

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CONTEMPT PETITION STAMP NO. 25555 OF 2017
IN
WRIT PETITION NO. 9981 OF 2014**

Shamsingh Narayan Rajput ... Petitioner
Versus
The State of Maharashtra and others ... Respondents

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Mr. Sagar A. Mane for the Petitioner.
Mr. P. G. Sawant, AGP for the Respondent No.1.
Mr.G. B. Walawalkar i/b Mr. S.P.Thorat for the Respondent No.3.

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CORAM : A. S. OKA AND M. S. SONAK, JJ.

DATE : 12th OCTOBER, 2018.

P. C.:

1. We have heard the learned Counsel appearing for the petitioner and the learned AGP for the State of Maharashtra. Dr. Pradeep Vyas – the Principal Secretary in Public Health Department as well as Dr. Manish Keshavrao Renghe - District Health Officer, Zilla Parishad, Thane, are personally present in the Court and they have tendered their affidavits. As noted in the earlier orders, this is a case of gross contempt. The writ petition filed by the petitioner was allowed by the judgment and order dated 19th April, 2017 passed by a Division Bench of this Court. The breach alleged is of this judgment and order.

2. Paragraphs 2 to 5 of the order dated 29th August, 2018 passed in this Contempt Petition read thus:-

“2. The said judgment and order was challenged by the respondents by filing a Special Leave Petition before the Apex Court. It is an admitted position that there was no stay granted to the implementation of the said judgment and order. The Special Leave Petition was dismissed on 6th August, 2018.

3. On 11th October 2017, a notice was issued on this contempt petition in presence of the learned AGP. On 23rd February 2018, 14th March 2018, 2nd April 2018, the learned AGP sought time to take instructions. It appears that Special Leave Petition was filed on 9th March 2018. Thus, Special Leave Petition was filed nearly after six months from 11th October 2017, on which day, a notice was issued in this Contempt Petition after hearing the learned AGP. Thus, throughout pendency of this petition, the judgment and order of this court of which the breach is alleged was operative. The Order dated 21st August 2018 passed in this contempt petition reads thus:

“1. The learned AGP on oral instructions of the concerned officer states that Special Leave Petition preferred by the State Government for challenging the judgment and order dated 19th April 2017 of which the breach is alleged in this present petition has been dismissed.

2. Place the contempt petition high on board on 29th August 2018. We make it clear that if compliance of the directions issued under the aforesaid judgment is not reported by the next date, action under the Contempt of Courts Act, 1971 will have to be initiated. If by the next date, compliance is not made,

the learned AGP will disclose the names and designation of the officers who are responsible for committing breach of the order passed by this Court so that an action can be initiated against them.”

4. Today, a letter dated 28th August 2018, addressed by the District Health Officer of Zilha Parishad, Thane to the learned AGP is placed on record. The letter records that it will take at least three months time to comply with the judgment and order of this Court. The said letter indicates that though the judgment and order is delivered on 19th April 2017, as on today, even pension proposal of the petitioner has not been submitted by the concerned department. As stated earlier, Special Leave Petition was filed after contempt notice was issued. In fact Special Leave Petition was filed 11 months after judgment and order dated 19th April 2017 was pronounced. The letter dated 28th August 2018, is taken on record and marked “X” for identification. It is very clear that there is no possibility of the respondents complying with the directions under the judgment and order dated 19th April 2017, for a period of minimum three months.

5. In terms of clause (2) of the order dated 21st August 2018, the learned AGP is unable to supply the names and designations of the officers, who are responsible for committing the breach of the order. Therefore, we have no option but to issue contempt notice to the Principal Secretary of the Public Health Department as he is responsible for the functioning of the said department. Learned AGP to give the name of the Principal Secretary of the Public Health Department by filing a praecipe within a period of three days from today. Prima facie, it appears to us that the Principal Secretary has committed willful breach of order dated 19th April 2017, for the reasons indicated earlier. Accordingly, issue notice to the Principal Secretary under Rule 9(1) of the Contempt of Courts (Bombay High Court) Rules, 1994 returnable on 28th September 2018. The Petition be listed high on board on that day.”

3. On 28th September, 2018, this Court passed the following order:-

“By the order dated 29th August 2018, the office of the Government Pleader was directed to supply the name of the Principal Secretary of the Public Health Department, as by the said order, for the reasons recorded therein, this Court issued notice of contempt. The office remarks show that notwithstanding specific direction issued to the office of the Government Pleader, the name of the Principal Secretary of the Public Health Department has not been furnished and, therefore, contempt notice could not be issued.

