

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CONTEMPT APPEAL NO.3/2018 IN
CONTEMPT PETITION NO. 239/2015(P) IN
WRIT PETITION NO.4257/2012(D)

1. Ashok Sitaramji Thakare,
Aged 57 years, Occ. Business,
President of Khateshwar Maharaj Shikshan Prasarak
Mandal and Charitable Trust, Bori Arab, Tq.Darwaha,
District Yavatmal.
2. Narendra s/o Sudam Tiwari,
Aged about 56 years,
Occupation : Business,
Secretary of Khateshwar Maharaj Shikshan Prasarak
Mandal and Charitable Trust, Bori Arab, Tq.Darwaha,
District Yavatmal.

..... **APPELLANTS**

...V E R S U S...

1. Ku. Mangala d/o Laxmanrao Bodhankar,
Aged about 60 years, Occ. Retired,
R/o. Plot No.53, Udawal Nagar-III,
Kantanand Bhawan, Yavatmal.
Tq.and District Yavatmal.
2. Chintaman Wanjari,
Education Officer (Secondary),
Zilla Parishad, Yavatmal, District Yavatmal.

..... **RESPONDENTS**

 Shri R.L.Khapre, Senior Advocate with A.P.Tathod, Advocate for appellants.
 Shri V.P.Marpakwar, Advocate for respondent no.1.
 Mrs. Sangeeta Jachak, Assistant Government Pleader for respondent no.2.

CORAM : A.S.CHANDURKAR and G.A.SANAP, JJ.

DATE ON WHICH THE ARGUMENTS WERE HEARD : 03.08.2021

DATE ON WHICH THE JUDGMENT IS PRONOUNCED : 11.08.2021

JUDGMENT (Per A.S.Chandurkar, J.)

This appeal under Section 19 of the Contempt of Courts Act, 1971 (for short, the Act of 1971) raises a challenge to the order dated 12.03.2018 passed by the learned Single Judge in Contempt Petition No. 239/2015 thereby admitting the contempt petition and framing charge against the appellants.

2. Relevant facts are that the respondent no.1 was serving as an Assistant Teacher with Khateshwar Maharaj Shikshan Prasarak Mandal and Charitable Trust. Her services came to be terminated on 17.04.2010 and hence she filed an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the Act of 1977) before the School Tribunal, Amravati. The School Tribunal by its judgment dated 12.01.2012 partly allowed the appeal and after setting aside the order of termination directed the Management to hold fresh enquiry against the respondent no.1. Since the relief of reinstatement was not granted to the respondent no.1, she filed Writ Petition No.4257/2012. On 27.10.2014 the learned Single Judge modified the judgment of the School Tribunal and held the respondent no.1 entitled to reinstatement. There was a further direction to pay entire back wages to her by 31.01.2015 and in default that amount was to be paid with interest @9% per annum from 01.12.2014 till realization. The aforesaid judgment was sought to be reviewed by filing a review application. On 09.03.2015 the judgment delivered in the writ petition was partly modified. Instead of the relief of actual reinstatement, the services of the respondent no.1 were directed to be notionally reinstated to enable the Management to conduct

an enquiry. These orders were the subject matter of challenge before the Hon'ble Supreme Court in Special Leave to Appeal(C) Diary No. 17299/2015. On 29.01.2016 those proceedings came to be dismissed. Consequently the direction as regards notional reinstatement and payment of back wages attained finality. Since the Management which was represented by the present appellants in the writ petition did not comply with the directions as issued, the respondent no.1 filed Contempt Petition No.239/2015. During the course of hearing and after due notice to the parties, the order dated 12.03.2018 referred to above came to be passed. The aforesaid order is the subject matter of challenge in this appeal.

