

Court No. 22
04.8.2023
(Item No. 5)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.C.R.C. 105 of 2023
in
W.P.A. 18927 of 2022

Sk. Hasan Imam
VS
Sk. Jan Mahammad, the Head Master, Pole
Hasnatiya Senior Madrasah, Hooghly.

Mr. Kazi Sajjad Alam
..... for the petitioner
Mr. Joudip Basu
Mr. Tapas Chatterjee
.... For the alleged contemnor

This is a contempt proceeding arose from an order dated **September 8, 2022** passed by this Court in **W.P.A. 18927 of 2022, Annexure - A** at **page 15** to the contempt application. The relevant direction made by this Court in the said order is quoted below:

“In view of the above, the respondent Nos. 6 & 7 are directed to carry out and give effect to the said reasoned order dated June 8, 2022, Annexure P-13 to the writ petition immediately and positively within a period of four weeks from the date of communication of this order in every respect.”

Under the said order of this Court the reasoned order **dated June 8, 2022** passed by the alleged contemnor No. 2, was directed to be carried out immediately. The relevant part of the said order of the alleged contemnor No. 2 is quoted below:

ORDER

“After considering all aspects, facets of submissions of all the parties and upon considering all the documents submitted, it is

ordered and declared that the termination of Sk. Hasan Imam was not done in accordance to the prescribed rules. His termination notice issued by the Managing Committee of Pole Hasnatiya Senior Madrasah is set aside. The appointment of one named Tammanna Parvin in the post of Assistant Teacher of science in the place of Sk. Hasan Imam is also declared as illegal and therefore set aside accordingly.

Thus the matter disposed of. All the concerned may accordingly be informed.”

Alleging violation of the direction of this Court made on **September 8, 2022** this contempt application was filed on **January 31, 2023**. The alleged original contemnor No. 3 **Sk. Jan Mahammad** being the sole alleged contemnor now had filed an affidavit-in-opposition in the contempt application affirmed on July 13, 2023.

Mr. Jaydip Basu, learned counsel appearing for the alleged contemnor, namely, **Sk. Jan Mahammad** referring to communication of the relevant Madrasah dated **November 10, 2022 at page 21 and November 21, 2022 at page 20A** to the said affidavit-in-opposition submitted that, information was sent before the Director of Madrasah Education and the Secretary, the West Bengal Board of Madrasah Education by the relevant Madrasah to facilitate the resumption of employment of the petitioner and to cause the necessary formalities with regard to his employment benefit immediately. Learned counsel further submitted that, this is still

pending before the said two State authorities. He submitted that, unless those clearances are received from the said two State authorities the present alleged contemnor has nothing to do and whatever was to be done by him for compliance of the direction of this Court dated September 8, 2022 was done in due compliance of the direction of this Court dated September 8, 2022.

Mr. Jaydip Basu, learned counsel then relied upon an order of this Court dated **December 20, 2022, Annexure R-2 at page 15** to the said affidavit-in-opposition and submitted that, in the writ petition of **Tamanna Parvin** this Court after considering the said order dated September 8, 2022, wherefrom this contempt proceeding arose, directed the respondent Nos. 4 and 5 in the said writ petition of Tamanna Parvin i.e. the West Bengal Board of Madrasah Education and the Secretary of the West Bengal Board of Madrasah Education not to take any further step in the matter including any coercive step against Tamanna Parvin without prior leave of the Court. That writ petition is also pending. The said order depicts that, the petitioner in this contempt petition was not represented.

Mr. Basu then referred to another order passed by this Court in the writ petition of Tamanna Parvin dated **January 10, 2023 at page 18** to the said affidavit-in-opposition, wherefrom it appeared that,

the petitioner in this contempt proceeding was duly represented in that writ petition through his set of counsel being respondent No. 8 as mentioned in the said order. This order has also taken note of the previous interim order **dated December 20, 2022** passed in Tamanna Parvin's writ petition as stated above and the parties including this petitioner in this contempt proceeding was directed to file and exchange their respective affidavits.

