

(2001) 07 CAL CK 0017

In the Calcutta High Court

Case No : W.P.C.R.C. No. 18108 (W) of 2000 with W.P.C.R.C. No. 3214 (W) of 2001 W.P. 1924 (W) of 1999

Ashim Kumar Sharma and Others

APPELLANT

Vs

Arun Kumar Roy Director of School Education Sakti Das
Mukherjee Dist. Primary School Council, Jalpaiguri

RESPONDENT

Date of Decision : 12-07-2001

Acts Referred:

Constitution of India, 1950 — Article 129, 142, 215

Citation : 106 CWN 985

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : K.K. Moitra, Alok Ghosh and Srikanto Moitra, for the Appellant;
Asoke De, T.P. Halder, Amal Kumar Basu Chowdhury and Ashim Hadler, for the Respondent

Judgement

Amitava Lala, J.—In the first contempt application, there was originally one contemner, Sri Arun Kumar Roy, Director of Primary Education (Primary Education). West Bengal and subsequently another contemner was impleaded, Sri Sakti Das Mukherjee, Chairman, Dist. Primary School Council, Jalpaiguri. The said contempt application has arisen out of a final order passed in W.P. No. 19242(W) of 1999 on 27-4-2000. The writ petition was disposed of upon observing the resolution as taken by the Chairman, Ad-hoc Committee, Dist. Primary School Council, Jalpaiguri, which is as follows:

After hearing, the Hon''ble High Court was pleased to pass identical orders in several cases to consider the petitioners'' candidature in accordance with recruitment rules along with other eligible candidates for future vacancies. It may be noted here that the Council has notified 1917 posts for appointment of primary teachers and process of recruitment has been going on and the Council as directed by the Hon''ble Court is considering the case of the petitioners along with other candidates as per law. These group of the petitioners agitating to consider their cases separately as their cases have been considered not on the

sponsoring of the Employment Exchanges but on the order of the Hon''ble High Court. They also demanded to consider their cases separately beyond notified vacancies.

In this connection Council in its meeting dated 5-5-99 took a resolution to act as per opinion of the Ld. Govt. Pleader, Jalpaiguri. The opinion of the said Ld. Govt. Pleader dated 17-5-99 is enclosed for your kind perusal.

2. The learned Government Pleader has opined in favour of the petitioners ultimately by saying, inter alia, as follows:

After careful consideration of the pros and cons of the matter, I am of the considered view that there is no legal impediment in so far as the correct desire to make out a proposal for absorption of the writ petitioners of High Court cases in the enhanced vacancies generally determined by the Council in its meeting if the appointments are given as per rules. But the proposal when mooted, before it is acted upon, must got prior approval of the Court.

3. Upon considering the submissions as made by the parties in the facts and circumstances of the case as well as a question of law, this court was pleased to direct the Director of School Education, West Bengal, to finalise the appointment or regularisation of service in accordance with law within a period of four weeks from the date of communication of the order and the same is required for balance of convenience. This court was further pleased to direct that since the petitioners were interviewed long back, in such case the age bar will be condoned by following the principle as laid down by the Supreme Court on various cases including the case of Keshav Narayan Gupta and Others Vs. Jila Parishad, Shivpuri (MP) and Another, . It was further directed that at the time of consideration of filling up the vacancies a priority should be given in respect of the candidates under the writ petition.

4. Being aggrieved and dissatisfied with the non-compliance of the order of the court, the petitioners filed a contempt application and being prima facie satisfied, this court issued a contempt Rule. As against the rule of Contempt, personal appearance of the alleged contemnors were dispensed with until further orders of this court. Parties were directed to file their respective affidavits which were ultimately taken into account by the court.

5. The first technical point has been taken by the learned counsel appearing on behalf of the alleged contemner no. 2, Chairman, Dist. Primary School Council, that the contempt application cannot lie as against him because the Chairman, Dist Primary School Council, forwarded the names of the successful candidates and subsequently a list of the candidates to whom the names were not forwarded had become not eligible for reference separately. Secondly, even the contempt application cannot lie as against either of the contemnors specially the alleged contemner no. 1, Director of Primary Education, because of the reason that good, bad or indifferent a consideration is made by such authority in compliance of the order passed by this court.

