
(2006) 08 AP CK 0087

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 5 of 2006

C.V. Padmanabham, Conservator of Forests, Forest
Department and Another

APPELLANT

Vs

Bevara Prakasa Rao and Others

RESPONDENT

Date of Decision : 03-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, 151, 2(9)
Constitution of India, 1950 — Article 136, 215
Contempt of Courts Act, 1971 — Section 10, 11, 12, 13, 19
Contempt of Courts Rules, 1980 — Rule 27

Citation : (2007) 3 ALD 377

Hon'ble Judges : G.S. Singhvi, C.J

Bench : Single Bench

Advocate : V. Venkata Ramana, for the Appellant; S. Niranjan Reddy, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, C.J.—This appeal is directed against order dated 16-6-2006 passed by the learned Single Judge in Contempt Application No. 342 of 2006 (Contempt Case No. 358 of 2006).

2. The background facts:

On an application made in that behalf, Assistant Director of Mines and Geology, Vizianagaram, vide his order dated 19-4-2005 accorded sanction for grant of quarry lease in favour of respondent No. 1 over an area measuring 4.50 hectares in Survey No. 1, Mulaga Village, Parvathipuram Mandal, Vizianagaram District for a period of two years commencing from 19-4-2005. After about nine months, respondent No. 1 filed Writ Petition No. 3458 of 2006 for issue of a direction to Conservator of Forests, Visakhapatnam and Divisional Forest Officer, Vizianagaram not to interfere with the quarrying operations by alleging that the officers concerned were not allowing him to operate the quarry on the pretext

that the same is in the reserved forest. The writ petition was disposed of by the learned Single Judge vide his order dated 28-2-2006, the operative part of which reads as under:

Having regard to the facts and circumstances of the case, the respondents 1 and 2 are directed not to interfere with the quarrying operations of the petitioner in respect of the land in an extent of 4.50 hectares in S. No. 1 of Mulaga Village, covered by the proceedings No. 2939/Q/2000 dated 19.04.2005 of the third respondent. If the petitioner is carrying out the quarrying operations in the land other than the one in question and if the said land in question comes within the reserve forest it is always open for the respondents 1 and 2 to take appropriate action following due process of law.

3. Soon after disposal of the writ petition, respondent No. 1 filed a petition under Sections 10 - 12 of the Contempt of Courts Act, 1971 (for short, "the 1971 Act") for punishing the officers of the Forest Department (appellants herein) by alleging that they have wilfully and deliberately flouted the aforementioned order. The same was registered as Contempt Case No. 295 of 2006 and was disposed of by the learned Single Judge on 23-3-2006 by granting leave to the petitioner to withdraw the same with liberty to institute appropriate proceedings. On the same day i.e., 23-3-2006, respondent No. 1 filed another petition under Sections 10 - 12 of the 1971 Act, which was registered as Contempt Case No. 358 of 2006. For the sake of convenient reference, the prayer made in that case is reproduced below:

In the above circumstances, it is prayed that this Hon''ble Court may be pleased to punish the respondents for wilfully and deliberately flouting the orders passed in W.P. No. 3458 of 2006, dt.28-2-2006 passed by His Lordship Hon''ble Justice V. Eshwaraiah and to pass such other order or orders as this Hon''ble Court deems fit and proper in the circumstances of the case.

It is further prayed that this Hon''ble Court may be pleased to direct the respondents to forthwith release the machinery seized from Sy. No. 1 of Mulaga Village, Vizianagaram District from an extent of 4.5 hectares by respondent No. 2 pending disposal of the above Contempt Case and to pass such other order or orders as this Hon''ble Court deems fit and proper in the circumstances of the case.

4. Along with the contempt case, respondent No. 1 filed an application u/s 151 of the CPC with the prayer that the respondents (appellants herein) be directed to forthwith release the machinery seized from Survey No. 1 of Mulaga Village, Vizianagaram District. The same was registered as Contempt Application No. 342 of 2006 and was disposed of by the learned Single Judge on 16-6-2006 in the following terms:

Though learned Government Pleader was asked to produce records by order dated 03-04-2006, but till today, no records have been produced and he says that records are not ready.

From the certification dated 06-05-2006, a copy of which is filed before this Court, issued by Assistant Director, District Survey & Land Records, Vizianagaram, it is evident that the petitioner is undertaking quarry operation in the area, in which lease is granted to him. It is further stated that the said area is classified in the Revenue records as assessed waste land. In that view of the matter, there shall be interim direction as prayed for. Post the Contempt Case after four weeks.

