

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

100 CONTEMPT PETITION NO.389 OF 2022

**RAVINDRA BASVARAJ GASTGAR
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY LAW
AND JUDICIARY DEPARTMENT AND OTHERS**

...
Advocate for Petitioner: Mr. Santosh B. Gastgar
AGP for Respondent/State: Mr. S. K. Tambe
...

**CORAM: RAVINDRA V. GHUGE
AND
ARUN R. PEDNEKER, JJ.**

DATE: 06th SEPTEMBER, 2022

PER COURT:

1. The Petitioner has put-forth prayer clause 'B', as under:-

"B. It may kindly be held and declared that, the respondent No.7 Shri. B. D. Kulkarni District Judge presently posted as Joint Charity Commissioner, Latur Region Latur has committed deliberate, intentional and willful contempt of order dated 05.07.2019, 17.07.2019 and 31.07.2019 passed by Division Bench of Hon'ble High Court in

Criminal Writ Petition No.488/2019 and he may be punished and penalized under Article-215 of the Constitution of India and under provisions of Contempt of Courts Act, 1971."

2. In view of the prayer clause, we have called upon the learned Advocate for the Petitioner to address us on each of the orders mentioned in the prayer clause.

3. In so far as the order dated 05.07.2019 is concerned, this Court had observed in Paragraph No.2 as under:-

"2. This Court wants every thing in black and white. The report of the concerned Investigating Officer including further steps taken by him after revealing such information, be placed on record before next date."

4. The subsequent order passed is dated 17.07.2019. The learned Advocate for the

Petitioner concedes that the report was produced before the Court and the Court has perused the report as is visible from the opening paragraph of the order dated 17.07.2019. In the said order, the only direction that was issued is, *'those record like copy of ledger book is produced. The Bank Account of the Institution needs to be produced to show that this amount was really shown in the account of the Institution opened in the Bank'*.

5. The order dated 31.07.2019, is pursuant to the order dated 17.07.2019 and this Court noted as to which amounts were not credited to the Bank Account and were spent on construction of school building. This would indicate that this Court perused the Bank Account of the Institution. In these facts and circumstances, it is apparent that the order dated 05.07.2019 and 17.07.2019, were complied with by the litigating parties.

6. Much ado has been made by the Petitioner with regard to the order dated 31.07.2019. For the sake of clarity, we reproduce the entire order,

since the learned Advocate for the Petitioner has repeated his arguments at least 3 times with reference to the said order:-

" Seen the report submitted by police, today. In view of the report, it is mentioned that the consideration of Rs.2.4 Lakhs was received in the year 1992, which was not credited to the bank account, but it was spent on the same day for construction of school building. There is mentioned that the audit of the institution was done and Auditor did not find any irregularities.

2. Submission made shows that the proceeding is pending before the learned Assistant Charity Commissioner in regard to accounts. The learned Assistant Charity Commissioner has an ample power to make investigation in respect of misappropriation of the public money. Learned counsel for the petitioner submits that present petition is kept pending as the inquiry is going on and the action will be taken after decision of learned Assistant Charity Commissioner, the petitioner is at liberty to come before this Court. Hence, Remove from the board.

3. Office of Assistant Charity Commissioner to complete the inquiry and take decision as expeditiously as possible, preferably within a period of six months from today.

4. Authenticated copy be allowed to both."

7. It is obvious from the above reproduced order that Paragraph No.2 contains the submissions of the Petitioner. It was contended that the Joint Charity Commissioner has ample power to investigate. It was also contended that the enquiry is going on and action will be taken after decision of the Joint Charity Commissioner. With the request of the Petitioner to keep the Criminal Writ Petition No.488 of 2019 pending, this Court finally issued the direction in Paragraph No.3 that the Joint Charity Commissioner would complete the enquiry and take a decision within a period of 6 months. When repeatedly asked, the learned Advocate for the Petitioner submits that the direction set out in Paragraph No.3 has been

complied with and the enquiry has been done, albeit, after 6 months. But he submits that this direction is complied with.

8. The learned Advocate for the Petitioner has relied upon the Judgments delivered by the Hon'ble Supreme Court in the following matters:-

A] Baradakanta Mishra Vs. Bhimsen Dixit, AIR 1972 SC 2466

B] Anil Ratan Sarkar and others Vs. Hirak Ghosh and others, (2002) 4 SCC 21

C] K. Shamrao and others Vs. Assistant Charity Commissioner, (2003) 3 SCC 563

9. The Petitioner has then relied upon certain orders passed by this Court, as under:-

[a] Order dated 03.12.2020, passed in Contempt Petition No.127 of 2019, filed by Yogesh Waman Athavale Vs. Vikram Abasaheb Jadhav and others.

[b] Order dted 06.04.2022, passed in Contempt Petition NO.203 of 2022, filed

by Madhavrao Hanmantrao Patil Taklikar
Vs. Heera Kashinath Shelke and another.

[c] Order dated 27.04.2022, passed
in Contempt Petition No.203 of 2022,
filed by Madhavrao Hanmantrao Patil
Taklikar Vs. Heera Kashinath Shelke and
another.

10. It is well settled that a Court cannot conclude disobedience of an order on the basis of assumptions and presumptions. Contempt proceedings can be initiated against the proposed contemnor, if the order passed by the Court is not obeyed willfully, intentionally and deliberately with the intention of overbearing the authority of the Court. The basic requirement is that there should be a disobedience of an order, resulting in contempt. The disobedience has to be willful, intentional and deliberate.

11. In the submissions of the learned Advocate for the Petitioner, the order dated 05.07.2019, has been complied with which is

visible from the order dated 17.07.2019. The direction to the Bank to produce the Bank Account set out in the order dated 17.07.2019, has been complied with as is visible from Paragraph No.1 of the order dated 31.07.2019. The learned Advocate for the Petitioner does not dispute this position. In so far as the last direction set out in Paragraph No.3 (*reproduced supra*), under the order dated 31.07.2019, we repeatedly asked the learned Advocate for the Petitioner and he repeatedly conceded that the order has been complied with, but beyond 6 months.

12. In view of the above, we do not find that there is any willful, deliberate or intentional disobedience of the order of this Court. In fact, there is compliance of all the three orders passed by this Court.

13. Hence, this Petition is dismissed.