3. Shri R.L.Khapre, learned Senior Advocate for the appellants submitted that the learned Single Judge was not justified in framing charge against the appellants in the light of the fact that from 01.12.2010 an Administrator had been appointed to manage the affairs of the school. Referring to the decision in ***Shivaji Education Society Vs. State of Maharashtra and others 2017 (3) Mh.L.J.833*** it was submitted that the appeal challenging the order framing charge in the contempt petition was maintainable. As per the directions issued in Writ Petition No. 4257/2012 though the liability to pay back wages was on the Management, in effect it was the Administrator/Education Officer who was responsible to pay the same as he was the officer incharge of the affairs of the school. Referring to the affidavit dated 07.07.2016 filed on behalf of the Education Officer(Secondary), it was submitted that the Education Officer had expressed readiness to release the amount of back wages as per the order passed by this Court. Despite the aforesaid position, the learned Single Judge in the impugned order had rejected this defence raised by

the appellants in that regard thereby causing prejudice to the appellants. It was in fact the concerned Head Mistress who had not forwarded the salary bills as a result of which the arrears of salary could not be paid to the respondent no.1. It was submitted that as the appellants were not in the management or control of the affairs of the school, they could not have been saddled with the liability to pay the amount of back wages. In any event it was submitted that after 01.12.2010 no liability could have been fixed on the appellants. It was then submitted that the appellants being trustees of the Trust that was running the school they could not have been held personally liable to pay the amount of arrears of salary. He referred to the provisions of the Societies Registration Act, 1860 as well as the decisions in *Upendra Nath Kalamuri and another Vs. Kusum Kumari Dasi AIR 1915 Cal 327 Satyavart Sidhantalankar and Ors. Vs. Arya Samaj, Bombay AIR 1946 Bombay 516, Swami Satchitanand and others Vs. The 2nd Addl.Income Tax Officer, Kazhikode and others AIR 1964 Kerala 118, Someswara Sawmy Vari Devasthanam Vs. Dasam Suryanarayana and others AIR 2004 A.P. 223 and Illachi Devi (D) by L.Rs. And others Vs. Jain Society, Protection of Orphans India and others AIR 2003 SC 3397* to submit that no personal liability could be saddled on the appellants so as to hold them liable in contempt. In the light of aforesaid position, the direction to pay back wages was not executable against the members of the governing body of the Trust. The learned Senior Advocate then referred to the provisions of Chapter XVII Rule 21 of the Bombay High Court Appellate Side Rules, 1960 to urge that an order passed in writ petition was executable as a decree. Such decree could be executed by the Civil Court and it was not necessary for the respondent no.1 to have invoked the contempt jurisdiction of this Court. Relying upon the decisions in *Mohammad Salam*

Anamul Haque Vs. S.A.Azmi and others 2001 (1) Mh.L.J. 249, Vilas Shankarrao Deshmukh and another Vs. S.A.Ghode, Principal Navprabhat Vidya Mandir and Junior College, Thanegaon and others 2001 (1) Mh.L.J. 261 and Saroj Pundlikrao Datir Vs. Prakash Nandurkar (Dr.) and others 2009 (6) Mh.L.J. 235 it was submitted that this Court had observed that contempt jurisdiction ought not to be invoked merely for enforcing an order passed by the School Tribunal. Since the respondent no.1 had not filed any execution proceedings before the Civil Court nor had taken recourse to the provisions of Section 13 of the Act of 1977, the contempt petition was not liable to be entertained by invoking contempt jurisdiction. The respondent no.1 was seeking execution of the order passed by the School Tribunal by initiating the present proceedings and the same was impermissible. The learned Senior Advocate also referred to the judgment of the Full Bench in *St.Ulai High School and another Vs. Devendraprasad Jagannath Singh and another 2007(1) Mh.L.J. 597* in that regard. It was urged that as the appellants were not incharge of the affairs of the school, they could not be compelled to obey the directions issued by the learned Single Judge. This also indicated that there was no wilful breach or disobedience of the aforesaid directions. It was thus submitted that the impugned order was liable to be set aside.

