

THE HON'BLE SRI JUSTICE M.GANGA RAO
CONTEMPT APPLICATION No.1503 OF 2015
IN/AND
CONTEMPT CASE No.1215 OF 2012
IN
WPMP No. 7168 OF 2001
IN
WRIT PETITION No. 5617 OF 2001

COMMON ORDER:

The 1st petitioner, K.Veereshwar – Party-in-person, along with 2nd petitioner, K.Rameshwar (died) – Mentally retarded person, filed this contempt case complaining non-compliance of the order dated 20.12.2001 passed in WPMP No.7168 of 2001 in W.P.No.5617 of 2001 against the respondents – 1) R.Sundarvadan, IFS, Commissioner for Disabled Welfare, Hyderabad and 2) Dr. Uma Tuli, Chief Commissioenr Disabilities, Ministry of Social Justice & Empowerment, Noida, U.P.

2. The brief facts of the case are that the 1st petitioner K.Veereshwar had a brother by name K.Rameshwar, who was mentally retarded with psychosis by birth. Both the brothers were born to Sri K.Venkata Krishna Bhagavath Sastry and Smt. Radha Poornima. Due to matrimonial disputes, the parents got divorce from a Court of law and then got married with the persons of their choice. Thus, the 1st petitioner and his brother 2nd petitioner became destitute without any succour. The 1st petitioner claims that in view of family circumstances, he was forced to look after and take care of his disabled brother 2nd petitioner at the cost of his education

and future prospectus and that though he approached the authorities concerned in the Government, they did not respond properly and due to their inaction and negligence his brother 2nd petitioner died in a road accident on 29.04.2002. On this premise, the 1st petitioner filed Writ Petition No.11738 of 2002 during the lifetime of 2nd petitioner seeking declaration that the inaction of the 1st respondent therein in not disposing of the representation allegedly filed by 2nd petitioner on 18.03.2002 as illegal, but the same was dismissed on 19.07.2002. The 1st petitioner filed another Writ Petition No.24544 of 2002 to take alternative steps under Section 5 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'the Act, 1995'), but the same was dismissed on 17.03.2003. The 1st petitioner filed Writ Appeal Nos.1542 of 2002 and 1606 of 2005 against the orders passed in Writ Petition Nos.11738 of 2002 and 24544 of 2002 respectively. He also filed Contempt Case (SR) No.6549 of 2007 to punish the respondents therein. This Court by common judgment dated 09.04.2009, dismissed the Contempt Case (SR) and disposed of the Writ Appeals directing the Principal District & Sessions Judge, Medak at Sangareddy to conduct a comprehensive detailed enquiry into the claim of the petitioner and complete the same within a period of two months. Based on the said judgment, the Principal District & Sessions Judge, Medak at Sangareddy

conducted enquiry and submitted a report dated 20.06.2001 vide Writ Appeal Enquiry No.1 of 2009 stating that 2nd petitioner was diagnosed with 'Mild Mental Retardation with Psychosis' and outside the ambit of the Act, 1995. The 1st petitioner could not establish his brother's case that it comes under the category of 'severe disability'. The 1st petitioner also filed Contempt Case No.684 of 2009 in Writ Petition No.9459 of 2009, wherein this Court directed the District Collector, Medak at Sangareddy to provide a job to the 1st petitioner to enable him to act as a guardian to his brother – 2nd petitioner and further to see any possibility to continue him in the temporary post provided already. The 2nd petitioner could not be admitted in any of the Non-Governmental institutions for rehabilitation. The 1st petitioner instead of resorting to get the 2nd petitioner treated as an outpatient approached the Government authorities to appoint him as a guardian. On considering the same, the Collector, Rangareddy District rejected the 1st petitioner's application on the ground that he was involved in a criminal case in Crime No.192 of 2001 of P.S. Kushaiguda. As per Section 14 of the National Trust for Welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (for short 'the Act, 1999'), a parent of a person with disability or his relative can make an application to act as a guardian of the disabled. As per Section 53 of the Mental Health Act, 1987, only a

'suitable person' can be appointed as a guardian of mentally ill person. The Collector rightly rejected the 1st petitioner's application stating that he is not a 'suitable person' to be appointed as a guardian. The 1st petitioner claims Rs.15 lakhs towards compensation.

