
(2015) 02 RAJ CK 0297

In the Rajasthan High Court

Case No : Special Appeal (Civil) Nos. 78, 143, 144 of 2000, 111, 112 and 113 of 2001

Ganesh Ram Manla and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Constitution of India, 1950 — Article 136

Contempt of Courts Act, 1971 — Section 11, 12, 18, 19, 19(1)

Citation : (2015) 4 RLW 2814

Hon'ble Judges : Sunil Ambwani, Actg. C.J. and Prakash Gupta, J.

Bench : Division Bench

Advocate : Sanjeev Prakash Sharma, Sr. Advocate assisted by Gaurav Sharma, for the Appellant; R.N. Mathur, Ashok GaurAdvocateAdvocates assisted by Rahul Kamwar, Rudraksh Sharma, Abhisar Bhanu, Akram, Ashish Shukla, Surya Pratap Singh on behalf of Rajendra Prasad, AAG and Punit Singhvi, for the Respondent

Final Decision : Allowed

Judgement

Sunil Ambwani, Actg. C.J.

1. Interim applications seeking leave to file appeals are allowed. We have heard learned counsels appearing for the parties.

2. These Special Appeals, filed under Section 18 of the Rajasthan High Court Ordinance, arise out of an order dated 13.9.2000 passed by learned Single Judge in S.B. Civil Contempt Petition No. 71/98 and two other connected contempt petitions. Learned Single Judge has, after considering the directions issued by this Court in D.B. Civil Writ Petition No. 832/86 decided on 16.4.1991, which were reiterated in S.B. Civil Writ Petition Nos. 4547/95 and 5127/92 by view dated 24.7.1996, found that the seniority list has not been drawn in accordance with the directions issued by the Court. After recording the facts, that the judgments in which the directions were given, have become final, as the Special Leave to Appeal (Civil) No. 6982/2000 filed by the State of Rajasthan, was

dismissed by the Supreme Court on 1.5.2000, he gave the directions as follows:--

"In my opinion, the same procedure needs to be adopted in the present case. The redrawing of seniority list issued in pushing down the persons vide letter dated 5.2.1998 shall have no effect for the reasons that it goes contrary to the judgments of this court nor it does contain any reason or application of mind. As the matter did not require interpretation of the judgment, the respondents cannot be said to have implemented the judgment, but had only tried to misinterpret Rule 23 which was not the ambit of direction No. 2 and 3 given by the Division Bench and also reiterated by the Single Judge, even though they were expected to implement the judgment in the right spirit. However, in the circumstances of the case, it shall be appropriate to direct the respondents to comply with the orders of this court in the right perspective on the facts of the present case and as stated above within one month from today.

List these cases on 19.10.2000 for further proceedings, after compliance.

(J.C. Verma), J."

3. Learned Senior Counsel appearing for the appellants submits that learned Single Judge, hearing the S.B. Civil Contempt Petition No. 71/98 with two other connected matters, filed on a complaint that the orders passed by the Court have not been complied with, instead of calling the contemnors and to punish them in accordance with the provisions of the Contempt of Courts Act, 1971, adjudicated over the letter dated 5.2.1998, and issued a fresh writ of mandamus, to draw the seniority list within one month.

4. It is submitted that in almost a similar situation, where a learned Single Judge of the Rajasthan High Court had issued fresh directions to redraw the seniority list, the Supreme Court had interfered and had set aside the orders in *J. Parihar Vs. Ganpat Duggar and others*, . After rejecting the objections that the appeal before Division Bench against the order passed by learned Single Judge in contempt jurisdiction, was not maintainable under Section 19, the Apex Court held that the appeal was maintainable and observed that once an order has been passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum, and for which the writ petition could be filed. The relevant portion of Paragraph 6 of the judgment is quoted as below:--

".....It is seen 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 of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the willful violation of the order. After re-exercising the judicial review, in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Single Judge was exercising

the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned Single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench."

5. Learned Senior Counsels appearing for the respondents, who are applicants before learned Single Judge in the contempt matters, submit that an appeal under Section 19 of the Contempt of Courts Act, 1971 was not maintainable. It is also not maintainable under Section 18 of the Rajasthan High Court Ordinance, against the order dated 13.9.2000. It is submitted that learned Single Judge was having the jurisdiction, to pass an order to redraw the seniority list within one month, as such a course is open to him, even in exercise of powers under the Contempt of Courts Act, 1971. They have relied on the judgments of the Supreme Court in *D.N. Taneja Vs. Bhajan Lal*, and *Midnapore Peoples" Co-op. Bank Ltd. and Others Vs. Chunilal Nanda and Others*, .

6. In *D.N. Taneja v. Bhajan Lal* (supra), the Supreme Court held, in paragraphs 11 & 12, as follows:--

"11. It does not, however, mean that when the High Court erroneously acquits a contemnor guilty of criminal contempt, the petitioner who is interested in maintaining the dignity of the court will be without any remedy. Even though no appeal is maintainable under Section 19(1) of the Act, the petitioner in such a case can move this Court under Article 136 of the Constitution. Therefore, the contention, as advanced on behalf of the appellant, that there would be no remedy against the erroneous or perverse decision of the High Court in not exercising its jurisdiction to punish for contempt, is not correct. But, in such a case there would be no right of appeal under Section 19(1) , as there is no exercise of jurisdiction or power by the High Court, to punish for contempt. The view which we take finds support from a decision of this Court in *Baradakanta Mishra v. Justice Gatikrushna Mishra*.