4. Shri V.P.Marpakwar, learned counsel for the respondent no.1 opposed the aforesaid submissions. According to him as the services of the respondent no.1 were terminated on 17.04.2010, the back wages were liable to be paid from that date. Even if it was accepted that an Administrator was appointed on 01.12.2010 the arrears of salary from 17.04.2010 till 01.12.2010 had not been paid by the

appellants though they were the incharge of the affairs of the school at least during that period. Drawing attention of the Court to the review application that was filed in Writ Petition No. 4257/2012 as well as the Special Leave Petition filed before the Hon'ble Supreme Court, it was submitted that these proceedings had been filed by the present appellants and not by the Administrator. This indicated that it was in fact the appellants who were concerned with the affairs of the school and the appointment of the Administrator was being relied upon merely as an excuse for not complying with the orders of the Court. He also drew attention of the Court to the order dated 28.04.2016 passed in Contempt Petition No. 239/2015 and the grounds raised by the appellants in the appeal. He thus submitted that the conduct of the appellants clearly indicated that they had no desire whatsoever to comply with the directions issued in the writ petition and that the learned Single Judge rightly framed charge against them in the contempt petition. At this stage, there was no reason to entertain the appeal filed by the appellants and it was open for the appellants to furnish explanation before the learned Single Judge in answer to the charge as framed. In the facts of the case, the contempt jurisdiction was rightly invoked by the respondent no.1. He therefore submitted that it was not necessary to interfere with the impugned order.

5. We have heard the learned counsel for the parties and we have given due consideration to their respective submissions. The maintainability of the appeal was not seriously objected to by the learned counsel for the respondent no.1. Even otherwise in the light of the decision in *R.N.Dey and others Vs. Bhagyabati Pramanik and others, (2000) 4 SCC 400* and *Shivaji Education Society* (supra) we find that the

appeal is maintainable. We therefore proceed to adjudicate the same on merits.

6. It is clear from the record that the order passed by the School Tribunal in the appeal preferred by the respondent no.1 was modified by the learned Single Judge in Writ Petition No.4257/2012. As per the directions issued therein, the respondent no.1 was entitled to back wages from 17.04.2010 which is the date of termination till 02.04.2016 which is the date on which services of the respondent no.1 were reinstated. According to the appellants, an Administrator was appointed on the school on 01.12.2010 and hence from that date the appellants were not incharge of the affairs of the school. The averments to that effect can be found in paragraph 3 of the present appeal. A communication dated 01.12.2010 issued by the Block Development Officer, Panchayat Samiti, Yavatmal in his capacity as an Administrator has been annexed at page 47 of the record to substantiate the same. While the appointment of the Administrator is undisputed, the appellants have not brought on record the period for which the Administrator was to be incharge of the affairs of the school.

In this regard, it is necessary to notice the provisions of Section 3 of the Maharashtra Educational Institutions (Management) Act, 1976 (for short, the Act of 1976). As per Section 3(1), the Director of Education is empowered to take over the Management of a school and appoint an Administrator for a limited period not exceeding three years. As per proviso to Section 3(1) of the Act of 1976, the aforesaid limited period can be extended by one year at a time. However the total period for which the Management is taken over cannot in any case exceed five years. From the aforesaid provision it becomes clear that the Management can be taken

over and an Administrator can be appointed initially for a period of three years with extension for a period of one year at a time with the total period not exceeding five years. As stated above, the appellants have not indicated the period for which the Management of the school was taken over by the Director of Education nor is the period for which the Administrator appointed indicated. In any event it is found that beyond a maximum period of five years the Administrator could not have continued to be incharge of the Management of the educational institution. If on 01.12.2010 the Administrator was appointed on the school in terms of the provisions of Section 3(1) of the Act of 1976 such appointment could not have in any event continued beyond 30.11.2015. This is by considering the maximum period permissible under the Act of 1976. As stated above, the direction is to pay back wages from 17.04.2010 to 02.04.2016. Thus even by accepting the case of the appellants that the Administrator was incharge of the Management of the school from 01.12.2010 for period of five years, it is obvious that the order passed in Writ Petition No.4257/2012 has not been complied with even from 17.04.2010 to 30.11.2010 and thereafter from 01.12.2015 to 02.04.2016.

