
(2006) 02 MP CK 0092

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 254 of 2005

Mohammad Anwar Qureshi

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 27-02-2006

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15, 17, 27
Contempt of Courts Act, 1971 — Section 17

Citation : (2006) 2 JLJ 401 : (2007) 1 MPJR 276

Hon'ble Judges : J.K. Maheshwari, J

Bench : Single Bench

Advocate : S.R. Kochatta, for the Appellant; V.K. Dubey and S.H. Sen, Advs, for the Respondent

Final Decision : Dismissed

Judgement

J.K. Maheshwari, J.

This contempt petition was preferred before the learned M.P. State Administrative Tribunal for invoking jurisdiction u/s 17 of the Administrative Act, 1985. On abolition of the Tribunal, it is received for final adjudication in this Court.

Mohammad Anwar Qureshi (deceased) had filed this contempt petition before the State Administrative Tribunal for alleged noncompliance of an order dated 25.5.1995 passed in OA No. 972/93. His original application was decided on the basis of direction issued in TA No. 24/93 Mohanlal Coudhary v. State of M.P. and Ors. Thus, it is needless to say that decision in the case of Mohammad Anwar Qureshi is based on the judgment of Tribunal in Mohanlal Choudhary's case.

During the lifetime of Mohammad Anwar Qureshi, legal heirs had moved various applications to authorities for alleged non-compliance of the order dated 25.5.1995 as Annexure A-2 and A-3. Thereafter Mohammad Anwar Qureshi had filed contempt petition u/s 17 of the Administrative Tribunal Act. It is reported that during pendency of the contempt petition, Mohammad Anwar Qureshi died

and legal heirs have been brought on record. Counsel for Petitioner submits that order passed by the learned Tribunal in OA Nov 972/93 dated 25.5.1995 has attained finality between the parties. However, it is required to be complied with. Despite bringing this fact to the knowledge of the Respondents, the directives as issued by the Tribunal have not been complied with. Thus, non-applicants have wilfully not complied the directions as issued by the Tribunal. Therefore, they deserve for punishment for the wilful and deliberate non-compliance of the orders of the Tribunal.

Respondents have filed their reply. It is said that judgment in the case of Mohammad Anwar Qureshi passed on OA 972/93 dated 25.5.1995 is based on the another judgment of the Tribunal in TA No. 24/93, Madanlal Choudhary's case. Against such order of Tribunal, writ petition was preferred before Division Bench of the main seat, WP No. 1743/97. On rejection of writ petition, SLP was preferred. On granting leave, it was registered as Civil Appeal No. 3919/97. After hearing, Hon'ble Supreme Court has remitted back the matters for final adjudication to the High Court. Thereafter, Division Bench of this Court has considered the issue on merit, arising out of the judgment of the Tribunal passed in TA No. 24/93 Madanlal Choudhary's case. The Division Bench vide order dated 27.6.1997, allowed the writ petitions of the Government and issued following directions:

Now coming to the question regarding extending benefits of the pension and gratuity etc. to the employees of the panchayats, it may be stated that they are governed by the rules framed by the State under the Paanchayat Act, 1993. The Panchayat Act has come into force on 25th January, 1994 but no rules have been brought to our notice governing payment of pension and gratuity etc. to employees of the panchayats. What has been brought to our notice is the rules of 1976 and no other rules have been brought to our notice despite our direction, with regard to payment of pension and gratuity etc., to the employees of the panchayats. The rules of 1976 do not provide payment of pension. The rules of 1976 provide payment of gratuity only. If any amendment has been made in these rules, we do not know. If the rules of 1976 hold good, then in that case the service conditions of the incumbents shall be governed by these rules of 1976.

Accordingly, we hold that the employees of the panchayats are not the employees of the State. So far as their post-retiral benefits are concerned, the same will be governed by the rules of 1976, as amended, accordingly, all the three petitions are disposed of.

It is submitted by the counsel for the non-applicants that because of the basic judgment of TA No. 24/93 in Madanlal Choudhary's case has not been allowed to stand by the Division Bench of this High Court, therefore, the order passed by the Tribunal in the Petitioner's case has not been complied with.

Counsel for Respondents has also raised a preliminary objection regarding maintainability of the contempt petition. It is urged that this Court cannot punish

for the contempt filed u/s 17 of the Administrative Tribunals Act, 1985, for non-compliance to the order of Tribunal.

Refuting the aforesaid, counsel for Petitioner submits that because of High Court is entertaining the cases of Tribunal after it's abolition, therefore, this Court can hear and punish to non-applicants for the noncompliance of the direction of the Tribunal, therefore, preliminary objection is not tenable.