The 1st petitioner also approached the District Collector, Medak at Sangareddy to appoint him as a guardian to one disabled person by name Ch.Laxman Rao and the same was rejected. After four years of the demise of his brother (2nd petitioner), the 1st petitioner brought the said Ch.Laxman Rao, a mentally retarded person, and sought appointment as his guardian under the provisions of the Act, 1999 though his parents were alive. As per the report, while the deceased 2nd petitioner was staying with his father in the month of April, 2002 within the limits of P.S. CCC Naspur, Adilabad District, he died in a road accident on 29.04.2002 and on the complaint of the father of the deceased, a case in Crime No.37 of 2002 under Section 304-A IPC was registered and investigated into. After thorough investigation, as the offending vehicle which caused the accident could not be located, the case was closed in accordance with law in the month of August, 2002. A report is submitted to the Principal District & Sessions Judge, Medak at Sangareddy that the 1st petitioner has no *locus standi* to claim compensation as a guardian of his late brother during the lifetime of his parents and for want of any legal sanction for his claim as a guardian.

Thus, the learned District Judge held that the claim of the 1st petitioner was devoid of merit and the enquiry petition was dismissed.

3. The 1st petitioner along with his brother 2nd petitioner, to whom the 1st petitioner is claiming as a guardian, filed Writ Petition No.5617 of 2001 against the respondents – 1) The Commissioner for Disable Welfare, Hyderabad; 2) The Chief Commissioner for Persons with Disabilities, New Delhi; and 3) The Chairman, Railway Board, New Delhi, to issue a writ order or direction particularly one in the nature of Writ of Mandamus to find solutions to his brother's problems which is guaranteed under the provisions of Section 8(1) of the Act, 1995.

4. Pending writ petition, they also sought interim direction in WPMP No.7168 of 2001 to direct the 3rd respondent therein to absorb the 1st petitioner in any temporary or casual (Departmental) job on the basis of qualification pending writ petition. This Court by order dated 20.12.2001 passed interim direction to the respondents to accommodate the 2nd petitioner in any of the institutions established for 'Mentally retarded' within a period of two weeks from the date of receipt of a copy of that order. Now, the 2nd petitioner is no more.

5. The present Contempt Case is filed for non-compliance of the order dated 20.12.2001 passed in WPMP No.7168 of

2001 in W.P.No.5617 of 2001 against the respondents –
 1) R.Sundarvadan, IFS, Commissioner for Disabled Welfare, Hyderabad and 2) Dr. Uma Tuli, Chief Commissioner Disabilities, Ministry of Social Justice & Empowerment, Noida, U.P. The contempt case is numbered subject to office objections as per the Court order dated 13.08.2012 and notice was issued to the respondents before admission.

C.A.No.1503 of 2015:

6. In the Contempt Case, Contempt Application No.1503 of 2015 is also filed to implead Sri R.N.Malhothra, Chairman, Railway Board, Ministry of Railways, Government of India, New Delhi as 3rd respondent/Contemnor, stating that the proposed 3rd respondent was also wilfully disobeyed the order dated 20.12.2001 in not accommodating the 2nd petitioner, who is mentally retarded younger brother of 1st petitioner, into any of the institutions established for mentally retarded.

