

(2008) 04 MAD CK 0158

In the Madras High Court

Case No : Contempt Petition No. 750 of 2003

D. Ramamurthy and B. Easwaraiah

APPELLANT

Vs

R. Sekar, Executive Authority, Kottivakam Panchayat and Mr.
K. Rajaraman I.A.S., Addl. Commissioner, Civil Supplies and
Consumer Protection

RESPONDENT

Date of Decision : 29-04-2008

Acts Referred:

Citation : (2008) 04 MAD CK 0158

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

**Advocate : D. Nagasaila, for the Appellant; V. Raghavachari, for R1 and A.
Arumugam, Additional Government Pleader for R2, for the Respondent**

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—This contempt petition has been filed praying that this Court may be pleased to punish the respondents for committing contempt of Court by wilfully disobeying the order passed by this Court, on 25.6.2002, in Writ Petition No. 3126 of 2001.

2. It is stated that the petitioners had filed the writ petition before this Court in W.P. No. 3126 of 2001, for payment of wages as Electrician/Electrical Assistant and not as sweeper, as per the market rates notified by the District Collector for daily rated employees and for arrears of wages from the date of their appointment.

3. The said writ petition had been allowed, on 25.6.2002, directing the respondents to pay the market rates from time to time including the arrears. However, the order was not implemented and the respondents had continued to pay the petitioners' wages notified for sweepers. In such circumstances, the present contempt petition had been filed.

4. In the writ petition filed on behalf of the petitioners, it has been stated that

inspite of the fact that the wages due to the petitioners were revised every year by way of a notification issued by the District Collector, the respondents had continued to pay the petitioners the wages due to sweepers, even though they are employed as Electricians. The petitioners had also prayed for the payment of their backwages from the year 1992.

5. This Court had passed an order, dated 25.6.2002, in W.P. No. 3126 of 2001, which is as follows:

Heard the learned Counsel appearing for the parties.

2. Though the matter is listed to consider the direction petition, by consent of the learned Counsel appearing for the parties, the main writ petition itself is taken up for final disposal as the matter appears to be covered by a decision of this Court dated 15.11.2001 in W.P. No. 17530 of 1998.

3. The writ petition relates to the question of payment of wages to the employees in the respondent panchayat on the basis of the revised pay structure from year to year. It appears that a similar question has already been decided in the aforesaid writ petition No. 17530/98 dated 15.11.2001 wherein this Court has observed as follows: (Para-8)

8. The engagement of the employees who fall under the categories covered by annexure (III) cannot be on a regular basis, inasmuch as, the engagement of such persons could be only under certain special contingencies. When the employees covered by annexure (I) and (II) namely, the regular Full Time Menial servants and the part time employees would not meet the requirement, the respective village panchayats could avail the services of such daily rated employees under certain special contingencies. The second respondent being the competent authority having jurisdiction over the various village panchayats coming under St. Thomas Panchayat Union has every jurisdiction to ascertain before ever authorising the respective village panchayats to make payments when a claim is made that such contingency employment lasted for all the 30 days in the month through out the year. Viewed in that respect, though, it will have to be held that the employees employed on such daily wage basis were entitled for the wages at the rate of Rs. 74/- per day by virtue of the proceedings of the first respondent dated 16.9.1997. It will have to be held that when such payment was sought to be made on a monthly basis claiming that such engagement lasted for all the 30 days during the entire financial year, the second respondent could make appropriate investigation and ascertain whether at all such engagement as claimed to have been made by the respective village panchayats of St.Thomas Panchayat Union was true as claimed by it.

Keeping in view the aforesaid observation, it is directed that the 2nd respondent/ village panchayat shall pay the concerned employees the wages on the basis of the wage fixed for the particular year and arrears if any, should also be paid. This exercise should be completed and also the arrears should be paid within a period of six months from the date of communication of this order. So far as the current

wages are concerned, such wages should be paid in accordance with the wage structure applicable to the particular year. It is open to the panchayat to enquire into the matter relating to the actual employment of the concerned employees and thereafter to make necessary payment depending upon the period during which such person has been engaged.

