

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.09.2019	Pronounced on : 18.10.2019
--------------------------	-------------------------------

CORAM:

THE HON'BLE MR. JUSTICE P.D.AUDIKESSAVALU

W.P. No. 26948 of 2019

CA.V. Venkata Sivakumar

... Petitioner

-vs-

1. Md. Sheriff Tariq

2. Hon'ble Advocate General of Tamil Nadu,
Hon'ble Madras High Court,
Chennai,
Tamil Nadu.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the proceedings before the Learned Advocate General in the Contempt Complaint 17 of 2018 and quash the order dated 18.01.2019 and permit the Petitioner to initiate criminal contempt proceedings u/s 16 of the Contempt of Courts Act, 1971 against the First Respondent.

For Petitioner : Mr. CA.V. Venkata Sivakumar
Party-in-person

O R D E R

Heard Mr. V. Venkata Sivakumar, who has appeared party-in-person and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition has been filed challenging the order dated 18.01.2019 in Contempt Application No. 17 of 2018 passed by the Second Respondent, viz., the Learned Advocate General of Tamil Nadu, and for consequential direction to permit the Petitioner to initiate criminal contempt proceedings under Section 16 of the Contempt of Court Act, 1971, against the First Respondent.

3. The Hon'ble Supreme Court of India in General Manager, Electrical Rengali Hydro Electric Project, Orissa -vs- Sri Giridhari Sahu (Judgment dated 12.09.2019 in Civil Appeal No. 8071 of 2010), after referring to the earlier decisions of the

Hon'ble Supreme Court of India in T.C. Basappa -vs- T. Nagappa (AIR 1954 SC 440), Hari Vishnu Kamath -vs- Ahmed Ishaque (AIR 1955 SC 233), Dharangadhara Chemical Works Ltd. -vs- State of Saurashtra (AIR 1957 SC 264), Syed Yakoob -vs- K.S. Radhakrishnan (AIR 1964 SC 477), M/s. Perry and Co. Ltd. -vs- P.C. Pal, Judge of the Second Industrial Tribunal, Calcutta (AIR 1970 SC 1334), Management of Hindustan Steel Limited -vs- Workmen (AIR 1973 SC 878), Bharat Iron Works -vs- Bhagubhai Balubhai Patel (AIR 1976 SC 98), Bank of India -vs- O.P. Swarnakar [(2003) 2 SCC 721], Mukand Ltd. -vs- Mukand Staff & Officers' Association [(2004) 10 SCC 460] and Management of Madurantakam Co-op. Sugar Mills Limited -vs- S. Viswanathan [(2005) 3 SCC 193], has succinctly explained the scope of the certiorari jurisdiction of the High Courts as follows:-

"29. On the conspectus of the decisions and material, we would hold as follows:

The jurisdiction to issue writ of certiorari is supervisory and not appellate. The Court considering a writ application of Certiorari will not don the cap of an Appellate Court. It will not reappreciate evidence. The Writ of Certiorari is intended to correct jurisdictional excesses. A writ of prohibition would issue when a Tribunal or authority has not yet concluded its proceedings. Once a decision is rendered by a body amenable to Certiorari jurisdiction, certiorari could be issued when a jurisdictional error is clearly established. The jurisdictional error may be from failure to observe the limits of its jurisdiction. It may arise from the procedure adopted by the body after validly assuming jurisdiction. It may act in violation of principles of natural justice. The body whose decision which comes under attack may decide a collateral fact which is also a jurisdictional fact and assume jurisdiction. Such a finding of fact is not immune from being interfered with by a Writ of Certiorari. As far as the finding of fact which is one within the jurisdiction of the court, it is ordinarily a matter 'off bounds' for the writ court. This is for the reason that a body which has jurisdiction to decide the matter has the jurisdiction to decide it correctly or wrongly. It would become a mere error and that too an error of fact. However, gross it may amount to, it does not amount to an error of law. An error of law which becomes vulnerable to judicial scrutiny by way of Certiorari must also one which is apparent on the face of the record. As held by this Court in Hari Vishnu Kamath v. Ahmed Ishaque (AIR 1955 SC 233), as to what constitutes an error

