
(2012) 07 MP CK 0032

In the Madhya Pradesh High Court

Case No : Contempt Petition No. 42 of 2012

Gunmala Shanti Foundation Trust's

APPELLANT

Vs

V.S. Niranjana

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Citation : (2013) ILR (MP) 141

Hon'ble Judges : J.K. Maheshwari, J;G.D. Saxena, J

Bench : Division Bench

Advocate : R.B.S. Tomar, for the Appellant; Raghvendra Dixit, for the Respondent

Judgement

J.K. Maheshwari, J.—This order shall govern the disposal of contempt case No. 42/2012 filed for non-compliance of order dated 15.11.2011 passed on W.P. No. 7239/2011, Contempt Case No. 53/2012 filed for noncompliance of order dated 15.11.2011 passed in W.P. No. 7404/2011; and Contempt Case No. 60/2012 filed for non-compliance of order dated 15.11.2011 passed in W.P. No. 7105/2011. In the aforesaid three writ petitions the issue for non-allotment of the seats for the academic session 2010-2011 to the students in B.Ed. course was in question. It was pleaded that the students could not get admission because it was specified by respondents that the admission in the petitioner's institution shall be "at the risk of the student" in view of the pending litigation, thereby the complete seats of the B.Ed. course could not be filled up. In S.P.S. Academy, Shivpuri 19 seats, in Smt. Gunmala Shanti Foundation Trust's 25 seats and in H.I.C.T. Shiksha Mahavidyalaya 36 seats were remained vacant, however on perusing the reply filed by the respondents/State and after hearing, directions were issued to allot 19, 25 and 36 students against the vacant seats in the respective institutions for admission in the B.Ed. Course in accordance with the prescribed limit of All India quota and State quota. The order was passed on 15.11.2011 in all three writ petitions bearing Nos. 7239/2011, 7105/2011 and 7404/2011. The directions so issued in all the writ petitions are similar except indicating the number of the

seats, however the directions issued in one of the writ petition i.e. Smt. Gunmala Shanti Foundation Trust's vs. The State of M.P. and another is reproduced as thus:

In this view of the matter, the petition of the petitioner is allowed. The respondents are directed to allot 25 students against vacant seats to the petitioner institution for admission in the B.Ed. Course in accordance with the prescribed limit of All India quota and State quota. The order be complied with within a period of two weeks from the date of receipt of a copy of the order.

2. The respondent-State has filed the first review petition in all the three cases. The description of the writ petition and the number of the first review petition and the date of the order is given below as thus:-

3. This Court while dismissing the aforesaid review petitions has considered the argument so advanced by the State Government that if permission to admit the students is allowed then they may not be in a position to complete the teaching of 180 days which can be relaxed on the event that institution shall arrange extra classes. It is considered by the Court that the State Government vide its letter bearing No. 2026/221 dated 4.10.2011 issued the direction to fill up the remaining seats of the B.Ed. course by holding the counseling in between the period 4th October, 2011 to 15th October, 2011, however there is no reason why the order of the Court can not be complied, therefore dismissed the review petitions as no error apparent was found on record. The order of dismissal dated 09.12.2011 passed in one of the review petition i.e. R.P. No. 309/2011 is reproduced as thus which is similar in other review petitions.

9/12/2011

Shri Raghvendra Dixit, Government Advocate for the petitioners/State.

Shri R.B.S. Tomar, Advocate for respondent.

Heard on the question of admission.

This review petition has been filed for review of the order dated 15/11/2011 passed by this Court in W.P. No. 7239/2011.

Learned Government Advocate for petitioners/State has submitted that the counselling had already been over, hence, it is not possible to grant permission for admission of the students because the students did not complete 180 days of teaching.

Learned counsel for respondent has produced a letter dated 04/10/2011, by which, certain institutions have been granted permission to admit students because the counselling was continued upto 04th October, 2011 to 15th October, 2011. It has been mentioned in the letter that the condition of 180 days of teaching can be relaxed on the event that institution shall arrange extra classes. Apart from this in the present case, the Department was at fault in not permitting the respondent institution to admit students of outside, although, the

seats were vacant and students were available.

In this view of the matter, we do not find any merit in this review petition. It is hereby dismissed.

However, this order will not be treated as a precedent.

Two weeks" time is granted as prayed by learned Government Advocate to comply the order.

We hope and trust that the order be complied with within the aforesaid period.

4. In view of the foregoing, it is apparent that on the request so made by the learned Government Advocate, two weeks time was granted to comply the order dated 15.11.2011 passed in various writ petitions. But, the compliance has not been made and the second review petitions have been filed by the State Government on 17.2.2012. The description of the second review petition is reproduced in the tabular form as under:-

5. All these three review petitions were dismissed on 5.3.2012 as not maintainable. Thereafter, the State has preferred the SLP before Hon"ble the Apex Court. The details of special leave petitions and the date of dismissal order is reproduced in tabular form which is as under:-

6. In view of the foregoing, it is apparent that the orders, passed on 15.11.2011 were affirmed up to the Apex Court and there was no stay either in the review petitions or before the Apex Court to comply the aforesaid directions. Thus looking to the nature of the issue which relates to allotment of seats for the academic Session 2010-2011 the compliance ought to be made then and there by the State authorities as directed by this Court or within the period of request made for compliance on behalf of State Government.

