

HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

AND

HONOURABLE SRI JUSTICE P. KESHA VA RAO

Interlocutory Application No.1 of 2019

IN / AND

Writ Petition No.45786 of 2018

AND

Contempt Case No.456 of 2019

COMMON ORDER : *(Per Sri Justice M.S.Ramachandra Rao)*

The petitioner was selected in the erstwhile combined State of Andhra Pradesh initially as a Co-op Sub-Registrar under Group –II Services pursuant to the Notification No.10/1999 and was appointed on 2.3.2005 and thereafter promoted to the cadre of Deputy Registrar of Co-operative Societies on 3.8.2007.

2. The combined State of Andhra Pradesh was bifurcated into the new State of Telangana (1st respondent) and the residuary State of Andhra Pradesh (4th respondent) w.e.f 2.6.2014, by the A.P. Reorganisation Act, 2014.

3. Thereafter the A.P. Public Service Commission (respondent no.7) revised the selections under Group-II services (General) made under the Notification No.10/1999 in compliance with orders passed by the Supreme Court of India on 18.2.2015 in Civil Appeal No.5099/2006 and batch reported in **M.Surender Reddy v. State of**

A.P¹. and sent to the 1st respondent a revised unit list of provisionally selected candidates to the post of Asst. Labour Officer (Post code 07) for issuance of appointment orders to the provisionally selected candidates. The said unit list was communicated to the Office of the Commissioner of Labour, State of Telangana (2nd respondent) by the 1st respondent for taking further necessary action vide Memo No.3018/Labour/A1/2017-1 dt.3-7-2017.

4. In the said unit list, the petitioner's name was included to the post of Asst. Labour officer under Zone-V (Warangal) (which is in the State of Telangana).

5. Subsequent to the above selection, the petitioner was relieved from his earlier post of Deputy Registrar vide. Rc.No.5197/2017/Dir.rec dt.31.3.2018 of the Commissioner of Co-operative Societies and Registrar of Co-operative Societies, State of Telangana , Hyderabad.

6. On relief, the petitioner reported before the Commissioner of Labour, Telangana for appointment orders. As per directions of the 1st respondent, appointment orders were issued and he was allotted to Zone-V (Warangal) vide Proc.No.A1/4050/2017 dt.9.4.2018. Petitioner then reported to duty before the Joint Commissioner of Labour, Warangal on 27.4.2018.

¹ (2015) 8 SCC 410

7. As matters stood thus the A.P.Public Service Commission again revised the selections made to Group-II Services pursuant to the Notification No.10/1999 and the said revised unit list was sent to the Office of the Commissioner of Labour (2nd respondent) for issuance of the appointment orders to the provisionally selected candidates to the post of Asst.Labour Officer (Post code 07) vide Lr.No.196/RS-23-B/2015 dt.10.5.2018.

8. But the petitioner's name was not reflected in the provisionally selected candidates to the post of Asst.Labour Officer, Telangana, but he was shown as having been provisionally selected to the post of Deputy Tahsildar and allotted to Zone IV (Kurnool) (falling in the residuary State of Andhra Pradesh).

9. To enable him to report to as Deputy Tahsildar in Zone IV (Kurnool), the 2nd respondent relieved the petitioner from the post of Asst.Labour Officer, Warangal, Telangana vide Proc.No.A1/4050/2017 dt.29.6.2018.

10. On 16.7.2018, the Chief Commissioner of Land Administration, State of Andhra Pradesh (respondent no.5) vide CCLA Proc.No.Ser.II (1)/560/2017 dt.16.7.2018 issued allotment orders allotting the petitioner and others to Kurnool District in the State of A.P.

11. But before the petitioner could join in the said post, in Conmt. Pet. (C) No.1700/2017 in C.A.No.5099 of 2006 filed by some affected persons against the above action of the A.P.Public Service

Commission, the Supreme Court on 24.7.2018 constituted a committee consisting of former Judge of the Supreme Court Justice C.K.Thakker (Retd.) to submit a report to it and directed both the 1st respondent and the State of Andhra Pradesh (6th respondent) to render assistance to the said Committee; and directed that pending submission of the report by the learned Judge, it directed both states to maintain *status quo* as on that day.

12. When petitioner went to the Office of Collector and District Magistrate to give joining report on 28.7.2018, the latter refused to permit him to join as probationary Deputy Tahsildar in view of the said *status quo* order passed by the Supreme Court.

