

IN THE HIGH COURT AT CALCUTTA

SPECIAL CIVIL JURISDICTION

(Appellate Side)

Coram: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.C.R.C 144 of 2022

In

WPA 6918 of 2019

Reserved on : 10.05.2023

Pronounced on: 05.07.2023

Malay Roy

...Petitioner

-Vs-

Sandip Biswas

...Respondent

Present:-

Mr. Ranjit Kumar Jaiswal,
Mr. Nandalal Prodhan, Advocates

... for the Petitioner

Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag,
Ms. Deboleena Ghosh, Advocates

....for the Municipality

Rajarshi Bharadwaj, J:

1. The applicant/petitioner is seeking contempt proceedings against the contemnor for violation of the solemn order dated 14.08.2019 passed by the learned Single Judge in W.P.A No.6918(W) of 2019.

2. Before considering the submissions made by Learned Counsel appearing on behalf of the respective parties, the chronological dates and

events leading up to the filing of this contempt petition are required to be referred to and considered, which are as under:

3. One Malay Roy herein the applicant/petitioner moved a writ petition bearing WPA No.6918(W) of 2019, for a direction upon the Chairman, Raiganj Municipality Uttar Dinajpur herein the respondent authority/ alleged contemnor to take steps in accordance with the law in respect of the applicant/petitioner's representation dated 28th September, 2018 for disbursement of pensionary benefits as well as salary and other admissible dues of the petitioner's wife who was a teacher in a school run by the respondent authorities.

4. WPA No. 6918(W) of 2019 was, thus, disposed of on 14th August, 2019 by observing that the respondent/ alleged contemnor shall take a decision in accordance with law in respect of the petitioner's representation expeditiously and positively within six weeks from date of communication of the order after giving an opportunity of hearing to the applicant and thereafter communicate the decision within one week. It was further instructed that if in the course of hearing it is found that the applicant is entitled to enjoy family pension and other admissible dues such as the arrear salary then steps must be taken for disbursement of those dues to the petitioner within two weeks.

5. Subsequently, the apparent indolence of the alleged contemnor to take notice of the applicant's representation for payment of pensionary benefits and outstanding legal entitlements occasioned an application for contempt in C.P.A.N No. 318 of 2020 for deliberately and willfully violating the said order dated 14th January, 2019 passed by the learned Single Judge in W.P.A No. 6918(W) of 2019. Being prima facie satisfied that a case of contempt had been made out; the Court issued a Rule of Contempt asking the contemnor to duly appear before the Court on 30th August, 2022 thereby giving rise to WPCRC No.144 of 2022.

6. Contempt application is heard on merit.

7. It is argued by Learned Counsel for the applicant/petitioner is that the respondent has exercised fraud upon the Court by intentionally changing his stand from time to time to deprive the applicant's statutory benefit including the amount of gratuity and the arrear of outstanding salary. In the absence of service book of the deceased employee, a pre-conceived conclusion that the deceased was an employee of non-function category, not entitled to death gratuity and family pension is open to question. Missing of a service book of an employee cannot be used as a tool for non-payment of outstanding statutory dues; the payment of unpaid salary has no relation with the payment of the outstanding statutory dues that have fallen due to be paid upon death of the applicant's wife.

8. It is further submitted that on receiving letter from the respondent dated 19th September, 2022, the applicant gave a reply by indicating that neither disbursement amount of the deceased's retiral benefits were provided nor acknowledgment with regard to fixation and payment of family pension has been made. Only bank account details were sought for. Relevant documents such as death certificate and joining report of deceased employee, age proof documents, Aadhaar card of all the legal heirs of the deceased for laying out of her retiral/death benefits and pending salary amount has been submitted by the applicant.

9. The Learned Counsel for the respondent, at the outset, submits that the respondent maintains highest reverence and obedience towards the Hon'ble Court and that an error had occurred on his part, in understanding the true spirit behind the Order/Judgement dated 14th August, 2019 passed by the Learned Single Judge and that no willful and/or deliberate disobedience of the Order/Judgement was committed by the respondent.

10. In order to comply with the order, the respondent conducted a hearing with the Petitioner on 03rd September, 2019, but unfortunately the hearing could not be fruitful as the Petitioner ignored the respondent's request of submitting the relevant bank account details of the Petitioner where the dues

of the deceased employee (herein the Petitioner's wife) could be credited and also failed to submit relevant service documents of the deceased employee. The respondent authority has at various occasions sent letters to the petitioner stating that the bank account details are required for legitimate disbursement of the admissible dues. However, such cooperation was never extended by the petitioner.

11. Hence, owing to the deliberate failure to provide the bank account details of the legal heirs of the Petitioner's wife the last salary of the deceased could not be disbursed and the PF amount which has been accrued till date stands at Rs.5,76,947.00/- (Five lakh seventy six thousand nine hundred forty seven). However, the respondent on 27th April, 2023 has passed a reasoned order, thereby complying with the Order/Judgement dated 14th August, 2019 passed by the Learned Single Judge.

12. Heard learned counsel for the respective parties and on perusal of records this court is of the view that to tantamount to contempt of court, the alleged disobedience has to be willful and deliberate. It is a well settled principle that the benefit of any doubt which might crop up with regard to the allegation of deliberate disobedience has to go in favour of the alleged contemnor. There arises no element of doubt in the instant case in view of the ongoing developments that the respondent did not act within the bounds of its power. Instead the respondent exercised its authority according to the rules, law and regulations governing its operation. The petitioner, on the contrary, did not adhere to the orders of the respondent by spurning the request to submit the Bank account details for disbursement of the retrial/death benefits and the pending salary of the petitioner's wife.

13. It is to be further noted that the Supreme Court in **Sudhir Vasudeva vs. M. George Ravishekar** reported in **(2014) 3 SCC 373** held that:

"The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. The very nature

of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective Jurisdictions like review or appeal is not trenched upon.”

Therefore, no order or direction supplemental to what has been already expressed should be issued by this Court while exercising jurisdiction in the domain of the contempt law as such an exercise is more appropriate in other jurisdictions vested to the Courts.

14. It is well settled law, before a proceeding for contempt can succeed, it is of paramount importance to establish first, the service of the order of the Court said to have been disobeyed upon the person alleged to have committed contempt thereof, secondly the precise act of contempt, thirdly the precise responsibility of the contemnor in the act of contempt, and fourthly the date of the alleged contempt being subsequent to the service of the order said to have been disobeyed. These are the four indispensable requisites and failure to establish any one of them must mean dismissal of the petition for contempt.

15. Supreme Court in **Jhareshwar Prasad Paul and Another v. Tarak Nath Ganguly and Others** reported in **2002 SCC (L & S) 703** held that:

“The Court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained”.

For that reason a separate cause of action shall arise as the alleged conduct stated by the petitioner which forms the basis for the contempt in the present case is not directly related to the underlying Court order/judgement, instead constitutes to be a separate legal claim.

16. In such view of the matter, the contempt application fails. Accordingly, WPCRC No.144 of 2022 is rejected.

17. There will be no order as to costs.

18. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(RAJARSHI BHARADWAJ)