

(2005) 10 MAD CK 0011

In the Madras High Court

Case No : Contempt Petition No. 196 of 2005

E. Thangasamy Raja

APPELLANT

Vs

Mr. A. Mani, The Executive Officer Ettayapuram Selection
Grade Town Panchayat, S. Saravanavelu and A.
Nagarathinam

RESPONDENT

Date of Decision : 28-10-2005

Acts Referred:

Citation : (2005) 10 MAD CK 0011

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

**Advocate : J. Pothiraj, for the Appellant; R. Karthikeyan, Government Advocate
for Respondent No. 1 and V. Ramajagadeesan, for the Respondent**

Judgement

P.K. Misra, J.—The contempt petition has been filed by the petitioner in W.P. No. 40814 of 2002, which was allowed on 31.3.2004. The

operative portion of the judgment is as follows:-

10. Having regard to the facts and circumstances of the case and keeping in view the several orders passed by the High Court on earlier

occasions, the impugned proceedings dated 27.5.2002 is quashed and it is directed that the petitioner's application for renewal or fresh application

for renewal should be considered in accordance with law and it should be borne in mind that the petitioner as the priority in right to hold the market

on Saturdays and if the respondent is of the opinion that weekly market cannot be held at two different places on the very same day, the

respondent would to well shift its market day to any other suitable day. Keeping in view the recalcitrant attitude of the respondent, I direct the

respondent to pay a consolidated costs of Rs. 2,500/- to the petitioner. Pending

application or the fresh application for renewal should be

considered by the respondent in the light of the observations made within a period of four weeks from the date of receipt of a copy of this order.

2. The writ petitioner received a copy of the order on 16.4.2004 and thereafter sent a representation on 6.5.2004 annexing a copy of the order to

consider the application for renewal. The representation and the copy of the order was served on the original respondent, who was the Executive

Officer of the Ettayapuram Selection Grade Town Panchayat, but no action was taken. The second representation dated 3.8.2004 was made,

which was received. On 11.8.2004, the respondent sent a communication stating that writ appeal has been filed. When the When the petitioner

requested to furnish number of the writ appeal, the respondent gave a reply dated 23.8.2004 indicating S.R. Number of the writ appeal. On

1.8.2004, the petitioner informed the respondent that W.A. No. 3518 of 2004 was dismissed as withdrawn. Subsequently, by proceedings dated

12.11.2004, the respondent informed the petitioner that they would renew the license after the petitioner files a fresh application. On 16.11.2004,

the petitioner sent a detailed representation that he had sent a representation as early as on 6.5.2004 with proper application and license fee of Rs.

75/- by demand draft dated 5.5.2004. After receiving the representation dated 16.11.2004, the respondent sent another reply dated 23.11.2004

indicating that the demand draft sent by the petitioner has become time barred/ invalid and directed the petitioner to take a fresh demand draft in

order to renew the license. By representation dated 29.11.2004, the petitioner informed the respondent that the demand draft has become invalid

due to negligence of the respondent and it was not the fault of the petitioner and it is further indicated that only to drag on the question of issuing

license, the respondent is involving in such dilatory tactics. The petitioner also indicated that he had provided sufficient toilet facilities, which has

been confirmed by the Advocate Commissioner during the earlier writ proceedings. In order to satisfy the demand of the respondent, a fresh

application was also made by the petitioner, which was received on 1.12.2004, and the respondent, on some pretext of the other, is indulging in

dilatory tactics nor deny the right of the petitioner in total disregard of the order passed by the High Court.

3. A counter affidavit was filed by the original contemner A. Mani. In such counter affidavit, it has been indicated that the order was passed on

31.3.2004 in W.P. No. 40814 of 2002 and at that time, one Nagarathinam was the Executive Officer of the Panchayat. An explanation has been

called for from the said Nagarathinam by the Assistant Director of Town Panchayat on 23.4.2005 calling for this explanation as to why the writ

appeal was withdrawn and such officer gave a reply on 30.5.2005 stating that the Advocate had withdrawn the appeal due to ""contingency and

prevailing circumstances in the Court hall"" and the letter of the Advocate was enclosed along with the explanation. A. Mani, in his affidavit, has

further stated that everything was done by the previous Executive Officer and he joined only on 22.12.2004 and before his joining, the writ appeal

was withdrawn on 29.9.2004 and the subsequent Review Petition filed to review the judgment was dismissed and a copy of the judgment in the

Review Petition was received by A. Mani on 17.3.2005. It is further stated that before A. Mani joined, show cause notice was issued to the writ

petitioner to rectify the defects so as to enable the Panchayat to grant the licence for the private market and since the defects were not rectified, A.

Mani simply passed the rejection order on 11.6.2005 stating that the petitioner has not complied with the direction of the Panchayat and not

rectified the defects. It is further indicated:

...The subordinates of the Ettayapuram Town Panchayat have not properly guided me and they have not brought to my notice about the directions

of this Hon'ble Court in the aforesaid Writ Petition and there was no proper advice from my subordinates and from the local Government Pleader,

who has given opinion to the Panchayat when the previous Executive Officers were in service. I was under the bona fide impression that since the

petitioner has not complied with the directions of the Panchayat to rectify the defects to run the private market, as a follow up measure, I have

issued a formal order of rejection on 11.6.2005 and all the previous acts were done by the previous Executive Officers, namely, Saravana Velu

and Nagarathinam. I state that since there was a threat from the higher officials to run the public market on Saturday, and to shift the private market

to any other day having regard to the augmentation of the revenues of the Panchayat and since I was not properly instructed by my subordinates

and the orders of this Hon"ble Court was not brought to my notice by any subordinates without knowing the consequences I have passed the order of rejection as a routine follow up action on the actions taken by the previous Executive Officer of the said Town Panchayat. There is no deliberate intention on my part to disobey the orders of this Hon"ble Court and I am innocent and I may be pardoned in case if this Hon"ble Court comes to the conclusion that I am guilty of contempt and I tender my unconditional apology for my salutary act of passing the order of rejection of licence on 11.6.2005. I state that the notice of contempt may be given to the previous Executive Officers viz. Saravana Velu and Nagarathinam of the aforesaid panchayat and I may be relieved from the contempt proceedings.

