked.



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

CONTEMPT CASE No.150 of 2016



1st September, 2017.

Js