

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

Contempt Case No.2340 of 2017

ORDER: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Heard Smt. R. Annapurna, learned counsel for the petitioners, and the learned Special Government Pleader, appearing on behalf of the learned Additional Advocate-General for the State of Telangana.

This contempt case is filed alleging wilful and deliberate violation of the order passed by us in W.A.No.1278 of 2017 dated 07.09.2017. By the said order, the Additional Registrar (State Cooperative Election Authority) (5th respondent in this Contempt Case) was directed to commence the process of holding elections to the Fisheries Cooperative Societies within six weeks from the date of the order, and to complete the process of elections within the stipulated time period.

The order of this Court dated 07.09.2017, whereby the fifth respondent-contemnor was required to commence the process of holding elections, necessitated compliance within six weeks from the order dated 07.09.2017 i.e by 19.10.2017. Alleging non-compliance of the said order, the petitioners herein filed the present Contempt Case on 06.11.2017. The Contempt Case was initially listed on 08.12.2017, and notice before admission was ordered. Thereafter an application, in WAMP.No.3773 of 2017 in W.A.No.1278 of 2017, was filed on 25.12.2017 seeking extension of time of two months to comply with the order dated 07.09.2017. The Contempt Case was, thereafter, listed on 02.02.2018 and, as the order in W.A. No.1278 of 2017 dated 07.09.2017 had not been

complied with even by then, the Contempt Case was admitted and Notice in Form-I was issued on 09.02.2018. When W.A.M.P. No.3773 of 2017 in W.A. No.1278 of 2017 was listed before us on 23.02.2018, the learned Special Government Pleader requested that the said application be dismissed as not pressed, as a fresh application was intended to be filed seeking extension of time, to complete the elections, till the end of March, 2018. In the light of the submission of the Learned Special Government Pleader, W.A.M.P.No.3773 of 2017 was dismissed on 23.02.2018 as not pressed. No application was filed thereafter seeking extension of time to comply with the order passed by us in W.A.No.1278 of 2017 dated 07.09.2017, nor has the 5th respondent commenced the process of elections even as on date. During the hearing of the Contempt Case today, all that the learned Special Government Pleader requests is for grant of further time stating that the officers were not prompt in following up the matter with the officials concerned. No other submission has been made by him regarding non-compliance, of the order of this Court, by the 5th respondent. The fact, however, remains that the order in W.A. No.1278 of 2017 dated 07.09.2017, violation of which is alleged in this contempt case, has not been complied with till date.

Counter-affidavits have been filed on behalf of all the respondents. In the counter-affidavit, filed by the 1st respondent, it is stated that the contempt petition is not maintainable against him, since this Court had only directed the Additional Registrar of Cooperative Societies (5th respondent) to comply with the order; since the 5th respondent is already designated as the State Cooperative Election Authority, neither he (i.e., the 1st respondent)

nor the 2nd respondent had any role to play in this regard, and they could not be held to have violated the order of this Court. A similar stand is taken by the 2nd respondent in her counter-affidavit. The 3rd respondent also takes a similar stand.

In his counter-affidavit, the 4th respondent (Joint Registrar-cum-District Cooperative Officer, Nalgonda) submits that the Government had issued orders, vide G.O.Rt.No.1104 dated 21.09.2017, appointing the Additional Registrar as the State Cooperative Election Authority; after assumption of charge, the Election Authority had proposed certain compulsory and necessary amendments to Rule 22 of the Telangana Cooperative Societies Rules, 1964; the same were submitted to the Government; and he had no role to play either in the process of election or in the conduct of election to the society.

In his counter-affidavit dated 27.12.2017, the 5th respondent places blame on the Government, and contends that amendments were proposed to the Rules, they were under active consideration, and the contention that he had wilfully disobeyed the order of this Court was totally misconceived. While expressing great respect for the orders of Court, the 5th respondent claims that he has taken all steps necessary to comply with the order of this Court; and, after he took charge, amendments to the Rules were drafted and submitted to the Government; a copy was also marked to the Chief Minister's office on 27.10.2017; and there is no wilful disobedience on his part.

The public at large, no less the individual litigant, have an interest, and a very real interest, in justice being effectively administered. Unless it is so administered the rights, and indeed

the liberty, of the individual shall perish. (**Jennison v. Baker**¹).

