

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

**CONTEMPT PETITION NO.191 OF 2022 IN
CONTEMPT PETITION NO.327 OF 2021 IN
WRIT PETITION NO.2400 OF 2004**

Trimurti Pawan Pratishthan
A registered Educational Trust,
having its office at Trimurti Nagar,
Newasa Phata, Taluka Newasa,
District Ahmednagar,
Through its Authorised person
Manish Annasaheb Ghadge
Age 45 years, Occu. Secretary of
Petitioner Educational Institution
R/o as above.

... PETITIONER

VERSUS

- 1) The State of Maharashtra
through Secretary,
The Department of School Education,
Mantralaya, Mumbai – 32
Through Respondent No.2
- 2) Mrs. Vandana Krishna,
Age major, Occu. Service as
Additional Chief Secretary,
School Education Department,
Maharashtra State, Mumbai – 32
- 2-A) Ranjeetsingh Deol,
Age major, Occu. Retired as
Additional Chief Secretary,
School Education Department,
Maharashtra State, Mumbai – 32
- 3) Mr. Vishal Solanki,
Age major, occu. Service,
Commissioner Education,
Pune Division, Pune – 1
- 3-A) Mr. Suraj Mandhre,

Age major, Occu. Service as
Commissioner Education,
Pune Division, Pune – 1

- 4) Mr. Mahesh Palkar,
Age major, Occu. Service,
Director of Education
(Secondary and Higher Secondary),
Central Building,
Maharashtra State, Pune – 1

- 4-A) Mr. Krushna Patil,
Age major, Occu. Service as
Director of Education
(Secondary and Higher Secondary),
Central Building,
Maharashtra State, Pune – 1

- 5) Mr. Audumbar Ukirde,
Age major, Occu. Service,
Deputy Director of Education,
Dr. Ambedkar Marg,
Pune Division, Pune – 1

(Copy of respondent No.1 to be served
on Government Pleader, High Court of
Bombay, Bench at Aurangabad) ... **RESPONDENTS**

.....
Mr. A.P. Bhandari, Advocate for petitioner
Mr. A.R. Kale, A.G.P. for respondents No.1, 2 & 5

.....
**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

Date of reserving judgment : 19th June, 2023

Date of pronouncing judgment : 20th July, 2023

JUDGMENT (PER R.G. AVACHAT, J.) :

Heard. This petition has been filed for taking action
against the respondents for committing contempt of the order dated

25/3/2019, passed by this Court in Writ Petition No.2400/2004 and the order dated 25/22/2021, passed in Contempt Petition No.327/2021.

2. The background facts :-

The petitioner is a registered educational Trust. It filed Writ Petition No.2400/2004 for various reliefs. The Writ Petition was allowed vide judgment and order dated 25/3/2019 with the following order :

“I. The petition is partly allowed.

II. Direction is given to the Respondents to grant permission on the basis of proposal made in the year 2000 on “no grant basis” for VIIIth to Xth standards school of the Petitioner. The grants are to be made available to this part of the school from the year 2007-08. The grants be made available only after strict scrutiny in respect of procedure followed for recruitment, the posts actually filled as against the permanent posts, which had become available and grant is to be released only in respect of those posts, which were filled as per the roster point system of the State Government. If any post is filled from open category, when the post was meant for socially reserved class, no grant is to be given in respect of that post. Thus, it is to be ascertained that the reservation policy was strictly followed before releasing of the grants. The process of ascertaining that the aforesaid things were followed is to be completed within three months from the date of this judgment and

thereafter, within three months the grants are to be released for the period starting from 2007-08.

III. In respect of Vth to VIIth standards, grants to be paid only after the conditions of all the aforesaid Government Resolutions including the Government Resolution dated 9th May, 2018 are fulfilled and the grants can be made available from the date of satisfying those conditions.

IV. The communication under challenge like direction given to give undertaking that the Petitioner institution would not demand grant, directions given to close down the school are hereby set aside. The order subsequently made like giving grants only from the year 2018 for VIIIth to Xth standards is also set aside as the grants are to be given from the year 2007-08 for standards VIIIth to Xth.”

3. Since the respondents did not comply with the aforesaid order, the petitioner Trust filed Contempt Petition, No.327/2021. The said Contempt Petition was disposed of vide order dated 25/11/2021. The Civil Contempt allegedly committed by the respondent No.1 came to be purged. Since the statement made in the said Contempt Petition towards compliance of the order passed in Writ Petition was not acted upon, the petitioner Trust filed the present Contempt Petition.