Mr. Jaydip Basu, learned counsel for the alleged contemnor then referred to the averments made in this contempt petition and submitted that, in gross and deliberate suppression of these two orders dated **December 20, 2022 and January 10, 2023** passed in Tamanna Parvin's writ petition, the contempt application was filed which was affirmed and filed subsequent to the said two orders on **January 31, 2023**. He submitted that, had these two orders been brought to the notice of this Court when the contempt application was moved without notice upon the contemnors, this Court would have considered the same but in absence of these orders being placed in the contempt application and having been suppressed, the rule was issued upon hearing the submission of the learned counsel appearing for the petitioner in this contempt proceeding. He submitted that, in any event, the present sole contemnor has complied with his obligation in so far

as the direction of this Court dated September 8, 2022 is concerned and the sole contemnor cannot be held guilty of contempt.

Mr. Kaji Sajjad Alam, learned advocate appearing for the petitioner in this contempt proceeding referred to the averments made in paragraph 4, 6, 8 and 9 from the affidavit-in-reply filed by the petitioner affirmed on July 20, 2023. These paragraphs are reproduced herein below:

“4. With regard to the paragraph No. 5 and 6 of the opposition, the contents made therein are denied and disputed by me except those which are matters of record. It is stated that the Madrasah authority has allowed Sk. Hasan Imam to join in the Madrasah on 14.09.2022 pursuant to the order of the Hon’ble Court. But he was not allowed to sign in the Madrasah Register (Teacher Attendance Register) till 15th December, 2022. I, being the Advocate for the writ petitioner/applicant personally requested Mr. Kamalesh Bhattacharyya, learned Advocate of this Court to advise the contemnor to allow Sk. Hasan Imam sign in the Madrasah Register. Since thereafter Sk. Hasan Imam is allowed to sign Madrasah Register. Again when the Contempt Rule was issued against the Teacher-in-Charge/Head Master of the said Madrasah immediately thereafter the writ petitioner/applicant was not allowed to sign in Madrasah Register. Though Sk. Hasan Imam doing his duty in the said Madrasah without any break and to the full satisfaction to the student.

6. It is further stated in the paragraph No. 7 and 8 of the opposition; Tamanna Parvin

was not made party either before the Madrasah Board or before the writ petition filed by me in the High Court. It is further stated that the appointment of Tamanna Parvin in my post, I was not aware of the fact that she has been appointed as Assistant Teacher in Science Group in my place in the said Madrasah and no information has been provided by the Madrasah to me. Therefore, the question of made party of Tamanna Parvin in the writ petition does not arise at all.

8. It is stated that pursuant to the order of the Court the Madrasah Board has taken a lengthy hearing wherein the present contemnor, the then Secretary of the Managing Committee and other teachers of the said Madrasah were present in the hearing. The Madrasah Board on 08.06.2022 passed the order as below:

'It is ordered and declared that the termination of Sk. Hasan Imam was not done in accordance to the prescribed Rules. His termination notice issue by the Managing Committee of Pole Hasnatiya Senior Madrasah is set aside. The appointment of one named Tamanna Parvin in the post of Assistant Teacher of Science in the place of Sk. Hasan Imam is also declared as illegal and therefore set aside accordingly.'

9. With regard to the paragraph Nos. 13, 14 and 15 of the opposition, the contents made therein are denied and disputed by me except those which are matters of record. It is stated that the contemnor stated in paragraph no. 13 of the opposition that the writ petition is deliberately ventured to create pressure on the said un-aided Madrasah authority in order to fetch salary month by month. It is curious to

note that the Madrasah authority issued a letter dated 10.11.2022 addressed to the Secretary; The West Bengal of Madrasah Education stating thereby Sk. Hasan Imam on 14.09.2022 has joined in the Madrasah pursuant to the order of the Court. It is further stated that all the requisite documents to the Madrasah authority submitted by me, but no receipt given to me, as such I compel to send again all the requisite documents by speed post on 01.10.2022. As per Rule the un-aided Madrasah is entitled Honorarium/Remuneration month by month from the government of West Bengal through Director of Madrasah Education. Intentionally the Madrasah authority did not send the requisition for release of salary of mine to the Director of Madrasah Education; as a result I am not getting the remuneration/salary till today though other teaching and non-teaching staffs of said Madrasah are getting salary regularly.”

