

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CONTEMPT PETITION NO.739 OF 2022

Raghunath s/o Bhagwan Mule
Age: 56 years, Occu. Service,
R/o. At Shirur (Kasar), Tq. Shirur
(Kasar), Dist. Beed.

.. Petitioner

Versus

1. Rajesh Kumar
Secretary,
Rural Development Department,
Mantralaya, Mumbai

2. Ajit Pawar
Chief Executive Officer,
Zilla Parishad, Beed.

.. Respondents

AND
CONTEMPT PETITION NO.743 OF 2022

Bhagwan s/o Haribhau Mule
Age: 85 years, Occu. Retired/Nil
R/o. At post Patoda, Tal. Patoda,
Dist. Beed.

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Public Works Department,
Mantralaya, Mumbai

2. Markande P.M.
Executive Engineer,
Public Works Department,
Beed.

3. Ajit Pawar,
The Chief Executive Officer,
Zilla Parishad, Beed.

.. Respondents

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Mr. A. D. Aghav, Advocate for petitioners in both the cases.

Mr. S. D. Ghayal, APP for respondent - State in Contempt Petition No.739 of 2022.

Mr. M. M. Nerlikar, APP for respondent - State in Contempt Petition No.743 of 2022.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : DECEMBER 16, 2022.

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. Both the contempt petitions are arising out of the alleged violation of/non compliance of the orders passed by this Court. Both the contempt petitioners were the original petitioners in Writ Petition No.13975 of 2018 and Writ Petition No.13957 of 2018 respectively. The said writ petitions came to be decided on 17.12.2018 and 14.03.2019 respectively and the directions were given to respondent - State to decide the proposal/representation in accordance with law preferably within a period of four months from the date of the respective orders.

2. Heard learned Advocate Mr. A. D. Aghav for the petitioners in both the cases, learned APP Mr. S. D. Ghayal for respondent - State in Contempt Petition No.739 of 2022 and learned APP Mr. M. M. Nerlikar for respondent - State in Contempt Petition No.743 of 2022.

3. Learned Advocate appearing for the contempt petitioners in Contempt Petition No.739 of 2022 has submitted that though the order was passed by this Court on 17.12.2018, yet it was not complied till 20.07.2022 and, therefore, on that day, the application was given by the petitioner for deciding the proposal and, therefore, action needs to be taken against respondent Nos.1 and 2.

4. When the point regarding limitation as prescribed under Section 20 of the Contempt of Courts Act, 1971 was raised by this Court, the learned Advocate appearing for the petitioners is relying on the decision in ***Pallav Sheth Vs. Custodian, [2001 DGLS (SC) 1005]***, wherein in paragraph No.30, it has been observed that :-

"30. THERE can be no doubt that both this Court and High Courts are Courts of Record and the Constitution has given them the powers to punish for contempt. The decisions of this Court clearly show that this power cannot be abrogated or stultified. But if the power under Article 129 and Article 215 is absolute can there be any legislation indicating the manner and to the extent that the power can be exercised? If there is any provision of the law which stultifies or abrogates the power under Article 129 and/or Article 215 there can be little doubt that such law would not be regarded as having been validly enacted. It, however, appears to us that providing for the quantum of punishment or what may or may not be regarded as acts of contempt or even

providing for a period of limitation for initiating proceedings for contempt cannot be taken to be a provision which abrogates or stultifies the contempt jurisdiction under Article 129 or Article 215 of the Constitution."

5. It is further submitted that Section 20 of the Contempt of Courts Act has to be interpreted in a way that may not render constitutional power of High Court nugatory. He also relied on the decision in ***Namdeo Miraji Sirsat Vs. Shrikrishna Atmaram Thorat, [2021 DGLS (Bom.) 1992]***, wherein the Division Bench of this Court, Bench at Nagpur has taken a view that non compliance of the order passed by this Court would continue the limitation period and till its compliance, the limitation will not stop. He, therefore, submitted that the petitions are within limitation.

6. Per contra, the learned APP in both the respective petitions have relied on the decision in ***Maheshwar Peri and others Vs. High Court of Judicature at Allahabad Through Registrar General, [AIR 2016 (SC) 3267]***, wherein it has been held that the period of one year prescribed under Section 20 of the Contempt of Courts Act is applicable even to Suo-Motu contempt proceedings and, therefore, the contempt proceedings initiated after a period of four years of publication of impugned article was held to be barred by limitation and therefore, cannot be entertained.

7. At the outset, as regards **Namdeo Miraji Sirsat (Supra)** is concerned, this Court, Bench at Nagpur, has taken the facts of the case into consideration and also dealt with how the willful disobedience continued in spite of various orders on different stages and the communications, in a way it was held to be continuous cause of action, as it was relating to non payment of salary and each non payment would have given a fresh cause of action. Here, the facts were different. It was only the question of deciding the proposal/representation of the petitioners. It is required to be mentioned here that in paragraph No.3 of the order dated 17.12.2018 passed in Writ Petition No.13975 of 2018, this Court has clarified that the Court has not expressed any opinion on merits of the contentions raised in the proposal. The proposal was in respect of deciding the designation/post and payment as per post. There is nothing that has been produced on record by both the petitioners that after the decisions by this Court on 17.12.2018 and 14.03.2019 respectively, what steps they had taken so that the concerned respondent could have taken the decision. There was no communication within those four months or even thereafter till 20.07.2022 in Contempt Petition No.739 of 2022 and till 29.01.2020 in Contempt Petition No.743 of 2022, which would have had the effect of waking up the concerned respondent. As regards the period of limitation is concerned, reliance on paragraph No.30 of the decision in **Pallav Sheth (Supra)** only will not be sufficient. Rather paragraph No.44, which has also been

quoted in paragraph No.15 of the decision in ***Maheshwar Peri and others (Supra)***, would be important. Therefore, we would like to quote paragraph No.15 of the decision in ***Maheshwar Peri and others (Supra)***, which reads thus :-

"15. This aspect has been succinctly discussed and subtly distinguished in paragraph-44 of the *Pallav Sheth case (supra)*. To quote paragraph-44 :

"44. Action for contempt is divisible into two categories, namely, that initiated suo motu by the court and that instituted otherwise than on the court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the court itself which must initiate by issuing a notice, in the other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed."

8. It has also been observed in ***Maheshwar Peri and others (Supra)*** that as regards the suo motu action is concerned, it can be said that in motion on the reference made to it i.e. the High Court by the subordinate Court and in ***Pallav Sheth (Supra)*** it was held that

the reference is the starting point of process of initiation of action for contempt. The case in hand before us is not a case of suo motu contempt petition, but the petitioners want this Court to initiate the action of contempt of the orders passed by this Court. Section 20 of the Contempt of Courts Act prescribes that no Court shall initiate any proceeding of contempt, either of its own motion or otherwise after expiry of period of one year from the date on which the contempt is alleged to have been committed. In other words this case would fall in "or otherwise" category. The compliance of the orders passed by this Court on 17.12.2018 and 14.03.2019 was to be made within four months. The four months from 17.12.2018 would end on or around 17.04.2019 and four months from 14.03.2019 would end on or around 14.07.2019 and thereafter, the application for contempt of non compliance of the said order ought to have been filed before the expiry of the period of one year from 17.04.2019 and 14.07.2019 and, therefore, the petitions filed on 03.10.2022 would be beyond the period of limitation. Hence, both the contempt petitions stand rejected on the ground of limitation.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm