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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CONT.CAS(C) 85/2017

PATSY GONSALVES ..... Petitioner  
Through Ms.Lina Gonsalves, Advocate.

Versus

SOMYA GUPTA ..... Respondent  
Through Mr.Rizwan, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN**

**ORDER**  
% **22.03.2017**

Present contempt petition has been filed alleging wilful disobedience of the order dated 22<sup>nd</sup> August, 2016, subsequently modified vide order dated 19<sup>th</sup> September, 2016, passed by a Coordinate Bench of this Court in W.P.(C) No.7258/2016, whereby the writ petition preferred by the petitioner was directed to be treated as a representation to the respondent who was to depute an officer of the rank of Deputy Director, Education to decide the same within a period of eight weeks.

In the present contempt petition, it has been averred that despite the aforesaid order, the respondent had not decided the petitioner's representation.

Today, learned counsel for the respondent-Director of Education has handed over a copy of the office order dated 16<sup>th</sup>

March, 2017, whereby the petitioner's representation has been disposed of. The same is taken on record. The relevant portion of the order dated 16<sup>th</sup> March, 2017 is reproduced hereinbelow:-

*“NOW, THEREFORE, after having considered all the facts and circumstances of the case, the undersigned hereby directs the School Authority to grant the benefits of 2<sup>nd</sup> ACP scheme w.e.f. 25/07/07 and 3<sup>rd</sup> MACP scheme w.e.f. 25/07/2013 to the petitioner teacher. The Managing Committee is further directed to release the benefits of ACP & MACP schemes including the arrears to the petitioner teacher within four weeks of issue of this order.*

*Accordingly, the representation of the petitioner is disposed off in compliance of the directions given by the Hon'ble High Court vide it's order dated 22.08.2016 & 19.09.2016 in WPC No. 7285/2016 in the matter of Patsy Gonsalves V/S Convent of Jesus and Mary School and others.”*

However, learned counsel for the petitioner states that the impugned order has not been complied with in its entirety and the Director of Education has not computed the exact amount that is due and payable by the School to the petitioner.

It is settled law that a person can be held guilty of contempt only if he has wilfully disobeyed any judgment, order or direction. Though the term 'wilful' has not been defined, the Supreme Court has, in number of judgments, explained its meaning. In ***All India Anna Dravida Munnetra Kazhagam vs. L.K. Tripathi and Ors., (2009) 5 SCC 417*** the Supreme Court has held as under:-

*“54. An analysis of Section 2(b) of the 1971 Act shows that wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court constitutes civil contempt. If this definition is read with Article 129 of the Constitution of*

*India, it becomes clear that being a court of record, this Court can punish a person for civil contempt if it is found that he has wilfully disobeyed any judgment, etc. or violated an undertaking given to the Court.*

*55. The term “wilful” (willfull) has not been defined in the 1971 Act. Therefore, it will be useful to notice dictionary meaning of the said term. As per The New Oxford Illustrated Dictionary (1980 Edn.), the term “wilful” means “asserting or disposed to assert one's own will against instruction, persuasion, etc.; obstinately self-willed; deliberate, intentional, showing perversity or self-will”.*

*56. According to Black's Law Dictionary (8th Edn.)—“Wilful” means “[v]oluntary and intentional, but not necessarily malicious” and “wilfulness” means*

*“1. The fact or quality of acting purposely or by design; deliberateness; intention; wilfulness does not necessarily imply malice, but it involves more than just knowledge.*

*2. The voluntary, intentional violation or disregard of a known legal duty.”*

*57. As per Stroud's Judicial Dictionary, Vol. 5 (4th Edn.), “wilful disobedience” means:*

*“(1) The wilful disobedience of a SEAMAN or apprentice is ‘wilfully disobeying any lawful command DURING the engagement’: ‘There may be many cases in which DESERTION, or ABSENCE without leave, would not amount to wilful disobedience, and in these cases the seaman would only be liable to the lesser penalty. Where, however, the seaman deserts or is intentionally absent without leave after the time at which he has been lawfully ordered to be on board, his desertion or absence may amount to “wilful disobedience,” and, consequently, that he would be liable to imprisonment. The words “during the engagement” seem to suggest that the contract between the employer and the employed should be taken into account, and that if,*

*having regard to that contract, the order was one which the employed was bound to obey, his disobedience might be dealt with under clause (d)';"*