I have heard learned Counsel for the parties and perused the records. Prior to advert the merit of the case, it is thought proper to deal with the question of maintainability of the contempt petitions filed for non-compliance of the directions of the Tribunal and to punish for such non-compliance by this Court. Power and authority to punish for contempt by Tribunal has been dealt by Section 17 of the Administrative Tribunals Act, 1985, which confers powers to the State Administrative Tribunals to punish for contempt. The relevant provisions of the Act is required to be quoted herewith:

Section 17 - Power to punish for contempt-

A Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 (70 of 1971) shall have effect subject to the modifications that-

- (a) The references therein to a High Court shall be construed as including a reference to such Tribunal;
- (b) The references to the Advocate General in Section 15 of the said Act shall be construed,-
 - (i) in relation to the Central Administrative Tribunal, as a reference to the Attorney General or the Solicitor General or the Additional Solicitor General; and
 - (ii) in relation to an Administrative Tribunal for a State or a Joint Administrative Tribunal for two or more States, as reference to the Advocate General of the State or any of the States for which such Tribunal has been established.

The careful reading of Section 17 indicates that Tribunal shall have and exercise the same jurisdiction, powers and authority in respect to contempt of itself, however, it is apparent that the Legislature had intended to give the powers viewing for punishment to the Tribunal, for the noncompliance of their own directions as enumerated under the Contempt of Court's Act 1971.

The plain and simple reading of Section 17 further indicates that the Tribunal was vested with power and authority for contempt of itself as "High Court has" may be exercised and for this purpose. Thus, it is apparent that keeping the Tribunal at par to the High Court in relation to exercising the powers and authorities in respect of contempt of itself the powers and authorities to punish for non-compliance of their own direction was vested with the Tribunal itself, as per the provisions of the Contempt of the Court Act, u/s 17, except by certain

modifications which is specified under Clauses (a) and (b) of Section 17 of the Act.

This contempt petition which is filed before the Tribunal invoking the jurisdiction, u/s 17 has now been transferred before this Court. Wherein the non-compliance of the order of Tribunal passed in OA No. 972/93 has been alleged. Thus, in view of above discussion, and as per provisions of Section 17; exercise of the jurisdiction, powers and authority for non-compliance of the order of the Tribunal is only vested with the Tribunal and not with the High Court, until and unless the High Court has issued the direction to the Respondents to comply the order passed by the Tribunal converting the direction of Tribunal into the direction of the High Court in appropriate cases. If such a direction is issued by the High Court then reading of Section 17 of the Act does not come in the way, otherwise the High Court cannot entertain the contempt petitions for punishment to non-applicants, filed before the Tribunal u/s 17 of the Administrative Tribunals Act, 1985. The High Court cannot punish the non-applicants for non-compliance to the direction of the Tribunal.

In view of the foregoing discussion the preliminary objection raised by the counsel for the Respondents is upheld. In the present case, after the order passed by the Tribunal on 25.5.1995 in OA No. 972/93, High Court has not passed any order directing the Respondent to comply the order of Tribunal. In such circumstances, present case, which is filed before the Tribunal invoking the jurisdiction of Section 17 of the Administrative Tribunals Act and received on transfer to this Court is not tenable, and non-applicants cannot be punished in this case.

Counsel for Petitioner has further urged to decide this case on merits because it is a case of gross non-compliance to the directives of the Court, therefore, to maintain supremacy of the judicial system, non-applicants deserve punishment. In the peculiar facts of the present case, this Court though appropriate to deal with the question on merit in the interest of public at large because various panchayat employees are being governed by the subsequent order of Division Bench and the Respondents may be compelled to follow the directions issued in various other similar cases, relying on the earlier judgments of the Tribunal and High Court. In that view of the matter, the merits of the case has also been considered.

On consideration, it is found that the order passed in the case of Mohammad Anwar Qureshi (deceased) in OA No. 972/93 vide order dated 25.5.1995 is based on the judgment of Tribunal passed in TA No. 24/93 and an earlier order passed by this Court. Thus, the direction in the case of Mohammad Anwar Qureshi was based on the judgment of Tribunal passed in TA No. 24/93 Madanlal Choudhary's case and it is not the independent one.

The original judgment of the Tribunal in TA No. 24/93 Madanlal Choudhary's case was challenged before the Division Bench of this Court and this Court has

dismissed the writ petition, various special leave petitions were preferred before the Supreme Court and after hearing all the matters were remitted back to this Court to decide it afresh. The Division Bench has again considered those cases and passed a final order as per Annexure R-1 dated 27.6.1997.

