
(1990) 01 MAD CK 0083
In the Madras High Court
Case No : Contempt Appn No. 416 of 1988

P. Mahamani

APPELLANT

Vs

The Tamil Nadu Magnesite Ltd. and Others

RESPONDENT

Date of Decision : 23-01-1990

Acts Referred:

Contempt of Courts Act, 1971 — Section 11, 19

Citation : (1991) LW(Cri) 296

Hon'ble Judges : A. Sathiadev, C.J.; Bellie, J

Bench : Division Bench

Advocate : S. Govind Swaminathan, for N.S. Sivam and G. Anbumani, for the Appellant; S. Ramasubramaniam, for the Respondent

Judgement

1. Appellant in W.A. 2325 and 2326 of 1987 on the file of this Court is the applicant herein. The first Respondent and the fourth Respondent in

the writ appeal are Respondents 1 and 2 herein. Respondents 3 to 8 herein are the Board of Directors of Tamil Nadu Magnesite Ltd.

2. In the supporting affidavit filed along with this application, applicant states that the first Respondent-company appointed him in May, 1980 as

Company Secretary. In May, 1985, the second Respondent was appointed as Managing Director of the first Respondent company. Since the

applicant discharged his functions independently refusing to yield to the threats and pressures brought out by second Respondent, he became

infuriated and decided to wreak vengeance against him. Assuming that he being an Indian Administrative Officer, who can do anything without any

regard of the rule of law, the second Respondent suo motu issued orders placing the applicant under suspension which was not permissible in law.

His action was in total violation of the provisions of Articles of Association of the

Company and the Companies Act, Applicant filed W.P. No.

10527 of 1987 to quash the illegal order of suspension and the framing of charges against him. Though interim stay was obtained, second

Respondent without obeying the order, sought for vacating it, and the interim order was vacated. Aggrieved against this order, W.A. Nos. 2325

and 2326 of 1987 were filed; and by judgment dated 3-5-1988, the writ appeals and W.P. No. 10527 of 1987 were allowed with a direction to

restore the applicant to duty forthwith and which would be without prejudice to the rights of the Undertaking to take action afresh, it deemed

necessary by following proper procedure. On obtaining steno copy of the said order, the applicant went to the office of the first Respondent on 7-

5-1988 and met the second Respondent in person and handed over the copy of the order along with the joining report. After perusing the order of

the Court, second Respondent has observed as to how the Court could pass an order in favour of the applicant and made certain unwarranted

remarks and then stated that applicant could join duty by signing the attendance register and can go home and take rest. He also stated that, when

the High Court had given. 2 1/2 years of paid holidays, he would also give holidays till the Supreme Court grants stay. As he had made these

unwarranted remarks, he was asked to give it in writing but unable to do that, he kept quiet. After some time a letter dated 7-5-1988 was served

upon the applicant which reads as follows:

Your duty joining report dated 7-5-88 is received and in view of the order passed by the High Court of Madras in W.A. No. 2325 of 1987 and

2326 of 1987 and W.P. No. 10252 of 1987 dt. 3-5-88, you are subject to what is stated below:

a. On and from the date of your reporting to duty you would be deemed to be in service.

b. You are being permitted to report to duty, without prejudice to the right of the Company to take up the entire matter on appeal to the Supreme

Court of India, for which purpose, appropriate steps are being taken.

c. Since the Supreme Court also is being moved for stay of operation of the order of the High Court, the question of payment of full salary from the

date of suspension till date would depend upon the nature of the order that would be passed by the Supreme Court.

d. If the Supreme Court grants stay of operation of the order of High Court, the order of suspension dated 17-12-1985 would receive and enquiry would be proceeded with, subject of course to the directions that might be given by the Supreme Court.

This communication, shall under no circumstances, be treated as revocation of order of suspension dated 17-12-85 you are required to sign the duplicate copy tendered herewith in acknowledgment of the service.

3. As second Respondent behaved badly, regarding the discussions applicant had with him on 7-5-1988, a letter dated 8-5-1988 was sent to him.