apparent on the face of the record, is a matter to be decided by the court on the facts of each case. A finding of fact which is not supported by any evidence would be perverse and in fact would constitute an error of law enabling the writ court to interfere. It is also to be noticed that if the overwhelming weight of the evidence does not support the finding, it would render the decision amendable to certiorari jurisdiction. This would be the same as a finding which is wholly unwarranted by the evidence which is what this Court has laid down M/s. Perry and Co. Ltd. v. P.C. Pal, Judge of the Second Industrial Tribunal, Calcutta and others (AIR 1970 SC 1334)."

4. In the light of this legal position, the order impugned in the Writ Petition, would have to be examined, which reads as follows:-

"This Petition filed under Section 15 of the Contempt of Courts Act, 1971, seeks to initiate criminal contempt proceedings against Mr. Md. Sheriff Tariq, a serving member of the National Company Law Tribunal.

1. According to the Petitioner, he is a practising chartered accountant and a member of the Institute of Chartered Accountants of India for over 30 years. He states that he has been a professor in constitutional law, cost accounting, management accountancy and strategic financial management for students. From the year 2010, he has been appearing as a party in person before the High Court in various cases.

2. The grievance of the Petitioner is that the Respondent has been violating judicial ethics and etiquette and has been acting in total disregard of the provisions of the Insolvency and Bankruptcy Code, the principles of natural justice, and the law laid down by the Hon'ble Supreme Court, and therefore the petition has been filed in larger public interest and in the interest of public confidence on the judiciary. He further states that the Respondent has been passing totally contradictory orders, he has been passing orders to the issues that have been raised, he has been misinterpreting the evidence, he has been very hostile against those who were not in his good books and he has been ridiculing and threatening them in open Court by passing vituperative comments.

3. In support of his application, the Petitioner has filed several documents which are in the nature of pleadings filed before the National Company Law

Tribunal, Chennai Bench in CP No. 540 (IB) of 2018 in a matter relating to PRC International Hotels Private Limited, where the Petitioner was appointed as an Interim Resolution Professional (IRP). He has filed certain pleadings and orders in respect of CP No. 563 (IB) of 2017 relating to Oceanic Edibles International Ltd, again a case in which he was appointed as an IRP. A few other pleadings, written submission and orders passed by the National Company Law Tribunal and the High Court have also been produced.

4. The Petitioner has relied upon certain judgements of the Hon'ble Supreme Court wherein certain general observations have been made with regard to the conduct and behaviour that is expected from a Judge.

5. The Petitioner has also filed written submissions before me and from a reading of the same, it appears that the main grievance of the Petitioner is that the Respondent exercised judicial powers, removing the Petitioner as the interim resolution professional in respect of PRC International Hotels Ltd. The further grievance that is expressed is that in another case, while a request for unpaid remuneration was pending, the Respondent close the Petition without granting any relief.

6. I have heard the Petitioner in detail to decide whether notice should be issued to the Respondent on the basis of the facts stated in the Petition, but after going through the papers as well as hearing the submissions of the Petitioner, I am of the view that the facts stated in the Petitioner relating to the conduct of the member of the tribunal do not constitute any ground for initiation of criminal contempt proceedings.

7. The Contempt of Courts Act, 1971 recognises two forms of contempt-civil and criminal. Such a distinction has always been made in the country ever since the present legal system was introduced by the British. "Civil contempt" is defined under Section 2 (b) as follows:

"2. (b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court;"] to be "wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an

undertaking given to a Court".

Section 2(c) defines "criminal contempt":

"2. (c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which-

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any Court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"

8. It can be seen from the above that any act which scandalises or tends to scandalise the authority of the Court and interference or obstruction of the administration of justice in any manner are two forms of contumacious action.