Learned counsel for the petitioner in this contempt proceeding further submitted that, under all those facts quoted above, this Court had passed the interim order in the writ petition filed by Tamanna Parvin. Referring to the averments made in paragraph 6 from the affidavit-in-reply he submitted that, appointment of Tamanna Parvin was not within the notice and knowledge of the petitioner. The appointment was made during Covid period. He further submitted that, it is the Tamanna Parvin who has suppressed the material fact in her writ petition. He further submitted that, the petitioner has not received his salary since the alleged contemnor has

acted in violation of the order dated **September 8, 2022** and he is a poor man.

Considering the rival contentions of the parties and considering the materials on record, this Court first proceeds to take note of the principles applicable while adjudicating a contempt proceeding. In terms of **Section 2(b) of the Contempt of Court Act, 1971** where the civil contempt is defined, there must be a willful disobedience on the part of the alleged contemnor in not complying the order/direction of the Court. Considering the punishment for contempt being civil imprisonment, the Court has to be extremely cautious and careful while adjudicating a contempt proceeding and the most judicious approach has to be adopted by the Court.

In the light of the above principle of law this Court has assessed the conduct of the sole present alleged contemnor and this Court is of the firm view that, whatever was to be performed on the part of the sole alleged contemnor, he has performed to give effect and carry out the direction of this Court dated **September 8, 2022**. He has carried out his obligation and communicated the same before the relevant State authority for taking further steps as would be evident from **pages 20 and 21** to the affidavit-in-opposition filed by the sole alleged contemnor. Any further act on the part of the alleged contemnor would be beyond his authority and

domain. He can not take any further or other step at this juncture. Hence, the sole alleged contemnor has discharged his obligation and there is no civil contempt on its part. **Thus the charge of contempt against said sole alleged contemnor stands dropped.**

The second but most important part now comes is about the **suppression of material facts** as alleged by the sole alleged contemnor, on the part of the petitioner by not divulging the said two orders dated **December 20, 2022 and January 10, 2023** passed by this Court in the writ petition of **Tamanna Parvin** as narrated in detail herein above. It is true that, when the order was passed by this Court on **December 20, 2022** the petitioner in the contempt proceeding was not represented, though the order speaks that due notice was served upon him.

Be that as it may, when this Court after taking note of the said **interim order** dated **December 20, 2022** passed the subsequent order dated January 10, 2023 the petitioner was duly represented through his set of counsel. The petitioner was definitely aware of the interim order passed by this Court and deliberately and willfully suppressed the same before this Court while applying under the contempt jurisdiction of this Court. Had this fact of passing of interim order been brought to the notice of this Court in this contempt proceeding at the threshold, the

complexion of the proceeding might have been different. Taking the averments made in the contempt application to be true and correct and in the facts stated therein, this Court proceeded and issued rule in this contempt proceeding. It is settled that, suppression of fact which are material for the adjudication amounts to fraud on Court. It was the obligation and duty of the petitioner to disclose the said two orders dated December 20, 2022 and January 10, 2023 in this contempt proceeding while applying before this Court. The said two orders had material bearing in this contempt proceeding. The petitioner approached the contempt jurisdiction of this Court with an unclean hands.

In view of the foregoing discussions and reasons, the petitioner shall pay and is directed to pay **a cost of Rs.50,000/- in favour of the State Legal Aid Services Authority, West Bengal positively within a period of four weeks from date.**

The learned Registrar General is requested to communicate and serve a copy of this order at the office of the State Legal Aid Services Authority, West Bengal forthwith. The State Legal Aid Services Authority, West Bengal shall be at liberty to bring it to the notice of this Court, in the event the cost is not paid as directed above.

With the above observations and in view of the foregoing reasons this contempt proceeding being

W.P.C.R.C. 105 of 2023 stands dropped. The contempt application accordingly stands disposed of with the cost assessed as above to be paid by the petitioner.

Rule issued, stands **discharged**.

(Aniruddha Roy, J.)