

(2009) 12 KAR CK 0024
In the Karnataka High Court
Case No : C.C.C. No. 1482 of 2009 (civil)

M/S Ganesh Saw Mill

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:

Citation : (2009) 12 KAR CK 0024

Hon'ble Judges : K.N. Keshavanarayana, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : Gururaj Joshi, for C.C.C. No. 1482 and 1483/2009 civil, for the Appellant;

Judgement

Sri D.V. Shylendra Kumar, J.—These two contempt petitions filed under Sections 11 and 12 of the Contempt of Courts Act read with Article 215 of the Constitution of India are said to be having their origin in the orders dated 25.5.2009 passed in W.P. Nos. 81449/09 and 81450/09 respectively wherein this court has, while allowing the writ petitions for issue of a writ of mandamus, directed as under:

In W.P. 81449/09:

Now, the learned Govt. Advocate has made a submission before this court that the application filed by the petitioner has been already forwarded to the Central Empowerment Committee for necessary permission. Under such circumstances, the only order that is required to be passed is to direct the respondent/authorities including the Central Empowerment Committee to consider the application of the petitioner in accordance with law and pass appropriate orders within a period of four months from the date of receipt of a copy of this order. The respondent/authorities are directed to send necessary communication to the Central Empowerment Committee enclosing the copy of this order. Petitioner is also at liberty to submit necessary reminders to the Central Empowerment Committee by enclosing the copy of this order to consider and dispose of the application filed by him. I am sure that the Central Empowerment Committee,

having due regard to the nature of the dispute raised and the direction already issued by this court as back as on 10.01.2005 directing the authorities to consider the application filed by the petitioner on 28.9.2004 considering the same as a fresh application submitted by the petitioner for grant of licence, will consider the same and pass appropriate orders in accordance with law within the time stipulated herein above.

The writ petition stands disposed of in the above terms.

In W.P. 81450/09:

In the light of the above, it is necessary to issue appropriate direction to the authorities to consider the application expeditiously and take necessary steps for disposal of the application filed by the petitioner seeking grant of licence in accordance with law and in the light of the observations made in W.P. 49707/04 disposed of on 6.1.2005. I am sure that the Central Empowerment Committee will consider the application as expeditiously as possible, at any rate, within a period of four months from the date of receipt of a copy of this order. The respondents-State and its authorities are directed to pursue the matter before the Central Empowerment Committee so that it can pass necessary orders within the time frame prescribed. The petitioner is also at liberty to make separate representation to the Central Empowerment Committee so that it can pass necessary orders within the time frame prescribed. The petitioner is also at liberty to make separate representation to the Central Empowerment Committee by enclosing the copy of this order and the order dated 6.1.2005 passed in W.P. 49707/04 so as to enable the Central Empowerment Committee to pass appropriate orders expeditiously. This writ petition is disposed of accordingly.

Complaining that the respondent/accused persons have not obeyed the directions, the present contempt petitions are filed praying for initiation of contempt proceedings against respondents 1 to 6 for disobedience of the order dated 25.5.2009 and to inflict on them suitable punishment. We find that while in the writ petition, there were only 5 respondents, who are the officers of the Forest Department, in the contempt petitions, the Member Secretary, Central Empowerment Committee, Room No. 106, Paryavaran Bhavan, C.G.O. Complex, Lodhi Road, New Delhi-110003, is now arrayed as 6th respondent/accused.

2. We have been noticing instances of gross abuse of not only writ jurisdiction of this court but also contempt jurisdiction resulting in undesirable, unwarranted pressure being applied on Government officials who, with a view to save their skin and position, are ready to perform acts and show compliance of the directions issued by this court though in law, either they were not mandated to perform such duties, and even if such acts, so performed may amount to an infraction in law.

See - Ashok Paper Kamgar Union Vs. Dharam Godha, [A.I.R. 2004 S.C. 105 at p. 114], wherein the Supreme Court has observed that;

In order to constitute contempt, the order of the Court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extraordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case.

3. This is a tendency that has developed in recent times with the litigants approaching this court, invoking writ jurisdiction without bona fides, and writs being issued even when the petitioner not having a legal right and there being no demonstration of a corresponding legal duty on the part of the respondent and further not showing that in spite of demand on the part of the petitioner, there has been deliberate, contumacious inaction on the part of the authorities.

4. In the present two cases, on a reading of the orders passed by the learned single Judge in the two writ petitions, we find that even as per the writ petitioners, respondents 1 to 5, i.e. State of Karnataka and its officers have in fact performed all their duties as is required in law and that precisely was the submission of the learned Addl. Govt. Advocate representing the State. But very strangely a writ of mandamus is issued against the respondents who had already performed their duty and also against an authority who is not a party to the writ proceedings.

5. To compound this incongruity, while the respondents-accused who had performed their duty even before the filing of the writ petition and had nothing more to be carried out, are also arrayed as accused in the present contempt proceedings, a nonparty to the writ petition namely Member Secretary, Central Empowerment Committee, Room No. 106, Paryavaran Bhavan, C.G.O. Complex, Lodhi Road, New Delhi-110003 has now been added as an accused.

6. We also fail to understand as to how such contempt proceedings pass muster as statutory functionaries cannot be arrayed as accused and contumacious conduct amounting to contempt by disobeying a positive directions and deliberate disregard of the directions issued by the court, is a personal act of any official who was required to perform in terms of the court directions and was a party respondent to the main proceedings (Writ Petition). In this petition, none of the officers are arrayed by their names, pointing out dereliction of their respective duties.

7. In this state of affairs, while these contempt proceedings have to be inevitably dropped, and though Sri Gururaj Joshi, learned counsel for the complainant seeks permission of the court to withdraw the contempt petitions to work out the complainants' remedies later in a properly filed writ petition, etc., that is not a matter of concern for us. But what is a matter of concern and which disturbs us is, such contempt petitions have proliferated in large numbers resulting in loss of time by the tendency in the first instance to invoke and abuse the process of the court by filing writ petitions not tenable for grant of any relief in law, and after obtaining some directions with or without suppression of facts, contempt

jurisdiction is also invoked to bring pressure on officials who might not have committed or indulged in such contumacious conduct, but nevertheless, are pressurized by the threat of contempt jurisdiction, being let loose on them?

8. We strongly deprecate this tendency and to discourage such misuse and abuse the process of this Court, even when both the contempt petitions are dismissed, cost of Rs. 5,000/- on each of the complainant is levied in the contempt petitions. Cost to be deposited before the registry and to be credited to the High Court Legal Services committee maintained at Gulbarga Bench, for being used to extend legal aid for deserving litigants who cannot bear of their legal expenses, while seeking relief before this Court for redressal of their legitimate grievances.