Copies of this letter were also perused by the Directors of the first Respondent in the Board Meeting held on 9-5-1988, when they perused the

order of this Court dated 3-5-1988. When the Division Bench of this Court had set aside the order of suspension dated 17-12-1985 and the

charge memo dated 13-1-1986; second Respondent had still chosen to state in the letter dated 7-5-1988 that the order of suspension dated 17-

12-1985 will continue to remain in force.

4. As applicant had been directed to attend the meeting of the Board of Directors on 9-5-1988; and when he went there, he came to know that

second Respondent had assumed charge on 4-5-1988 as the Managing Director of Tamil Nadu Newsprint and Papers Limited. As instructed by

the second Respondent in the meeting of the Board of Directors, the signatures of the Directors were obtained by the applicant in the attendance

register. It was then brought to the notice of the Directors of the first Respondent Company that as per the provisions of the Companies Act,

second Respondent cannot continue as Managing Director of the first Respondent Company, since he had assumed charge as Managing Director

of Tamil Nadu Newsprint and Papers Limited and that the meeting convened was not proper. Second Respondent asked the applicant to go out,

since the meeting was going to consider the matter relating to the applicant. On 10-5-1988, a letter was served upon the applicant stating that

certain serious lapses committed by him had come to the notice of the Management, which warranted detailed enquiry and that a charge-sheet

would be issued separately. On 19-5-1988, a charge memo was served, and it contained the same charges which had been quashed by the Order

of this Court dated 3-5-1988. At the end of that letter, it had been typed ""BY

THE ORDER OF THE BOARD." Second Respondent had signed the letter as Chairman-cum-Managing Director, which is a wilful and wanton disobedience of the order of this Court. Since the order of this Court had not been properly complied with, and as the acts of the Respondents amount to interference with the administration of justice of this Court; he had filed the present contempt application u/s 11 of Contempt of Courts Act, 1971.

5. In the counter-affidavit filed by the first Respondent sworn to by second Respondent, it is stated that on 20-7-1988, applicant had filed W.P.

No. 8420 of 1988 challenging the order of suspension dated 9-5-1988 as well as the charge memo dated 19-5-1988. He had also filed W.M.P.

No. 12322 of 1988 seeking stay of implementation of the order of suspension, and that by order dated 29-7-1988, an ex-parte order of interim

stay had been obtained by him. On Respondents filing W.M.P. No. 13476 of 1988, by order dated 19-8-1988, the ex-parte order was vacated

as far as suspension order dated 9-5-1988 was concerned. Regarding the charge-sheet, it was directed to be proceeded with, but final orders

shall await the result of the writ petition. Aggrieved against this order, W.A. No. 1143 of 1988 was filed by the applicant, and by order dated 23-

8-1988, this Court ad directed both the order of suspension and the charge memo to be stayed till 5-9-1988. Thereafter, Respondents had

informed the Court the the applicant need not report for work, and the Court directed that the writ appeal to be posted for final hearing on 13-1-

1988, and hence ail these factors, the applicant should have brought to the knowledge of this Court, when he moved the application for contempt

on 13-1-1989, but he had suppressed the material facts while filing this application. In the writ appeal, the main contention of the applicant was

that, he was appointed only by the Board of Directors, and therefore, the impugned orders of suspension and charge memo dated 17-12-1985

and 13-1-1986 respectively issued by the second Respondent were without lawful authority. It is by accepting this contention, the writ appeals

were allowed without prejudice to the Respondents to take fresh action by following proper procedure and the subsequent orders passed were

based on disciplinary proceedings initiated by the Board of Directors. As for the allegations made about remarks made by him, he being a

responsible member of Indian Administrative Service, he knows his responsibility as much as the applicant claims to realise this. No remark casting any aspersion on this Court was uttered, whereas on 7-5-1988 itself applicant was allowed to join duty. On 9-5-1988 when the Board of Directors met, and the applicant attended the meeting as Secretary of the Company and a decision was taken to frame charges against him and also place him under suspension pending enquiry. It was the Board which framed charges and also took the decision to place him under suspension and authorised the second Respondent to issue the proceedings. Applicant has read too much into the communication dated 7-5-1988. He was not only allowed to join duty, but entire emoluments had been paid, which is in compliance with the order of the Court. As he is guilty of suppressing material facts about developments that had taken place between July 1988 and January, 1989, this application is liable to be dismissed with costs.

