
(2009) 03 RAJ CK 0045
In the Rajasthan High Court

Mahi Ram Bishnoi

APPELLANT

Vs

Khem Raj Choudhary and Others

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Constitution of India, 1950 — Article 214, 215, 225, 226, 227

Citation : (2009) 2 RLW 1471 : (2009) 1 RLW 735

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Judgement

Govind Mathur, J.—While accepting S.B. Civil Writ Petition No. 3612/2003-Mahi Ram Bishnoi v. State of Rajasthan & others on 01st August, 2006, this Court directed the respondents to appoint the petitioner Mahi Ram as Para Teacher from the date of his selection with the Gram Panchayat, Meethariya. Alleging noncompliance of the

order aforesaid, this application to initiate contempt proceedings as per provisions of Contempt of Courts Act, 1971 was filed on 31st January, 2007 and a rule was issued by this Court on 16th March, 2007 to Shri Hira Lal Meena, District Education Officer (Elementary), Bikaner and Shri Surendra Singh Bhati, Block Elementary Education Officer, Panchayat Samiti, Kolayat, Bikaner; to show cause as to why proceedings under Contempt of Courts Act, 1971 be not initiated against them.

2. An application is now preferred by the petitioner seeking execution of the writ issued under judgment dated 01st August, 2006. It is stated that despite service of notices issued by this Court, Shri Hira Lal Meena has not filed any reply to the application for initiating proceedings under Contempt of Courts Act. It is further stated that Shri Hira Lal, as a matter of fact, is not at all in a position to make compliance of the directions given by this Court as a consequence of his transfer to some other place. It is also stated that Shri Teja Singh Dhaliwal, who was posted vice aforesaid Hira Lal Meena is also no more holding the post concerned because of his transfer and now one Shri Devendra Kumar Vyas is working as

District Education Officer (Elementary), Bikaner.

3. It is urged by learned Counsel for the petitioner that the petitioner is much concerned with the execution of the directions given by this Court being a beneficiary of that, therefore, this Court being a court of record must take appropriate steps to ensure execution of its command.

4. The High Court of Judicature for Rajasthan was established by the Rajasthan High Court Ordinance, 1949 and is now a High Court as a mandate of Article 214 of the Constitution of India. The High Court, while exercising powers conferred by Section 46 of the Rajasthan High Court Ordinance read with Article 225 of the Constitution of India, framed Rules of the High Court of Rajasthan, 1952, to regulate proceedings and matters in the High Court but those Rules are absolutely silent with regard to execution of writs, orders or directions given under Article 226 or 227 of the Constitution of India; though Chapter-XXII of the Rules prescribes complete procedure relating to application preferred seeking a direction, order or writ under Article 226 of the Constitution of India, other than a writ in the nature of habeas corpus. No Rules independent to Rules of 1952 are also enacted by the High Court making provisions for execution of writs, orders or directions issued under Article 226 of the Constitution of India.

5. What appears is that non-Inclusion of such provision is looking to wide plenary powers available to High Courts as per provisions of Article 215 of the Constitution of India. For this reason only, Chapter-XXII of the Rules of 1952 is confined to office process while dealing with a writ application and not to procedure to exercise powers by a writ court. As per Article 215 of the Constitution of India, High Courts in India are superior courts of record, with inherent and plenary powers.

6. As held by Supreme Court in *M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd.*, Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, High Courts have unlimited jurisdiction including jurisdiction to determine their own powers. As a court of plenary jurisdiction, this Court while exercising powers under Article 226 of the Constitution of India is free to adopt its own procedure and follow that. The powers of a writ court are not encircled or restricted unless it is expressly shown.

7. True it is that powers of a writ court and the procedure of exercising such powers must be reasonable and fair and with such reasonability and fairness, a writ court may evolve its own mode to secure efficacy and edge of its orders, directions or writs issued. With a view to secure efficacy of a writ court and to avoid unnecessary procedural technicalities, which may reduce edge of a writ court, the Legislature by the CPC (Amendment) Act, 1976 excluded proceedings under Article 226 of the Constitution of India from application of the Code of Civil Procedure.

8. Hon"ble Supreme Court in *Puran Singh and others Vs. State of Punjab and others*, , while emphasizing authority of a writ court held as under:

When the Constitution has vested extraordinary power in the High Court under Articles 226 and 227 to issue any order, writ or direction and the power of superintendence over all courts and tribunals throughout the territories in relation to which such High Court is exercising jurisdiction, the procedure for exercising such power and jurisdiction have to be traced and found in Articles 226 and 227 itself. No useful purpose will be served by limiting the power of the High Court by procedural provisions prescribed in the Code. Of course, on many questions, the provisions and procedures prescribed under the Code can be taken up as guide while exercising the power, for granting relief to persons, who have invoked the jurisdiction of the High Court. Different provisions and procedures under the Code are based on well-recognized principles for exercise of discretionary power, and they are reasonable and rational. But at the same time, many procedures "prescribed in the said Code are responsible for delaying the delivery of justice and causing delay in securing the remedy available to a person who pursues such remedies. The High Court should be left to adopt its own procedure for granting relief to the persons concerned. The High Court is expected to adopt a procedure which can be held to be not only reasonable but also expeditious....

...When the High Court exercises extra ordinary jurisdiction under Article 226, it aims at securing a very speedy and efficacious remedy to a person, whose legal or constitutional right has been infringed....

As such a writ court is having unlimited powers to adopt a reasonable but sharp mode to operate for protecting fundamental rights and other rights of a person and citizens of our country and also to ensure rule of law and majesty of justice. The authority to execute a writ, order and direction so issued, is thus, an inherent power of a writ court, otherwise the powers available shall be toothless and non-workable.

9. It can also be argued that once the petitioner has already moved an application for initiating contempt proceedings then there must be no need to go for execution proceedings. Such an argument has been finely dealt with by Hon'ble Calcutta High Court in Bonbehari Roy and Others Vs. Kolkata Metropolitan Development Authority, by observing:

...The main purpose of a contempt proceeding is to punish the person who commits contempt of the Court. The initiation of a contempt proceedings may at times bring about the wanted compliance with the order passed by the writ court, and the event may be a mitigating factor while considering the question of sentence but in a contempt proceeding it may not be always possible to ensure execution and enforcement of the order. The various different modes of execution of orders and decrees, as recognized by law, can not be resorted to-by the Court in a contempt proceeding. On the contrary, in an execution proceeding, the Court, while pursuing the main object and following the recognized modes of execution, on its own motion can simultaneously initiate a contempt proceeding for its limited and special purpose. An execution proceeding begins solely for the

benefit of the person who initiates it, the same is not the case in a contempt proceeding, which is aimed at upholding the dignity, majesty and authority of the Court, and in which the person initiating the proceeding in no time loses his identity. So a contempt proceeding can never be a substitute for an execution proceeding.

10. In view of the above, I am inclined to exercise plenary and inherent powers of this Court to initiate execution proceedings, to get directions given by this Court on 01st August, 2006 In S.B. Civil Writ Petition No. 3612/2003 Mahi Ram Bishnoi v. State of Rajasthan and Ors. executed

Accordingly, a notice be issued to District Education Officer (Elementary), Bikaner and Block Elementary Education Officer, Panchayat Samiti, Kolayat, Bikaner, as to why their monthly salary be not attached till execution of the direction given by this Court under order dated 01st August, 2006 in S.B.C.W.P. No. 3612/2003.

Aforesaid notices are made returnable on 15th April, 2009.

Registry is directed to serve copies of this order to all the three Additional Advocate Generals of the Government of Rajasthan posted at Jodhpur.