4. Learned counsel for the petitioner would submit that, on very many occasions during hearing of Contempt Petition

No.327/2021, the respondent authorities made positive statements that the order passed in Writ Petition No.2400/2004 would be complied with. Even affidavits-in-reply in that regard were filed. A Government Resolution dated 24/11/2021 was even issued, specifying the petitioner to have entitlement for grant-in-aid. The amount of grant-in-aid was even quantified at Rs.1,83,46,544/-. The respondent No.1, however, later on reneged. According to learned counsel for the petitioner, it is thus an aggravated form of contempt of Court. The learned counsel urged this Court to decide the present Contempt Petition considering the rejoinder affidavit filed on behalf of the petitioner Trust.

5. The learned A.G.P. would, on the other hand, submit that, the authorities concerned, joining hands with the officials of petitioner Trust, miscalculated the amount of grant-in-aid. It was in fact a mischief played by all of them. The petitioner Trust was only entitled to a sum of Rs.7,72,846/- towards grant-in-aid. The respondent No.1 had filed her earlier affidavit-in-reply based on the record submitted by certain subordinate authorities in the Department of Education. According to him, it is a financial affair. It would be a burden on the State exchequer. On re-calculation, the Head Master of the school submitted correct bill for Rs.7,72,846/-. The same has been sanctioned and the amount has been credited to the Bank Accounts of the respective employees. According to

the learned A.G.P., it was not intentional or deliberate disobedience of the order passed by this Court, first in the Writ Petition and consequential Contempt Petition No.327/2021. He ultimately urged for dismissal of the Contempt Petition.

6. Considered the submissions advanced. Perused all the documents relied on besides the affidavits filed on behalf of the parties to this petition.

Section 2(d) of the Contempt of Courts act defines “civil contempt” to mean wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court. In case of **Kapildeo Prasad Sah and Others v. State of Bihar [AIR 1999 SC 3215]**, it was observed:-

“For holding the respondents to have committed contempt, it has to be shown that there has been wilful disobedience of the judgment or order of the Court. Power to punish for contempt is to be resorted to when there is clear violation of the Court’s order. Since notice of contempt and punishment for contempt is of far-reaching consequence, these powers should be invoked only when a clear case of wilful disobedience of the Court’s order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and

complied. Even negligence and carelessness can amount to disobedience particularly when attention of the person is drawn to the Court's orders and its implication. Disobedience of Court's order strikes at the very root of rule of law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice.

Mere disobedience to any judgment, order, etc., will not make a person liable for contempt of Court. It is only when such disobedience is found to be wilful, that the person will be liable for contempt of Court [Hari Har Singh v. Niroti Lal Gupta – 2004 Cr.L.J. 3568 (all) (para 11)]. The fundamental principle of criminal law, including the law of Contempt of Courts, is that if there is a bona fide dispute or if there is possibility of some justification for the action complained of or there is no mens rea, the benefit of doubt must go to the accused [Fakruddin v. State of Gujarat, 1984 GLH (UJ 79) p.49].

7. The petitioner Trust was held to be entitled for grant-in-aid from the year 2007-2008. The entitlement was hedged with certain directions and compliances to be made. It was conditional on strict scrutiny in respect of procedure followed for recruitment, the posts actually filled up as against permanent posts and the grant-in-aid was in respect of those posts, only, which were filled up as per the roster point system of the State Government. Following of reservation policy was a condition precedent for releasing of the grants-in-aid.

8. It is true that, in Contempt Petition No.327/2021, the then Director of Education filed his affidavit-in-reply, stating therein:-

“8. I say and submit that,, the present Respondent No.2 after receipt of the report dated 06/09/2021 through communication dated 07/09/2021 from the Deputy Director of Education, Maharashtra State, Pune and after verifying the same, the report has been forwarded to the State Government on 09/09/2021.

9. I say and submit that, the report has been submitted to the State Government for taking appropriate decision in furtherance of the Judgment and Order dated 25/03/2019 passed in Writ Petition No.2400 of 2004. I say and submit that, the final decision is required to be taken at the Government level.”

9. Along with the said affidavit-in-reply, his communication dated 9/9/2021 addressed to Additional Chief Secretary, School Education was placed on record. It has been stated therein that, the Assistant Commissioner (Ma.Va.Ka.), Nasik inspected the roster point and certified that the backlog of Head Master and Teacher was duly filled up. So far as regards post of Clerk is concerned, there was no such compliance. It was further certified by the aforesaid affiant (Director of Education) that the petitioner Trust would be entitled for grants-in-aid from January 2014 onwards. A sum of Rs.3,63,80,512/- was worked out towards grant-in-aid.