5. The appellants have challenged the aforementioned order by contending that in exercise of the power vested in him under the 1971 Act to punish the persons found guilty of willful violation or disobedience of the order of the court, the learned Single Judge could not have passed a substantive order in favour of the petitioner and that too by overlooking the fact that the prayer made in Contempt Application No. 342 of 2006 was beyond the scope of the prayer made in the writ petition. Another contention of the appellants is that the power vested in the High Court under Rule 27 of the Contempt of Courts Rules, 1980 (for short, "the Contempt Rules") to pass appropriate order for doing justice can be exercised at the time of final adjudication of the contempt case and not as an interim measure.

6. Before proceeding further, we consider it proper to mention that after seeking time from the Court on 27-7-2006, Sri S. Niranjan Reddy, counsel appearing for respondent No. 1 filed affidavit of G. Palanisamy, S/o. Gurunatha, who has described himself as General Power of Attorney holder of respondent No. 1. The deponent has detailed the facts leading to the grant of lease in favour of respondent No. 1 and alleged that the appellants are deliberately obstructing the quarrying operations on the pretext of encroachment of the area declared as reserved forest. Along with his affidavit, Sri G. Palanisamy has annexed documents marked Annexures R/1 to R/10.

7. Sri S. Niranjan Reddy, learned Counsel for respondent No. 1 raised a preliminary objection to the maintainability of the appeal by arguing that the order passed by the learned Single Judge cannot be treated as a judgment for the purposes of Clause 15 of the Letters Patent because it does not result in determination of lis between the parties or their rights. Learned Counsel further argued that the source of power of the High Court to pass an order like the one impugned in this appeal can be traced in Rule 27 of the Contempt Rules and the learned Single Judge did not commit any error by directing the appellants to release the machinery seized by them without giving respondent No. 1 notice and opportunity of hearing. Sri Reddy submitted that even if the Bench finds any technical flaw in the direction given by the learned Single Judge, the order under appeal may not be upset because the appellants had arbitrarily and in a highhanded manner seized the machinery and deprived respondent No. 1 of his right to undertake the quarrying operations.

8. Sri V. Venkata Ramana, learned Counsel for the appellants argued that in exercise of power under the 1971 Act, the Court can punish a person found guilty

of committing civil or criminal contempt, but cannot pass substantive orders, which can be passed in the main case. Learned Counsel pointed out that in the writ petition filed by him, respondent No. 1 had not questioned the action of the Forest Range Officer, Parvathipuram to register the case against him and seize the machinery and equipment and argued that during the pendency of the contempt case, the learned Single Judge could not have passed a mandatory interim order for release of the machinery. Sri Venkata Ramana then argued that the impugned order cannot be justified by placing reliance on Rule 27 of the Contempt Rules because the power vested in this Court to pass appropriate order for doing justice to the parties can be exercised only at the time of final adjudication of the contempt case and not at an interlocutory stage. He submitted that the manner and speed with which respondent No. 1 instituted one after the other contempt cases shows that he is trying to misuse the process of the Court to legitimise the illegal quarrying operations in the reserved forest.

9. We have given serious thought to the respective arguments and perused the record. We shall first consider the question whether an appeal under Clause 15 of the Letters Patent is maintainable against an interlocutory order like the one impugned in this appeal. A brief recapitulation of the facts would show that after less than ten months of the sanction of quarry lease in his favour, respondent No. 1 filed Writ Petition No. 3458 of 2006 for restraining the respondents from interfering with the quarrying operations. The learned Single Judge disposed of the writ petition by directing the officers of the Forest Department not to interfere with the quarrying operations, but made it clear that if the writ petitioner undertakes quarrying operations in some other land which constitutes part of the reserved forest, then the authorities shall be free to take appropriate action in accordance with law. In the affidavit filed by him in the writ petition, respondent No. 1 neither gave details of the alleged interference by the officers of the Forest Department nor he made any allegation that the authorities were intending to seize the machinery used for quarrying operations. In the affidavit filed in support of the first contempt case, respondent No. 1 made the following allegations:

It is further submitted that subsequent to the above said orders, the petitioner herein has communicated the said orders to the respondents herein, but to the utter surprise and dismay of the petitioners, the respondents herein and their men are obstructing the petitioner from carrying on the quarrying operations without following the due process of law, thereby rendering themselves liable for punishment for wilfully and deliberately violating the orders passed in the above writ petition. It is submitted that the petitioner herein having no other alternative remedy got issued a notice on 9-3-2006 through his counsel calling upon the respondents not to obstruct the petitioner from carrying on with the quarrying operations. It is submitted that the respondents in spite of receiving the said contempt notice dt.9-3-2006 did not stop their illegal interference and further threatening the labourers not to do the quarrying operations in the above said land, as a result of which the petitioner herein is sustaining huge loss and the

purpose of the orders granted by this Hon"ble Court is defeated. It is submitted that the acts of the respondents are contumacious and they themselves rendered liable for punishment under the Contempt of Courts.

