

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CONTEMPT CASE No. 2597 of 2018

ORDER:

This Contempt Case is filed alleging violation of the order dated 17.08.2017 passed by this Court in WP.No.21755 of 2018, wherein this Court passed the following order;

“ On the above analysis the impugned order is unsustainable and it is accordingly set aside. In the circumstances, the respondent is directed to re-consider the application of the petitioner for grant of approval for starting D.Ed. Special Education (VI) course for the academic year 2018-2019, since the academic year is started, such application of the petitioner be considered and appropriate speaking order be passed thereon, in accordance with law, within a period of two weeks from the date of receipt of a copy of this order. The writ petition is allowed accordingly.”

The respondent filed Counter affidavit stating that in pursuance to the orders passed by this Court, the matter was reconsidered and order dated 07.09.2018 was passed and the same was also communicated to the petitioner, as such, there is no violation of the orders passed by this court.

Heard Sri Deepak Bhattacharjee, learned Senior Counsel appearing for the petitioner submits that the respondents have passed order dated 07.09.2018 repeating the same order which is impugned in the writ petition, by holding otherwise, though this Court set aside the

said impugned order in the writ petition, as such, the same amounts to willful violation of the orders passed by this Court. He also submits that clinical infrastructure/resource room is not the required parameter for considering the application of petitioner for grant of permission to D.Ed. course; and that this Court also held the same in the writ petition order, but the respondents have again passed order dated 07.09.2018 rejecting the application of the petitioner on the same ground.

On the other hand learned Assistant Solicitor General submits that since the impugned order in the writ petition dated 23.05.2018 was not a speaking order, this court has set aside the same and directed the respondent to re-consider the application of the petitioner seeking approval to start D.Ed. course; and that the respondent reconsidered the application of the petitioner and passed order dated 07.09.2018, basing on the joint inspection report and also in terms of the regulations, as such, there is no willful violation of the orders passed by this Court. He also submits that even if it is construed that the said order dated 07.09.2018 is wrong, the petitioner cannot agitate the said order in Contempt Case as a separate cause of action would arise for the petitioner to challenge the same. In support of this contention, he relied on the Judgment rendered by the Honourable Supreme Court in **J.S.Parihar v. Ganpat Duggar and others**¹.

¹ (1996) 6 Supreme Court Cases 291

This Court while setting aside the impugned order dated 23.05.2018 in the writ petition, directed the respondent to reconsider the application of the petitioner for grant of approval for starting D.Ed. Special Education (VI) course for the academic year 2018-2019, and in pursuance of the same the respondents passed speaking order dated 07.09.2018. This court has gone through both the orders dated 23.05.2018 and 07.09.2018. The respondents after referring joint inspection report and the norms prescribed by the Rehabilitation Council of India, passed order dated 07.09.2018.

In view of the same, this Court is of the opinion that the respondents reconsidered the application of the petitioner and passed order dated 07.09.2018, as such, there is no willful violation of the orders passed by this Court. Further, merits of the order dated 07.09.2018 cannot be gone into the Contempt Case and invalidate the said order in the Contempt Case. Even, if the submissions made by the learned Senior Counsel is accepted that the order dated 07.09.2018 is wrong, the petitioner can not challenge the same in the Contempt Case. He can challenge the same by way of fresh proceedings as different cause of action would arise as held by the Honourable Supreme Court in **J.S.Parihar's case (supra one)**.

In view of the above, I do not see any willful violation of the orders passed by this Court in the writ petition. Accordingly, the Contempt Case is disposed of granting liberty to the petitioner to challenge the said proceedings dated 07.09.2018, in accordance with

law. However, it is open for the petitioner to rectify the defects, if any, regarding required parameters and it is open for the respondent to consider the same for the next academic year. No order as to costs.

As a sequel, miscellaneous applications, if any, pending shall stand closed.

A.RAJASHEKER REDDY, J

29.03.2019
tk

