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16.06.2023
D.Hira
Court No. 22

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**W.P.C.R.C. 72 of 2023
In
W.P.A. 21481 of 2022**

**Subhash Mandal
-versus
Kalipada Mandal & Anr.**

**Mr. Subir Sanyal,
Mr. Sagnik roy Choudhury.
...For the Petitioner.**

**Mr. Nilanjan Bhattacharjee,
Mr. A. Chatterjee,
Mr. Saikat Dey.
... For the Alleged Contemnors**

This is a contempt application arose from an order passed by this Court on September 28, 2022 in the writ petition being **W.P.A. 21481 of 2022 Annexure A at page 14 to the Contempt Application.**

The writ petition was disposed of by this Court with the following direction:-

“Considering the issue involved in this writ petition, this Court is of the firm opinion that justice would be subserved if the Governing Body of the College is directed to decide the issue raised by the petitioner through its said representations both dated December 21, 2021 at page 54 and 55 respectively of the writ petition.

The Governing Body of the College shall give a prior notice of at least seven days to the petitioner and then after giving an opportunity of hearing to the petitioner shall decide the issue with its reasoned order strictly in accordance with law.

The entire exercise, as directed above, shall be carried out and completed by the Governing Body of the relevant College within a period of seven weeks from the date of communication of this order. The Governing Body of the College then shall communicate this reasoned decision/order to the petitioner within a further period of one week from the date of the said reasoned decision/ order to be passed.

It is, however, made clear that the Governing Body shall conclude the issue by arriving at a reasonable conclusion thereupon strictly in terms of the direction made above in view of the fact that its tenure shall expire on December 31, 2022.

In the event the reasoned decision/order goes in favour of the petitioner, the Governing Body of the College shall take all consequential steps in accordance with law and shall give necessary appointment to the petitioner within a further period of two weeks from the date of communication of the said reasoned decision/order to the petitioner.”

From a close perusal of the direction made by this Court as quoted above, it appeared to this Court that, following directions were there:

- i. The Governing Body of the College was directed to consider the representation of the petitioner dated December 21, 2021 and to pass a reasoned decision/order thereupon in the manner and mode as directed therein;
- ii. In the event, the reasoned decision/order goes in favour of the petitioner, the Governing Body of the College was directed to take **all consequential steps in accordance with law** and was further directed to give necessary appointment to

the petitioner within the time stipulated in the order.

Pursuant to the direction made by this Court on April 28, 2023, the alleged contemnors filed their respective affidavits-in-opposition both affirmed on May 11, 2023.

On the scrutiny of the averments made by and the stand of the alleged contemnors taken in two affidavits-in-opposition, it appeared to this Court that, the stand taken by both the alleged contemnors are identical. Hence, this Court thinks it fit to deal with anyone of such affidavit for the purpose of adjudication of this contempt proceeding instead of making this decision voluminous to run into pages.

The petitioner chose not to file any affidavit-in-reply against the said two affidavits-in-opposition, as submitted by Mr. Roy Choudhury, learned counsel appearing for the petitioner.

Mr. Nilanjan Bhattacharjee, learned counsel appearing for the alleged contemnors placing reliance upon the reasoned decision taken by the Governing Body of the College dated December 9, 2022 **Annexure I at page 36 to the said affidavit in opposition** submitted that, by virtue of the said reasoned order in compliance of the direction of this Court dated September 28, 2022, the Governing Body of the College had decided the petitioner to be the most eligible candidate for giving appointment.

The operative part of the decision from the said reasoned order is quoted below:

“Therefore, the Governing Body of the college, in the hearing dated 02-12-2022 unanimously decided to move ahead with the appointment process and lift the embargo as imposed by the resolution dated 29.03.2022 and decided to make necessary arrangements to forward the candidature of Sri Subhash Mandal as the most eligible candidate and follow the procedure laid down by different Government Order and fulfilling all other necessary conditions and compliances from the Government.”

Mr. Bhattacharjee, learned counsel for the alleged contemnors had pointed out that the nomenclature of the reasoned order mentioned **at page 36 to the said affidavit** was wrong as **“Written Notes of Arguments”** the same should have been **“reasoned order”**.