7. On behalf of the proposed 3rd respondent/contemnor, counter is filed by the Deputy Chief Personnel Officer (Admn. & Recruitment) of South Central Railway, Secunderabad, stating that there is no provision in the Act, 1995 to provide employment to the 1st petitioner who is said to be the guardian of the 2nd petitioner, who is mentally retarded. The case of the 2nd petitioner was duly considered and the State Government was requested vide Letter No. E(NG)II/2001/RC1/10(Pt.) dated 03.01.2002 to consider the

case of the 1st petitioner in light of schemes and policies including the established institutions of mentally retarded as the Ministry of Railways have no such schemes and institutions except providing a quota of 3% for employment of disabled persons with reference to the provisions of the Act. The relief sought by the 1st petitioner is fully considered and examined for the purpose of appointment or otherwise with reference to rules framed under Article 309 of the Constitution for recruitment/appointment. It was also mentioned that there is no scope to provide employment to the petitioner on the ground that the mentally retarded brother is dependent on him in the absence of any provision in the rules for filling the Group 'C' and Group 'D' posts and also the Act has made no provision in this regard. The 1st petitioner in his personal interview with the then Chief Personnel Officer on 17.11.2006, produced a Letter No.E(NG)II/2001/RC-2/10(Pt) dated 02.12.2004 purported to have been issued by Board directing employment to him on appearing in the Railway Recruitment Board examination irrespective of the merit and eligibility criteria. It was replied by Board that the said letter is fake and false. As advised by Board, a complaint had been lodged with concerned Station House Officer, Tukaramgate Police Station, Hyderabad against the 1st petitioner for having produced false and fake letter dated 02.12.2004 purported to have been issued by the Railway Board. This Court, by order dated 06.01.2010 in

Writ Petition No.5617 of 2001 and C.C.No.784 of 2002, directed the 1st respondent not to initiate any action against the 1st petitioner on the ground that the Letter No.E(NG)II/2001/RC-2/10(Pt) dated 02.12.2004 is forged. Sri R.N.Malhotra, the proposed 3rd respondent, is retired from service on 31.03.2002 and his address is not known to the Railways. The contempt case is filed beyond limitation as prescribed under Contempt of Courts Act, 1971. There is no wilful or deliberate intention on the part of proposed 3rd respondent and he has not flouted any order much less deliberately or wilfully. Hence, the proposed 3rd respondent is not a proper and necessary party to the contempt case and the C.A. may be dismissed.

8. Considering the counter averments, this Court feels that it is not proper to implead the proposed 3rd respondent as a party to the Contempt Case. Hence, the C.A.No.1503 of 2015 is liable to be dismissed.

C.C.No.1215 of 2012:

9. Sri R.Sundaravadan, I.F.S. – 1st respondent filed counter stating that the 1st petitioner has no *locus standi* to file the case as the mother of the deceased by name Smt. Radha Punima is the Class-I heir and the 1st petitioner is not declared either by any authority or any Civil Court as guardian of deceased 2nd petitioner. The 1st petitioner is a habitual litigant and is going on filing several petitions and

complaints and cases against various Government Departments in order to get wrongful gain and he has not taken any steps against his parents for maintenance and negligence caused by his parents to look after his deceased brother. The Principal District & Sessions Judge, Medak at Sangareddy in Writ Appeal Enquiry No.1 of 2009 in W.A.Nos.1542 of 2002 and 1606 of 2005 in CC (SR) No.6549 of 2007 of this Court, has passed orders dated 20.06.2011 dismissing the Writ Appeal Enquiry Petition.

As per the Certificate dated 12.06.2000 of the Institute of Mental Health, Erragadda in respect of the 1st petitioner's brother, he cannot take admission as inpatient into the hospital wards as he was diagnosed as 'Mild Mental Retardation with Psychosis' who cannot able to fulfil the definition under Clause (m) and (q) defined in Section 2 of Mental Health Act, 1987 and he can attend the institute as an outpatient for treatment and guidance whenever needed. As per the Section 2(m) of Mental Health Act, 1987, "mentally ill prisoner' means a mentally ill person for whose detention in, or removal to, a psychiatric hospital, psychiatric nursing home, jail or other place of safe custody, an order referred to in Section 27 has been made. The Superintendent, Mental Health Institute, Hyderabad addressed a letter to the Commissioner, Disabled Welfare, Hyderabad on 11.02.2002 stating the assessment details pertaining to the 2nd petitioner that the 'Sri K.Rameshwar is a case of Mental Retardation