6. Mr. Asok De, learned counsel appearing in support of the alleged contemner no. 2, has relied upon a decision in the case of J. Parihar Vs. Ganpat Duggar and others, , by saying 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 or action to seek redressal in an appropriate forum. Therefore, I have to look into the order passed by the authority in compliance of the order of the court.

7. A supplementary affidavit has been filed by Mr. Basuchowdhury, learned senior counsel appearing on behalf of the alleged contemner no. 1, by stating that the cases of the petitioners were considered by the authority in compliance of the order of the court. It appears that under Memo No. 1105-Sc/p/7)-26P-94 dated 5-7-2000 one Sri M.C. Dolai on behalf of the Director of Schools Education, West Bengal, has written a letter to the Chairman, Dist. Primary School Council, that the provisional approval is accorded in respect of 1099 candidates (original-993 + 10% additional-106) under different categories and medium as shown in Annexure-"R1" to the supplementary affidavit for appointment of primary school teachers under his council. The appointments may be made strictly following the conditions as shown in Annexure-"B".

8. In Annexure - "B" to the contempt application list of the candidates who are untrained invoked the jurisdiction of this court on repeated occasions for the purpose of redressal of their grievances. I also find that on the self same date the said Sri M.C. Dolai has written a letter under Memo No. 558-Law (Pry) dated 5-7-2000 by stating that the matter regarding appointment/regularisation of the services of the petitioners has been taken up for consideration on perusal of papers as were placed before him and also on examining the score sheet it is found that the petitioners could not come within the zone of consideration. Surprisingly, such order of consideration was cancelled by a Memo No. 1301-L(P)/1C-618L (P) dated 7-12-2000 and a fresh order was issued by Sri Arun Kumar Roy, alleged contemner no. 1. These activities have created a cloud in the mind of the court about the clever ploy on behalf of the authority in rendering justice and fair play in respect of the petitioners" contentions merged with an order of this court.

9. Mr. Kashi Kanta Moitra, learned senior counsel appearing in support of the petitioners contended before this court that a contemner ought not be permitted to enjoy and/or keep the fruits of his contempt is well settled. This salutary rule has to be applied and given effect to by the Supreme Court, if necessary, by overruling any procedural or other technical objections. Article 129 is a constitutional power and when exercised in tandem with Article 142, all such objections should be given away. The court must ensure full justice between the parties before it. It is necessary to indicate that the question of lifting veil was taken into account by the Supreme Court in this regard. According to me, the question of lifting veil is to ascertain as to whether there is a clever ploy or not within the domain of the court in the contempt jurisdiction to come to a final decision because it is a quasi criminal proceeding. The court taking the contempt

matter is the best judge to take into account to such fact, that is the reason for which under normal circumstances the contempt application will have to be made before the court which has passed the original order. I have to hold that under Article 129 of the Constitution of India, the High Court being the Apex court of the State is also holding the similar power under Article 215 of the Constitution of India in which it is stated that every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. The duty of the court of contempt is not only made for giving punishment but also to take into account the complaints and if necessary otherwise deal with. Therefore, the contempt cannot be proceeded only in the manner as provided in the decision of Parihar's case unless it is absolutely fitting with the facts and circumstances of the case therein. In the Parihar case, there was no dispute that there was a consideration. But, in the instant case, there is a dispute about the consideration. It is expected and it is a real law that each and every Governmental order should be passed with the reasons and if there is no reason that will not be taken into account as an order passed in compliance with the order of the court. This is a case in which the court was directed to consider the matter and the consideration cannot be held to be, a bare consideration. Such consideration has to be construed in the eye of law as a reasoned consideration as has been provided in many judgments including the judgment of this court but I shall prefer to put it down in the principle as laid down in the case of *The Barium Chemicals Ltd. and Another Vs. Sh. A.J. Rana and Others*, , by the Five Judges Bench of the Supreme Court.

