

(2023) 08 CHH CK 0004
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 2986 Of 2017

Himanshu Kumar Sharma

APPELLANT

Vs

Registrar General, Chhattisgarh High Court

RESPONDENT

Date of Decision : 01-08-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 225, 226, 227
High Court of Chhattisgarh (Contempt of Court Proceedings) Rules, 2007 — Rule 350(1), 350(2), 352
Code Of Civil Procedure, 1908 — Order 21 Rule 32
Contempt of Courts Act, 1971 — Section 2(b), 10, 15(2), 23
Madhya Pradesh Reorganisation Act, 2000 — Section 25

Citation : (2023) 08 CHH CK 0004

Hon'ble Judges : Sanjay K. Agrawal, J; Radhakishan Agrawal, J

Bench : Division Bench

Advocate : Himanshu Kumar Sharma, Dr. N.K. Shukla, Ashish Surana, Ashish Tiwari

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J

1. The petitioner seeks to challenge the constitutional validity of Rule 352 of the High Court of Chhattisgarh (Contempt of Court Proceedings) Rules, 2007 branding the same as suffers from manifest arbitrariness, illegal and beyond the rule making authority of the High Court under Section 23 of the Contempt of Courts Act, 1971 read with Articles 225 & 227 of the Constitution of India.

2. The petitioner has sought to challenge the constitutional validity of the aforesaid rule on the following factual backdrop: -

3. In exercise of the powers conferred under Articles 225 and 227 of the Constitution of India read with Section 25 of the Madhya Pradesh Reorganisation Act, 2000, the High Court of Chhattisgarh has framed the rules namely, the High Court of Chhattisgarh Rules, 2007. Part (F) of Chapter XVIII of the High Court of

Chhattisgarh Rules, 2007 (for short, 'the Rules of 2007') provides for the High Court of Chhattisgarh (Contempt of Court Proceedings) Rules, 2007. The said rules have been framed in exercise of power conferred under Section 23 of the Contempt of Courts Act, 1971 (for short, 'the Act of 1971'). These rules prescribe the procedure of adjudicating the contempt case initiated by the High Court as well as by the subordinate court. Section 23 of the Act of 1971 only prescribes that the High Court and the Supreme Court can make rules and the rules so made must not be inconsistent with the provisions of the Act of 1971. Rule 350(1) of the Rules of 2007 provides that reference under Section 15(2) (criminal contempt) of the Act of 1971 may be made by subordinate courts either suo motu or on an application received by it. Rule 350(2) of the Rules of 2007 provides that before making a reference, the subordinate court shall conduct a preliminary enquiry by issuing a show cause accompanied by copies of relevant documents, if any, to the contemner and after receiving the reply, if any, of the show cause notice, the subordinate court shall write a concise reasoned order of reference indicating why contempt appears to have been committed. Section 10 of the Act of 1971 empowers the High Court to punish contempts of subordinate courts exercising the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself and since there is no provision for filing contempt petition for non-compliance of the order(s) passed by civil court, Rule 352 of the Rules of 2007 deserves to be struck down as unconstitutional.

4. Reply to the writ petition has been filed on behalf of the High Court / respondent No.1 stating inter alia that the present writ petition is not maintainable on account of locus standi of the petitioner, as the petitioner is not facing any contempt proceeding under the Act of 1971 and it is well settled law that the provisions of Article 226 of the Constitution of India can be invoked only when there is real dispute exists between the parties, whereas in the present writ petition, no case or controversy exists between the petitioner and the respondents with reference to the provisions of the Rules of 2007. It has been further stated that the Rules of 2007 have been framed in exercise of powers conferred under Section 23 of the Act of 1971 read with Articles 225 & 227 of the Constitution of India. It has also been stated that in the entire writ petition there is no pleading as to which of the provisions of the Act of 1971, Rule 352 of the Rules of 2007 is inconsistent with and as such, the petitioner has failed to discharge the initial burden that Rule 352 is inconsistent / opposite / differing to the provisions of the Act of 1971 and therefore the writ petition is liable to be dismissed.

5. Mr. Himanshu Kumar Sharma, the petitioner appearing in person, submits that against non-compliance of the order of civil court, contempt proceeding cannot directly be filed before this Court as reference is required to be made by that court and therefore Rule 352 of the Rules of 2007 is inconsistent with the provisions of the Act of 1971 and as such, it deserves to be struck down.

6. Dr. N.K. Shukla, learned Senior Counsel appearing for the High Court / respondent No.1, would submit that Rule 352 of the Rules of 2007 is constitutionally valid and it only lays down the procedure for punishing the persons guilty of contempt of the subordinate court. He would further submit that the writ petition lacks in pleading as to how the said Rule is constitutionally invalid and therefore the writ petition deserves to be dismissed.

7. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

8. Before advertng to the contentions raised in challenging the vires of the Rule in question, it would be appropriate to notice the grounds on which the constitutional validity of the subordinate legislation can be struck down.

9. A Statute is construed so as to make it effective and operative on the principle expressed in the maxim "ut res magis valeat quam pereat". Therefore, a presumption is there that Legislature does not have jurisdiction and burden of establishing that the Act is not within the competence of the Legislature or that it transgressed other constitutional mandates, such as those relating to fundamental rights, it is always upon the person who challenges the vires. (See Principles of Statutory Interpretation by Justice G.P. Singh, 12th Edition, page 592.)

10. It is a settled principle of law that the Statute enacted by the Parliament or State Legislature cannot be declared unconstitutional lightly. The Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provisions under challenge cannot stand.

11. Thereafter, the Constitution Bench of the Supreme Court in Shayara Bano (supra) held that legislation can be struck down if it is manifestly arbitrary and manifest arbitrariness is the ground to negate legislation as well under Article 14 of the Constitution of India. It has been observed by their Lordships as under: -

"101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India (1985) 1 SCC 641 : 1985 SCC (Tax) 121 stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above

would apply to negate legislation as well under Article 14.”

12. Thereafter, very recently, in the matter of Dr. Jaya Thakur v. Union of India and others 2023 SCC OnLine SC 813, it has been held by three-judge Bench of the Supreme Court that judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive by observing as under: -

“68. It could thus be seen that the role of the judiciary is to ensure that the aforesaid two organs of the State i.e. the Legislature and Executive function within the constitutional limits. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The role of this Court is limited to examine as to whether the Legislature or the Executive has acted within the powers and functions assigned under the Constitution. However, while doing so, the court must remain within its self-imposed limits.”

Thereafter, relying upon its earlier judgment in the matter of Binoy Viswam v. Union of India and others (2017) 7 SCC 59 and reviewing its earlier decisions, the Supreme Court speaking through B.R. Gavai, J., has held that the statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly, and observed as under: -

“70. It could thus be seen that this Court has held that the statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. To do so, the Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. It has been held that unless there is flagrant violation of the constitutional provisions, the law made by Parliament or a State Legislature cannot be declared bad.

71. It has been the consistent view of this Court that legislative enactment can be struck down only on two grounds. Firstly, that the appropriate legislature does not have the competence to make the law; and secondly, that it takes away or abridges any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. It has been held that no enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. It has been held that Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom.

72. It has been held by this Court that there is one and only one ground for declaring an Act of the legislature or a provision in the Act to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. It has further been held that if two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. It has been held that

the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope.

73. It has consistently been held that there is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt. It has been held that if the law which is passed is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a court may think of it.

74. It could thus be seen that the challenge to the legislative Act would be sustainable only if it is established that the legislature concerned had no legislative competence to enact on the subject it has enacted. The other ground on which the validity can be challenged is that such an enactment is in contravention of any of the fundamental rights stipulated in Part III of the Constitution or any other provision of the Constitution. Another ground as could be culled out from the recent judgments of this Court is that the validity of the legislative act can be challenged on the ground of manifest arbitrariness. However, while doing so, it will have to be remembered that the presumption is in favour of the constitutionality of a legislative enactment.”

13. Furthermore, in the matter of Dental Council of India v. Biyani Shikshan Samiti and another (2022) 6 SCC 65, their Lordships of the Supreme Court have held that there is always a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. B.R. Gavai, J., speaking for the Supreme Court, held in paragraphs 27 & 28 of the report as under: -

“27. It could thus be seen that this Court has held that the subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. Though it may also be questioned on the ground of unreasonableness, such unreasonableness should not be in the sense of not being reasonable, but should be in the sense that it is manifestly arbitrary.

28. It has further been held by this Court in the said case that for challenging the subordinate legislation on the ground of arbitrariness, it can only be done when it is found that it is not in conformity with the statute or that it offends Article 14 of the Constitution. It has further been held that it cannot be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant.”