2. Thus, this is a case of an aggravated contempt. Place this petition high upon board on next Friday i.e. 5th October 2018. We direct the Principal Secretary, Public Health Department to remain present in the Court on the next date. This order shall be communicated to him by the office of the Government Pleader. The Principal Secretary of the Public Health Department shall furnish names and designations and office address of the officers who are responsible for non-compliance with the orders of this Court so that contempt notices can be issued to them. The Principal Secretary to state whether the State Government is willing to pay interest on the overdue amount to the petitioner, if not from 19th April 2017 but at least from 6th August 2018.”

4. Apart from gross breach of the directions issued by this Court, our attention was invited to the Government Circular dated 2nd April, 2014 issued by the Law and Judiciary Department. The circular in so many words states that merely because a Special

Leave Petition (SLP) is filed against a judgment and order of this Court, no department should be under an impression that mere filing of SLP operates as a stay. It also records that if any SLP or Appeal is preferred and no stay is granted by the Apex Court of the implementation and enforcement of order of this Court, such orders must be implemented subject to the final decision of the Apex Court.

5. In large number of matters we have come across, we found that even in a case where there are orders of this Court directing payment of retirement dues to a Government Employee, steps are not taken for implementation of the orders though there is no stay granted by higher Court. This has also happened in the case of the orders passed by the Maharashtra Administrative Tribunal. If the Tribunal issues an order for payment of retirement dues, such as pension, gratuity etc, and even if there is no interim relief granted by this Court, the orders of the Tribunal are not being implemented.

6. This is a classic case where after contempt notice was issued in the present petition, Special Leave Petition was filed. On 11th

October, 2017 a contempt notice was ordered to be issued in presence of the learned AGP. Thereafter, time was granted to the State on two subsequent dates. Instead of complying with the order of this Court, undue advantage of the leniency shown by this Court was taken. This Court showed indulgence by repeatedly adjourning the Contempt Petition at least on three dates after contempt notice was issued. Not only that undue advantage was taken of the leniency of this Court but notwithstanding the fact that the stay was not granted by the Apex Court, the order of this Court was not implemented. Even after the Apex Court did not interfere with the judgment of this Court, no steps were taken to implement the order of this Court. That is the reason why so many orders were required to be passed by this Court and even the order of procuring the personal presence of the Senior Officer was passed by this Court. This Court very rarely insists on the personal appearance of the Principal Secretaries. But considering the gross default by the State Government, we had no option but to summon the Principal Secretary to remain present in the Court.

7. The affidavit of the Principal Secretary affirmed on 11th October, 2018 records that the substantial compliance has been

made by making payments. It is also stated that interest @7.24 p.a. has been paid on overdue amount from 19th April, 2017 till 2nd October, 2018. The Principal Secretary has tendered apology. In the affidavit of Dr. Manish Keshavrao Renghe affirmed on 11th October, 2018, it is stated that only an amount of Rs. 8,000/- remains payable to the petitioner which is the provisional pension for May 2014 which will be paid to the petitioner within two days. We accept the said statement. Even the said officer has tendered apology.

8. Considering the apology tendered by the said officers and payment of interest made by the State, a case is made out for discharging the contempt notice. However, we cannot ignore that it took time of about one year for compliance of the order of this Court from the date on which contempt notice was issued in presence of the learned AGP. We, therefore, propose that while discharging the contempt notice, the State should be saddled with costs quantified at Rs.25,000/-.

9. Accordingly, we dispose of the contempt petition by passing the following order:-

- (i) We accept the apology tendered in the affidavits of Dr. Pradeep Vyas, Principal Secretary of Public Health Department and Dr. Manish Keshavrao Renghe, District Health Officer, Zilla Parishad, Thane. We also accept the statement made in paragraph 9 of the affidavit of Dr. Manish Keshavrao Renghe as an undertaking;
- (ii) The contempt notice ordered to be issued on 29th August, 2018 is discharged. No further action is called for on the basis of order dated 28th September, 2018;
- (iii) We direct the State Government to pay costs quantified at Rs.25,000/- to the petitioner within a period of one month from the date on which this order is uploaded;
- (iv) The contempt petition is disposed of;
- (v) Even the contempt petition is disposed of, the same shall be listed on daily board on 30th November, 2018 for reporting compliance of order of payment of costs.

(M. S. SONAK, J.)

(A. S. OKA, J.)