Mr. Bhattacharjee, learned counsel appearing for the alleged contemnors then referred to the relevant rules for appointment from the notification bearing no. **940-Edn. (CS)/4E-25/2010 (Part) dated August 25, 2017** issued by the Secretary to the Government of West Bengal under the order of the Governor, **at page 23 of the affidavit-in-opposition.**

Clause 3 of the said notification is quoted below:-

“The College authority shall constitute a Selection Committee for conducting the selection process and such selection Committee shall comprise of a nominee of the State Government, a nominee of the affiliating University and a nominee of the Governing Body/Administrator, as the case may be. A selection Committee constituted for this purpose shall remain valid for

a period of one year or until completion of the selection process, whichever is earlier.”

Mr. Bhattacharjee, learned counsel then drew attention of this Court to a communication dated November 2, 2022 issued by the College authority addressed to the Inspector of Colleges, University of Calcutta **annexure F at page 31 to the said affidavit** and submitted that the College authority had already made a request before the relevant university concerned to appoint a nominee for formation of the selection committee. He then relied on another communication dated November 2, 2022 **annexure F at page 32 to the said affidavit** and submitted that the College authority had also requested the Director of Public Instruction, Education Department, State of West Bengal to appoint its nominee for formation of the selection committee for filling up the post.

Drawing attention to a communication issued by the relevant University dated December 12, 2022, **annexure J at page 41 to the said affidavit**, he submitted that the University had acknowledged the said request made by the College authority and had nominated its nominee as a member of the selection committee for selection of the relevant post.

Mr. Bhattacharjee, learned counsel submitted that the State had not nominated anybody though the request was made by the College authority on November 2, 2022 as referred to above.

Mr. Bhattacharjee, learned counsel submitted that nothing further is left open or remained to be performed on the part of the alleged contemnors and the College authority, in terms of the directions made by this Court

on September 28, 2022. The College authority and the alleged contemnors had performed their all obligations in due compliance of the direction of this Court.

Mr. Bhattacharjee, learned counsel then drew attention of this Court to a **Gazette Notification dated November 29, 2022 annexure K at page 42 to the said affidavit** and specifically referred to **Clause 13 under Chapter IV** thereunder **at page 50 to the said affidavit**. He submitted that, the authority for the appointment of non-teaching employee of the Government Aided Colleges in West Bengal, now vests and within the domain of the West Bengal College Service Commission and the provision had come into effect, pursuant to the another **Gazette Notification dated January 5, 2022 at page 54 to the said affidavit**.

Mr. Sagnik Roy Choudhury, learned counsel appearing for the petitioner submitted that, the alleged contempt against the alleged contemnors was only in respect of the second limb of the direction of this Court made on September 28, 2022 as the Governing Body of the College through the alleged contemnors willfully violated the direction **by not taking any consequential steps in accordance with law and did not give the necessary appointment to the petitioner within the time framed**.

Insofar as the first limb of direction of this Court that the Governing Body of the College shall pass a reasoned order, the same had duly been complied with, as confirmed on behalf of the petitioner.

Mr. Roy Choudhury, learned counsel for the petitioner submitted that, the petitioner had also served

notice of this contempt proceeding upon the West Bengal College Service Commission and Director of Public Instruction though they are not impleaded as alleged contemnors but were parties in the original writ petition. Therefore, leave may be granted to the petitioner to implead these two authorities in the contempt application and in that event, the Court may proceed against them.

In support, Mr. Roy Choudhury, learned counsel for the petitioner had relied upon a decision of the Hon'ble Supreme Court in the matter of ***Sita Ram vs. Balbir @ Bali*** reported at **(2017) 2 Supreme Court Cases 456**.

He submitted that it is the said two authorities, namely, the West Bengal College Service Commission and the Director of Public Instruction had aided and abated the alleged contemnor nos. 1 and 2 not to carry out the direction of this Court, since the State Authority despite being requested by the College authority had not nominated its nominee in the selection committee.

Mr. Bhattacharjee, learned counsel for the alleged contemnors, per contra, submitted that the order of this Court dated September 28, 2022 had stood duly complied with in so far as the alleged contemnors are concerned and the issue raised by the petitioner today in the contempt application to incorporate the West Bengal College Service Commission and the Director of Public Instruction within the scope and ambit of this contempt proceeding and then to proceed against them would amount to a fresh cause of action and beyond the scope of this contempt proceeding.