6. Mr. S. Govind Swaminathan, learned Counsel for the applicant puts forth two submissions. He would first claim that the applicant has sworn before Court about the comments made by the second Respondent on production of the order of this Court dated 3-5-1988, and second Respondent being an interested person, and who is more anxious to absolve himself of the contumacious behaviour exhibited by him, has failed to satisfactorily place materials before this Court that he had not made the utterances as claimed, and therefore it goes to show that second Respondent by his impertinent conduct, exhibited his reluctance to abide by the order of Court and which is unbecoming of an officer in the cadre of Indian Administrative Service. The nature of communication issued by him on 7-5-1983 and the actions which had since been taken subsequently, and the peculiar stand, taken by Respondents 1 and 2 that pending disposal of W.P. No. 8420 of 1988 and W.A. No. 1143 of 1988, applicant would be entitled to draw full salary provided he does not discharge his duties go to show that the second Respondent is highly motivated and had chosen to put the first Respondent Company to suffer monetary loss to satisfy his personal prejudices, and therefore, such a person would have made the remarks as claimed by the applicant. He also points out that in respect of ah undertaking owned by the State of Tamil

Nadu, a Managing Director who goes to the extent of reporting to Court that even though the order of interim suspension and the charge memo are stayed by Court, in the incumbent would not be permitted to do work but would paid full salary and when such a decision would result in financial loss to the first Respondent Company, it speaks for itself that first Respondent was not for faithfully implementing the order of Court, and such a person would have made the remarks, in the manner as alleged by the applicant When applicant had chosen to put in writing about these remarks on the very next date i.e. on 8-5-88 for what had transpired on 7-5-1988 at the office of the first Respondent Company; and the Respondent being fully aware of the implication of his failure to reply the said letter, till date he having never chosen to refute them; the claim of the applicant on this aspect, deserves acceptance.

7. Mr. S. Ramasubramaniam, learned Counsel for Respondents 1 and 2, submits that in a serious matter of this nature this sort of allegation by the affected person should not be acted upon, and the allegations of motive are baseless, and that second Respondent would not have ever conducted in the manner in which certain statements have been attributed to him. About the peculiar attitude adopted by second Respondent by making an offer to pay full salary by preventing the applicant to discharge his duties, he would state that it is a decision which he could take in his capacity as Managing Director of the first Respondent Company, and it is not for the applicant to comment upon it.

8. The failure on the part of the second Respondent to immediately refute the allegation about the alleged remarks in spite of letter dated 8-5-1988 sent by the applicant, and the attitude adopted by the second Respondent subsequently to deprive the applicant of his right to work but come forward with an unusual offer to pay full salary to him, go to show that the second Respondent should have certain motives in taking action against the applicant. No Company ever takes such a decision to incur financial loss to the extent to which second Respondent had taken in relation to the applicant; and this is an added pointer to understand the stand taken by the second Respondent in issuing the letter dated 7-5-1988 which would be dealt with later on. It is not necessary to have direct evidence on these aspects, and an inference could be drawn by taking into account the

conduct of the parties and the surrounding circumstances. This is not a case wherein the claim and the refutation could be treated as like statements

made i.e., oath against oath and hence need not choose to believe anyone. Nothing precluded the second Respondent, who claims to be a

responsible Officer of the Indian Administrative Service to refute the claims made by the applicant by letter dated 8-5-1988 about what had

transpired on 7-5-1988 when he met the second Respondent. He knew the consequences of not replying such a letter. On the very next day,

second Respondent had served upon the applicant the order of suspension. When such actions could be taken by the second Respondent so

swiftly, he cannot claim that he did not have the time to refute the claims found in the letter dated 8-5-1988. He had known the impact of the

serious allegations made against him. Applicant had concluded by stating in that letter as follows:

This letter has been written to place on record what had transpired on 7-5-88 in your room, so that if an occasion arises the same may be required

for scrutiny.