7. From the record we find that the appellants have not shown that they have taken any steps to comply with the order passed in Writ Petition No.4257/2012 even during the period when they were incharge of the affairs of the school. The liability to pay back wages has been specifically fixed on the appellants and except for stating that the Education Officer was ready to release the amount of arrears of salary, no further steps have been shown to be taken in that regard. The appellants could have shown their bonafides by complying with at least that part of the order

that had attained finality up to the Hon'ble Supreme Court for the period when they were incharge of the Management of the school. It is also necessary to note the conduct of the appellants which can be gathered from the orders passed in Contempt Petition No.239/2015. The orders dated 28.04.2016 and 19.09.2017 are being reproduced which would clearly indicate the conduct of the appellants.

Order dated 28.04.2016 :

"The learned counsel for the petitioner submits that respondent nos. 1 and 2 are deliberately avoiding implementation of the order of this Court. He points out from the order that a direction has specifically been issued to the Society for payment of back wages.

The learned counsel for respondent nos. 1 and 2 submits that since administrator has been appointed, respondent nos.1 and 2 are not in a position to take any decision regarding payment of back wages. When asked by this Court as to whether or not the respondent nos. 1 and 2 or the office bearers of the Society have been deprived of their power to issue the cheque, the learned counsel for the respondents submits that he would have to take instructions in the matter.

At this stage, the learned counsel for the petitioner has placed on record the copy of letter dated 02/04/2016 sent by the Head Master of the Society and addressed to the petitioner making request that she should resume her duties. This letter is taken on record and marked "X" for identification.

The learned counsel for respondent nos.1 and 2 submits that even about this letter, he would have to seek instructions from the respondents.

Time for taking instructions is granted to the learned counsel for respondent nos. 1 and 2. However, the reason being put forth by respondent nos. 1 and 2 for not complying with the order of this Court is not borne out from the record and it prima facie appears to be incorrect.

In this circumstance, it is directed that respondent nos.1 and 2 shall personally remain present before this Court to explain as to why the order of this Court is not being complied with by them. If it is found that an incorrect submission has been made before the Court today regarding lack of power of the respondents to pay the back-wages, this Court shall proceed to pass appropriate orders in the matter.

As respondent no.3-Education Officer, as submitted by the learned Assistant Government Pleader, does not appear to be

having any direct role to play in the matter, his presence is dispensed with till further orders.

Order dated 19.09.2017 :

“Heard learned counsel for the parties.

Prima facie, the order passed by this Court on 27th October, 2014 and modified on 9th March, 2015 indicates that the respondents were required not only to reinstate the petitioner but pay full back wages to the petitioner. The words “full and all emoluments which are not paid to her” appearing in the context in which they are placed in the order of this Court passed on 27th October, 2014 include prima facie nothing but back wages. Considering the earlier stand taken before this Court on 28th April 2016, the present stand of the respondents appears to be prima facie dishonest and an afterthought. Accordingly, a contempt notice will have to be issued. Accordingly the office is directed to issue contempt notice under Rule 9(2) of Chapter XXXIV of the Bombay Appellate Side Rules, 1960 returnable on 13th October, 2017. The respondents shall be personally served with the contempt notice and respondent nos. 1 and 2 shall remain present on the returnable date.”

In the aforesaid backdrop we find that the learned Single Judge did not commit any error in admitting the contempt petition and framing the charge against the appellants.

8. As regards the submission that the respondent no.1 ought to have executed the orders passed in Writ Petition No.4257/2012 is concerned, the same cannot be a justification for not complying with the directions issued in the writ petition. The respondent no.1 does have the remedy to execute the orders passed in the said writ petition. The order passed by the School Tribunal is executable under the provisions of the Code of Civil Procedure, 1908 as held by the Full Bench in *St.Ulai High School* (supra). At the same time, if the respondent no.1 is in a position to point out wilful disobedience of the directions issued in the said

writ petition which would amount to committing “civil contempt” by the appellants, there is no reason for not entertaining Contempt Petition No.239/2015. It is after noting the conduct of the appellants that the learned Single Judge proceeded to admit the contempt petition and frame charge against the appellants. The decisions relied upon by the learned Senior Advocate for the appellants do not lay down an absolute proposition that despite the fact that an order passed by the School Tribunal is executable, a contempt petition complaining of wilful disobedience by the alleged contemnors would not be maintainable. It all would depend on the facts of each case. In this regard, the observations of the Division Bench in paragraph 7 of the decision in ***Chandrakant Ganpat Shelar and others Vs. Sophy Keely, Hill Garange High School, Bombay and others 1987 Mh. L. J. 1012*** are relevant. The same are as under :

