



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL CONTEMPT PETITION REFERENCE CASE NO. 1 OF 2023

Kalpana N. Phatangare ..VS.. Mrs. Rachana Singh and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P.R. Agrawal, Advocate appointed as Amicus Curiae.

Mr. R.L. Khapre, Senior Advocate a/b Mr. Bernard John, Advocate for
respondent Nos.1 and 2.

Mr. V.A. Thakare, APP for respondent No.3/State.

CORAM : NITIN W. SAMBRE AND VALMIKI SA MENEZES, JJ.

DATED : 25th SEPTEMBER, 2023

1. This Court vide order dated 04.05.2023, after having receipt a reference from the School Tribunal, Nagpur pursuant to the provisions of Sub-section (2) of Section 15 of the Contempt of Courts Act, 1971, appointed Advocate Mr. P.R. Agrawal to assist the Court as an *Amicus Curiae*.

2. Subsequent to the aforesaid order, this Court issued notice to the respondents vide order dated 12.06.2023 to the extent of seeking assistance from the respondents as to the maintainability of the reference.

3. In this background, the matter is posted for hearing before us.

4. We have heard Mr. P.R. Agrawal, learned counsel, who was appointed as *Amicus Curiae* and Mr. R.L. Khapre, learned Senior Counsel appearing for respondent Nos.1 and 2.

5. It appears that against an order passed by the Management, which was represented by the respondent Nos.1 and 2, the petitioner employee preferred an appeal under Section 9 of the Maharashtra Employees of the Private Schools (Conditions of Service) Regulation Act, 1977, in which certain interim order was passed on 30.01.2023. During the pendency of the said appeal, this Court directed the Tribunal to decide the issue of maintainability.

6. We are informed that the said issue as to the maintainability of the appeal at the behest of petitioner came to be answered in favour of the employee. However, in Writ Petition No.1920/2023, vide order dated 27.03.2023, this Court has stayed the proceedings before the School Tribunal, Nagpur.

7. In this background, the original appellant appears to have moved before the Tribunal alleging non-compliance of the initial *ad interim* order dated 30.01.2023, which has prompted the Tribunal to make a reference under Sub-section (2) of Section 15 of the Contempt of Courts Act.

8. Having regard to the assistance rendered by *Amicus Curiae* Mr. P.R. Agrawal and learned Senior Counsel Mr. R.L. Khapre, appearing for respondent Nos.1 and 2, it can be inferred from the record that the original appellant before the School Tribunal has not invoked the remedy under the provisions of Contempt of Courts Act before this Court.

9. What has been brought to the notice of the Tribunal was non-compliance or disobedience of the interim order dated 30.01.2023 by the Management.

10. In such an eventuality, even if, it is presumed for the sake of argument that the Tribunal is having jurisdiction to make a reference pursuant to the proceedings taken out by the petitioner/original appellant before the Tribunal, the least that was expected to follow the provisions of Rule 12 of the Contempt of Courts (Bombay High Court) Rules, 1971, which reads thus :-

- “12. (a) *Reference under section 15(2) of the Act may be made subordinate Courts either suo motu or on an Application received by it.*
- (b) *Before making a reference the subordinate Court shall hold a preliminary enquiry by issuing a Show Cause Notice accompanied by copies of relevant documents, if any, to the contemnor and after hearing him the subordinate Court shall write a concise reasoned Order of Reference indicating the nature of the Contempt and the person/persons alleged to have committed it.”*

11. It can be inferred from the record as is rightly so pointed out by Advocate Mr. Agrawal *Amicus Curiae* so also Mr. Khapre, learned Senior Counsel that neither a show cause notice was issued to the respondents nor they were heard before making a reference in the matter. Hence the order of reference passed by the School Tribunal is contrary to Rule 12 of the Contempt of Courts (Bombay High Court) Rules, 1971.

12. Apart from above, our attention is invited to the judgment of this Court in the matter of ***Prabhakar Laxman Mokashi Vs. Sadanand Trimbak Yardi***, reported in ***1973 SCC OnLine Bom 79***, which squarely covers the aforesaid issue as could be inferred from reading of observations in para No.26.

13. Mr. Khapre, learned Senior Counsel has also drawn our attention to the judgment of Division Bench of this Court in the matter of ***D.D. Samudra, Judge, Court of Small Causes, Mumbai Vs. Vaziralli Pvt. Ltd., and Another***, reported in ***2006 CRI. L.J. 2628***, particularly observations made in para No.11, which reads thus :-

“11. The learned Small Causes Judge should have followed rules framed by the Bombay High Court under the Contempt of Courts Act, 1971. Rule 6 (b) of The Contempt of Courts (Bombay High Court) Rules, 1975 mandate that before making reference the subordinate Court must hold a preliminary enquiry by issuing show cause notice accompanied by copies of the relevant documents, if any, to the contemner. And after due hearing the subordinate Court is further required to write a concise order of reference indicating why contempt appears to have been committed.”

14. As such, what can be noticed is as per the Rule 12 of above Contempt of Courts Act, rules framed by the Bombay High Court under the Contempt of Courts Act even before making a reference, the Presiding Officer is required to cause a preliminary enquiry in the matter by issuing show cause notice to the party against whom the action under the Contempt of Courts Act is alleged.

15. It is borne out from the record so also as per the submissions made by learned Senior Counsel Mr. Khapre that neither a show cause notice was issued nor the opportunity of hearing was offered to the respondents before making an order of reference under Sub-section (2) of Section 15 of the Contempt Courts Act.

16. In this background, having regard to the law laid down by this Court in the matters of *Prabhakar Laxman Mokashi* and *D.D. Samudra, Judge, Court of Small Causes, Mumbai* (supra), we are of the view that the reference itself was completely misconceived and ought not to have been referred to this Court.

17. Apart from above, the fact remains that the petitioner i.e. original appellant has remedies for getting redressed its grievance about non-compliance of the order dated 30.01.2023. In this background, it has to be held that the reference made by the School Tribunal itself is not maintainable in the backdrop of aforesaid observations. That being so, the reference stands rejected.

18. The 'word of appreciation' needs to be placed on record for the *Amicus Curiae* Mr. P.R. Agrawal, in view of valuable assistance rendered.

(VALMIKI SA MENEZES, J.)

(NITIN W. SAMBRE, J.)

Kirtak