9. It is no doubt true that even a judge belonging to the higher judiciary can commit criminal contempt of Court as can be seen from the judgement of the Hon'ble Supreme Court in 2017 (7) SCC pg 1 titled C.S. Karnan, In re., but it must be demonstrated from the facts of the case that a judge or a member of the tribunal or other Court should have committed an act which scandalises or tends to scandalise the authority of the Court or interferes with the due course of any judicial proceeding or tends to interfere with or obstruct the administration of justice in any other manner. In the case of a Judge, judicial orders are passed everyday and are subject to the procedure for appeal and if such judicial orders are to be made the basis of initiation of criminal contempt proceedings, not only will it shake the foundation of the justice delivery system but it will also completely erode the independence of the judiciary since every judge passing a judicial order may face the possibility of a criminal contempt proceedings being initiated against him if the order is not to the liking of one of the parties to the dispute.

10. No purpose and object of Section 15 of the Contempt of Court Act is to weed out Petitions which are vexatious, frivolous, malicious or lacking in bonafides. The present petition is one such petition. It is accordingly rejected."

On a perusal of the order impugned in the Writ Petition viz-a-

viz the parameters laid down for interference in the exercise of discretionary power of judicial review under Article 226 of the Constitution, in the absence of any infirmity in the decision making process of the Second Respondent, this Court does not find any justifiable reason to interfere with that well reasoned order.

6. In the aforesaid circumstances, the Writ Petition cannot be entertained and accordingly, the same is dismissed at the admission stage. No costs.

Sd/-

Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

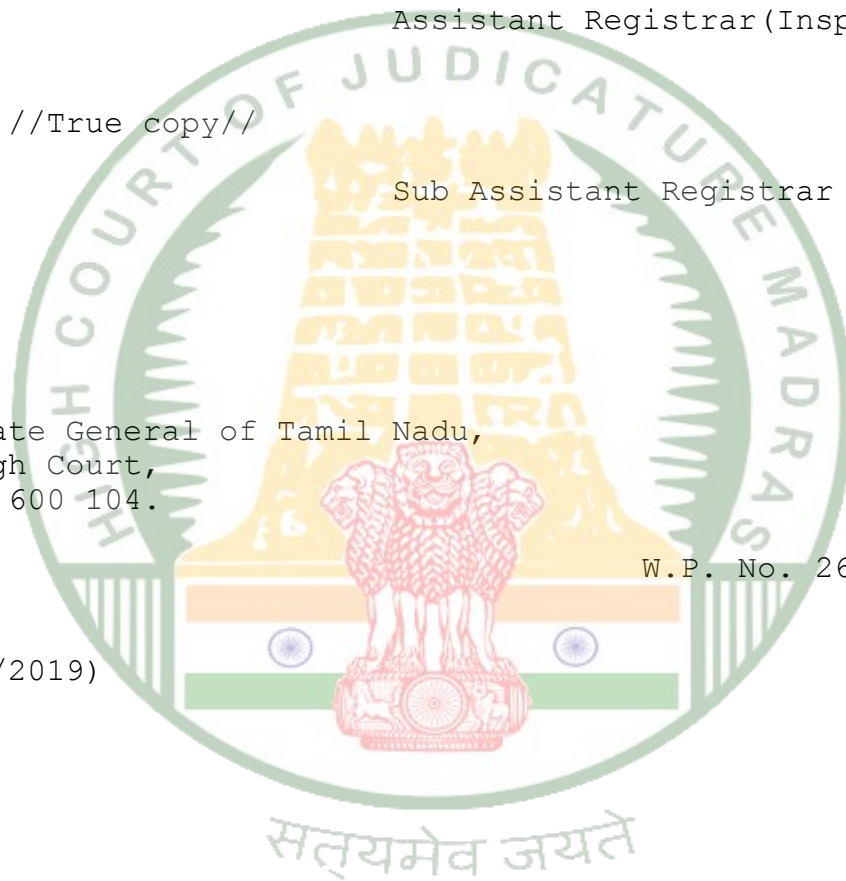
vjt

To

The Advocate General of Tamil Nadu,
Madras High Court,
Chennai - 600 104.

W.P. No. 26948 of 2019

RJI (CO)
GMY (22/10/2019)



WEB COPY