10. In paragraphs 3 to 6 of affidavit dated 23-3-2006 filed in the second contempt case, respondent No. 1 averred as under:

3. It is submitted that while so, the respondents herein without any authority or jurisdiction are frequently coming to the land and preventing the petitioner from doing his quarrying operations on the ground that the land in which the petitioner is carrying on his quarrying operations belong to the Forest Department. It is submitted that the respondents themselves certified the land in Sy. No. 1 of Mulaga Village, Parvathipuram Mandal, Vizianagaram District in an extent of 4.50 hectares in which the petitioner herein is carrying on quarrying operations as a "Hill Poramboke" vested with the Government and further the respondents are well aware of the licence issued in favour of the petitioner, causing their interference without any authority or jurisdiction is wholly illegal, arbitrary and unconstitutional. It is submitted that if at all the land in Sy. No. 1 of Mulaga Village, Parvathipuram Mandal, Vizianagaram District in an extent of 4.50 hectares belong to the Forest Department, they are duty bound to follow the procedure contemplated under the law. It is submitted that the respondents herein without following the due process of law have been causing their interference, as a result of which the petitioner is unable to do his quarrying operations in the land situated in Sy. No. 1 of Mulaga Village, Parvathipuram Mandal, Vizianagaram District in an extent of 4.50 hectares.

4. It is further submitted that the petitioner herein having no other alternative approached this Hon"ble Court and filed W.P. No. 3458/2006 before this Hon"ble Court and this Hon"ble Court after hearing the arguments was pleased to dispose of the said writ petition on 28-2-2006 with the following directions:

Having regard to the facts and circumstances of the case, the respondents 1 and 2 are directed not to interfere with the quarrying operations of the petitioner in respect of the land in an extent of 4.50 hectares in S. No. 1 of Mulaga Village, covered by the proceedings No. 2939/Q/2000 dated 19.04.2005 of the third respondent. If the petitioner is carrying out the quarrying operations in the land other than the one in question and if the said land in question comes within the reserve forest it is always open for the respondents 1 and 2 to take appropriate action following due process of law.

5. It is submitted that the petitioner right from the date of grant of licence had been quarrying only in the land situated in Sy. No. 1 of Mulaga Village, Parvathipuram Mandal, Vizianagaram District to an extent of 4.50 hectares only and apart from this land, the petitioner is not quarrying in any other land.

6. It is further submitted that subsequent to the above said orders, the petitioner herein has communicated the said orders to the respondents herein, but to the utter surprise and dismay of the petitioners, the respondents herein and their

men are obstructing the petitioner from carrying on the quarrying operations without following the due process of law, thereby rendering themselves liable for punishment for wilfully and deliberately violating the orders passed in the above writ petition. It is submitted that the petitioner herein having no other alternative remedy got issued a notice on 9-3-2006 through his counsel calling upon the respondents not to obstruct the petitioner from carrying on with the quarrying operations. It is submitted that the respondents in spite of receiving the said contempt notice dt.9-3-2006 did not stop their illegal interference and further threatening the labourers not to do the quarrying operations in the above said land, as a result of which the petitioner herein is sustaining huge loss and the purpose of the orders granted by this Hon''ble Court is defeated. The respondent No. 2 in spite of the order of this Hon''ble Court dt.28-2-2006 has been interfering with my quarrying operations in Sy. No. 1 of Mulaga Village, Parvathipuram Mandal, Vizianagaram District to an extent of 4.50 hectares and respondent Nos. 1 and 2 also seized the machinery which was lying in Sy. No. 1 of Mulaga Village, Parvathipuram Mandal, Vizianagaram District. It is submitted that the acts of respondent No. 2 are contumacious and they themselves rendered liable for punishment under the Contempt of Courts.