4. On the basis of the aforesaid affidavit, by order dated 29.7.2005, notices were directed to be issued to Saravana Velu and Nagarathinam, who have been impleaded as respondents-2 and 3 respectively.

5. Respondent No. 2 had filed an affidavit stating that he had been transferred even before the final order in the writ petition was passed. In view of such affidavit, the contempt petition was closed against respondent No. 2 by order dated 1.10.2005.

6. Respondent No. 3, who was the Executive Officer at the time when the order was passed, has filed an affidavit stating that he was transferred to another Town Panchayat and he was relieved on 22.12.2004. It has been stated by him that by his letter dated 11.8.2004, the petitioner was informed that writ appeal had been filed against the order and after knowing the result of the appeal, further proceedings would be initiated. It has been further stated that he had never given any instruction to the counsel to withdraw the writ appeal. It is further stated:

...Thereafter, this Respondent by his proceedings dated 12.11.2004 requested the petitioner to submit a fresh application and the petitioner submitted a fresh application with a demand Draft for Rs. 75/- on 6.5.2004 enclosing the Demand Draft of Rs. 75/- dated 5.5.2004. Thereafter, this Respondent sent another reply on 25.11.2004 stating that the Demand Draft sent by the Petitioner has become time barred and directed the Petitioner to take a fresh Demand Draft for which the Petitioner sent a reply on 29.11.2004 stating that the petitioner is not in any way responsible for the invalid Demand Draft. However, the Petitioner submitted another fresh

application on 1st December 2004 and remitted licence fee of Rs. 8175/-.

In paragraph 4 of the counter, it is stated:

4. ...the petitioner is bound to pay 15% of the amount collected from the public as a licence fee and the Petitioner never submitted a true account

of collection for the year 2001-2002 and therefore this Respondent is not in a position to calculate the licence fee. The Petitioner is also

responsible for the delay in getting the licence because he has failed to submit his application till a fresh application was asked for by this

Respondent and he has also not remitted the correct licence fee by submitting a true and proper account of his collection of the previous year 2002

and thereby prevented this Respondent from calculating the correct licence fee and therefore the Petitioner has also considerably contributed to the

delay in the disposal of the application for renewal. The averments to the contra in para 7 of the affidavit are therefore legally not sustainable.

5. Apart from that this Respondent had issued a show cause notice to the Petitioner pointing out the defects and deficiencies by his letter dated

20.12.2004 and the Petitioner has not rectified those defects. In the mean time this Respondent was transferred from Ettayapuram Special Village

Panchayat to Eral Special Village Panchayat.

7. On the basis of the aforesaid statement, the third respondent has submitted that there is no intentional or wilful disobedience by him and because

of the unhelpful attitude of the petitioner in not paying the correct fee and not complying with the correct licence fee, there was delay in disposing of

the application and there is no wilful disobedience.

8. The attitude of the previous Executive Officers has been highlighted in paragraph 9 of the judgment. It is obvious that the very same attitude is

reflected in the actions of the subsequent Executive Officers, namely, Respondent No. 1 as well as Respondent No. 3. The successive Executive

Officers have bent upon to reject the application of the writ petitioner on some pretext or the other. In fact, it is apparent from the averment of the

Respondent No. 1 that ""there was a threat from the higher officials to run the public market on Saturday, and to shift the private market to any

other day having regard to the augmentation of the revenues of the Panchayat"" shows the scant respect of the respondents-1 and 3 as well as their

superior officers regarding the order passed by the High Court even after the appeal against such order was dismissed as withdrawn.

9. The specific averment of the petitioner that the writ appeal was withdrawn as otherwise the Division Bench was inclined to impose heavy costs

on the Panchayat (Appellant) has not at all been replied in any of the affidavits filed by the respondents. A bare perusal of the history of the

litigations, which has been narrated in the main judgment in paragraph 2 and the subsequent events clearly indicate that the Panchayat, through the

Executive Officers, is bent upon defying the order of the High Court passed at different stages. In view of the aforesaid attitude, there is no escape

from the painful conclusion that the respondents-1 and 3, and even the superior officers, have deliberately flouted the order of this Court by trying

to over-reach such order by whatever pretext available. There is no escape from the conclusion that the respondents-1 and 3 have committed

contempt. Respondent No. 3 was the Executive Officer, when the order was passed. He had the occasion to comply with the order. There was

long and deliberate delay in disposing of the matter on his part and even after dismissal of the writ appeal, he dilly-dallied in the matter on some

pretext or the other. Similarly, respondent No. 1 had occasion to comply with the order subsequently, but he has dealt the matter with a cavalier

fashion and by his own admission, the fact that he was pressurised by the superior officers, was one of the reasons for rejection of the application.

10. In view of the above, both of them are found guilty of having wilfully committed contempt of this Court's order. The question of punishment

shall be considered after hearing the counsels for respondents on such aspect. The matter shall be listed in the next list for hearing on the question

of punishment.