(2018) 05 RAJ CK 0224

In the Rajasthan High Court

Case No : Civil Contempt Petition No.556 of 2017

Managing Committee @APPELLANT@Hash Shri Rajhans Upadhyay

Date of Decision : 11-05-2018

Acts Referred:
Rajasthan Non-Government Educational Institutions (Recognition, Grant-In-Aid and Service Conditions Etc.) Rules, 1993 — Rule 12
Code of Civil Procedure, 1908 — Order 8 Rule 5

Citation : (2018) 05 RAJ CK 0224

Hon'ble Judges : ALOK SHARMA, J

Bench : Single Bench

Advocate : Vivek Dangi, Hitesh Jatawat, S.K. Gupta, Y.S. Jadoun

Final Decision : Dismissed

Judgement

Contempt of the order dated 17.02.2017 passed by this Court in SBCWP No.3834/2015 is alleged in this petition. Therein this Court directed that the

â??remaining amountâ? of grant-in-aid due to the petitioner-College upto the year 2011 be paid within a period of seven days from the date of receipt

of the order failing which it would carry interest @ 12%. The court further directed verification of the petitionerâ??s claim for grant in aid for

financial year 2011-12 be done within a period of one month from the date of the order and amounts verified be paid to the petitioner within a period of

two months thereafter, failing which the amount found due on verification was so carry interest @12% p.a.Â from when due till date of payment.

Mr.Vivek Dangi counsel for the petitioner submits that the order dated 17.2.2017 passed by the Court entails the necessary conclusion that the

amounts due to the petitioner upto the FY year 2010-11 were admitted and not in question. They were to be paid without demur. This, Mr.Vivek

Dangi submitted because the amounts due on account of sanctioned grant in aid upto the year 2011 were set out in the writ petition duly supported by

the departmentâ??s finalization of statement upto FY 2010-11 based on Rule 12 of the Rajasthan Non-Government Educational Institutions

(Recognition, Grant-In-Aid and Service Conditions Etc.) Rules, 1993 (hereinafter â??the Rules of 1993â??). The said pleadings in the said petition

and annexures in support with regard to the amount due were not controverted by the respondent-Department and that constituted an admission under

Order 8 Rule 5 CPC of the amounts due upto the FY 2010-11. Mr.Vivek Dangi submitted that in this view of the matter it is not open for the

respondent to contend in this contempt petition as they do, that the amount as reflected in the pleadings in SBCWP No.3834/2015 are not the

â??remaining amountâ? due upto FY 201011 payable to the petitioner. Mr.Vivek Dangi further submitted that with regard to the amounts due

towards grant-in-aid due to the petitioner for FY 2011-12 while the petitioner claims that the due amount of sanctioned grant-in-aid is Rs.40,42,524/-

the Department has wrongly calculated the amount in question only asÂ Rs.30,68,015/-. Mr.Vivek Dangi submitted that questioning the amount of

grant in aid due to the petitioner in the contempt petition in an attempt to circumvent the finality of the Courtâ??s order dated 17.2.2017 on the

untenable legal alibi of the amount of grant in aid to the petitioner being open to be reverified and then purportedly found to have not only been paid in

full but in fact over paid for recovery of which the department is entitled. He submitted that one the amounts towards grant in aid due upto FY 2010-

11 had been finalizedâ?"it was not open for the respondents to seek verification thereof and find purported errors and omissions. And based thereupon

to revise the arithmetic altogether. If this were to be allowed Mr.Vivek Dangi submitted â??reverificationâ? would be a perpetual unending exercise

and the right to receive sanctioned grant in aid rendered a mere chimera and indefinitely postponed.Â Mr.Vivek Dangi relied upon the judgments of

the Apex Court in the case of T.R. Dhananjaya vs. J.Vasudeva reported in [(1995) 5 SCC 619] and State of Assam vs. Union of India & Others

reported in [(2010)10 SCC 408] in support of his contentions relating to deemed admission/s referable to Order 8 Rule 5 CPC and the Courtâ??s

disallowing legal alibiâ??s to circumvent finality in the orders of the Court.Â

Mr.S.K. Gupta, AAG counsel for the respondent-State submitted that the case of the petitioner based on purported non- payments of the alleged

â??remaining amountsâ?? due towards sanctioned grant in aid upto the FY 2010-2011 is unsustainable.

Mr.S.K. Gupta, submitted that there was no specific finding of the Court as to the amounts due towards sanctioned grant in aid upto FY 2010-11. And

as of certain amounts being reflected as grant in aid payable to the petitioner on the basis of statement of finalization under Rule 12 of the Rules of

1993 annexed to the SBCWP No.3834/2015, it is an universal accounting practice that errors and omissions in accounts can be rectified at any stage

even subsequent to payment and within limitation accounts overpaid recovered. It was submitted that in the course of compliance with the order dated

17.2.2017 passed by this Court, the account of the petitioner towards due sanctioned grant-in-aid were again rechecked/ verified with reference to

Rules of 1993 and thereupon it was found that far from any â??remaining amountâ? being due to the petitioner towards sanctioned grant-in-aid upto

financial year 2010-11 i.e. a sum of Rs.34,88,000/- overpaid was recoverable from the petitioner. It was submitted that for the Financial Year 2011-12

the amount of sanctioned grant-in-aid due to the petitioner has been calculated in accordance with Rules of 1993 at Rs.34,88,000/-. All payments due

from the FY 20062007 to 2011-12 have been made on or about 24.2.2017. Over payments made by the State Government will be recovered in

accordance with law.