10. However, taking the ratio of the Supreme Court judgment I have to hold that the words "considers it necessary" postulate that the authority concerned has thought over the matter deliberately and with care and it has been found necessary as a result of such thinking to pass the order. The dictionary meaning of the word "consider" is to view attentively, to survey, examine, inspect (arch), to look attentively, to contemplate mentally, to think over, meditate on, give heed to take note of, to think deliberately, bethink oneself, to reflect" (vide Shorter Oxford Dictionary). According" to Words and Phrases-Permanent Edn : Vol. 8-A to "consider" means to think with care. It is also mentioned that to "consider" is to fix the mind upon with a view to careful examination: to ponder; study; meditate upon, think or reflect with care. It is, therefore, manifest that careful thinking or due application of the mind regarding the necessity to obtain and examine the documents in question in sine qua non for the making of the order. If the impugned order was to show that there has been no careful thinking or proper application of the mind as to the necessity of obtaining and examining the documents specified in the order, the essential requisite to the making of the order would be held to be nonexistent.

11. Mr. Moitra, learned senior counsel appearing on behalf of the petitioners further submits before this court that it is an order of nullity or may not be strictly legal but until and unless it has been set aside by the appeal court or reviewed by the court itself, it has a legal force. Mr. Moitra has also cited a

decision in the case of Authorised Officer Authorised Officer (Land Reforms) Vs. M.M. Krishnamurthy Chetty[OVERRULED], , wherein it has been held that since there is no review application, the order passed by this court has a binding effect upon the parties.

12. Therefore, coming back to the original position as to why the original criptic order of consideration will be sustained. The entire records were called for by this court and, Sri Arun Kumar Roy, Director of School Education, West Bengal and Sri M.C. Dolai, were directed to be personally present before this court today. Firstly, they wanted to produce the photo copies of the decision and subsequently the original one. From the records it appears that Sri M.C. Dolai signed a letter not only played as a role of communicator but participated to the decision making process. Surprise to note that save and except in respect of the contemner Mr. Roy's signature at the bottom of the file at page 15 making a office note, no consideration is made due to technical approach by cancelling the earlier order and by passing the present order on 7-12-2000 only when a Rule of contempt was issued upon him. Therefore, one has committed the contempt of court and the other has aided or abated the contempt. Therefore, I have no other alternative but it hold that both of them are guilty of contempt. Under such circumstances, when I was about to call for at the witness box for the purpose of trial of evidence and also for taking serious step as against them, they have come with a good sense. All of them wanted to consider afresh by giving compliance of the order of the court. Therefore, I have refrained myself from passing any further order excepting giving warning and saying that in future this type of activity will not be taken for compliance of the order of the court.

13. Under such circumstances, I pass the following order because of the reason that a contempt application is not an executive application but in the process of contempt the order can be directed to be executed provided the parties appear to be guilty of contempt. Accordingly to me, the case should be rested in the end if Sri Arun Kumar Roy, Director of Primary School Education, West Bengal, is directed to consider the matter afresh in respect of all the candidates specially the petitioners within a period of two months from the date of communication of this order by giving fullest opportunity of hearing and by passing a reasoned order thereon. It is to be remembered that the alleged contemner no. 2 along with his office representative will co-operate with the Director of School Education with all original papers in respect of candidature of each candidate so that there should not be any controversy in future. At the time of consideration of all the papers in connection to the writ petition and affidavit thereto as well as the contempt application and annexures thereto will be taken into account as representation of the petitioners.

14. Thus, both the contempt application being WPCRC No. 18108(W)/2000 and WPCRC No. 3214(W)/2001 are disposed of. Both the contempt Rules are disposed of accordingly. There will be no order as to costs.

Personal appearance of both the alleged contemnors is permanently dispensed

with.

15. Let photocopy of the decision dated 4-7-2000 taken by the Director of School Education in relation to consideration of the case of the petitioners filed in court today be kept with the record. Let urgent xerox certified copy of this judgment order, if applied for, be given to the Id. counsel for the parties within a period of fortnight from the date of submission of the requisites.