3. Subject to the above observations the writ petition is disposed of along with the connected WPMP. No costs.

6. Even though the period of six months granted by this Court ended, on 25.12.2002, the respondents had failed to comply with the orders passed by this Court. The petitioners had not been paid the wages as per the current rates, nor have they been paid arrears of wages due to them from the year, 1992. In spite of the various representations submitted and notices issued to the respondents, the respondents had not complied with the order passed by this Court. A notice, dated 29.11.2002, had been issued as a reply to the notices issued on behalf of the petitioners. As per the reply notice, it is stated that the petitioners were not employed as Electricians and that they were only entitled to the wages of the Sweepers. It was also pointed out in the said notice that a writ petition in W.P. No. 17530 of 1998, had been filed by the Tamil Nadu Panchayat Union Employees Association, Kancheepuram, and the petitioners, who are the members of the said association, had accepted the payment of arrears pursuant to the order passed by this Court in the said writ petition. Therefore, the petitioners are ineligible to claim the remedies sought for in the writ petition. Since the respondents had not complied with the order passed by this Court, the petitioners have been constrained to file the present contempt petition.

7. In the counter affidavit filed on behalf of the first respondent, it has been submitted that the second petitioner was appointed as an Over Head Tank Operator, on 29.4.1993 by a Panchayat Resolution. However, he has been signing the attendance register from 1.4.1993 by interpolation in the records. One Dilli Babu, the uncle of the second petitioner was employed as an Panchayat Assistant in Kottivakam Panchayat could have tampered with the original records.

8. It has also been stated that no records were available in respect of the first petitioner. In spite of being employed as an Over Head Tank Operators, the petitioners have portrayed themselves to be electricians. At the time of their appointment the petitioners did not possess the required qualifications to be appointed as Electrician. Even though an order had been passed by this Court in W.P. No. 3126 of 2001, directing the Kottivakkam Village Panchayat, to pay the employees wages as fixed for the particular year, by its order, dated 25.6.2002, this Court had specifically left open the issue relating to the actual employment of the concerned employees.

9. It has also been pointed out that the petitioners have signed in the Acquittance Register acknowledging the receipt of a sum of Rs. 12,416/- paid to each of the petitioners. Thus, confirming the receipts of the said sum, as arrears

of wages. While so, it is not open to the petitioners to challenge the same at this stage by filing the present contempt petition.

10. Since the issue relating to the status of the petitioners and other similarly placed employees has been left open for further consideration of the respondents, it is clear that the respondents have not wilfully disobeyed the order passed by this Court, on 25.6.2002.

11. An unconditional apology has also been tendered by the respondents in the event of this Court findings that they have committed contempt of Court by some act or omission.

12. In the additional counter affidavit filed on behalf of the first respondent, it has been stated that the petitioners have not produced any material evidence to substantiate their claims that they have been appointed as Electricians. The Photo Identity Card shown as proof that they are employed as Electricians have not been issued by the first respondent. The Photo Identity Card is said to have been issued by the Block Development Officer, St. Thomas Mount Panchayat Union, even though the petitioners are employed by the Kottivakkam Village Panchayat. The other documents relied on by the petitioners like the service Register and the extract of the wages register have been signed by P.Rajaram, who was the President of the Panchayat between the years 1996 to 1999. He had been removed in his misdeeds and misfeasance. The documents alleged to have been signed by P.Rajaram are for the period when he was not the execute authority. Further, the petitioners had not shown that they have the qualification as Electricians. The first respondent had been elected as the president of the Kottivakkam Panchayat in the election held in the month of October, 2001 and in the month of October, 2006.

13. From the records available, the first respondent has found that the petitioners have never been employed as Electricians. They are only employed as Over Head Tank Operators and in other ministerial service. There is no direction in the order passed by this Court to consider the petitioners as Electricians and to pay their wages accordingly. In such circumstances, the contempt petition is not maintainable.

14. The learned Counsel appearing for the petitioners had submitted that the petitioners were, in fact, employed in the Kottivakkam Panchayat Union as Electricians. The entries in their wage Registers and their Photo Identity Cards and the other relevant documents clearly show that the petitioners have been employed as Electricians. This Court, while passing the order, on 25.6.2002, in W.P. No. 3126 of 2001, had considered the status of the petitioners and consequentially, directed the respondents to pay the wages due to them. The respondents had not refuted the claims of the petitioners that they were employed as Electricians at any stage before the said order was passed by this Court. Therefore, it is not open to the respondents to state, at this juncture, that the petitioners are not employed as Electricians. Such submissions are made

before this Court only with the malafide intention of denying the wages due to the petitioners by circumventing the order passed by this Court, on 25.6.2002. In fact, some of the documents available with the respondents have been tampered with to deny the rightful claims of the petitioners. Unless the respondents are punished for attempting to mislead this Court, it would result in travesty of justice.