7. On dismissal of the special leave petitions, statement has been made by learned Additional Advocate General on 30.4.2012 in contempt cases that the process of compliance of the order is underway, thereafter case was listed on 14.5.2012. On the said date the State Government along with the list of document has filed two documents one is letter dated 11.5.2012 written by Officer on Special Duty referring one order passed by the Principal Seat, Jabalpur in W.P. No. 3502/2012. It is stated in the said letter that the order passed by the Gwalior Bench and the Principal Seat at Jabalpur are different, however to have an uniformity in the compliance the guidance may be taken. Thereafter, the case was listed on 2.7.2012. On the same date the compliance report has been submitted along with letter dated 15.5.2012, 30.5.2012 and 19.6.2012, however looking to the documents filed along with compliance report direction was issued to produce the record indicating the fact, whether similar instructions were issued by the Commissioner, Higher Education while admitting students in regular course holding the counselling of the academic session 2010-2011. In this regard, it is urged that following the procedure under the rules applicable for B.Ed. admission academic Session 2010-2011, letter dated 15.5.2012 has been

passed thus the direction of this Court has been complied with.

8. Per contra learned counsel appearing on behalf of the applicant referring the document so filed on behalf of the contemnor and some other document filed on 29.6.2012 along with an application for taking documents on record, it is urged that the compliance of the directions so issued has not been done, however it is a case of non-compliance of the directions issued by this Court, therefore the non-applicant may be held guilty for non-compliance of the directions of this Court.

9. After hearing Shri Raghvendra Dixit, learned Government Advocate and the counsel appearing for the applicants up to a considerable length, the fact remains that as per the orders passed on 15.11.2011 in three different writ petitions, the directions were issued that 19, 25 and 36 seats which have remained vacant in the respective institutions shall be allotted from the All India quota and the State quota and the order be complied with within a period of two weeks from the date of receipt of the copy of the order. The aforesaid order has come to the knowledge of the State Government which is apparent from the fact that they themselves filed first review petition bearing nos. 309/2011, 307/2011 and 308/2011 on 1.12.2011. In those review petitions the arguments were advanced that at this stage the allotment of the seats would not be in the fair administration of justice because such students would not be in a position to complete the teaching of 180 days. This Court rejected the aforesaid arguments in the light of the letter dated 4.10.2011 issued by the Government for counselling to the vacant seats and admitted them in various institutions in B.Ed. 2011 in October 2011, however it was observed that if those students may be admitted to complete the teaching of 180 days, there would be no impediment to the students admitted on the basis of direction of the Court, however review petitions were dismissed. Thus, on the request made by the learned Government Advocate two weeks time to comply the order was passed. It is not explained what steps have been taken thereafter till filing the second review petitions i.e. on 17.2.2012 up to a period of about one month and 25 days, though it is undertaken that the order shall be complied with within a period of two weeks. The said three second review petitions bearing Nos. 70/2012, 69/2012 and 68/2012 were dismissed on 5.3.2012 as not maintainable. Thereafter the State Government has filed three special leave petitions bearing Nos. 6453/2012, 6188/2012 and 6515/2012, that too were dismissed after condoning the delay on 16.4.2012 and 24.4.2012. Thus it is clear that the order passed by this Court has been affirmed up to the Apex Court. It is further clear that during the period i.e. from the date on which the direction was issued on 15.11.2011 till dismissal of the SLP there was no stay from any of the Court. More so, at the time of dismissal of the review petition, request was made on behalf of the State Government to grant two weeks time for compliance of the order. On perusal of the record, it further reveals that after dismissal of the SLP when the contempt cases have come up for hearing on 30.4.2012 it was reported that the process of compliance of the order is underway, however some time may be allowed.

Thereupon the case was listed on 14.5.2012. On the said date along with the list of documents, two documents were filed, one is the letter dated 11.5.2012 written by the Officer on Special Duty, Higher Education Department, Bhopal with the approval of the Commissioner wherein the reference of the order passed by the Principal Seat Jabalpur in W.P. No. 3502/2012 has been made. The said writ petition also relates to allotment of the seats in B.Ed. course wherein the Court without going into the merits of the case issued a direction to consider the representation of the petitioner and to decide expeditiously within a period of two weeks. In the said context, it can safely be observed that the Principal Seat has not decided the controversy on merits while in the present three writ petitions the controversy was decided OR merits by passing the order dated 15.11.2011 and those orders have been upheld up to the Apex Court. Thus there was no occasion for the Commissioner, Higher Education to issue instructions in this regard to the Additional Director by writing such letter.