58. *In Shorter Oxford English Dictionary, the term "wilful" has been defined as:*

*"1. Asserting or disposed to assert one's own will against persuasion, instruction, or command; governed by will without regard to reason; obstinately self-willed or perverse.*

*2. Willing; consenting; ready to comply with a request, desire, or requirement—1598.*

*3. Proceeding from the will; done or suffered of one's own free will or choice; voluntary—1687.*

*4. Done on purpose or wittingly; purposed, deliberate, intentional. (Chiefly, now always, in bad sense of a blameworthy action; freq. implying 'perverse, obstinate'.)"*

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62. *Para 17 of the judgment which contains discussion on the subject reads as under: (Dharam Godha case [(2003) 11 SCC 1], SCC pp. 14-15)*

*"17. Section 2(b) of the Contempt of Courts Act defines 'civil contempt' and it means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of undertaking given to a court. 'Wilful' means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the court must be of such a nature which is capable of execution by the person charged in normal circumstances. It*

*should not require any extraordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case. The facts mentioned above show that none of the respondents to the petition can be held to be directly responsible if the Scheme which had been formulated by the Government of India on 28-6-1996 and had been approved by this Court by the order dated 8-7-1996 could not be implemented in letter and spirit as many factors have contributed to the same. The reasons given for non-inclusion of Shri Umadhar Prasad Singh in signing of the agreement appear to be quite plausible. NCFL has undoubtedly not discharged its liability of making payment of its entire liability of Rs 6 crores. However, it has come out with a case that some additional expenditure has been incurred in running the unit. It is not possible to get the complete financial picture only on the basis of the affidavits filed in the present petition. On the material on record, therefore, it is not possible to hold that the charge of having committed contempt of court on account of alleged non-compliance with the orders passed by this Court on 8-7-1996, 1-5-1997 [Ashok Paper Mills Kamgar Union v. Union of India, (1997) 10 SCC 113] and 31-7-2000 [Ashok Paper Mills Kamgar Union v. Union of India, (2003) 11 SCC 16] has been established against any one of the respondents.”*

*(emphasis added)*

63. In *DDA v. Skipper Construction* [(1995) 3 SCC 507] this Court highlighted the distinction between the civil and criminal contempt in the following words: (SCC p. 517, paras 43-44)

“43. Civil contempt is defined under Section 2(b) of the Act. Thus, any wilful disobedience to the order of the court to do or abstain from doing any act is *prima*

*facie a civil contempt. Civil contempt arises where the power of the court is invoked and exercised to enforce obedience to orders of the court.*

*44. On the contrary, criminal contempts are criminal in nature. It may include outrages on the Judges in open court, defiant disobedience to the Judges in court, libels on Judges or courts or interfering with the courts of justice or any act which tends to prejudice the courts of justice.”*

*64. In Kapildeo Prasad Sah v. State of Bihar [(1999) 7 SCC 569 : 1999 SCC (L&S) 1357] the Court outlined the object of its contempt jurisdiction in the following words: (SCC pp. 573-74, paras 9 & 11)*

*“9. For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court's order. Since notice of contempt and punishment for contempt is of far-reaching consequence, these powers should be invoked only when a clear case of wilful disobedience of the court's order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the court's orders and its implications. Disobedience of the court's order strikes at the very root of the rule of law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice.*

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*11. No person can defy the court's order. Wilful would exclude casual, accidental, bona fide or unintentional*

*acts or genuine inability to comply with the terms of the order. A petitioner who complains breach of the court's order must allege deliberate or contumacious disobedience of the court's order."*

*(emphasis added)"*

In the same judgment, it was also reiterated that the contempt of Court is a quasi criminal act and as such the standard of proof required is that of a criminal proceeding and the breach or wilful disobedience has to be established beyond all reasonable doubt.

The direction given by the Court in the present case to Director of Education was to decide the petitioner's representation by way of a reasoned order and if the petitioner was aggrieved by the same, the petitioner was given liberty to challenge the same. In the opinion of this Court, as the Director of Education has disposed of the petitioner's representation, the order in question stands complied with.

Accordingly, the present contempt petition is closed. However, as the petitioner is not satisfied with the order passed by Director of Education, she is given liberty to challenge the order dated 16<sup>th</sup> March, 2017 in accordance with law. The rights and contentions of all the parties are left open.

**MANMOHAN, J**

**MARCH 22, 2017**

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