In spite of having been put on specific notice of what the applicant had intended, second Respondent had not chosen to refute the allegations made

by him. Under such circumstances, the sworn statement made by the applicant on oath deserves greater credence to that of the formal denial made

by the second Respondent. As between the two, applicant is truthful in his submissions before Court.

9. Yet, this Court considers that this aspect need not form the basis for considering whether second Respondent had acted in a manner

unbecoming of the post held by him. It would be well to leave the matter at this stage, and treat it as of no consequence for the disposal of this

application.

10. The next point taken by learned Counsel Mr. S. Govind Swaminathan is that the letter dated 7-5-1988, as extracted above, shows clearly that

the second Respondent had gone to the extent of putting conditions for implementing the order of this Court, which is nothing but an interference

with the course of administration of justice Learned Counsel for Respondents 1 and 2 submits that what was stated in the last sentence therein was

not intended to disrespect the orders of this Court, but as the Supreme Court

was to be moved, it was stated that the communication under reference was not a revocation of the order of suspension. The relevant portion reads as follows:

This Communication, shall under no circumstances, be treated as revocation of order of suspension dt. 17-12-1985. You are required to sign the duplicate copy tendered herewith, in acknowledgment of the service.

Already, the entirety of the letter had been extracted in the earlier part of this order. In the first paragraph, it is stated that the applicant is permitted

to report to duty, but it is then stated ""subject to what is stated below."" Thereafter, it is stated therein that he would be deemed to be in service

from the date of reporting to duty and without prejudice to the rights of the Company to take up the matter on appeal to the Supreme Court, and

that payment of full salary from date of suspension till date would depend upon the nature of the order to be passed and if it grants stay, then the

order of suspension dated 17-12-1985 would be revived and enquiry proceeded with subject, of course, to the directions that might be given by

the Supreme Court.

11. A copy of the judgment in W.A. Nos. 2325 and 2326 of 1987 was laid before the second Respondent, and after reading it, he had allowed

the applicant to join duty subject to imposing certain conditions. In and by the said judgment, the impugned order of suspension dated 17-12-1985

along with the show cause notice-cum-charge-sheet dated 13-1-1986 had been quashed. When in paragraph 9 of the judgment it is ordered that

the two impugned proceedings are hereby set aside, thus entitling the Petitioner to be restored to duty forthwith"", second Respondent had

impertinently chosen to implement the order subject to imposing conditions.

12. As far as the condition that the Company intends to take the matter on appeal and subject to it the applicant was being permitted to join duty is

concerned, it could be looked upon as a reaction to the order passed by him without jurisdiction, being set aside; but when he chooses to assert

that the communication issued by him ""shall under no circumstance be treated as revocation of order of suspension dated 17-12-85"" is an

outrageous one. His action is one which amounts to gross interference with the administration of justice. If a semi-illiterate had reacted to an order

by imposing conditions, it may be a case for condonation. If a seasoned officer,

who should know what is his cardinal duty when an order of Court is served upon him, cannot come forward to claim after going through an order in and by which the order of suspension had been set aside, that the permission granted to the successful litigant to report for duty would not result in revocation of that illegal order of suspension. A Civil servant has to simply obey orders of Court scrupulously, meticulously, dutifully, diligently and without expressing any reluctance or reservation to abide by orders of Court. If the concerned authority on reading a judgment thinks that the matter merits filing of an appeal, it is his duty to take swift steps for presenting an appeal or revision. His intention to prefer an appeal revision should never stand in the way of dutifully implementing the order of Court. Being well aware of it, second Respondent had immediately asked the applicant to join duty forthwith, but his action in imposing conditions of this nature amounts to disobedience, which is unpardonable. He has no right to attach any condition whatsoever to orders of Court. He has thus interfered with the due administration of justice by asserting that in spite of the fact that the order of suspension is set aside by Court, the order permitting the applicant to rejoin duty would not result in the illegal order of suspension being revoked, and by doing so, he has committed contempt of orders of this Court dated 3-5-1988. He being the Managing Director of the first Respondent undertaking, by issuing the said communication dated 7-5-1988 on behalf of the said undertaking, it has led to the first Respondent also committing similar contempt.

