

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CONTEMPT CASE NO.1966 OF 2017

Date: 10.04.2018

Between:

Shankaraiah s/o. G.Mallaiah, Aged about 54 years,
Occu: Telephone (LMC) Operator, O/o the Superintending
Engineer, Operation APSPDCL, Vidyuth Bhavan,
Kadapa, r/o. 36/425-5-1, Ashok Nagar, Chinna Chouk,
Kadapa district and others.

.....Petitioners

and

Vijayanand s/o. not known, the Chairman & Managing
Director, A.P.Transco, Vidyuth Soudha, Somajigudam,
Khairathabad, Hyderabad and others.

.....Respondents



The Court made the following:

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ORDER:

Petitioners filed W.P.No.26770 of 2010 praying to direct the respondents to regularize their services as Watch and Ward Personnel/Security Guard or any other similarly situated post. According to petitioners, they were engaged in the year 1988 and 1989 and have rendered more than 20 years of service. The work rendered by them is one of perennial in nature and respondent company requires services of Watch and Ward Personnel/Security Guards. Only on the ground that they were not directly employed, but have employed through the contractor and treating them as contract employees, their services were not regularized. Persons similarly situated to the petitioners filed W.P.No.29592 of 1998. Learned single Judge did not grant the relief prayed by those petitioners. They preferred W.A.No.1478 of 1998. Following the decision of Supreme Court in **Secretary, H.S.E.B. Vs. Suresh¹**, Division Bench allowed the Writ Appeal directing consideration of appellants therein for absorption and regularization as Watch and Ward Personnel/Security Guards. Said decision of the Division Bench was affirmed by the Supreme Court. Another set of similarly situated employees filed W.P.No.21947 of 1999. Following the Division Bench judgment, said writ petition was allowed. Taking note of the litigation process, learned single Judge also directed the respondent company to grant benefit to all similarly situated persons without driving them to Court. Writ Appeal preferred against the said judgment was dismissed and SLP

¹ 1999 (3) SCC 601

preferred before the Supreme Court was also rejected. Directions in those two writ petitions were implemented and petitioners in those writ petitions were regularized. Though petitioners are similarly situated and in spite of directions issued in W.P.No.21947 of 1999 to extend benefit to all similarly situated, their services were not regularized compelling them to institute this Writ Petition. Following the judgments of Division Bench and learned single Judge, this writ petition was also allowed and respondent company was directed to absorb and regularize the petitioners as Watch and Ward Personnel/Security Guards. The Court fixed two months time for compliance of directions.

2. This Contempt Case is filed alleging deliberate and wilful disobedience of directions of this Court.

3. On 06.10.2017, Notice Before Admission was issued. Even though notice was served, as no compliance was reported till 05.01.2018, Contempt was admitted and notice in Form-1 was issued on respondents 3 and 4. On 2.2.2018 when the matter was taken up, learned Special Government Pleader representing the Advocate General informed the Court that Writ Appeal No.1267 of 2017 is filed and Division Bench has agreed to advance the hearing and that the matter is likely to be taken up during that week. In view of the same, matter was adjourned. On 20.02.2018 when the matter was called, learned Special Government Pleader requested some more time for reporting compliance. At his request, matter was finally adjourned to 06.03.2018 for reporting compliance. On 06.03.2018 Court was informed that Division Bench has agreed to take up Writ Appeal on 19.03.2018 at 2.30 P.M., and therefore

request was sought for adjournment. Acceding to the said request, matter was adjourned to 20.03.2018 for reporting compliance. On 20.03.2018 at the request of both sides, matter was adjourned to 22.03.2018. On 22.03.2018 Court was informed that Special Government Pleader has some personal inconvenience and sought adjournment. Accordingly, matter was adjourned to next date. On 23.03.2018, when the matter was taken up, learned Special Government Pleader assured the Court to report compliance by the next date of hearing if by then W.A., was not considered or stay is not granted. Recording the assurance, matter was adjourned to 02.04.2018. On 2.04.2018 when the matter was called, learned Special Government Pleader placed before this Court a letter dated 31.03.2018 written by Superintending Engineer addressed to the respective petitioners informing them that they are not entitled to regularisation and hence, their claims are rejected.