13. The petitioner contends that he was not being allowed by the Commissioner of Labour (2nd respondent) to go back to his earlier job of Asst. Labour Officer and he thus has nowhere to go.

14. Petitioner then filed the instant Writ petition challenging the action of the respondents in not permitting him to join as Deputy Tahsildar in Kurnool District and also not permitting him to continue in the previous post of Asst.Labour Officer, Warangal by revoking the relieving order dt.29.6.2018 issued by the Commissioner of Labour, State of Telangana (2nd respondent) and for a direction to permit him to join duty as Probationary Deputy Tahsildar in Kurnool District with all consequential and attendant benefits including treating the period from the date of relieving the post of Asst.Labour Officer to the date

of permitting him to join as Probationary Deputy Tahsildar in Kurnool District on duty including salaries for the said period.

15. On 5.2.2019, in I.A.No.1 of 2018 in WP.No.45786 of 2018, a Division Bench of this Court presided over by Hon'ble Justice V.Ramasubramanian (as His Lordship then was) took note of the delicate situation of the petitioner and directed the 2nd respondent *to allow the petitioner atleast to continue as Asst.Labour Officer till the issue is finally settled by the Supreme Court with regard to his appointment to the post of Deputy Tahsildar.*

16. To vacate the said order, the respondents 1-3 have filed IA No.1 of 2019.

17. The 2nd respondent did not implement the above interim order dt.5.2.2019 in IA.No.1 of 2018 in this W.P.

18. So the petitioner filed CC No.456 of 2019 to punish the Commissioner of Labour, State of Telangana (sole respondent in the CC) for Contempt of Court *alleging* that though petitioner gave a representation on 12.2.2019 to allow him to work as Asst.Labour Officer, the said officer did not permit him to do so.

19. The counsel for the petitioner contended that the respondent No.s 1 and 2 misinterpreted the order passed by the Supreme Court and arbitrarily and unreasonably refused to permit the petitioner to work as Asst. Labour officer in Warangal; that petitioner was deprived of his means of livelihood though he had loyally served the

1st respondent since 2.3.2005 for 13 years; that petitioner had also filed WP.No.33145 of 2018 in this Court to declare the revised selection of Group –II services relating to the Notification No.10/1999 in revised selection list dt.9.6.2017 as being contrary to the Supreme Court decision in Civil Appeal No.5099 of 2006 dt.18.2.2015, but the said Writ petition was dismissed on 17.9.2018 permitting the petitioner also to approach Justice C.K.Thakker (Retd) Committee appointed by the Supreme Court to go into these issues; that the said Judge had submitted his report to the Supreme Court, but no fresh orders had been passed by the Supreme Court till date.

20. The GP for Services –I for the State of Telangana stated that once the petitioner has been relieved as Asst.Labour Officer on 29.6.2018, petitioner cannot get any relief against the respondent No.s 1 and 2. It is also contended that this Court cannot entertain the Writ Petition at all since the petitioner ceased to be an employee of the 1st respondent after he was so relieved.

21. The Special Government Pleader for the State of A.P appearing for respondent No.s 4-6 contended that the State of A.P is helpless in view of the status quo order passed by the Supreme Court , and if it takes the petitioner into service as Deputy Tahsildar at Kurnool now, it would be committing Contempt of the order passed by the Supreme Court.

22. We have noted the contentions of both sides.

23. From the facts narrated above it is clear that but for the *status quo order* passed by the Supreme Court on 24.7.2018, the petitioner would have joined as Deputy Tahsildar in Kurnool District in State of A.P. after he was relieved by the respondent No. 1 and 2 on 29.6.2018.

24. Since only on 16.7.2018, the Chief Commissioner of Land Administration, State of Andhra Pradesh (respondent no.5) vide CCLA Proc.No.Ser.II (1)/560/2017 dt.16.7.2018 issued allotment orders allotting the petitioner and others to Kurnool District in the State of A.P., petitioner cannot be blamed for the delay in reporting in the State of A.P. to join as Deputy Tahsildar at Kurnool.

25. The respondent No.s 4 to 6 cannot be compelled by this Court to violate the Supreme Court order of *status quo* and take the petitioner's joining report as Deputy Tahsildar in Kurnool District in State of A.P. , for this Court also cannot violate the status quo order passed by the Supreme Court . It would also amount to tinkering with the decision of the AP Public Service Commission which is *sub-judice* before the Supreme Court. So we are of the opinion that in this Writ petition, no relief can be granted to the petitioner against respondent No.s 4-6.