It is not disputed that Mohammad Anwar Qureshi was an employee of the panchayat. The judgment of the Division Bench of this Court dated 27.6.1997 passed after remand from the Supreme Court is applicable to all the employees of the panchayat. The wordings of the directions of this Court applicable to all the employees of the panchayats. Because Mohammad Anwar Qureshi also is an employee of the panchayat, at par to other employee. The judgment of High Court applicable in rem to all the employees of the panchayats, and not in personem. Thus, in view of the subsequent judgment of High Court, applicable in rem to all the employees of the panchayats. However, non-compliance is not wilful and deliberate.

Counsel for Petitioner submits that because of order passed in the case of Mohammad Anwar Qureshi has neither been reviewed nor modified. Therefore, it has attained finality and such an order must be complied with by the non-applicants. Reliance is placed on the judgment of the Supreme Court in the case of Union of India v. Civil Railway Employees Coops. Stores Workmen Union reported in 1998(5) SSC 530. In that case the facts were entirely different before the Supreme Court. In that case some of the employees of the contractor were not treated within the definition of the workman. Before the Supreme Court it was urged that in a similar set of facts, in a group of other employees of the contractor, has been treated as workman. Thus, taking note of such a plea of discrimination Hon"ble Supreme Court has passed the order.

Counsel for Petitioner submits that, because the order passed by the Tribunal in the case of Mohammad Anwar Qureshi has not been applied for review by authorities, relying on the subsequent judgment of the High Court, therefore, order of Tribunal must be complied with, because it has attained finality. Reliance has been placed on a judgment of the Supreme Court in the case of Shanti Devi Vs. State of Haryana and Others, . The aforesaid judgment has enumerated a law towards consideration of the review applications. In that case Hon"ble Supreme Court has observed that if by subsequent judgment of the Court, the order is modified or reviewed then it shall not be a ground for review in an another case. In the present case no such situation is available. On the other hand, this judgment negatives the contention of applicants itself. Because on the basis of subsequent judgment of High Court, non-applicant cannot apply for review or modification.

Counsel has further placed the reliance on a judgment of the Supreme Court in the case of Bhawarlal Bhandari v. Universal HML Enterprises 1998 AIR SC 3761. The aforesaid case was the case of arbitration and in execution proceedings objections were raised therein. The Supreme Court has observed that Court cannot go behind the decree and relying on this principle the orders were

passed. In the present case the High Court has set aside the basic judgment of the Tribunal issuing general directions to all the panchayat employees. However, the cited judgment is having no application.

Reliance has also been placed on a judgment of Supreme Court in the case of Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others, . This case is also based on same principle that "executing Court cannot go behind the decree". The High Court is not the executing Court of the Tribunal more so u/s 27 of the Administrative Tribunal Act. there was a specific provision for execution of the order but Petitioner had not invoked such jurisdiction before the Tribunal. Therefore the judgment as relied upon is having no application.

Counsel for Petitioner has further placed reliance on a judgment of Supreme Court in case of Gauri Naidu v. Thandrothu Bodemma and Ors. 1997 SCC 808. In this case, Supreme Court has held that inter-parte judgment given by the competent Court binds parties. In the facts of the present case the situation is entirely different. In the present case, non-compliance of the orders, which is alleged is based on an order passed in TA No. 24/93 Madanlal Choudhary's case, and a judgment of this Court. After dismissal of the writ petition by this Court SLP was preferred before the Supreme Court and the matter was remitted back to the High Court. The High Court has decided the issue and making it applicable to all the employees of the panchayat. Therefore, in the facts of present case, cited judgment does not help to applicants.

In view of foregoing discussion, it is held that, High Court cannot entertain the contempt petitions u/s 17 of the Administrative Tribunals Act, 1985, for punishment to the non-applicants for alleged noncompliance. If any, to the orders of the Tribunal, even on transfer of such cases. On merit, in the facts and circumstances of this case, the basis of order on which the Tribunal has issued the direction inter-parte in between Mohammad Anwar Qureshi and the Government is not binding because the basic judgment which is relied upon by the Petitioner has itself been set aside by the common direction, issued to all the employees of the panchayats. In that view of the matter it is not the case in which non-applicant have committed any contempt by wilful or deliberate noncompliance of the direction of the Tribunal. In view of the foregoing discussion, this petition is having no merit, hence, dismissed, no cost.