and his IQ is 60'. If IQ is 50 – 70 range, the percentage of disability is less than 40%. As per the Notification No. 16-18/97/NLI dated 01.06.2001, 'Mild Mental Retardation' means the range of 50 to 69 (standardized IQ test) is indicative of mild retardation. Understanding and use of language tend to be delayed to a varying degree and executive speech problems that interfere with the development of independence may persist into adult life. As per the observation, definitions, guidelines etc., the disability of the 2nd petitioner is less than 40% (IQ 50 – 70 range) and as such he is not covered under the definition of person with disability as per Section 2(t) of the Act and hence the case is not at all concerned to the Department of Welfare of Disabled. In response to the 1st petitioner's representation dated 29.06.2000 for admission of his brother in any Non-Governmental organization under the provisions of Section 56 of the Act, 1995, as per the assessment given by Institute of Mental Health, Government Hospital for Mental Care, the 2nd petitioner did not come under the category of severe disability. Hence, the question of non-accommodating him in the established and maintaining institution for severely disabled persons with 80% disability under Section 56 does not arise.

The Department has made efforts for admission of the 2nd petitioner in the Non-Governmental organizations and accordingly the Managing Committee of Shanthiniketan

Residential Institution for mentally handicapped has kept the 2nd petitioner under observation for three days and observed that he was more aggressive than ever and if he admitted in the hostel, he may create nuisance and disturbance to the other inmates. Hence, the doctors of the institute have advised to admit the 2nd petitioner as a day scholar for at least one year and have to be observed during that period. After that period, whether he can be admitted in the hostel or not would be considered keeping in view of the advice given by the team of doctors. The Correspondent, Shanthiniketan Residential Institution for Mentally Handicapped, Vanastalipuram, Hyderabad has also informed vide letter dated 27.07.2011 that the 2nd petitioner was their student and stayed in their institution from October, 1985 to April, 1991 and later he was taken away by his parents. In response to the departmental efforts for admission of the 2nd petitioner in any non-governmental organization, the 2nd petitioner has been sent to Government Mental Hospital, Erragadda, where the qualified doctors are available with accommodation and for rectifying the disease. Afterwards, the 2nd petitioner was again admitted in another organization viz., Integrated Welfare Society (Special School and Residential for Mentally Handicapped), Bowenpally, Secunderabad on 08.02.2002. But the 1st petitioner, after creating some problem with the management of the Society on 15.02.2002, had taken away his brother (2nd petitioner)

along with him. As per the directions of this Court, the Advocate-Commissioner inspected the Integrated Welfare Society, Handicapped Home, Bowenpally, Secunderabad, during the course of inspection, the Director of the organization requested the 1st petitioner to take back his brother (2nd petitioner) on the ground that he is behaving very violently but the 1st petitioner refused to take him but ultimately the 2nd petitioner was discharged and taken away by the 1st petitioner.

This Court has passed interim orders in Contempt Case No.684 of 2009 dated 17.07.2009 as the learned Government Pleader for Women and Child Welfare submitted that the 1st petitioner is found to be not eligible for appointment as Guardian of the mentally retarded person. As per the orders of this Court to complete the process of appointment as early as possible to the 1st petitioner even in the temporary post in which he was previously appointed, the District administration also addressed a letter to M/s.Cyber Communications, Sangareddy. The office of the 1st respondent came to know that the 1st petitioner worked from 21.01.2008 to 30.04.2008 and left the job without intimating to the agency. The 1st petitioner has left the duty without prior permission violating the disciplinary norms laid for the conduct of the employees working through the agency. Hence, the firm requested to excuse for not providing placement to the 1st petitioner.

In view of the above, he sought for dismissal of the contempt petition and he has not violated the orders of this Court much less wilfully and deliberately.

10. Hence, this Court *prima facie* finds that there is no violation, much less wilful and deliberate, of the orders of this Court by the respondents even to admit the contempt case.

11. Accordingly, the Contempt Application No.1503 of 2015 as well as the Contempt Case No.1215 of 2012 are dismissed. No order as to costs.

Contempt Applications, if any, pending in this Contempt Case shall stand closed.



JUSTICE M.GANGA RAO

20-09-2018
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