Sequeira

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 387 OF 2015
In
WRIT PETITION NO. 8478 OF 2013

Trimurti Shikshan Sanstha and others .. Petitioners
Vs
The State of Maharashtra and others .. Respondents

With
CAN NO. 8/2016, CAN NO.78/2016, CAN NO.79/2016,
CPST No.7308/2015, CPST No.7309/2015,
CPST No.7310/2015, CPST No.21871/2015,
CPST No.21872/2015, CPST No.21873/2015,
CPST No.21874/2015, CPST No.21877/2015,
CPST No.21884/2015

Mr.S.S.Pakale a/w Mr.P.T.Waghmare i/b S.M.Katkar, for Petitioners in CP No.387 of 2015.

Mr.S.S.Pakale a/w Mr.P.T.Waghmare i/b Avinash Belge, for Petitioners in CPst No.7308/2015, CPst No.7309/2015, CPst No.7310/2015.

None for Petitioners in CPst No.21871/2015, CPst No.21872/2015, CPst No.21873/2015, CPst No.21874/2015, CPst No.21877/2015, CPst No.21884/2015.

Mr.A.I.Patel - Additional Government Pleader, for Respondent State in all Petitions and Applicant in CAN No.8/2016, CAN No.78/2016, CAN No.79/2016.

CORAM : PRADEEP NANDRAJOG, C.J. &
N.M.JAMDAR, J.
Date : 19 July 2019.

P.C. :

1. The Petitioners in this group of matters are educational institutions. They are seeking an action to be initiated against Respondents under the Contempt of Court Act 1976 and under the Article 215 of the Constitution of India for disobeying the orders passed by this Court. The orders of which contempt is alleged were passed on 16 July 2014, 6 August 2014, 30 September 2014 and 7 January 2015.

2. The Contempt Petitions are clubbed together and with the reply affidavits, subsequent orders and documents, the record has become voluminous. However, since the issue is only whether the Respondents need to be punished for contempt of this Court, we will highlight those facts relevant to the exercise of this jurisdiction.

3. A group of Writ Petitions were filed before the Division Bench of this court in the year 2014, challenging the orders passed by the Education Officer (Secondary), Zilla Parishad and the Director of Education (Secondary and Higher Secondary), Maharashtra State. By the impugned orders Respondents had declared that the Petitioners were not entitled to the Grant in Aid in their institutions

because there was a backlog of reserved category candidates to be filled in. The grievance of the Writ Petitioners was that the impugned orders were passed without show cause notice or giving an opportunity of being heard. The State could not controvert this assertion. The State had however contended that there was non-compliance of rules and regulations mandating reservation policy applicable to the post of teachers in the concerned schools. The Writ Petitioners on the other hand had contended that it was not open to the Respondents to decide without pointing out the shortfalls. The Division Bench did not find it necessary to go into the larger controversy because there was a breach of principles of natural justice as there was no show cause notice given before taking the decision. The Division Bench disposed of the group of Petitions by order dated 16 July 2014. The Division Bench set aside the impugned orders, respondents authorities were given liberty to issue show cause and to give an opportunity of personal hearing. The Respondents, State authorities were directed to release the salary grant and were given liberty to take a decision. Arrears of salary grant of period w.e.f. 9 May 2013 to 31 August 2014 was directed to be released up to 30 September 2014 with a further direction to Respondent-State authorities to continue to pay salary grant, without withholding any salary grant on the ground of backlog without following the procedural safeguards. Division Bench clarified that it had not gone to the merits of the controversy between the parties.

4. The matter again came up before the same Division Bench on 6 August 2014 for Speaking to Minutes, and it was clarified with the direction to pay full salary grant to the Petitioners Institutions by directing payment of salary to concerned employees in accordance with the rules and regulations.

5. The State of Maharashtra moved civil Applications for modifying the order dated 16 July 2014(as corrected by order dated 6 August 2014) in so far as the Division Bench had directed the State to pay full salary grant. The State argued that since the Court had permitted authorities to take a fresh decision after show cause notice salary grant could not have been directed to be released. The Writ Petitioners argued there is no justification for denying the grant on the ground of backlog of reservation. The Division Bench disposed of the Civil Applications holding that the directions in clause 6(iii) and (v) of the order dated 16 July 2014 for releasing the salary grant under the Government Resolution dated 15 November 2011 (i) shall not apply till the Director of Education takes a decision in the matter which shall be done within the time frame stipulated in the order. (ii) It was clarified that if an institution is found to be eligible to receive grant under the Government Resolution dated 15 November 2011, it shall not be denied the grant on the ground of not following the reservation policy. Further directions were issued regarding issuing show-cause notices. The Civil Applications were disposed of by order dated 7 January 2015.

6. The State challenged the order dated 7 January 2015 in the Supreme Court. The Supreme Court did not interfere with the order passed by the High Court. However, the Supreme Court clarified that the respondent (Petitioners Institutions) would be entitled to grant in aid from the date on which it fulfils the requirement of the Government Resolution dated 15 November 2011 regarding the reservation policy in the educational institutes, to the satisfaction of the petitioners therein, i.e. the State.

