

72-73 **26.06.**
2024
Ct. No. 08
Ab

MAT 1333 of 2013
State of West Bengal and another
Vs.
Narayan Chandra Mondal and others.

With

FMA 792 of 2015
State of West Bengal and another
Vs.
Narayan Chandra Mondal and others.

Mr. Tapan Kumar Mukherjee, Ld. AGP,
Mr. Somnath Naskar.
... for the appellants.

Mr. Ekraul Bari,
Mr. Syed Mansur Ali,
Mr. Sk. Imtiaj uddin.
... for the respondent no. 1.

Both the appeals are taken up together because of the commonality of the facts and the orders assailed therein originating from the same proceeding.

A contempt application was filed in the year 2008 alleging the willful and deliberate violation of the orders/directions passed by the Single Bench in WP 15780(W) of 2002 on 23rd March 2004. By the said order, the Single Bench directed the Director of School Education to take appropriate steps within a period of two months from the date of communication of the order in the light of the judgment and order passed by this Court.

Indubitably, on the date of filing the contempt application, the said authority did not take any decision and it can be reasonably inferred that the contempt was founded upon the allegation of inaction on the part of the alleged contemnors in securing the compliance of

the said order dated 23rd March 2004 within the period stipulated therein.

On 8th July 2013, the contempt application was listed before the Court and Mr. Tapan Kumar Mukherjee, learned Additional Government Pleader, appeared and informed the Court that since the records were missing, the Director of School Education could not pass the order in terms of the order dated 23rd March 2004 and prayed for an extension of time to comply with the said order.

The Single Bench extended the time for compliance, but astonishingly directed not to release the salary to the Director of School Education, West Bengal (re-designated as Commissioner of School Education, West Bengal) until the compliance is made. The said order is also assailed in FMA 792 of 2015 on the premise that the Contempt Court cannot pass an order withholding the salary of an authority.

Amidst the pendency of the contempt application and apropos to the order dated 8th July 2013, a decision was taken by the said Authority on 6th August 2013 in the following:

“20. Therefore, in order to take appropriate steps to enable compliance of the solemn order dated 23rd March 2004, I hereby direct the District Inspector Schools (Secondary Education), Uttar Dinajpur to notify the teaching vacancies of the school in accordance with the sanctioned strength available to the school to the Regional School Service Commission (Northern Region).

21. Further, I direct the District Inspector of Schools (Secondary Education), Uttar Dinajpur to accord prior permissions for the purpose of filling up non-teaching vacancies available upon recognition of the said school in terms of the Recruitment Rules issued vide No. 2066 GA dated 27th October 1995.

22. Further, I direct that the above two directions are to become effective when recognition of the school is granted once again to the said

school provisionally for a reasonable period by the competent authority and subject to the satisfactory fulfillment of the other procedures required for installing a legal administrative authority in the said school. This is necessitated because a school which is not recognized and does not have a valid Management authority cannot function under the existing legal framework.”

The said decision was duly communicated to the respondents and was brought to the notice of the Court when the contempt application was listed on 8th August 2013. On the said date the Single Bench proceeded to observe that the said order dated 6th August 2013 passed by the Commissioner of School Education is contrary to the order needs to be complied with and further proceeded to set aside the said order by admonishing the Commissioner of School Education not to repeat the action as the Single Bench perceived such action of the said authority as having crossed her limit. Simultaneously, the direction was passed upon the Commissioner of School Education to comply the said order dated 23rd March 2004 within four weeks from date. The said order is also assailed by the State of West Bengal in MAT 1333 of 2013.

Mr. Mukherjee submits that both the orders passed in exercise of the contempt jurisdiction are palpably wrong and illegal as the Court exercising the contempt jurisdiction cannot set aside the decision of the authority, which gives rise to a fresh cause of action and placed reliance upon a judgment of the Supreme Court rendered in **J. S. Parihar vs. Ganpat Duggar and others**, reported in **(1996) 6 SCC 291**. He further submits that the scope and the jurisdiction exercised by the Court under the Contempt of Courts Act is limited to a disobedience of an order willfully and deliberately, which should not be used as Court of ordinary jurisdiction and placed reliance upon a judgment of the

Apex Court in **Niaz Mohammad and others vs. State of Haryana and others**, reported in **(1994) 6 SCC 332**. He also submits that the contempt application is further barred under Section 20 of the Contempt of Courts Act, 1971 having been filed four years from the date of the order and, therefore, the Court should not have proceeded to pass such order, which is the subject matter of the instant appeals. In other words, Mr. Mukherjee submits that the Court should dismiss the contempt application being barred under Section 20 of the Contempt of Courts Act.