13. Learned Counsel Mr. S. Ramasubramaniam, who is reputed for his fairness to Court and doing his best for his clients, on being told at the conclusion of arguments and before judgment was reserved that Respondents 1 and 2 are to be held guilty of contempt under the Contempt of Courts Act, had mentioned some days after judgment was reserved that second Respondent intends to file a further affidavit to deny that he had never received the communication dated 8-5-1988 from the applicant. It is because of this persuasive plea, this Court thought that an opportunity should be extended to find out whether the second Respondent was truthful in his statements before Court. Hence, the matter was re-opened, and the second Respondent has filed a further affidavit dated 30-12-1989 asserting that he had not received the said letter. He states that this

communication was produced before this Court for the hearing on 20-12-1989, and on checking into his diary, he finds that he was on tour most of the days in May, 1988 and visited Salem only on 19-5-1988, and after checking up the records of the Company, he learns that no such letter addressed to him was received by the Company on or after 8-5-1988, it being a Sunday. After referring to what had happened on 7-5-1988 in the presence of two Officers, he would state that he had never meant or given an impression that the suspension order continues to remain in force, and what he had meant was that he was reserving his right of appeal to the Supreme Court. The letter was never shown or circulated by applicant at the Board Meeting. He then concludes by stating:

If this Honourable Court feels that my actions would constitute contempt. I herewith tender an unconditional apology....

14. Second Respondent has produced before Court affidavits filed by two Officers, and M. Palanisamy, who state that no statement as claimed by the applicant was ever made by the second Respondent. Four Directors have filed affidavits stating that a copy of this letter dated 8-5-1988 was not produced in the meeting held on 9-5-1988.

15. Learned Counsel Mr. Ramasubramaniam, by relying on these affidavits, strenuously pleads that they are filed by responsible persons, and therefore, the irresponsible statement made by the applicant could carry no weight.

16. A lengthy reply-affidavit has been filed by the applicant referring to factual aspects of what had transpired, in order to show that the second Respondent is more untruthful than what he had been earlier. As found in the affidavit filed by the second Respondent, he would state that he came to know of this communication only when it was produced in this Court on 20-12-1989 during the course of the hearing of the contempt application. The contempt application was filed on 19-7-1988 and notice was served on the second Respondent on 1-2-1989. The counter-affidavit was filed by him on 3-3-1989. In paragraph 10 of the counter-affidavit in referring to this letter, he states:

...No remark casting any aspersion on the Hon"ble Judges of this Court who dealt with the matter on the earlier occasion, was ever uttered by me

It means that even in March, 1989, he knew that applicant was relying upon this

letter, but would never claim that he never received the letter; but yet he now chooses to claim as if he came to know of this letter on being produced in this Court during the course of the hearing on 20-12-1989.

This cannot be true, because along with this contempt application; applicant had also filed W.P. No. 8420 of 1988 on 20-7-1988. In paragraph 3 of the affidavit filed in the said writ petition, he relies upon the letter dated 8-5-1988. In that writ petition, as the typed set of papers this letter bears S. No. 20 at page 101. It was served upon the second Respondent's counsel. Second Respondent then filed his counter-affidavit on 3-8-1988 in that writ petition. He had not refuted the contents of the said letter, even in that counter-affidavit filed therein. Against the order vacating interim stay, applicant preferred W.A. No. 1143 of 1988, and in Volume II of the typed set of papers therein, the letter dated 8-5-1988 was included as document No. 14 at page 123. The typed set of papers were served upon the Counsel for Respondents 1 and 2. After referring to what had happened in the Board Meeting, it is stated that because of this vindictive attitude, the second Respondent had committed one illegal act or the other and has now gone to the extent of committing perjury. Even though this communication had been brought to his knowledge in other proceedings, and even in the counter-affidavits filed therein, no refutation having been ever made about its non-existence; the present statement of the second Respondent is reflective of his "mala fide" intentions.