26. However, we do not agree with the plea of the respondents 1-3 that petitioner ceased to be an employee of the State of Telangana

merely because the 2nd respondent had issued orders relieving him on 29.6.2018.

27. We are of the view that the *status quo* order has to be properly understood and interpreted.

28. In our opinion, the proper way to interpret the said order of the Supreme Court is that if the petitioner, before the said order was passed, had been employed in the State of Telangana as Asst.Labour Officer, Warangal, such status ought to be maintained i.e., he ought to be allowed to continue to work in the said capacity till the said Court passes appropriate order regarding the revision of the selections made to Group-II Services pursuant to the Notification No.10/1999. In our view, the fact that the 2nd respondent had relieved the petitioner before the said order is not at all relevant.

29. We also do not accept the contention of the respondents 1-3 that because the petitioner was relieved on 29.6.2018, this Court had no jurisdiction to entertain the Writ Petition. Petitioner's contention is that in view of the Supreme Court order, since he was unable to join in Kurnool in the State of A.P as Deputy Tahsildar, the orders Prc.No.A1/4050/2016 dt.29.6.2018 passed by the 2nd respondent ought to be revoked. This ground furnishes jurisdiction to this Court to entertain this Writ Petition.

30. It is also settled law that no party shall be prejudiced by an act of a Court.

31. In Committee-GFIL v. Libra Buildtech (P) Ltd², an auction sale of immoveable properties of a Company (GFIL) by a Committee constituted by the Supreme Court took place. Successful bidders deposited with the Committee entire amount of sale consideration and stamp duty in terms of auction conditions and directions of Court monitoring the transaction. But despite full performance of purchasers' part of the contract, the Committee (seller) could not deliver possession of the properties to the purchasers and the transaction failed for reasons beyond the control of the parties. The Supreme Court cancelled the transaction and directed the Committee to refund the entire sale consideration with interest and permitted the petitioners to approach the State Government to claim refund of stamp duty. The Committee refunded the sale consideration, but the State refused to refund the stamp duty spent for execution of sale deeds in their favor in relation to the properties in question. The purchasers then approached the Supreme Court. It held that they are entitled under Sec.65 of the Contract Act,1872 to refund of the stamp duty as well. It applied the above principle i.e., that *no party shall be prejudiced by an act of a Court* and held that once the sale became void as a result of cancellation of transaction by the Court, the contract was rendered void. It held:

“25. In the first place, admittedly the transaction originally intended between the parties i.e. sale of properties in question by GFIL Committee to the applicants was not accomplished and failed due to reasons beyond the control of the parties. Secondly,

² (2015) 16 SCC 31

this Court after taking into consideration all facts and circumstances also came to the conclusion that it was not possible for the parties to conclude the transactions originally intended and while cancelling the same directed the seller (GFIL Committee) to refund the entire sale consideration to the applicants and simultaneously permitted the applicants to claim refund of stamp duty amount from the State Government by order dated 26-9-2012¹¹. Thirdly, as a result of the order of this Court, a right to claim refund of amount paid towards the stamp duty accrued to the applicants. Fourthly, this being a court-monitored transaction, no party was in a position to take any steps in the matter without the permission of the Court. Fifthly, the applicants throughout performed their part of the contract and ensured that transaction in question is accomplished as was originally intended but for the reasons to which they were not responsible, the transaction could not be accomplished. Lastly, the applicants in law were entitled to claim restoration of all such benefits/advantages from the State once the transaction was cancelled by this Court on 26-9-2012 in the light of the principle contained in Section 65 of the Contract Act which enable the party to a contract to seek restoration of all such advantage from other party which they took from such contract when the contract is discovered to be void or becomes void. This was a case where contract in question became void as a result of its cancellation by order of this Court dated 26-9-2012 which entitled the applicants to seek restitution of the money paid to the State for purchase of stamp papers.

26. *In our considered opinion, while deciding a case of this nature, we have to also bear in mind one maxim of equity, which is well settled, namely, **actus curiae neminem gravabit** meaning—**an act of the court shall prejudice no man**. In Broom's Legal Maxims, 10th Edn., 1939 at p. 73 this maxim is explained saying that it is founded upon justice and good sense and afforded a safe and certain guide for the administration of law. This maxim is also explained in the same words in **Jenk. Cent. 118**. **This principle is fundamental to any system of justice***

*and applies to our jurisprudence. [See **Busching Schmitz (P) Ltd. v. P.T. Menghani**³ and **Raj Kumar Dey v. Tarapada Dey**⁴].*

27. It is thus a settled principle of law based on principle of equity that a person cannot be penalised for no fault of his and the act of the court would cause no prejudice to any of his rights.