4. As briefly noted above, the prayer of petitioners was that they were engaged on contract basis against regular posts, their services were continuously utilized for about 20 years and the nature of work rendered by them is required by the respondent company and, therefore, their services should be regularized. Similar issue in the similar factual background was considered by this Court on two earlier occasions and directions issued by the Court were implemented. In W.P.No.21947 of 1999, learned single Judge of this Court observed that similar benefit should be extended to all similarly situated persons. In spite of the same, benefits were not extended and petitioners are driven to Court. The respondent company continue to litigate. Writ Appeal was filed after long lapse of time and in the guise of pending Writ

Appeal, they were dragging on to report compliance. Even though, learned Special Government Pleader assured to report compliance, compliance is not reported. Case was adjourned only on assurance given by Special Government Pleader. However, it is now clear that contemnors were vailing of time and Court was mislead of their undertaking to comply. It is clear that contemnors are bent on not complying with the directions of the Court. They deliberately breached assurance given to Court. The judgment of this Court is in force. In terms of declaration given by this Court in the earlier two rounds of litigation followed in this case, it is no more open to respondents to reject the claim of petitioners only on the ground that petitioners were working as contract employees. It is not open for any party to litigation to take plea that judgment may not be valid and refuse to comply with the order. As long as decision of the Court is not interfered by appellate Court, it is binding inter parties even if the view taken is erroneous. Such error can be corrected only by appellate Court. Merely because appeal is preferred and pending is not a ground to disobey the orders. The parties to a case cannot take a decision contrary to the judgment. The decision dated 31.03.2018, on the face of it is contempt of Court. It amounts to deliberate and wilful disobedience of directions of this Court. The contemnors are fully aware of the order of the Court and consequences of decision dated 31.03.2018.

5. Section 2(b) of the Contempt of Courts Act, 1971 defines 'civil contempt' to mean wilful disobedience of any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a Court. A wilful breach of an undertaking given to the court would also amount to Civil

Contempt. In the facts of this case, the actions of respondents are wilful and deliberate disobedience with full understanding of consequences.

6. To assure that violation of the undertaking and in issuing proceedings dated 31.03.2018 was not wilful or deliberate, no justification is put forth by the respondent-contemnor. Though, sufficient time was granted, respondents 3 and 4 did not choose to file affidavit explaining their stand. Till, 02.04.2018, Court was assured that order would be complied, but on this date letter dated 31.03.2018 is made available to this Court when contrary to the directions of the Court and on the same ground on which objection raised was rejected by the Court entitlement of petitioners for absorption/regularization is rejected.

7. If a party, who is fully in the know of the order of the Court or is conscious and aware of the consequences and implications of the order of the Court, acts in violation thereof, it must be held that disobedience is wilful. To establish contempt of court, it is sufficient to prove that the conduct was wilful, and that the contemnor knew of all the facts which made it a breach of the order.

8. At this stage, it is appropriate to note the observations made by the Division Bench of this Court in C.C.No.1974 of 2016. The Division Bench extensively reviewed the law on the jurisdiction of writ Court in contempt of Court proceedings. Division Bench observed:

“If a party who is fully in the know of the order of the Court, or is conscious and aware of the consequences and implications of the undertaking furnished by him to the Court,

ignores it or acts in violation thereof, it must be held that disobedience is wilful. It may not be possible to prove the actual intention behind the act or omission. A Court can approach the question only objectively, and it may presume the intention from the act done as every man is presumed to intend the probable consequence of his act. (**Court on its own motion v. N.S. Kanwar - 1995 Cr.L.J 1261 P&H HC DB**). To establish contempt of court, it is sufficient to prove that the conduct was wilful and that the contemnor knew of all the facts which made it a breach of the order. It is not necessary to prove that he appreciated that it did breach the order. (**St. Helen's Ltd. v. Transport & General Workers' Union; Adam Phones Ltd v. Goldschmidt - 1994 4 All ER 486**).

While the jurisdiction exercised in cases of contempt is quasi-criminal in nature and the court must be satisfied, on the material before it, that contempt of court was in fact committed, such satisfaction may be derived from the circumstances of the case. (**Ram Autar Shukla v. Arvind Shukla -1995 Supp (2) SCC 130; Bank of India v. Vijay Transport- (2000) 8 SCC 512**). For the purposes of judging 'civil contempt', intention or mens rea is not relevant. *The question is only whether the breach was on account of wilful disobedience i.e, whether it was not casual or accidental and unintentional.* (**V.C. Govindaswami Mudali v. B.Subba Reddy- 1986 (2) ALT 131**).

(emphasis supplied)

9. On the need to punish a contemnor, the Division Bench further held:

"It is not only the *power* but the *duty* of the Court to uphold and maintain the dignity of Courts and the majesty of law which may call for the *extreme* step of punishing the person for contempt of court. For proper administration of justice, and to ensure due compliance with the orders passed by it, the Court would not hesitate in wielding the potent weapon of contempt. (**Patel Rajnikant Dhulabhai v. Patel Chandrakant Dhulabhai**²). The summary jurisdiction, exercised by Superior Courts, in punishing contempt of their authority exists in order to prevent interference with the course of justice; to maintain the authority of law as is administered in the Court; and thereby protect the public interest in ensuring the purity of administration of justice (**Hira Lal Dixit v. State of U.P.**³).