In support, Mr. Bhattacharjee, learned counsel for the alleged contemnors relied upon a decision of the Hon'ble Supreme Court in the matter of ***Sudhir Vasudeva, Chairman & Managing Director, Oil and Natural Gas Corporation Limited & Ors. vs. M. George Ravishekar & Ors.*** reported at (2014) 3 Supreme Court Cases 373.

After considering the rival contentions of the parties and perusing the materials on record, this Court first proceeded to scrutiny the act and deed of the alleged contemnors in the light of the said reasoned order passed by the College authority dated December 9, 2022 **annexure I at page 36 to the affidavit in opposition.**

On a plain reading of the said reasoned order passed by the College authority upon being examined in the light of the direction made by this Court on September 28, 2022, it appeared that, the College authority had considered the case of the petitioner and came to a conclusive decision with a detailed deliberation that the petitioner was eligible to be appointed for the employment and consequently, the appointment shall follow. **So first limb of the direction of this Court dated September 28, 2022 stood complied.**

Insofar as the second limb of the direction of this Court was concerned that, the College authority shall give appointment in accordance with law, it appeared to this Court that, the College authority had followed the due process of law and had already applied before the relevant University and the State authority, requesting them to recommend their nominee in the selection committee for the appointment.

Such an act on the part of the College authority was totally in compliance with the relevant rules as contemplated in the said notification dated August 25, 2017 **at page 23 to the said affidavit.**

The University had appointed its nominee but the State had not yet.

The inaction, if any, on the part of the State authority by not appointing its nominee, the same cannot be triggered as a charge of contempt against the alleged contemnors, as the alleged contemnors had no authority to do so neither the same is pending due to any laches on the part of the College authority.

Sitting in the contempt jurisdiction, this Court had a very limited authority of adjudication on the issue raised before it. The Court cannot go beyond the order and/or direction passed or made by it. The Court must examine the act of the alleged contemnors strictly within the scope and in the light of the direction made by it. In exercise of its contempt jurisdiction, the Court cannot re-open or re-adjudicate any issue which was beyond the scope of the direction made or order passed by the Court wherefrom the contempt arose.

Of course, the primary duty of the Court is to look into whether there is any willful or deliberate violation of an order or direction of the Court by the alleged contemnors. If the violation is not willful or deliberate, there shall be no contempt.

From the facts and circumstances of the instant case and on perusal of the materials before this Court, this Court is of the firm opinion that the alleged contemnors had performed their obligation and carried

out the direction made by this Court in the order passed by it on September 28, 2022.

The portion as being alleged by the petitioner not being carried in terms of the direction of the Court is no more within the domain or authority on the part of the relevant College authority.

In the facts of this contempt proceeding, if the relevant University or the Director of Public Instruction are proceeded against, the same would enhance and alter the scope of this contempt proceeding, as there was no direction upon these two authorities in any manner in the order dated September 28, 2022. Insofar as the ratio laid down in the matter of **Sita Ram supra** that was a case where there was an act of aiding and abating by a party who had contributed for non-compliance of the direction of the Court. It was a Contempt before the Hon'ble Apex Court in exercise of its power.

In the facts of the instant case, there is no direction upon the University authority or the Director of Public Instruction in the parent order passed by this Court dated September 28, 2022 in as much as, the University had also acted upon by appointing its nominee. The request for appointment before the Director of Public Instruction made by the College authority for appointing its nominee is pending. No case of aiding and abating was also made out in the facts of this case.

In view of the forgoing reasons and discussions, this Court is of the considered and firm view that no contempt lies against the alleged contemnors.

Rule issued by this Court stands discharged against the alleged contemnors.

However, the petitioner shall be at liberty to exercise its further rights against the appropriate authorities, if the petitioner is entitled to in law.

This contempt proceeding **W.P.C.R.C. 72 of 2023** arising out of **CPAN 171 of 2023** in connection with **W.P.A. 21481 of 2022 stands dropped. The application stands dismissed.**

There shall be no order as to costs.

(Aniruddha Roy, J.)