28. In our considered opinion, the aforesaid maxim would apply with full vigour in the facts of this case and if that is the position then the applicants, in our opinion, are entitled to claim the refund of the entire amount of stamp duty from the State Government which they spent in purchasing the stamp papers for execution of sale deed in relation to the properties in question. Indeed in the light of six reasons set out supra which, in our considered opinion, in clear terms attract the principle contained in the aforesaid maxim, the State has no right to defend the order of the SDM for retaining the amount of stamp duty paid by the applicants with them. The applicants' bona fide genuine claim of refund cannot be denied on such technical grounds.

*29. This case reminds us of the observations made by M.C. Chagla, C.J. in **Firm Kaluram Sitaram v. Dominion of India**⁵¹⁴. The learned Chief Justice in his distinctive style of writing observed as under in para 19: (**Firm Kaluram** case, SCC OnLine Bom)*

"19. ... we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person."

We are in respectful agreement with the aforementioned observations, as in our considered opinion these observations apply fully to the case in hand against the State because except the plea of limitation, the State has no case to defend their action.

30. Even apart from what we have held above, when we examine the case of the applicants in the light of Sections 49 and 50 of the Act, we find that the case of the applicants can be

³ (1977) 2 SCC 835

⁴ (1987) 4 SCC 398

⁵ AIR 1954 BOMBAY 50

brought under Section 49(d)(2) read with Section 50(3) of the Act to enable the State to entertain the application made by the applicants seeking refund of stamp duty amount. The interpretation, which advances the cause of justice and is based on the principle of equity, should be preferred. We hereby do so.” (emphasis supplied)

32. Similar view was also taken in Urban Improvement Trust, Bikaner vs. Mohan Lal⁶. It declared:

“5. Statutory authorities exist to discharge statutory functions in public interest. They should be responsible litigants. They cannot raise frivolous and unjust objections, nor act in a callous and high-handed manner. They can not behave like some private litigants with profiteering motives. Nor can they resort to unjust enrichment. They are expected to show remorse or regret when their officers act negligently or in an overbearing manner. When glaring wrong acts by their officers are brought to their notice, for which there is no explanation or excuse, the least that is expected is restitution/restoration to the extent possible with appropriate compensation. Their harsh attitude in regard to genuine grievances of the public and their indulgence in unwarranted litigation requires to be corrected.

6. This Court has repeatedly expressed the view that Governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice. We may refer to some of the decisions in this behalf.

*7. In **Dilbagh Rai Jarry v. Union of India**⁷ this Court extracted with approval the following statement [from an earlier decision of the Kerala High Court (**P.P. Abubacker case**)⁸]:*

“25. ... ‘5. ... The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it

⁶ (2010) 1 SCC 512

⁷ (1974) 3 SCC 554

⁸ AIR 1972 KERALA 103

must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, Government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The layout on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic showdowns where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of Government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957.' "

8. In **Madras Port Trust v. Hymanshu International**⁹ this Court held: (SCC p. 177, para 2)

"2. ... It is high time that Governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a Government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a Government or a public authority, unless of course the claim is not well founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable."

9. In a three-Judge Bench judgment of **Bhag Singh v. UT of Chandigarh**¹⁰ this Court held: (SCC p. 741, para 3)

⁹ 1979 (4) SCC 176

“3. ... The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen.”

10. Unwarranted litigation by Governments and statutory authorities basically stems from the two general baseless assumptions by their officers. They are:

(i) All claims against the Government/statutory authorities should be viewed as illegal and should be resisted and fought up to the highest court of the land.

(ii) If taking a decision on an issue could be avoided, then it is prudent not to decide the issue and let the aggrieved party approach the court and secure a decision.

The reluctance to take decisions, or tendency to challenge all orders against them, is not the policy of Governments or statutory authorities, but is attributable to some officers who are responsible for taking decisions and/or officers in charge of litigation. Their reluctance arises from an instinctive tendency to protect themselves against any future accusations of wrong decision-making, or worse, of improper motives for any decision-making. Unless their insecurity and fear is addressed, officers will continue to pass on the responsibility of decision-making to courts and tribunals.”(emphasis supplied)

33. These observations aptly get attracted to the instant case.

34. We are of the view that respondent No.s 1-3 cannot raise frivolous and unjust objections, nor act in a callous and high-handed manner as they have done in the instant case. The stand taken by the State of Telangana (respondents 1-3) is a technical plea for the purpose of defeating legitimate claims of petitioner and by

¹⁰ 1985 (3) SCC 737

misinterpreting the *status quo* order of the Supreme Court, it cannot deny the petitioner the opportunity to rejoin as Asst.Labour Officer, Warangal.