Mr. Ekramul Bari, learned Advocate for the respondents, submits that the order passed on 6th August 2013 is a gross violation of the directions passed in the order dated 23rd March 2004 and if the authority has acted contrary to the orders or directions, the contempt application is maintainable. He further submits that the authority has acted contrary to the orders or the directions and if the Court finds the same to be not in tune therewith, there is no fetter on the part of the Court to take cognizance of the same and proceed to pass appropriate order under contempt jurisdiction. He, thus, submits that the order per se is in violation of the order of the Court passed on 23rd March 2004 and, therefore, there is no infirmity and/or illegality in the impugned orders assailed in the aforesaid appeals.

On the conspectus of the above facts, admittedly by an order dated 23rd March 2004, the Court directed the School Education to take appropriate steps in the light of the aforesaid judgments and orders passed in the writ petition. The said order does not indicate that the authority has to take a decision in a particular manner, but what has been highlighted is that the decision must be in the light of the said judgments or orders.

The subject matter of challenge in the said writ was

an order/Memorandum no. 360LC dated 25th June 2002, which was set aside by the Writ Court and the ball was rolled in the domain of the District Inspector of Schools to take fresh decision.

Indubitably, there has been a considerable lapse and/or negligence on the part of the alleged contemnors in not taking a decision as directed by the Single Bench while disposing of the writ petition, but subsequently, during pendency of the contempt application, the order was passed on 6th August 2013.

Section 2(d) of the Contempt of Courts Act, 1971 defines the civil contempt to mean the willful disobedience of any judgment, decree, direction, order, writ or other process of the Court and, therefore, a person can be found guilty of committing a civil contempt in the event the said order is not duly complied with and there is a deliberate and willful intention of not complying the said order or giving sanctity to a majesty of the Courts or its orders. The authority cannot sit tight over the matter nor suppose to show any dormant and lethargic attitude in securing the compliance of the said order nor should get away from the rigour of the provisions of the Contempt of Courts Act, if such conduct appears to be willful and deliberate in not securing such compliance.

Be that as it may, on 8th July 2013, a direction was passed upon the alleged contemnors to comply with the said order, which, in fact, was done on 6th August 2013. The moment the Contempt Court extended the period for its compliance, there is no justification in withholding of the salary of the Director of School Education for the purpose of such compliance. The Court must record the reasons, which prompted such stringent orders to be passed in withholding the salary of the Director of School Education and avoidance must

be made to pass such order in mechanical manner. If the Court has extended the time for its compliance, there is no justification in passing a stringent order of withholding the salary until such compliance is made. Such part of the order needs interference and is, accordingly, set aside.

Though we are conscious that within one month from the said order, the compliance has been made and, therefore, the said rigour of the stringent order was lifted automatically yet for the purpose of record, such direction, which appears to us, was unwarranted and in excess of the jurisdiction so exercised cannot withstand on the parameter of Law.

The subsequent order of setting aside the said order taken by the authority on 6th August 2013 cannot also withstand as the Court while exercising the contempt jurisdiction cannot usurp the powers that of ordinary jurisdiction as the subsequent decision gives rise to fresh cause of action as held by the three Judge Bench decision of the Apex Court delivered in **J.S. Parihar (supra)** in the following:

“6. The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr. S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had willfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently, promotions came to be made. The question is whether seniority list is open to review in the

contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches, It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the willful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned Single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench.”

Though the learned Advocate for the appellants relies upon a judgment of **Niaz Mohammad and others (supra)**, but it appears that the Apex Court in the said judgment has made a distinction between the exercise of powers emanating from the Contempt of Courts Act and the powers emanating under the Code of Civil Procedure for execution of decree. It has been held that both the powers are distinct and separate and the contempt jurisdiction should not be treated akin to a jurisdiction exercised by the Court in execution of decree in the following:

“9. Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as ‘the Act’) defines “civil contempt” to mean “willful disobedience to any judgment, decree, direction, order, writ or other process of a court...”. Where the contempt

consists in failure to comply with or carry out an order of a court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemner should be punished for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be willful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemner is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was willful and intentional. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any court to execute the decree whatever may be consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the court has to record a finding that such disobedience was willful and intentional. If from the circumstances of a particular case, brought to be notice of the court, the court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the contemner to comply with the order, the court may not punish the alleged contemner.”

Be that as it may, since the order has been duly complied with in view of the judgment rendered by the Apex Court in **J. S. Parihar (supra)**, the contempt jurisdiction cannot be stretched to an ordinary jurisdiction by setting aside the said order and passing

a fresh direction upon the authority to do a thing in a particular manner. It gives rise to fresh cause of action amenable to be assailed before the appropriate forum and, therefore, in our opinion, the Single Bench exceeded jurisdiction conferred under the Act in setting aside the order dated 6th August 2013 and passing a direction upon the appellants to proceed afresh.

The order dated 8th August 2013 is hereby quashed and set aside.

The plea of limitation is kept open and if taken before the Contempt Court, the same shall be decided on merit.

We, therefore, request the learned Single Judge to take up the contempt application on priority basis to secure its disposal at an earliest.

With these observations, both the appeals are disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)