7. In the meanwhile, Respondents-State issued a Government Resolution dated 4 August 2015 in which Government Resolution dated 15 November 2011 was reiterated. Five conditions were laid down by the State for grant of aid to the Educational Institutes. The salary grant is not released to the Contempt petitioners on the ground of backlog of reservation.

8. According to the Petitioners, they are otherwise eligible, and the denial of the grant on the ground of backlog, is a contempt of this court. According to the Petitioners laying down these conditions is contrary to the orders passed by this Court on 16 July 2014, 6 August 2014, 30 September 2014 and 7 January 2015. The Petitioners contend that the Annexure 'A' to the Government Resolution dated 4 August 2015 contains a list of the Educational Institutions which are eligible for the grant. It is contended that in

view of the orders passed by the Division Bench of this Court referred above once the Institutions are found eligible then grant in aid must be provided without insisting on the stipulation of the backlog of reserved category. According to the Petitioners, this act of the Respondent-State being contemptuous, an action needs to be initiated against the Respondents. The Petitioners have also sought directions to release salary grant to the employees, with an interim order to release such grant.

9. The State authorities have filed reply affidavits. The Government Resolution dated 4 August 2015 refers to the orders passed by Division Bench of this Court on 16 July 2014, 6 August 2014 and the Civil Applications and refer to the financial position of the State and the decision taken by the Ministers in the meeting of the Ministers. The Government Resolution refers to G.R dated 15 November 2011 and the stipulation regarding filling up the backlog. After considering the decision of this Court and the decision of the Apex Court, the Government Resolution dated 4 August 2015 is issued. Therefore the decision taken is a conscious decision by the State.

10. In the reply affidavit, it is stated that even if a school became eligible, it could not be given grant immediately because there may not be sufficient allocation of funds in the budget as it is difficult to foresee in advance as to how many schools will become

grantable. The funds are provided subject to priority. It is contended that there are financial constraints, and there is no intention to disobey the Court orders. The Secretary of the Education Department has also filed an affidavit. The Government Resolution dated 15 November 2011 is referred to and reiterated. The need for reservation is underscored, and it is stated that insistence of the State Government at the time of receiving grant in aid the school Management should follow reservation policy is not arbitrary, and unless a private institution follows the Constitutional mandate, the State Government cannot provide funds to any private institutions from its consolidated funds. The Government Resolutions dated 15 November 2011 is placed on record.

11. We have considered the submissions and have perused the record. The State is of an opinion that it is following a constitutional mandate. Whether their opinion is correct in law or otherwise is another matter. The Supreme Court in the order dated 9 December 2016, has referred to the fulfilment of requirements of GR dated 15 November 2011 to the satisfaction of the State. Though this order may be passed in the context of other matters, there is a reference to the GR dated 15 November 2011, on which the State relies on. We may note here that the first order of the Division Bench dated 16 July 2015, which is the genesis of the dispute, was only that State would proceed after giving an opportunity to the Petitioners. It is in a civil application for recalling the order, further directions

regarding the stipulation of clearing the backlog were commented upon by the Division Bench. This only to point out there are arguments to be made by the Respondent-State regarding stand they have taken. The issue is complex. Once we find that *prima facie* the issue has a complexity and requires an adjudication, we will leave it to be adjudicated in substantial proceeding and not under a threat of punitive action.

12. Further, whether a penal action can be taken against the Respondents who are arrayed, for contempt. The respondents are Education Officers and Deputy Directors in various districts. The decision complained of is by the State. The State has taken a decision to insist upon following the mandate of reservation policy. These education officers and the deputy directors cannot be held to have individually flouted the orders of the Court as they are merely adopting the stand taken by the State.

13. Every act seemingly contrary to the orders passed by the court is not contempt. A mere breach of the court's order cannot *ipso facto* constitute civil contempt. Such a breach must be willful, deliberate and intentional. To exercise its power to punish the contemnor, the court has to be satisfied beyond a reasonable doubt that the contemnor has deliberately and intentionally violated the court order. An action taken under contempt jurisdiction is primarily targeted at punishing the offender and not for granting substantive

relief to the petitioner. The role of a contempt petitioner is to bring the alleged contempt to the notice of the court, and once the court notes it, it becomes a matter between the court and the contemnor. Yet the contempt petitions are often argued as if they are meant for grant of relief to the petitioners.

14. We are of the opinion, given the circumstances, these contempt proceedings which have lingered on for the last four years cannot result in punitive action. We discharge the notice issued in this group of Contempt Petitions. We clarify that it is open to the Petitioners to seek reliefs regarding their entitlement by initiating substantive proceedings, which will be decided as per law. With the disposal of Contempt Petitions, the pending Civil Applications stand disposed of.

N.M.JAMDAR, J. *CHIEF JUSTICE*