The Contempt of Courts Act secures confidence of the people in the administration of justice. If an order passed by a competent court is clear and unambiguous, disobedience or breach of such order would amount to contempt of court. There can be no laxity, as otherwise court orders would be the subject of mockery. (**Anil Ratan Sarkar v. Hiral Ghosh**²; **Patel Rajnikant Dhulabhai v. Patel Chandrakant Dhulabhai**³).

The following conditions must be satisfied before a person can be held to have committed civil contempt: (i) there must be a judgment, decree, direction, order, writ or other process of a court (or an undertaking given to a court); (ii) there must be disobedience to such judgment, decree, direction, order, writ or other process of a court (or breach of undertaking given to a court); and (iii) such disobedience of judgment, decree, direction, order, writ or other process of a court (or breach of undertaking) must be wilful. (**Patel Rajnikant Dhulabhai**³). Civil contempt arises where the power of the Court is invoked and exercised to enforce obedience to orders of the court. (**Delhi Development Authority v. Skipper Construction**⁴).

As long as the order in W.A.No.1278 of 2017 dated 07.09.2017 remains in force, and is neither set aside nor varied, the order necessitates compliance. Disobedience of an order of Court, whether prohibitive or mandatory, whether made *ex-parte* or upon hearing both parties, or interim or perpetual, amounts to contempt, if it is calculated or tends to interfere with the

¹ (1972) 1 All.E.R 997

² (2002) 4 SCC 21

³ (2008) 14 SCC 561

⁴ (1995) 3 SCC 507

administration of justice, or brings it into disrespect or disregard, (**Jagarmudi Chandramouli v. K. Appa Rao**⁵), for it strikes at the very root of the rule of law on which our system of governance is based. Right or wrong, the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. (**Director of Education, Uttaranchal v. Ved Prakash Joshi**⁶, **Union of India v. Subedar Devassy PV**⁷, **Prithawi Nath Ram v. State of Jharkhand**⁸). Power to punish for contempt is necessary for the maintenance of an effective legal system. It is exercised to prevent perversion of the course of justice. (**Kapildeo Prasad Sah v. State of Bihar**⁹). Once a direction is issued by a competent Court, it should be obeyed and implemented without reservation. The only remedy available to a party, who suffers an order, is to challenge it in accordance with law. The order cannot be rendered ineffective by not complying with the directions on specious pleas as it would seriously affect and impair administration of justice. (**Karnataka Housing Board v. C. Muddaiah**¹⁰; **Patel Rajnikant Dhulabhai**³).

The order of this Court, in W.A.No.1278 of 2017 dated 07.09.2017, required the 5th respondent to commence the process of holding elections to the Fisheries Cooperative Societies within six weeks from the date of the order. The stipulated six weeks period expired on 19.10.2017. While an application was filed in W.A.M.P.No.3773 of 2017 in W.A.No.1278 of 2017 on 25.12.2017, seeking extension of time to comply with the order in W.A.No.1278

⁵ 1967 (1) An.W.R.129

⁶ (2005) 6 SCC 98

⁷ (2006) 1 SCC 613

⁸ (2004) 7 SCC 261

⁹ (1999) 7 SCC 569

¹⁰ (2007) 7 SCC 689

of 2017 dated 07.09.2017, the said application was dismissed as not pressed on 23.02.2017. No application has been made thereafter seeking further extension of time to comply with the order. However the order passed in W.A. No.1278 of 2017 dated 07.09.2017 has not been complied with, and the process of holding elections has not commenced, till date. While it is clear that the order of this Court has been violated, the question which necessitates examination is whether such violation is wilful and deliberate.

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**¹¹). “Wilful means an act or omission which is done voluntarily 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 the purpose of either disobeying or disregarding the law. (**Patel Rajnikant Dhulabhai**³; **Ashok Paper Kamgar Union v. Dharam Godha**¹²). The element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. (**Patel Rajnikant Dhulabhai**³; **S.S. Roy v. State of Orissa**¹³; **Indian Airports Employees' Union v. Ranjan Chatterjee**¹⁴; **Anil Ratan Sarkar**²). 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 Court's order, ignores it or acts in violation

¹¹ 1986 (2) A.L.T. 131

¹² (2003) 11 SCC 1

¹³ AIR 1960 SC 190

¹⁴ (1999) 2 SCC 537

thereof, it must be held that the 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**¹⁵). Wilful would exclude casual, accidental, bona fide or unintentional acts. To establish contempt of court, it is sufficient to prove that the conduct was wilful, and 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**¹⁶; **Adam Phones Ltd v. Goldschmidt**¹⁷). Even negligence and carelessness can amount to disobedience. (**Kapildeo Prasad Sah**⁹).