Mr.S.K. Gupta, emphatically submitted in the alternative that the contempt proceedings of this Court cannot be resorted to in terrorem as a substitute

for a suit for rendition of accounts where a dispute with regard to accounts obtains. He relied upon the judgment of the Apex Court in the case of

Niaz Mohammad and others vs. State of Haryana and others reported in [(1994)6 SCC 332]Â where it was held that contempt petitions are not a kin

to execution proceedings under CPC and even if there be finality to the Courtâ??s order, which will be enforced no matter what through in execution

proceedings, a contempt petition lying essentially in willful and intentional disobedience is not maintainable where disobedience even when found

(which cannot be found here) is in the compelling circumstances of facts obtaining in a case. Mr.S.K. Gupta, submitted that the case at hand stands

on a higher pedestal. The Court has under its order only directed payment of â??

remaining amountâ?. That â??remaining amountâ? was not set out

or stated and admittedly was not adjudicated. The â??remaining amountâ? were to be calculated and recalculated to the respondentâ??s content as

it entailsÂ outgo of public monies. The Courtâ??s order does not prohibit so doing nor it could so do. That right to verification of accounts has been

exercised. Due diligence in tooth-combing the accounts in issue with reference to the manner of calculation of sanctioned grant in aid as provided for

in the Rule 12 of the Rules of 1993 has been done. The exercise has entailed the conclusion that far from any â??remaining amountâ? due and

payable to the petitioner, monies having been over paid and are recoverable.

Heard. Considered.

It is trite that contempt proceedings are quasi criminal in nature. It is equally well settled that only willful disobedience of the order/s of the Court or

breach of undertaking filed in Court is contempt. In the aforesaid legal position, it has to be considered as to whether in the instant case any non-

compliance with the order dated 17.2.2017 passed by this Court in SBCWP No.3834/2015 is made out and if so, whether it tantamounts to willful

disobedience of the Courtâ??s order to entail contempt.

The order dated 17.2.2017 passed by this Court interalia directed the respondents pay the â??remainder amountâ? of grant-in-aid due to the petitioner

upto FY 2010-11 within a period of 7 days from the date of receipt of that order. That alleged non- payment of â??remaining amountâ? is stated to be

contempt of the Courtâ??s order. I am of the considered view that the order dated 17.2.2017 did not entail nor directed to pay any specific amount of

grant-in-aid upto the FY 2010-11 and for the FY 2011-12. The â??remaining amountâ? due was to be paid.Â For this the respondents had a right to

calculate the amount due. Mr.Vivek Dangi may be right in stating that the amount of due grant-in-aid upto FY 201011 as asserted by the petitioner in

SBCWP No.3834/2015 based on the statements of finalization under Rule 12 of the Rules of 1993 was not disputed at the relevant time. That

however cannot be the end of the matter. It is an universal accounting practice that accounts drawn can be revisited/ rechecked to rectify errors and

omissions. The order of this Court passed on 17.02.2017 did not take away that universal right of the respondents in ascertaining afresh the remaining

amount of grant-in-aid due to the petitioner upto the FY 2010-11. The right to reverify accounts before payment of grant in aid upto financial year

2011-12 having been exercised as the respondents have stated, and no â?? remaining amountsâ? due to the petitioner then being found, the

respondents cannot be held in contempt for non payments of grant in aid allegedly due to the petitioner.

I am of the considered view that in the facts on record, the contempt proceedings cannot be utilized by the petitioner to coerce the respondent to pay

the amount of grant in aid which according to them are not due and payable. Neither the judgment relied upon by Mr.Vivek Dangi with regard to the

deemed admission by resort to Order 8 Rule 5 CPC T.R. Dhananjaya vs. J.Vasudeva (supra) nor the judgment with regard to the legal alibiÂ being

no escape from the finality of an order/ judgment State of Assam vs. Union of India & Others (supra) are apposite to the facts of the case.

The contempt petition stands dismissed accordingly.

It is however in place to observe that in the event the petitioner-College is dissatisfied with the amount of sanctioned grant-in-aid found payable

Financial Year 2006-07 to 2010-11 and for Financial Year 2011-12 it shall be free to take its remedy by way of suit for rendition of accounts. All

defences on fact/ law will be open to the department. Similarly the respondent-State shall be at liberty to take itâ??s similar proceedings for recovery

of the purported over paid amounts, if any, to the petitioner. Needless to state the petitioner on its part, shall be free to resort to all facts/ law in

defence.Â

