

(1994) 07 MAD CK 0039

In the Madras High Court

Case No : W.M.P. No's. 9031, 9433, 10024, 10026 and 10028 of 1994 in Writ
Petition No. 5776 of 1994

M. Shamsundar

APPELLANT

Vs

Madras Fertilizers Ltd. and Others

RESPONDENT

Date of Decision : 07-07-1994

Acts Referred:

Contempt of Courts Act, 1971 — Section 12, 2

Citation : (1995) 2 CTC 471

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : N.G.R. Prasad, for Row and Reddy, Poornima Maduram and R.K. Sundaresan, for the Appellant; A.L. Somayaji, for Aiyar and Dolia for Respondents 1 and 2 and R. Viduthali, for 3 to 5 Respondents, for the Respondent

Judgement

Kanakaraj, J.—The above miscellaneous petitions arise out of the writ petition No. 5776 of 1994 seeking a writ of certiorari to quash a

circular dated 24.3.1994 issued by the second respondent restructuring, marketing and distribution group in the first respondent company. A few

facts are necessary before dealing with the miscellaneous petitions.

2. The first respondent is a Company registered under the Companies Act, 1956 with the following share holding pattern :-

Government of India - 67.55%

The National Iranian Oil Company, Tagran, Iran 32.45%.

The company is carrying on business in the manufacture and marketing of phopetic fertiliser and ure. The petitioner was acting as the Deputy

General Manager, Market Development Department of the company. On or about 31-12-1992 the second respondent was promoted as General

Manager of the marketing and distribution group. According to the petitioner he was better qualified for the said post of General Manager and

therefore, he filed W.P.No. 792 of 1993 challenging the promotion of the second respondent and seeking appointment as General Manager. That

Writ petition was admitted and in W.M.P. No. 1215 of 1993 an interim order was granted stating that any promotion will be subject to the result

of the writ petition. That limited order was made absolute on 20.8.1993. It is the case of the petitioner, in the present writ petition, that as a

counter-blast to the said writ petition, the Company has undertaken the present restructuring of the marketing and distribution group resulting in

abolition of the market development department, of which the petitioner is the Deputy General Manager. The whole case of the petitioner is that

the restructure and the consequent abolition of the market development department is to humiliate the petitioner. Beyond this no other grounds are

raised for challenging the impugned circular. Pending disposal of the above writ petition the petitioner sought for an injunction restraining the

respondents 1 and 2 from proceeding with the actual restructure in pursuance of the impugned circular dated 24.3.1994. On 31.3.1994 the writ

petition was admitted and on the very same day interim injunction was granted in W.M.P. No. 9031 of 1994. Respondents 1 and 2 have filed a

counter affidavit on 4.4.1994 and on the same day they have filed a petition to vacate the interim order. Respondents 3 to 5 got themselves

impleaded and claimed to be beneficiaries of the circular and they are also seeking to have the interim order vacated. They filed objections on

6.4.1994. These miscellaneous petitions had come before Lakshmanan, J. On 22.6.1994 and an objection was taken by the learned counsel for

the writ petitioner that the applications cannot be heard till the Contempt Application No. 217 of 1994 filed by the writ petitioner is disposed of.

Thereafter due to certain portfolio changes the miscellaneous petitions have come up before me for orders.

3. The first and foremost contention of Mr. N.G.R. Prasad is that his clients have filed a Contempt Application complaining about the disobedience

of the interim order dated 31.3.1994 and unless and until that Contempt Application is disposed of and the respondents purge themselves of the

alleged contempt, these applications should not be heard. In support of this argument reliance is placed in S.S. Roy Vs. Damodar Valley

Corporation and Others, . Even that judgment does not lay down any inflexible rule as contended by the learned counsel for the petitioner,

Observed the Calcutta High Court,

But the proposition propounded by Mrs. Bhattacharyya is too wide and on ultimate analysis I hold that the same is not in any way an absolute

proposition of law but only a qualified one, being subject to the various exceptions referred to above.

In saying so, the Calcutta High Court has approved the observations of Lord Justice Deening in (1952) 2 All. E R 557 to the following effects:-

applying this principle, I am of opinion that the fact that a party to a cause has disobeyed an order of the Court is not of itself a bar to his being

heard but if his disobedience is such that so long as it continues, it impedes the course of justice for the cause, by making it more difficult for the

Court to ascertain the truth or to enforce the orders which it may make then the Court may in its discretion refuse to hear him until the impediment

is removed or good reasons shown why it should not be removed.