14. Similarly, in the matter of PGF Limited and others v. Union of India and another (2015) 13 SCC 50, their Lordships of the Supreme Court have laid down certain guidelines by taking note of certain precautions to be observed whenever

the vires of any provision of law is raised before the Court and cautioned the Courts in paragraph 37 as under: -

"37. The Court can, in the first instance, examine whether there is a prima facie strong ground made out in order to examine the vires of the provisions raised in the writ petition. The Court can also note whether such challenge is made at the earliest point of time when the statute came to be introduced or any provision was brought into the statute book or any long time- gap exists as between the date of the enactment and the date when the challenge is made. It should also be noted as to whether the grounds of challenge based on the facts pleaded and the implication of the provision really has any nexus apart from the grounds of challenge made. With reference to those relevant provisions, the Court should be conscious of the position as to the extent of public interest involved when the provision operates the field as against the prevention of such operation. The Court should also examine the extent of financial implications by virtue of the operation of the provision vis-a-vis the State and alleged extent of sufferance by the person who seeks to challenge based on the alleged invalidity of the provision with particular reference to the vires made. Even if the writ court is of the view that the challenge raised requires to be considered, then again it will have to be examined, while entertaining the challenge raised for consideration, whether it calls for prevention of the operation of the provision in the larger interest of the public. We have only attempted to set out some of the basic considerations to be borne in mind by the writ court and the same is not exhaustive. In other words, the writ court should examine such other grounds on the above lines for consideration while considering a challenge on the ground of vires to a statute or the provision of law made before it for the purpose of entertaining the same as well as for granting any interim relief during the pendency of such writ petitions. For the abovestated reasons it is also imperative that when such writ petitions are entertained, the same should be disposed of as expeditiously as possible and on a time- bound basis, so that the legal position is settled one way or the other."

15. For the sake of convenience, Section 10 of the Act of 1971 is reproduced herein-below, which states as under: -

"10. Power of High Court to punish contempts of subordinate courts.—Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself :

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code, 1860 (45 of 1860)."

16. Rule 352 of the Rules of 2007, the constitutional validity of which is sought to be challenged, only prescribes that in case of civil contempt, the court concerned shall make a reference to the High Court by following, as far as possible, the

same procedure laid down for reference in case of criminal contempt, and states as under: -

"352. In case of Civil Contempt, the Court concerned shall make a reference to the High Court by following, as far as possible, the same procedure laid down for reference in case of Criminal Contempt."

17. As such, Rule 352 of the Rules of 2007 prescribes the procedure to be followed by the subordinate court while making reference to the High Court under Section 10 of the Act of 1971, as the High Court has power to punish contempts of subordinate courts under Section 10 of the Act of 1971. The term "civil contempt" has been defined in Section 2(b) of the Act of 1971 which states as under: -

"(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court:"

18. The writ petition filed by the petitioner questioning the constitutional validity of Rule 352 of the Rules of 2007 is conspicuously silent as to how the said rule is unconstitutional and inconsistent with the provisions of the Act of 1971. Even in the writ petition and in the written submission filed before this Court on 17-7-2023, no legal ground has been raised to demonstrate that Rule 352 of the Rules of 2007 is unconstitutional except citing the rules of other High Courts. Section 10 of the Act of 1971 prescribes power of High Court to punish contempt of subordinate courts and Rule 352 of the Rules of 2007 prescribes only the procedure prescribed for initiating reference by civil court for punishment the contemner, whereas, power and jurisdiction of this Court is conferred by Section 10, as power of High Court to punish for contempt of subordinate courts is derived to the High Court under Section 10 of the Act of 1971.

19. The faint submission raised by the petitioner in person that against non-compliance of the order of civil court, contempt proceeding cannot directly be filed before this Court by party to a decree or order as reference is required to be made by civil court under Section 10 of the Act of 1971 read with Rule 352 of the Rules of 2007, deserves to be rejected, as the contempt proceeding is not like an execution proceeding under the Code of Civil Procedure, 1908 (for short, 'the CPC'), the contempt proceeding is not substitute of the execution proceeding and remedy of the decree holder of injunction decree is to levy appropriate proceeding in accordance with Order 21 Rule 32 of the CPC (see Niaz Mohammad and others v. State of Haryana and others (1994) 6 SCC 332 and R.N. Dey and others v. Bhagyabati Pramanik and others (2000) 4 SCC 400). It is well settled that in case there is a grievance of non-compliance with the terms of the decree passed in the civil suit, the remedy available to the aggrieved person is to approach the execution court under Order 21 Rule 32 of the CPC (see Kanwar Singh Saini v. High Court of Delhi (2012) 4 SCC 307).

20. In view of the aforesaid analysis, we are of the considered opinion that the

petitioner has failed to demonstrate that Rule 352 of the Rules of 2007 is constitutionally invalid or it suffers from manifest arbitrariness and violative of the provisions of the Constitution of India or Articles 14 & 16 of the Constitution of India. Rule 352 of the Rules of 2007 is in the statute book since 28-12-2007 and it stood the test of time.

21. In that view of the matter, the writ petition questioning the constitutional validity of Rule 352 of the Rules of 2007 deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).