11. A careful reading of the above reproduced portions of the affidavits makes it clear that in the first contempt case, respondent No. 1 did not even allege that the officers of the Forest Department had seized the machinery. In paragraph 6 of the affidavit filed in the second contempt case, he did aver that the officers also seized the machinery which was lying in Survey No. 1 of Mulaga Village, Parvathipuram Mandal, Vizianagaram District, but neither the particulars of the machinery nor the date of seizure were given. However, the factum of seizure of the machinery much before the institution of the first contempt case is clearly evinced from paragraphs 3 and 4 of the affidavit filed by Sri B.V. Ramana Babu, Divisional Forest Officer, Vizianagaram in Contempt Case No. 358 of 2006. Sri B.V. Ramana Babu categorically averred that one Chinnappan Nagarajn was doing mining operations on behalf of the petitioner in Sangamvalasa Forest Block in Compartment No. 200. He further averred that application was made by the petitioner for doing mining operations in de-reserved area of Sangamvalasa Forest Block, but the mining operations were being undertaken in Sangamvalasa Forest Block in Compartment No. 200, which is an offence under the Andhra Pradesh Forest Act, 1967 (for short, "the 1967 Act") and the Forest Conservation Act, 1980. Accordingly, Forest Range Officer, Parvathipuram booked a case in O.R. No. 98/2005-06, dated 11-2-2006 and seized one Tipper, Wire Shock Cutting Machine, Apset - 50 Nos. (two small gunny bags) and five Drill Rods. Still further, it was averred that Sri Chinnappan Nagarajan was arrested and produced before the Court of Judicial First Class Magistrate, who remanded him to custody for 15 days. Another case was booked by the Forest Range Officer on 9-3-2006 and one Poclainer PC 200; one Compressor and one 125 KV Generator were seized.

12. The learned Single Judge did not advert to the averments contained in the

affidavit of appellant No. 2 and straightaway disposed of Contempt Application No. 342 of 2006 by issuing a mandatory direction to appellant No. 1 to release the machinery seized by the department. On the face of it, the direction given by the learned Single Judge not only traverses beyond the scope of the main petition instituted by respondent No. 1, but also results in virtual adjudication of the issue relating to legality of the seizure effected by the competent authority, which, as mentioned above, booked two forest offences for violation of the provisions of the 1967 Act. In our opinion, such an adjudication amounts to judgment within the meaning of Clause 15 of the Letters Patent.

13. The question whether an appeal is maintainable against an interim/interlocutory order passed by the learned Single Judge in the proceedings instituted under the 1971 Act is no longer *res integra*. In *V.M. Manohar Prasad v. N. Ratnam Raju* (2004) 13 SCC 610, the Supreme Court considered the question whether in exercise of power under Article 215 of the Constitution read with Sections 9, 10 and 13 of the 1971 Act, the High Court could pass a substantive order and whether an appeal against such an order is maintainable. The Supreme Court answered both the questions in affirmative and held:

...There is no doubt about the position under the law that in contempt proceedings no further directions could be issued by the court. In case it is found that there is violation of the order passed by the court the court may punish the contemnor otherwise notice of contempt is to be discharged. An order passed in the contempt petition, could not be a supplemental order to the main order granting relief.... The learned Counsel for the employees in some of the appeals, submit that the Division Bench has held that no appeal would lie against the order of the Contempt Judge since no one was punished for contempt. We find the argument to be fallacious. If a direction is given by a court without jurisdiction, against such orders an appeal would lie to a court normally exercising the appellate jurisdiction.

14. In *Midnapore Peoples' Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others*, , the Supreme Court considered the following questions:

(i) Where the High Court, in a contempt proceeding, renders a decision on the merits of a dispute between the parties, either by an interlocutory order or final judgment, whether it is appealable u/s 19 of the Contempt of Courts Act, 1971? If not, what is the remedy of the person aggrieved?

(ii) Where such a decision on merits is rendered by an interlocutory order of a learned Single Judge, whether an intra-court appeal is available under Clause 15 of the Letters Patent?

(iii) In a contempt proceeding initiated by a delinquent employee (against the enquiry officer as also the Chairman and Secretary in charge of the employer Bank), complaining of disobedience of an order directing completion of the enquiry in a time-bound schedule, whether the court can direct (a) that the employer shall reinstate the employee forthwith; (b) that the employee shall not

be prevented from discharging his duties in any manner; (c) that the employee shall be paid all arrears of salary; (d) that the enquiry officer shall cease to be the enquiry officer and the employer shall appoint a fresh enquiry officer; and (e) that the suspension shall be deemed to have been revoked?