Annual expenditure towards grant-in-aid was worked at Rs.28,61,000/-.

10. This Court, vide order dated 20/9/2021, passed in Contempt Petition No.3272/2021, had imposed costs of Rs.10,000/- each on some of the erring respondents. This Court further observed in the said order that, the concerned respondents sat over the order of this Court, dated 25/3/2019.

11. The respondent No.1- then Additional Chief Secretary, School Education and Sports Department filed her reply in Contempt Petition No.3272/2021, stating therein :-

“8. I say that thereafter, in accordance with the decision taken by the Cabinet held on 30/08/2016, the State Government had issued Government Resolution dated 19/09/2016 by which the earlier formula regarding the grant-in-aid was modified. As per the earlier practice, grants were increased from 20% to 40%, 60% and so on. However in view of the exponentially increasing financial burden on the Government, this practice was modified and it was decided that a blanket and fixed (*sarsakat*) 20% grant-in-aid would be sanctioned to all the schools/ divisions in the State which were declared eligible on 14/06/2016 to receive grant-in-aid. This grant-in-aid was sanctioned subject to the terms and conditions mentioned in the said Government Resolution.

.....

11. This Respondent most humbly submits that, for a long time the petitioner institution did not produce the basic roster verification from the Backward Class Cell which is the Competent Authority to verify whether the appointments have been made as per the Reservation Policy. However, for the first time the petitioner institution complied with the norms of the reservation policy only on the last date of the year 2013, i.e. on 31st December 2013. Accordingly, the State Government sanctioned the grant-in-aid of 20% from 2014, i.e. from the academic year 1/4/2018, and 40% from the year 1/11/2020. I respectfully say that, as per provisions of the GRs dated 15/11/2021 and 19/9/2016, the petitioner institution is eligible for grant-in-aid at the most from the academic year 2014 after complying with the reservation policy. However, as earlier clarified, being declared eligible does not give an automatic right to immediately start receiving grants, as it depends on the financial condition of the Govt. whether and when it can release grants, and that too not to any individual school but together to thousands of such schools. The petitioner school was declared on 14/06/2016 eligible to receive grant-in-aid. However, grants were actually released from the year 2018 taking into account the financial condition of the Govt.

Taking into special consideration the petitioner's case, a proposal has been submitted by the School Education Department to the Finance Department for release of grant-in-aid for the earlier period of two years, i.e. from the year 2016-2017. This Department is actively pursuing the matter with Finance Department."

It has been denied that, no similarly situated school

started getting grants from the year prior to 2016, as it was a policy decision taken based on the broad financial condition of the Government. It has also been averred in the reply affidavit that the State Government has taken necessary steps to comply with the orders passed by this Court.

12. A rejoinder affidavit was filed on behalf of the petitioner in Contempt Petition No.327/2021. Again, the very Additional Chief Secretary filed her additional affidavit-in-reply stating therein :-

“12. I say and submit that, after receipt of approval from the Finance Department dated 23/11/2021, a Government Resolution has been issued by my Department on 24/11/2021 thereby sanctioning grants to petitioner institution from 01/09/2016.”

13. A copy of the Government Resolution dated 24/11/2021 was placed on record. It is revealed therefrom, a sum of Rs.1,83,46,544/- was approved/ sanctioned for being released in favour of the petitioner Trust towards arrears of grants for the period 1/9/2016 to 31/3/2018.

14. It is also true that, this Court in its order dated 25/11/2021, passed in Contempt Petition No.327/2021, observed that the learned A.G.P. conceded to have no difficulty in accepting the contention of the petitioner Trust that it was eligible for grants

from 1/1/2014. A statement was also made across the bar that the aforementioned amount would be released within a short time. The Court was even assured that the amount would be credited to the account of the petitioner. In these facts and circumstances, it would, therefore, be in the first blush, appear that the State Government, in Education Department, unequivocally admitted the claim of the petitioner Trust and agreed to comply with the order/s by releasing a sum of Rs.1,83,46,544/-.