Where there has been willful disobedience of an order of the Court, and a measure of contumacy on the part of the defendants, then "*civil contempt*", what is called "*contempt in procedure*", bears a two fold character, implying as between the parties to the proceedings merely a right to exercise and a liability to submit to a form of civil execution, but as between the party in default and the State, a penal or disciplinary jurisdiction to be exercised by the Court in the public interest. (**Jennison**¹). Effective administration of justice would require some penalty for disobedience to the order of the Court if disobedience is more than casual, accidental or unintentional. (**Heatons Transport Ltd. v. Transport and General Workers Union**¹⁸; **N.S. Kanwar**¹⁵).

¹⁵ 1995 Cri.L.J.1261 (Punjab & Haryana HC DB)

¹⁶ (1972) 3 All ER 101

¹⁷ (1999) 4 All ER 486

¹⁸ (1972) 3 All ER 101 (House of Lords)

All that is stated by the 5th respondent in his counter-affidavit, as a justification for non-compliance, is that he had drafted the amendment to the Rules and had submitted it to the Government. It is not even contended before us that elections cannot be held under the pre-amended rules. Failure to comply with the orders of Court, on the excuse that the contemnor was consulting his superiors before complying with such orders, is of no avail when he is asked to show cause why he should not be convicted for contempt (**Taluri Sessaiah v. M. Narayana Rao**¹⁹; **N.S. Kanwar**¹⁵). Except to make an oral request for grant of further time to comply with the order in W.A.No.1278 of 2017 dated 07.09.2017, the learned Special Government Pleader has no further submissions to make. It is evident, therefore, that the order passed by us in W.A.No.1278 of 2017 dated 07.09.2017 has been violated, and such violation is wilful and deliberate.

On the nature and extent of penalty to be imposed on the 5th respondent-contemnor, on his being found guilty of contempt, it must be borne in mind that 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 is disregarded with impunity. (**Patel Rajnikant Dhulabhai**³; **Attorney General v. Times Newspaper Ltd**²⁰). 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**⁹; **Patel Rajnikant Dhulabhai**³). 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

¹⁹ 1967 Cri.L.J. 19 (A.P.H.C.)

²⁰ (1974) AC 273

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**³). 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.**²¹).

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**²²). 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 limits and only upto a point and not beyond. (**Anil Ratan Sarkar**²). 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**¹).

The 5th respondent has not taken any action, even after the contempt case was filed, to comply with the order and purge himself of contempt. Though the six weeks period stipulated by this Court, in its order in W.A.No.1278 of 2017 dated 07.09.2017,

²¹ AIR 1954 SC 743

²² (1995) 6 SCC 249

expired more than 4 months ago, it is not his case even today that a notification has been issued commencing the election process. In our considered opinion, on the facts and in the circumstances of this case, imposition of fine on the 5th respondent-contemnor, in lieu of imprisonment, will not meet the ends of justice. (**Patel Rajnikant Dhulabhai**³). Where public interest demands, the Court will not shrink from exercising its power to impose punishment even by way of imprisonment, in cases where a mere fine may not be adequate, to let people know that they cannot, with impunity, hinder or obstruct or attempt to hinder or obstruct the due course of administration of justice. (**Hira Lal Dixit**²¹). We consider it appropriate, in such circumstances, to impose on the 5th respondent-contemnor the sentence of simple imprisonment for a period of two months.

As required under Rule 32(1) of the Contempt of Court Rules, 1980, the 5th respondent-contemnor shall be entitled to subsistence allowance, in accordance with his status, during the period of his detention in civil prison. The subsistence allowance, for the 5th respondent-contemnor, is fixed at Rs.750/- per day. The State Government shall bear the cost of the subsistence allowance payable to the 5th respondent-contemnor. The Contempt Case is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall also stand disposed of.

After the order was pronounced, an oral request is made by the Learned Special Government Pleader seeking suspension of the order passed by us. While we find no remorse on the part of the 5th respondent, nor has he purged himself of contempt even as on date, we consider it appropriate to suspend our order, for a period

of three weeks, as he has a right of appeal against our order and detaining him in civil prison, in the meanwhile, would result in denial of his statutory right under the Contempt of Courts Act.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

09th March, 2018

Note: Issue copy by 12.03.2018

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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS JUSTICE J.UMA DEVI



Contempt Case No.2340 of 2017

Date: 09.03.2018

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