While awarding sentence on a contemnor, the Court does so to uphold the majesty of the law and to ensure that the unflinching faith of people in Courts remains intact. If the guilty are let off, and their sentence remitted on grounds of mercy, people would lose faith in the administration of justice. The Court is duty-bound to award proper punishment to uphold the rule of law, however high the person may be. (**J. Vasudevan v. T.R. Dhananjaya**⁴). There cannot be any laxity, as otherwise law courts would render their orders to utter mockery. *Tolerance of law courts there is, but not without*

² (2008) 14 SCC 561

³ AIR 1954 SC 743

⁴ (1995) 6 SCC 249

limits and only upto a point and not beyond. (Anil Ratan Sarkar v. Hirak Ghosh⁵). The law should not be seen to sit by limply, while those who defy it go free and those who seek its protection lose hope. (Jennison v. Baker⁶).

(emphasis supplied)

10. The next question which arises for consideration is the nature and extent of penalty to be imposed on the respondent-contemnors on being found guilty of contempt.

11. The Hon'ble Division Bench in the above cited case observed as under:

“There is an element of public policy in punishing civil contempt, since the administration of justice would be undermined if the order of a Court of law, or a solemn undertaking given to it, is disregarded with impunity. (**Patel Rajnikant Dhulabhai** (supra); **Attorney General v. Times Newspaper Ltd⁷**). The power to punish for contempt is intended to maintain an effective legal system, and is exercised to prevent perversion of the course of justice. (**Kapildeo Prasad Sah v. State of Bihar⁸**; **Patel Rajnikant Dhulabhai** (supra). There are certain well recognized principles which govern the exercise of power and jurisdiction to punish for contempt. The power to commit for contempt will not be used for the vindication of a Judge as a person, but only with a view to protect the interests of the public for whose benefit, and for the protection of whose rights and liberties, the Courts exist and function. (**Advocate General, Andhra Pradesh, Hyderabad v. V. Ramana Rao⁹**).

It is not only the *power* but the *duty* of the Court to uphold and maintain the dignity of Courts and the majesty of law which may call for the extreme step of punishing the person for contempt of court. For proper administration of justice, and to ensure due compliance with the orders passed by it, the Court would not hesitate in wielding the potent weapon of contempt. (**Patel Rajnikant Dhulabhai**). The summary jurisdiction, exercised by Superior Courts, in punishing contempt of their authority exists in order to prevent interference with the course of justice; to maintain the authority of law as is administered in the Court; and thereby protect the public interest in ensuring the

⁵ 2002(4) SCC 21

⁶ 1972 (1) All.E.R. 997

⁷ 1974 AC 273

⁸ (1999) 7 SCC 569

⁹ AIR 1967 AP 299

purity of administration of justice (**Hira Lal Dixit v. State of U.P.**¹⁰).

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Effective administration of justice would require some penalty to be imposed for disobedience of orders of the Court if disobedience is more than casual, accidental or unintentional. [**Heatons Transport Ltd. v. Transport and General Workers Union**¹³; **Court on its own motion v. N.S. Kanwar** (supra)]. Anyone who deflects the course of judicial proceedings, or sullies the pure stream of the judicial process, must be held to have interfered with the due course of justice, and to have obstructed administration of justice. Such persons must be punished not only for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice. (**Chandra Shashi v. Anil Kumar Verma**¹⁴; **Dhananjay Sharma v. State of Haryana**¹⁵).”

12. By their conduct 3 & 4 respondents-contemnors have interfered with the administration of justice, made mockery of the order of this Court. By their acts, have wilfully and deliberately not only flouted the solemn undertaking given to this Court but have taken decisions in utter violation of the directions. Such flagrant violation must be dealt with sternly. In my considered opinion, they have resorted to unscrupulous and devious methods, adopted

¹⁰ AIR 1954 SC 743

¹¹ (1995) 6 SCC 249

¹² 2002(4) SCC 21

¹³ (1972) (3) All ER 101 (House of Lords)

¹⁴ 1995(1) SCC 421

¹⁵ (1995) 3 SCC 757

to circumvent and defeat orders of court. It is an affront to the majesty of law. Considering the gravity of their offence, it is appropriate to impose sentence of imprisonment with fine. Respondents 3 and 4 shall be detained in civil prison for a period of one month and shall in addition pay a fine of 2,000/- (Rupees two thousand only) each within four weeks from today.

13. As required under Rule 32(1) of the Contempt of Court Rules, 1980, the respondent-contemnors shall be entitled to subsistence allowance, in accordance with their status, during the period of detention in civil prison. The subsistence allowance for the respondent-contemnors is fixed at 500/- per day each. The respondent company shall bear the cost of the subsistence allowance payable to the 3 & 4 respondents-contemnors. However, as these consequences are invited by the conduct of officials of APSPDCL, the petitioners are entitled costs of 20,000/- to be paid by the Company within four weeks from the date of receipt of the copy of the order. The Contempt Case is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of.

However, the order is suspended only to the extent of sentence for a period of four weeks.

JUSTICE P.NAVEEN RAO

Date: 10.04.2018
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