15. On the other hand, the learned Counsel appearing for the respondents have stated that the Photo Identity Cards relied on by the petitioners have not been issued by Kottivakkam Panchayat. The petitioners were not qualified at the time of their appointment to be appointed as Electricians. They are employed as Non Muster Roll Over Head Tank Operators. If any of the documents of the Panchayat had been tampered with, the only person responsible would be P.Rajaram who was the president between the year 1996-1999. He was removed from the post based on certain serious charges. Thereafter, the Panchayat had been under the administration of the Special Officer and only, on 25.10.2001, the first respondent was elected as the President. The order passed by this Court had never mentioned the word "Electrician" and it was never understood as though the petitioners were employed as Electricians in the Kottivakam Panchayat.

16. It has also been stated that the District Collector, Kancheepuram District, had passed the orders in his proceedings, Rc. No. 14380/2001/PB(2), dated 16.12.2002, holding that the petitioners are employed as casual labourers and not as Electricians and that they are not eligible for daily wages as Electricians. The said proceedings of the Collector had not been challenged by the petitioners and therefore, the petitioners cannot be considered as Electricians.

17. Further, in reply to the submissions made on behalf of the respondents, the learned Counsel appearing for the petitioners had submitted that the proceedings of the Collector, Rc. No. 14380/2001/PB(2), dated 16.12.2002, cannot be challenged, as it is only a reply to the notices, dated 18.11.2002 and 25.11.2002, issued on behalf of the petitioners.

18. The learned Counsel appearing for the first respondent had relied on the following decisions in support of his contentions:

18.1. In Director of Education, Uttaranchal and Others Vs. Ved Prakash Joshi and Others, , the Supreme Court has held as follows:

7. While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a court to examine the correctness of the earlier decision which had not been assailed and to take a view different than what was taken in the earlier decision. A similar view was taken in K.G. Derasari v. Union of India. The Court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in

the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher court. The court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order. Right or wrong the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt, the court cannot traverse beyond the order, non-compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional directions or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside.

18.2. In Union of India (UOI) and Others Vs. Subedar Devassy PV, , the Supreme Court has held as follows:

6. If any party concerned is aggrieved by the order which in its opinion is wrong or against the rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt, the Court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test the correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible.

19. On analysing the rival contentions and on a perusal of the records available, this Court is of the considered view that the allegations of the petitioners that the respondents had committed contempt of Court by wilfully disobeying the order passed by this Court, on 25.6.2002, in W.P. No. 3126 of 2001, is not sustainable. The petitioners have not been in a position to substantiate their claims that they have been employed as Electricians in Kottivakam Panchayat Union. No evidence is available to prove their claims except the extract of the wages register and some other entries in the documents of the Kottivakam Panchayat as well as the Photo Identity Cards showing the designation of the petitioners as an Electrician. Such claims of the petitioners have been vehemently denied by the respondents stating that the Photo Identity Cards have not been issued by the Kottivakkam Panchayat Union and that the petitioners have never been employed as Electricians. The documents relied on by the petitioners cannot be sufficient proof to show that the petitioners were actually employed as Electricians in the

Kottivakam Panchayat Union. The order passed by this Court, on 25.6.2002, in W.P. No. 3126 of 2001, does not clearly state that the petitioners are to be treated as Electricians and that their wages are to be paid accordingly. When the order, which is the subject matter of the present contempt petition, is not clear and if it permits varied interpretations, the respondents cannot be punished for contempt of Court for wilfully disobeying such an order. Unless the order passed by this Court is clear without any ambiguity, this Court may not opt to punish the respondents for contempt of Court. Further, the petitioners have not shown that the respondents have wilfully disobeyed the order passed by this Court, on 25.6.2002, in W.P. No. 3126 of 2001.

20. No doubt the authority and dignity of this Court has to be preserved in the process of establishing and maintaining the rule of law. There is also no doubt that this Court has sufficient powers vested in it by the authority of law to punish the acts and omissions committed by persons having the effect of diluting such authority or dignity. However, this Court is also conscious of the fact that its power to punish persons for contempt of Court is to be exercised with sufficient care and caution. If not, it would result in a situation where Tyranny of law would prevail instead of rule of law. The contempt petition stands dismissed. In such view of the matter, there is nothing available before this Court to show that the respondents have committed contempt of Court, as alleged by the petitioners. Hence, the contempt petition stands closed. No costs.

21. At the time of pronouncing the order, the learned Counsel appearing for the petitioners had submitted that the petitioners may be permitted to approach the appropriate forum to establish the fact that they have been working as Electricians in Kottivakam Panchayat. On such submission being made, it is made clear that it is open to the petitioners to approach the appropriate forum, in the manner known to law, to establish their status as Electricians as well as their claims with regard to the amount due to them as wages.