10. Now, along with compliance report dated 2.7.2012 the Commissioner by a letter dated 15.5.2012 intended for fresh registration of students adopting procedure for admission. Learned counsel representing the contemnor contends that the aforesaid procedure has been specified to the rules of admission therefore, the letter dated 15.5.2012 has rightly been issued. To advert the aforesaid contention, rule 3 of the Admission Rules of B.Ed. Course for the academic sessions 2010-11 is relevant which is reproduced as under-

11. On going through the said rules and the material so brought on record and also it is admitted by the counsel for the contemnor that advertisement for admission allotting the seats to the students in the newspaper Hindi and English of National or State level has not been issued. Merely on the online web site the department has offered for admission for registration of the students to the academic session 2010-11 in furtherance to the order of the Court. Thus the compliance of rule (3) as contended by the non-applicant has not been made.

12. In addition thereto on perusal of the letter dated 15.05.2012 which has been filed showing the compliance is required to be seen. In the said letter, it is stated that there are no registrations available in the higher education department and the students were required to deposit Rs. 5200/- again in between the period 01.06.2012 to 10.06.2012 to get the admission for the academic year 2010-2011. Along with contempt case the document Annexure A-4 filed by the applicant by which it is clear that after issuing the direction by this Court on 15.11.2011, without complying it, the State Government refunded the registration fee to the student. Learned counsel for contemnor referring the said document Annexure A-4 has argued that the said refund is only for those students who want to take admission for the academic year 2011-12 but the aforesaid fact is incorrect in view of the document dated 15.5.2012 filed along with the compliance report by them. If the argument so advanced by the learned counsel is accepted then the necessity to mention that there is no registration of students available was not required, it indicates that the contemnor by his own

refunded the registration fee to all the students, and when they lost up to Hon"ble Apex Court it is only to weed out the things and to put the cloth on the face showing the compliance of the Court, the letter dated 15.05.2012 has been issued. By filing a document today, it has been brought to the notice that 7 students have been allotted to Smt. Gunmala Shanti Foundation Trust's for admission; 8 students to S.P.S. Academy and none of the student has been allotted to H.I.C.T. Shiksha Mahavidyalaya, however it would amounting to compliance of the direction of the Court. In view of the foregoing discussion, neither by issuance of the letter dated 15.5.2012 the compliance has been made nor by allotment of the aforementioned seats because rule (3) of the Admission Rules as relied upon by contemnor was not complied with. More so, even after issuance of directions, the registration fees of the students which were with the Higher Education Department has been refunded back by issuing the document on web site Annexure A/4.

13. Thus as per the foregoing discussions and observations made herein above, it is crystal clear that the directions issued by this Court on 15.11.2011 have not been complied, within the time so specified in the order. Even on dismissal of first review and asking time to comply the same within two weeks, the compliance has not been reported. It is further apparent that without taking any step, the State Government has filed the second review by a lapse of one month and 25 days which was dismissed by the Court as not maintainable, thereafter SLP was filed which was also dismissed by Hon"ble the Apex Court. Till that time the academic session has become over while the Government by its own issuing the letter on 4.10.2011 filled up the vacant seats, arranging special counselling in October, 2011 but the direction issued 15th November, 2011 has not been complied with for the one reason or another without giving any plausible explanation. Though the order passed by this Court has been affirmed up to the Apex Court and there was no stay of any of the Court since 15.11.2011 till issuing the letter dated 15.5.2012 referred hereinabove. It may be observed that the compliance of admission rule (3.1) for allotment of the seats issuing advertisement in the newspaper has not been done, however mere publication of notice on web site as per letter dated 15.5.2012 for registration of the student is not sufficient. On the basis of said registration, if some allotment of the seat has been made as shown today, it would not amount to compliance of the direction within the time so specified by this Court in letter and spirit. In the aforesaid circumstances, the irresistible conclusion which can be arrived is that the contemnor is guilty for noncompliance of the orders of this Court dated 15.11.2011 passed in W.P. No. 7239/2011, W.P. No. 7404/2011 and W.P. No. 7105/2011 within the time so specified, or till now. Thus in our considered opinion, it is a case of deliberate and willful non-compliance of the directions of the Court, accordingly we hold that the contemnor is guilty for such noncompliance.

14. In the present case, we have seen that the contemnor has not filed any reply along with an affidavit and the case has been defended by the subordinate

officers present in the Court. In a contempt case where the contemnor is a party by name, he is bound to file the reply along with his own affidavit, however either by filing documents along with the list of documents, or submitting compliance report without any affidavit, compliance has been reported to the court. This itself indicates that the contemnor is not having much concern and giving no weightage to the orders/directions of this Court. In such circumstances, the Registry of this court is directed to send the copy of this order through fax to the Chief Secretary of the State of Madhya Pradesh for the information so as to visualize the working of the officers of the State and also to know how the officers are showing concern to the directions/orders of this court and are defending in contempt cases. It is an issue of thought of the Chief Secretary whether such functioning of the officers in contempt cases is appropriate and reasonable. We trust and hope that the necessary guiding instructions shall be issued with respect to compliance of the orders/directions of this court well within time and also to know as to how officers of the State should defend themselves in contempt cases. List this case for presence of contemnor to afford an opportunity of hearing on the point of punishment on 13th July, 2012.