17. These factual claims about this letter having come to the notice of the second Respondent in more than one proceeding, and in spite of his filing more than one affidavit into Court and he having never denied that he had not received the said letter dated 8-5-1988, it is unfortunate that he had roped in to the proceedings half a dozen persons by collecting affidavits from them for which they could also be proceeded against suitably. In spite of being aware of the inevitable consequences which would follow on what he had done, and after asking for re-opening of the matter; he had resorted to make further untrue claims. It shows his vindictiveness towards the applicant, and he does not seem to repent for his conduct in putting conditions while implementing the order of this Court by asserting that the illegal order of suspension passed by him had not been revoked in spite of the Court setting aside it. It is necessary to point out that no appeal is filed

before Supreme Court thereafter.

18. Already in paragraph 9, it having been stated that this aspect shall not be treated as of any consequence in the disposal of the application the

magnanimity of this Court which learned Counsel Mr. Ramasubramaniam had been seeking, could be extended by retaining the same views, in

spite of the irresponsible, untruthful and clumsy manner in which the second Respondent had filed these affidavits.

19. Learned Counsel for the applicant, (sic) pertinently points out that second Respondent had not, in the affidavit already filed, expressed any

apology to Court. It is only after judgment was reserved, he had come forward with conditional qualified apology, as extracted above, and this

conduct on his part is reprehensible. In spite of being told that it is inevitable on the part of the Court to hold him guilty of contempt, yet, he having

not expressed unqualified apology, the pleas now put forth by his counsel cannot be accepted by Court, to absolve him of the consequences,

because he belongs to Indian Administrative Service. Status is immaterial in Contempt proceedings, and therefore, when he had interfered with

administration of justice, the approach made in *Mulh Raj Vs. State of Punjab*, is called for in a matter of this nature.

20. These submissions made by him are acceptable, because the hesitant apology now made after being told that he had committed contempt; and

that he is required to be present in Court on the date of judgment since it is being reserved; he has come forward with an apology which is certainly

not a "bona fide" one. He had done it, in order to avoid the consequence, which he ""has invited upon himself by his own behaviour in stating that

by allowing the applicant to rejoin duty on order of Court; it does not mean that the illegal order of suspension which had been set aside by this

Court had not been revoked. When an apology of this nature is made, as to how to be understood in law, it had been succinctly put forth by the

Supreme Court in the above mentioned decision as follows:

Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace apology is shown of penitence and hence, is

liable to be rejected. If apology is offered at a time when the contemner finds that the Court is going to impose punishment it ceases to be an

apology and it becomes an act of cringing coward.

This Court cannot put it in a better manner than what had been done by the Apex Court of this Country. Therefore, what has to follow for what he had done knowingly and willingly as stated above, with an element of vindictiveness towards the applicant, is nothing but contempt. Though when the judgment was reserved, this Court expressed that an attitude of this nature by an official would call for a punishment of simple imprisonment at least for four weeks, because of the fervent pleas put forth by learned Counsel Mr. S. Ramasubramaniam; the second Respondent is hereby sentenced to pay a fine of Rs. 1,000/- within ten days from to day and which shall not come, either out of the funds of the first Respondent or of that of the Public Exchequer. In default of payment of fine, he shall be detained in Civil Prison for a period of two weeks. As for the first Respondent, it is also sentenced to pay the same fine of Rs. 1,000/- within 10 days from to day. As for the other Respondents, the proceedings are dropped. Regarding those who have now filed supporting affidavits, they shall henceforth be careful and avoid filing of such affidavit in courts and also desist from handing over such affidavits to the second Respondent for filing into court.

21. Hence this contempt application is allowed. No costs.

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On pronouncement of the order, learned Counsel Mr. Ramasubramaniam by referring to Section 19 of the Contempt of Courts Act, has sought for suspension of the order pending disposal of the appeal to the Supreme Court. This Court considers that payment of a fine within the time as fixed would not in any manner prejudice the contemnor. Hence this is not a fit case where it merits suspension of the order pending disposal of the proposed petition to the Supreme Court.