

(2010) 09 GUJ CK 0152

In the Gujarat High Court

Case No : Special Civil Application No. 9058 of 2010

Desai Nayankumar Lalabhai

APPELLANT

Vs

Union Public Service Commission and Others

RESPONDENT

Date of Decision : 09-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 39, 82
Constitution of India, 1950 — Article 215, 226
Contempt of Courts Act, 1971 — Section 11
Gujarat High Court Rules, 1993 — Rule 189, 190

Citation : (2011) 1 GLR 687

Hon'ble Judges : S.J. Mukhopadhaya, C.J.; Anant S. Dave, J

Bench : Division Bench

Advocate : Preeti S. Parmar and S.V. Parmar, for the Appellant; Government Pleader for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, C.J.—If an order passed by the High Court under Article 226 of the Constitution of India is not complied with and thereby not executed, apart from Section 11 of the Contempt of Courts Act, 1971, the High Courts, as the Court of record, have all the powers of such a Court including the power to punish for contempt of itself under Article 215 of the Constitution of India, which reads as follows:

215. High Court to be courts of record.- 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.

2. In addition to such power, for execution of the High Court orders under Article 226 of the Constitution, the High Court has framed Rule 190. For such execution, the High Court order has to be drawn up including the costs as if it were a decree and can be executable as a decree in the manner provided in the CPC as evidence from Rules 189 and 190 of the High Court Rules and quoted hereunder:

189. Drawing up of order including costs. - Every order passed on a petition under Article 226 of the Constitution, including any order as to costs, shall be drawn up as if it were a decree and shall be executable as a decree in the manner provided in the Code of Civil Procedure.

190. Execution of order of decree on original side.- Any order in a petition under Article 226 of the Constitution may on an application in that behalf subject to the provision of Section 82 of CPC be transferred u/s 39 of the CPC to any Civil Court for execution.

3. In view of the fact that the aforesaid two provisions are in addition to Article 215 of the Constitution of India and they do not curtail the right of the Court to pass order under Article 215 of the Constitution of India, Rules 189 and 190 of the High Court Rules cannot be held to be ultra vires of Article 215 of the Constitution of India. In absence of any merit, this writ petition is dismissed. No costs.