15. The respondent No.2 has filed her affidavit-in-reply on 7/3/2022, stating therein that the petitioner Trust and the concerned officers were responsible for the whole thing. The petitioner Trust attempted to get an amount much more than its entitlement. It was only entitled to receive amount of Rs.7,72,846/-, being 20% grants. It has, however, claimed 100%. The petitioner Trust was entitled for grants for the period 1/9/2016 to 31/3/2018. It has, however, made a claim for the period from 2016 to 2021-2022. It has already been getting 40% grants from November 2020. It has further been stated that, in Contempt Petition No.327/2021, the petitioner Trust submitted proposal for payment of grant amounting to Rs.3,63,80,512/-. The Education Officer submitted a proposal to the Deputy Director of Education, Maharashtra State, Pune. He, in turn, submitted the proposal to the Director of Education on 7/9/2021. The proposal came to be forwarded to the Government

in a hurry and under pressure without proper scrutiny. It has further been stated that, this Court had directed the affiant to personally remain present in the Court, taking into consideration urgency of the matter and believing in good faith the revised claim of the petitioner Trust, the Government issued Government Resolution dated 24/11/2021, granting claim of Rs.1,83,46,544/-. It has further been stated that, the Superintendent, Pay Unit, Ahmednagar examined the bills and found it to be faulty and inflated. The Superintendent of Pay Unit, therefore, wrote a letter to the Head Master on 11/1/2022 to furnish a revised bill. Accordingly, a bill for Rs.7,72,846/- was submitted. The same has been approved. The amount due to the respective staff members has been credited to their respective Bank Accounts. It has further been stated that, the responsible officers have been issued with notices and a departmental enquiry has been proposed against them.

16. The petitioner Trust filed rejoinder affidavit, stating therein the history of litigation and the circumstances under which it had filed Writ Petition, being No.2400/2004. The findings recorded by this Court while disposing of the said Writ Petition have also been reiterated. It has been contended that, local MLA's educational institution has been granted 100% grants with back effect. The Division Bench of this Court took cognizance of this discrimination. It has further been stated therein that, the petitioner

Trust was entitled for grants from 2007-2008. The amount of arrears of grants from 1/1/2014 to 1/8/2021 comes to Rs.1,83,46,544/-. On number of occasions, the respondent authorities and the learned A.G.P. representing the State either in writing and/or orally made a statement before the Court, undertaking to release the sum of Rs.1,83,46,544/-. As such, the respondent authorities admitted the petitioner Trust's claim in unequivocal terms. No application has been moved for recall of statement made in Contempt Petition No.327/2021. With all these grounds, rejection of the contempt petition was urged for.

17. As stated above, a responsible officer of the rank of Additional Chief Secretary, on affidavit, stated that, certain officers of Education Department and officials of the petitioner Trust joined hands and inflated claim was put up. Without scrutinising the same closely, a statement was made, accepting the same. The Court had directed the Additional Chief Secretary to remain personally present. The record indicates that, a day before Contempt Petition No.327/2021 was disposed of on 25/11/2021. The Government had issued a Government Resolution (dated 24/11/2021). Clause No.2 therein specifically states the petitioner Trust to have been entitled for 20% of grants. Arrears of Rs.1,83,46,544/- for the period 1/9/2016 to 31/3/2018 were sanctioned. This clause appears to have been overlooked. The petitioner Trust did not challenge the

said Government Resolution. A chart showing the names of the employees of the petitioner Trust, being not more than 7 in number, was placed on record with details as to payment of arrears of their salary, totally amounting to Rs.7,72,846/- . This Court, in its order dated 25/3/2019, did not specify the percentage of the grants to which the petitioner Trust was entitled to. It is a fiscal affair of the respondent No.1 State. The entitlement for grant was also subject to compliance of the roster. The said compliance appears to have been made by the petitioner Trust only in the year 2013. It is reiterated, while the Government Resolution dated 24/11/2021 was issued specifying the allocation of grants only @ 20% and arrears being quantified at Rs.1,83,46,544/- for the period 1/9/2016 to 31/3/2018, the petitioner institution did not challenge the said Government Resolution in an independent proceedings. The quantification of the amount of Rs.1,83,46,544/- for the period 1/9/2016 to 13/3/2018 at the rate of 20% only and for 7 employees is obviously wrong/ miscalculated. Needless to mention, admission made is not a conclusive proof. True, it may estop. It, however, needs to be stated that an admission can be explained. It can be proved to be wrong or it can successfully be withdrawn. All these facts and circumstances undoubtedly lead us to conclude that the respondent authorities have not disobeyed the orders of this Court. There is no either willful or deliberate disobedience of the order/s of this Court. The contempt petition, therefore, stands disposed of,

with liberty to the petitioner to initiate proceedings for execution of the order, if so advised.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

fmp/-