15. After noticing the relevant statutory provisions and some judicial precedents, the Supreme Court laid down the following propositions:

I. An appeal u/s 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable u/s 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of jurisdiction to punish for contempt and, therefore, not appealable u/s 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal u/s 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

16. The Supreme Court then considered whether an interlocutory order passed in the proceedings initiated under the 1971 Act can be challenged by filing appeal under the Letters Patent. Their Lordships referred to Clause 15 of the Letters Patent of the Calcutta High Court and Clause 10 of the Letters Patent of the Patna High Court, which are *pari materia* to Clause 15 of the Letters Patent of this Court and the ratio of Employer in Relation to Managment of Central Mine Planning and Design Institute Ltd. Vs. Union of India and Another, , Mithailal Dalsangar Singh and Others Vs. Annabai Devram Kini and Others, and Subal Paul Vs. Malina Paul and Another, and held:

Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:

- (i) Orders which finally decide a question or issue in controversy in the main case.
- (ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.
- (iii) Orders which finally decide a collateral issue or question which is not the subject-matter of the main case.
- (iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.
- (v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

The term judgment occurring in Clause 15 of the Letters Patent will take into its fold not only the judgments as defined in Section 2(9) CPC and orders enumerated in Order 43 Rule 1 CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, judgments for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not judgments for the purpose of filing appeals provided under the Letters Patent." Lastly, the Supreme Court referred to the factual matrix of that case, noted that the learned Single Judge of the High Court passed interlocutory order for reinstatement of the employee and reversed that order by recording the following observations:

There was also no justification for the further direction by the learned Single Judge in the contempt proceedings, that too by an interlocutory order, that the complainant should immediately and forthwith be reinstated into the service of the Bank, and shall be deemed to be in the service of the Bank all through, that the employee shall not be prevented in any manner from discharging his duties and that he shall be paid all arrears of salary within four weeks, and that the suspension order shall be deemed to have been revoked. These were totally outside the scope of the proceedings for contempt and amounted to adjudication of rights and liabilities not in issue in the contempt proceedings. At all events, on the facts and circumstances, there was no disobedience, breach or neglect on the part of the Bank and its President and Secretary, to provoke the Court to issue such directions, even assuming that such directions could be issued in the course of the contempt proceedings. Hence, Directions 2 and 3 and the direction relating to revocation of suspension are liable to be set aside.

17. In view of the law laid down in the aforementioned judgments, it must be held that the appeal preferred against the direction given by the learned Single Judge for release of the machinery of respondent No. 1 is maintainable under

Clause 15 of the Letters Patent.

18. The next question which requires consideration is whether the learned Single Judge could entertain an application filed u/s 151 of the CPC in the pending contempt case and pass a substantive order on the merits of the dispute between the parties. At the cost of repetition, we deem it proper to observe that the seizure of the machinery from Survey No. 1 of Mulaga Village, Parvathipuram Mandal, Vizianagaram District was not subject matter of Writ Petition No. 3458 of 2006 filed by respondent No. 1. This is the reason why the learned Single Judge, who disposed of the writ petition, did not even remotely touch the issue of seizure of the machinery, what to say of adjudicating on the legality of the action taken by the Forest Range Officer to seize the machinery on 11-2-2006 in the first instance and again on 9-3-2006. In the absence of such adjudication, the learned Single Judge, who was dealing with the contempt case, was not at all justified in entertaining the application made by respondent No. 1 for release of the machinery. Therefore, we have no hesitation to hold that the order under challenge is without jurisdiction and is liable to be set aside in view of the judgments of the Supreme Court in *V.M. Manohar Prasad v. N. Ratnam Raju and Midnapore Peoples' Co-op. Bank Ltd. v. Chunilal Nanda (supra)* and *J. Parihar Vs. Ganpat Duggar and others*, .

19. We also agree with *Sri V. Venkata Ramana* that in exercise of power under Rule 27 of the Contempt Rules, the Court can pass a substantive order for doing justice between the parties only at the time of final adjudication of the contempt case and not interlocutory proceedings.

20. In the result, the appeal is allowed and the impugned order is set aside.

21. At this stage, *Sri S. Niranjan Reddy*, learned Counsel for respondent No. 1 fairly stated that the Court may close the proceedings of Contempt Case No. 624 of 2006 filed by his clients for punishing the appellants on the ground of non-compliance of order dated 16-6-2006. We appreciate the fair stand taken by the learned Counsel and direct that proceedings of Contempt Case No. 624 of 2006 shall stand closed and the file of that case be consigned to the records. However, it is made clear that this order will not affect the adjudication of Contempt Case No. 358 of 2006, which is pending before the learned Single Judge.