On the other hand reliance is placed on C.K. Sukla v. Renuka Ballav 84 Cal. W N 324.

In paragraphs 6 and 7 of the said judgment the proposition of Mr. Prasad is discountenanced. What is more in State of Jammu & Kashmir Vs.

Mohd. Yaqoob Khan and Others, a directly contrary view is laid down by the apex court. The following passage makes the position very clear.

The scope of a contempt proceeding is very different from that of the pending main case yet to be heard and disposed of (in future). Besides, the

respondents in a pending case are at a disadvantage if they are called upon to meet the merits of the claim in a contempt proceeding at the risk of

being punished. It is, therefore, not right to suggest that it should be assumed that the initial order of stay got confirmed by the subsequent orders

passed in the content matter.

7. We, therefore, hold that the High Court should have first taken up the stay matter without any threat to the respondents in the writ case of being

punished for contempt. Only after disposing it of, the other case should have been taken up.

Therefore, I have no hesitation in rejecting the preliminary objection raised by the writ petitioner, to the disposal of the applications to vacate the

interim order.

4. Before dealing with the merits of the case I may deal with the another preliminary objection raised by the learned counsel for respondents 1 and

2 to the effect that no writ petition at all is maintainable because the first respondent company is a company registered under the Companies Act

and not amenable to the jurisdiction of this Court under Article 226 of the Constitution of India. He also placed reliance on a judgment of

Srinivasan, J. to the same effect. However, this question of maintainability of the writ petition can be relegated to the time of final disposal of the

writ petition.

5. Coming to the merits of the case and to ascertain whether there is a prima facie in favour of the petitioner I have already noticed that an affidavit

filed in support of the writ petition does not disclose any ground except that the restructure was to harass the petitioner and humiliate him. In other

words, the entire restructure is to see that the petitioner does not get his promotion as General Manager. A perusal of the counter-affidavit of the

first respondent Company shows that the first respondent company had other good reasons for the restructure. It is stated that the company has

sustained a loss of about Rs. 50 Crores during the year 1993-94 because of the decontrol of fertilisers and because of the stiff competition in the

market. It is also stated that the functions of the marketing and distribution group were being changed from time to time, taking into account the

Government policies, the competition in the market etc. In the recent past in October, 1991 it was so changed. The present change has been

introduced in April, 1994. In view of the severe loss suffered by the Company in 1993-94, it was found necessary to expand the area of marketing

staff strength. It was therefore, found necessary to integrate functions of sales and sales promotion and bringing them under the control of one

department. Discussions had been held with various persons under task force was constituted to make special recommendations for the purpose of

development of agree information activities the marketing service department was revalued. Therefore, the restructure has nothing to do with the

claim of the petitioner for promotion to the post of Manager. In fact, the restructure has resulted in transfers and promotions to several other

officers. It is also averred that the restructure was undertaken by the first

respondent who, under the Articles of Association, has every right to undertake such change in administration. It is also stated that the restructure has already been implemented with effect from 1.4.1994 and some of the promotions have been given effect to. Prima facie, I hold that the impugned restructure was not with the view to spite the writ petitioner and was undertaken as a measure of general policy in augmenting the sales.

6. Even on the question of balance of convenience I have to hold against the petitioner because it is stated that as many as 17 transfers had to be undertaken and 21 promotions have been made. This apart several reassignment of work has also been undertaken. Therefore, for the sake of the petitioner, all the other officers should not suffer. In fact W.M.P. Nos. 10024, 10026 and 10028 of 1994 have been filed by other such officers to vacate the interim order. It can not also be said that the petitioner is in any way prejudiced because the counter affidavit categorically says ""even today the writ petitioner continues in the post of Deputy General Manager and his terms and conditions of service continued to be the same with no change whatsoever."" So far as his chances of promotion are concerned W.P. No. 792 of 1993 will take care of the same.

7. I am satisfied that the interim order can no longer be continued and it is accordingly vacated. W.M.P. No. 9031 of 1994 is dismissed and the interim injunction granted on 31.3.1994 is vacated. W.M.P. Nos. 9433, 10024, 10026 and 10028 of 1994 are allowed.