

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CONTEMPT PETITION NO. 327 OF 2021
IN WP/2400/2004**

TRIMURTI PAWAN PRATISTHAN THROUGH ITS AUTHORIZED PERSON
MANISH ANNASAHEB GHADGE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Anand P. Bhandari
AGP for Respondents No.1 to 4 : Mr. S. G. Karlekar
...

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 25TH NOVEMBER 2021

PC :

1. In our order dated 20-09-2021, we have assigned the reasons for issuing the notice under the Contempt of Courts Act, 1971. In the light of order dated 15-11-2021, respondent No.1 is present in the Court today. An affidavit dated 25-11-2021 has been filed in which reasons have been assigned as regards the circumstances/difficulties faced by respondent No. 1 in appearing before the Court. Having perused the reasons cited from paragraph Nos 2 to 6, we are convinced that respondent No 1 did not remain present in the Court, due to circumstances which were beyond her control.

2. This Court has delivered a judgment dated 25-03-2019 in Writ Petition No. 2400 of 2004 filed by the petitioner herein. Certain

directions had been issued in the said judgment after paragraph No. 33 (Clause-I to Clause-IV), which read as under:

- I. The petition is partly allowed.*
- II. Direction is given to the Respondents to grant permission on the basis of proposal made in the year 2000 on "no grant basis" for VIIIth to Xth standards school of the Petitioner. The grants are to be made available to this part of the school from the year 2007-08. The grants be made available only after strict scrutiny in respect of procedure followed for recruitment, the post actually filled as against the permanent posts, which had become available and grant is to be released only in respect of those posts, which were filled as per the roster point system of the State Government. If any post is filled from open category, when the post was meant for socially reserved class, no grant is to be given in respect of that post. Thus, it is to be ascertained that the reservation policy was strictly followed before releasing of the grants. The process of ascertaining that the aforesaid things were followed is to be completed within three months from the date of this judgment and thereafter, within three months the grants are to be released for the period starting from 2007-08.*
- III. In respect of Vth to VIIth standards, grants to be paid only after the conditions of all the aforesaid Government Resolution including the Government Resolution dated 9th May, 2018 are fulfilled and the grants can be made available from the date of satisfying those conditions.*

IV. The communication under challenge like direction given to give undertaking that the Petitioner institution would not demand grant, directions given to close down the school are hereby set aside. The order subsequently made like giving grants only from the year 2018 for VIIIth to Xth standards is also set aside as the grants are to be given from the year 2007-08 for standards VIIIth to Xth."

3. We have considered the extensive submissions of the learned counsel for the petitioner and the learned AGP appearing on behalf of the respondents.

4. Shri Bhandari, the learned counsel representing the petitioner submits, on specific instructions, that though this Court has noted the year 2007-2008, as being the year, from which the grants were required to be made available and such grants should be released for the period starting from 2007-2008 (Clause-II reproduced above), the said direction would not be appropriate, as the petitioner is entitled for the grants in tune with clause II, from 01-01-2014. He, therefore, submits, on instructions, that there would be no grievance as regards the grants being released from 01-01-2014 instead of from the year 2007-2008.

5. Considering the order, which we are required to pass in the facts and circumstances of the case, it would be appropriate to refer to an affidavit-in-reply filed by respondent No. 1 - Smt. Vandana Krishna, Additional Chief Secretary, School Education and Sports Department, Government of Maharashtra, dated 25-11-2021. It is stated that the

petitioner would be eligible for the grants w.e.f. 01-01-2014, in view of the first paragraph below "Shashan Nirnaya", which is a part of the Government Resolution dated 24-11-2021 published by the School Education and Sports Department, Government of Maharashtra.

6. We have no doubt that in dealing with contempt proceedings under the Contempt of Courts Act, we have to assess, as to whether there is an intentional, willful and deliberate disobedience of the orders of the Court with the aim and object of overbearing the authority of the Court, by a person/entity, who is duty bound to implement the order. In this context, we have carefully perused (Clause-II of our order reproduced above), which indicates that the grants would be made available to the School, as admitted, from 01-01-2014, after strict scrutiny in respect of the procedure of recruitment, posts actually filled in against permanent vacancy, reservation roster point system of the Government to be carefully followed and with a rider that only if such conditions are fulfilled, that grants would be released.

7. This obviously means that the Government will have to initiate the process to comply with the above conditions for releasing the grants. No doubt, there has been delay in complying with the order of the Court and for which we have already penalized certain Officers, vide our order dated 20-09-2021, who are directed to deposit certain amounts vide order dated 20-09-2021. They have deposited the said amounts.

8. The affidavit dated 25-11-2021 indicates that the concerned Department has initiated steps and has also quantified an amount of Rs. 1,83,46,544/-, as grants to be paid to the petitioner for the period 01-09-2016 till 31-03-2018. It is informed across the bar on specific instructions from the Officer present in the Court that this amount would be released and credited to the account of the petitioner shortly.