12. Right of appeal is a creature of the statute and the question whether there is a right of appeal or not will have to be considered on an interpretation of the provision of the statute and not on the ground of propriety or any other consideration. In this connection, it may be noticed that there was no right of appeal under the Contempt of Courts Act, 1952. It is for the first time that under Section 19(1) of the Act, a right of appeal has been provided for. A contempt is a matter between the court and the alleged contemnor. Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he may still assist the court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor. It

may be one of the reasons which weighed with the legislature in not conferring any right of appeal on the petitioner for contempt. The aggrieved party under Section 19(1) can only be the contemnor who has been punished for contempt of court."

7. In *Midnapore Peoples' Co-op. Bank Ltd. v. Chunilal Nanda* (supra), the Supreme Court laid down the guidelines, in which appeals, as provided under Sec. 19 of the Contempt of Courts Act, 1971, is maintainable, as follows:

"11. The position emerging from these decisions, in regard to appeal against orders in contempt proceedings may be summarized thus:

I. An appeal under section 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 under Section 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 under section 19 of 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 under section 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)."

8. It is submitted that in *Promotee Telecom Engineers Forum and Others Vs. D.S. Mathur, Secretary, Department of Telecommunications*, the Supreme Court ruled that, where the respondents have not decided the representations, despite directions issued by the Court, in the matters, in which the rights have been finally determined, the Court may pass orders in the contempt petition, for enforcement of the orders. Paragraphs 20 & 21 of the judgment are quoted as

below:--

"20. We are not impressed at all by the contention of the learned counsel appearing on behalf of the respondent that since the respondent has passed the orders disposing of the representations of the petitioners, the only way left for the petitioners was to challenge the same by way of an independent original application before the Tribunal. It is more than a decade that the petitioners are fighting for their rights. Their rights had already been crystallised by various orders passed by the Tribunals and the courts which fact is not denied by the respondent. On the top of it, the petitioners were again required to come before this Court by way of an interim application being I.A. No. 16 and that has resulted in denial of the fruits of the orders which were passed in their favour by the Tribunals and the courts. Under such circumstances, to push them again to file original application challenging the obviously erroneous orders passed by the respondent disposing of the representations of the petitioners would be a travesty of justice.

21. We, therefore, direct that the respondent shall rearrange the seniority in terms of the principles laid down in Parmanand Lal case restoring their earlier position and shall not put any employee over and above the present petitioners on the basis of the seniority in service in the entry year, more particularly S/Shri Belani, Biradar and Kulkarni shall not be put over and above the petitioners herein. This shall be done within 8 weeks from the date of this judgment."

9. In the present case, we did not hear the parties on merits of the matters, as we find that learned Single Judge could not have given any directions for compliance of the directions, in pursuance to which the seniority list was redrawn by order dated 5.2.1998. If the directions issued by Division Bench of this Court in D.B. Civil Writ Petition No. 832/86 decided on 16.4.1991, were not complied with, in the manner, in accordance with the order of the Court, and that, Rule 23 of the Rajasthan Service of Engineers (Building and Roads Branch) Rules", 1954, was not applicable, the order gave rise to a fresh cause of action to the appellants to challenge the order, the complaint made by the appellants that Rule 23 was misinterpreted, and was not in the ambit of directions No. 2 & 3 given by the Division Bench, which was also reiterated by Single Bench, could have been a ground for the courts to set aside the order dated 5.2.1998, by which the seniority list was redrawn. Learned Single Judge did not have any power under the provisions of the Contempt of Courts Act, 1971, to declare that the letter dated 5.2.1998 was issued in breach of the directions issued by the Court, and to direct the respondents to comply with the orders of the Court in right perspective, on the facts of the case within a period of one month, and thereafter, list the contempt petition on a subsequent date, awaiting compliance of the orders.

10. A direction in the nature of writ of mandamus, is an execution in itself. It does not require any execution application, to be filed for its compliance. If the directions have not been complied with, the law has provided for taking action to

punish the contemnors under Sections 11 & 12 of the Contempt of Courts Act, 1971. The issuance of fresh writ of mandamus, is not a remedy for compliance of the order, nor the order, in pursuance to which, the decision has been taken, can be faulted with, or set aside in the contempt proceedings. In case, the contempt court finds that the orders of this Court have been flouted impunity, it must proceed in accordance with law, by calling upon the parties to file a reply, and if it is satisfied that there has been deliberate and wilful non-compliance, to frame charges and to punish the persons, by holding them guilty, after giving them a fair opportunity of hearing, in which they may also be given opportunities to produce document and lead oral evidence. The issue of fresh directions, or to declare an order, in pursuance to the directions, to be bad in law, is not a remedy available under the Contempt of Courts Act.

11. In the present case, we find that learned Single Judge, instead of exercising his powers, after recording the findings to punish the guilty person, has issued fresh directions, and thus, the order passed without jurisdiction, even if it is passed in exercise of the jurisdiction under the Contempt of Courts Act, is appealable under Section 18 of the Rajasthan High Court Ordinance. The judgment in J.S. Parihar (supra) is directly on the point in issue, and for which similar observations have been made by Hon"ble Supreme Court in Midnapore Peoples" Co-op. Bank Ltd. v. Chunilal Nanda (supra).

For the aforesaid reasons, these intra court Special Appeals u/Sec. 18 of the Rajasthan High Court Ordinance against the order dated 13.9.2000 are held to be maintainable, and for the reasons given as above, the Special Appeals are allowed and the order dated 13.9.2000 is set aside. Learned Single Judge hearing the contempt matters, will now decide the contempt proceeding in accordance with law, in the light of the observations made by us in this order. All the pending applications are accordingly disposed of.

A copy of this judgment be placed in all the connected files.