‘7. It was then contended that since the Act itself had made a provision for penalising the management for failure to comply with the Tribunal’s directions, no proceedings for the contempt of Court under the Contempt of Courts Act can be taken for such defiance. The argument according to us is misconceived. In the first instance, the provisions of Section 13 of the Act show that a prosecution has to be launched for failure on the part of the management to comply with the directions issued by the Tribunal. If the management is convicted, the only punishment that can be awarded to the management is a fine which may extend to one thousand rupees for the first offence, and to two thousand rupees for the second and subsequent offences. As has happened in the present case, the direction of the Tribunal to reinstate the petitioners cannot be enforced through the modalities of the said provisions of Section 13. It is, therefore, clear that the Act is not a Code by itself to ensure compliance with the directions given by the Tribunal. What is more, neither the provisions of the said Act nor the provisions of general law, including the provisions of the Contempt of Courts Act, exclude the operation of the Contempt of Courts Act in such cases. It is well settled that the provisions of the Contempt of Courts Act are in addition to the provisions contained in any law for the enforcement of the orders and directions given by the Courts. Apart from the fact that the provisions of the Act do not exclude the operation of the

Contempt of Courts Act, the law is to the contrary, namely that the provisions of the Contempt of Courts Act are in addition to the provisions of special statute even if such a statute provides for punishment for contempt of Courts. Section 22 of the Contempt of Courts Act makes this position very clear, when it states that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law relating to the contempt of Courts. If this is so even where a special law makes provision for contempt of Courts, it is difficult to appreciate the contention that when a statute like the present one does not make provisions for Contempt of Courts, but merely provides for prosecution of the offender the exclusion of the Contempt of Courts Act should be read in it. This being the position in law, all that we have to find out is whether the respondents are guilty of the contempt of Court within the meaning of the Contempt of Courts Act.”

We may also refer to the decision in ***Rama Narang Vs. Ramesh Narang*** **AIR 2006 SC 1883** wherein it has been held that merely because an order or decree is executable, that would not take away the Court's jurisdiction to deal with a matter under the Act of 1971 on satisfaction that there has been violation of the order or decree.

9. It is thus clear that only after *prima facie* finding that cognizance was liable to be taken in the present proceedings that the contempt petition came to be admitted by framing charge against the appellants. We also find that it was the appellants as President and Secretary of the Trust who had filed the review application before this Court as well as the Special Leave Petition before the Hon'ble Supreme Court despite the fact that it was their case that an Administrator had been appointed to look into the affairs of the school. Hence at this stage we are not inclined to go into the contention raised by the appellants as regards their personal liability and the same can be raised by way of defence to the charge as framed in the contempt petition. We also find that the observations in the order dated 12.03.2018

that the Education Officer cannot be directed to make payment of arrears of salary as an Administrator of the institution or as the Education officer are *prima facie* in nature as stated in the said order itself. We clarify that the said observations are *prima facie* in nature and the defence of the appellants in that regard is not taken away. It is open for the appellants to raise all permissible defences in answer to the charge framed against them while admitting the contempt petition.

10. In that view of the matter, we do not find any merit in the contempt appeal. The same is accordingly dismissed. It is clarified that the observations made herein are only for the purpose of deciding the contempt appeal. It is open for the appellants to raise all permissible defences available in law to them in answer to the charged framed in Contempt Petition No.239/2015. The parties shall bear their own costs.

JUDGE

JUDGE

At this stage, learned Senior Advocate for the appellant prays that the effect of the judgment be stayed for a period of eight weeks.

This request is opposed by the learned counsel for the respondent no.1.

In the facts of the case, the judgment shall operate after a period of four weeks from today.

JUDGE

JUDGE

Andurkar..