9. The grievance of the petitioner is that Clause 2 (1)(2)(3) of the Government Resolution dated 24-11-2021, would be an attempt on the part of the State Government to deny payment of the grants to the petitioner. He further contends that the documents placed on record, including the documents produced by the Director of Education dated 09-09-2021 at page No. 147 of the petition paper-book, would indicate that the petitioner has been held eligible to the grants from 01-01-2014 and certain inspections at different levels have already been conducted by the concerned Department.

10. The learned AGP submits that there is no difficulty in accepting the contention of the petitioner that said institution is eligible for the grants from 01-01-2014. He hastens to add that similarly situated institutions and comparable institutions, as a part of a uniform policy of the State Government, have been sanctioned the grants from 01-09-2016 and there has been no single instance, which is identically placed as like the petitioner or comparable to the petitioner Institution, wherein State has extended such grants w.e.f. 01-01-2014.

11. Keeping in view the Government Resolution dated 24-11-2021 and the statement made across the bar that an amount of Rs.1,83,46,544/- would be released within a short time and the conditions as regards inspection of the institution so as to ensure compliance of the terms and conditions as applicable, as part of the policy of the State Government to extend such grants, the department would be justified in scrutinising, not only petitioner institution, but all other institutions. The State can also consider the complaints against such institutions as a pre-condition for granting and releasing yearly grants. We have no doubt that as such grants are to be released by the State Government under certain conditions, which this Court has also approved of in the judgment at issue, it would be within the domain of the State to ensure strict compliance of the conditions since grants would not be a bounty from the State Government.

12. In the light of the facts as recorded above, if the petitioner has any grievance as regards non-payment of the grants from 01-01-2014, or that the petitioner claims to have reasons to hold a grudge since certain institutions have been paid the grants for said period, or the petitioner has a reason to believe that there are no justifiable reasons for excluding the petitioner for payment of grants from 2014, these aspects cannot be considered in a Contempt proceeding. The contention of the petitioner that these should be considered by this Court while dealing with this Contempt Petition, stands rejected.

13. We have no doubt as regards the limited jurisdiction of this Court to consider the proceedings under the Contempt of Courts Act. We also are of the firm belief, based on crystallized position of law, that contempt proceedings are not for execution of orders and this Court cannot exercise its jurisdiction under the Contempt of Courts Act for the purpose of execution of orders.

14. In the facts and circumstances of this case, though belatedly, the Government has initiated the steps, has carried out certain inspections and is ready to release the amount as noted above within a short period of time. The Court is assured that the amount would be credited to the account of the petitioner. Certain conditions set out in the Government Resolution dated 24-11-2021 are in relation to the authority of the State Government for inspecting the institutions like the petitioner before releasing the grants and we are informed that such inspections, in tune with conditions as set out, would be carried out on regular basis and would also be made applicable to the petitioner's case prospectively. While considering the scope of clause (II) of our direction in the judgment at issue, we are not creating any embargo on the authority of the State Government.

15. This Court has recognized the condition on which the grants are to be released. Neither this Court would go into the aspect as regards justifiability of the parameters decided by the Government, nor it would be open to the Court to consider the challenge to that extent; save and except, if the very condition is found to be wholly arbitrary and

unsustainable in law. Having noted that the Government has acted on the direction of the Court, though belatedly, for which the petitioner graciously does not continue to hold a grudge, we find that this contempt proceeding deserves to be purged as there is no wilful, intentional or deliberate disobedience in the facts and circumstances of the case, as recorded above.

16. This contempt petition is, therefore, disposed off.

17. We deem it appropriate to record that in contempt proceedings, we issued notice to the proposed contemnor only after considering the facts and circumstances. The petitioner convinced us that notice needs to be issued in accordance with the format prescribed under the Act. We had not initially insisted the appearance of respondent No. 1. However, on account of the conduct of the subordinate persons which has been considered in the order dated 20-09-2021, that constrained us to issue notice under the Contempt of Courts Act, to respondent No. 1.

18. We find it appropriate to record that if the petitioner has any grievance as regards any lapse on the part of the Government with regard to the implementation of the directions of this Court concerning the reasons cited for excluding the grants from 2014-15, it would amount to an independent cause of action in the light of the judgment cited by the learned AGP Shri Karlekar, in the case of **J. S. Parihar Versus Ganpat Duggar and others, (1996) 6 SCC 291**. The observations in paragraph No.6, read as under:

“The question then is whether the Division Bench was right in setting aside the direction issued by the learned single Judge to redraw the seniority list. It is contended by Mr.S.K. Jain, learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under [Section 2\(b\)](#) of the Act. Therefore, the learned single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2.7.1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out, whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the willful violation of the order. After re-exercising the judicial review in contempt proceedings, afresh direction by the learned single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under [Section 12](#) of the Act. Therefore, the Division Bench has

exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the single Judge; the Division Bench corrected the mistake committed by the learned single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned single Judge when the matter was already seized of the Division Bench.”

19. The petitioner, therefore, is at liberty to avail a remedy as is permissible in law.

[S.G. MEHARE, J.]

[RAVINDRA V. GHUGE, J.]

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