35. We also hold that the respondents 1-3 ought to have implemented the interim order passed by the Division Bench of this Court on 5.2.2019 and taken back the petitioner into service as Asst.Labour Officer, Warangal without waiting for the fate of the vacate stay application to be decided.

36. In **Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd¹¹**, the Supreme Court held that where an objection to jurisdiction of a civil court is raised to entertain a suit and to pass any interim orders therein, the Court should decide the question of jurisdiction in the first instance but that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. A mere objection to jurisdiction does not instantly disable the court from passing any interim orders. It can yet pass appropriate orders. At the same time, it should also decide the question of jurisdiction at the earliest possible time. The interim orders so passed are orders within jurisdiction when passed and effective till the court decides that it has no jurisdiction to entertain the suit. These interim orders undoubtedly come to an end with the decision that this Court had no jurisdiction. It is open to the court to

¹¹ (1997) 3 SCC 443, at page 457

modify these orders while holding that it has no jurisdiction to try the suit. Indeed, in certain situations, it would be its duty to modify such orders or make appropriate directions. For example, take a case, where a party has been dispossessed from the suit property by appointing a receiver or otherwise; in such a case, the Court should, while holding that it has no jurisdiction to entertain the suit, put back the party in the position he was on the date of suit. But this power or obligation has nothing to do with the proposition that while in force, these orders have to be obeyed and their violation can be punished even after the question of jurisdiction is decided against the plaintiff provided the violation is committed before the decision of the Court on the question of jurisdiction. It quoted the decision of the Court of Appeal in **Hadkinson v. Hadkinson**¹². It held :

“23. In *Hadkinson v. Hadkinson*, the Court of Appeal held:

*“It is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cottenham, L.C., said in **Chuck v. Cremer**¹³ (at p. 342):*

‘A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it.... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid — whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an

¹² (1952) 2 ALL.E.R 567

¹³ 47 ER 820

order, which was null or irregular, and who might be affected by it, was plain. He should apply to the court that it might be discharged. As long as it existed it must not be disobeyed.'

Such being the nature of this obligation, two consequences will, in general follow from its breach. The first is that anyone who disobeys an order of the court (and I am not now considering disobedience of orders relating merely to matters of procedure) is in contempt and may be punished by committal or attachment or otherwise. The second is that no application to the court by such a person will be entertained until he has purged himself of his contempt." (Emphasis supplied)

37. We respectfully follow the said decision, and hold that the action of the respondent No.s 1 and 2 in not implementing the interim order dt.5.2.2019 in IA.No.1 of 2018 in this Writ Petition is a deliberate and willful disobedience of the said order. We also hold that since they had prevented the petitioner from working as Asst.Labour Officer, Warangal, they shall also be liable to pay salary to the petitioner from 5.2.2019 till date.

38. Accordingly the Writ Petition and the CC are both allowed with costs of Rs.25,000/- each payable by 1st respondent to petitioner; the orders in Proc.No.A1/4050/2016 dt.29.6.2018 passed by the 2nd respondent are set aside ; and the respondent No.s 1-3 are directed to forthwith take back the petitioner into service as Asst. Labour Officer, Warangal pending the disposal of Conmt. Pet. (C) No.1700/2017 in C.A.No.5099 of 2006 by the Supreme Court of India; IA No.1 of 2019 filed by the respondent No.s 1 and 2 is dismissed; the respondent No.s 1 and 2 shall also pay the salary to the petitioner for the period from

5.2.2019 with interest @ 7% p.a from the dates it fell due till date of payment; and such payment shall be made within 6 weeks from today.

The petitioner shall also be treated to be in service between 29.6.2018 till date without any break.

39. If not the 2nd respondent shall suffer simple imprisonment for 1 month and also pay fine of Rs.2000/-.

40. As a sequel, miscellaneous petitions pending if any, in this Writ Petition, shall stand closed.

M.S.RAMACHANDRA RAO, J

P.KESHAHA RAO, J

Date: 03.06.2020
SVV/NDR/VSV

