

(2011) 09 MAD CK 0052

In the Madras High Court

Case No : Contempt Petition No. 942 of 2011

P. Yogapriya

APPELLANT

Vs

p. Thirumavalavan, Registrar, Bharathiar University and K.C.
Palanisamy Chairman Principal in Charge, Cheran's Arts
Science College

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Constitution of India, 1950 — Article 215

Contempt of Courts Act, 1971 — Section 10, 11, 12

Citation : (2011) 09 MAD CK 0052

Hon'ble Judges : N. Paul Vasantha kumar, J

Bench : Single Bench

Advocate : M. Baskaran, for the Appellant; N. Kavitha, for 1st Respondent, K. Doraisami for Kandhan Doraisami, for 2nd Respondent, for the Respondent

Judgement

N. Paul Vasantha kumar, J.—This contempt petition is filed for the alleged violation of the interim order passed in M.P. No. 1 of 2011 in

W.P. No. 10355 of 2011 dated 26.4.2011 wherein a direction was issued to the first Respondent University to permit the Petitioner to write the

final semester examination stated to be held on 4.5.2011 without prejudice to the rights of the parties on condition that the said order does not

confer any equity on the Petitioner, and that the result of the Petitioner shall not be published until further orders.

2. The brief facts of the case are as follows:

(a) The second Respondent college is a private college affiliated to the first Respondent University. Before Petitioner getting admission in B.C.A.

Course in the second Respondent College, the college made an advertisement in the newspapers stating that the second Respondent college will

not insist for any fee other than the University fee, and accordingly for five semesters the second Respondent did not insist for payment of any fee.

Petitioner appeared in all examinations including the 5th semester conducted by the first Respondent and secured 75% aggregate marks and she

prepared for the 6th semester final examinations, which commenced on 31.3.2011. The hall ticket for the 6th semester was issued by the first

Respondent to the second Respondent.

(b) On 30.3.2011 the second Respondent insisted the Petitioner to pay a sum of Rs. 1 lakh immediately towards tuition fee, hostel fee, etc., for the

entire B.C.A. course failing which she will not be permitted to write the examination on 31.3.2011. As the Petitioner was not able to pay the fee as

demand, she was not permitted to write the first examination, that is Software System in the 6th semester on 1.4.2011.

(c) According to the Petitioner, on the next day, the students got agitated and the management permitted the students to write the examinations on

condition that they should pay the fees as demanded, before they leave the college. Before the final examination on 4.5.2011, the second

Respondent directed the Petitioner to pay a sum of Rs. 1 lakh on or before 3.5.2011. The Petitioner having not able to pay the fee as claimed,

filed the above writ petition and obtained the above said interim order on 26.4.2011.

(d) The interim order obtained on 26.4.2011 was duly communicated to the Respondents through a counsel notice dated 30.4.2011 along with

copy of the order. The first Respondent received the order with covering letter on 4.5.2011 and the second Respondent received the same on

3.5.2011. The first Respondent informed the Petitioner that hall ticket having been issued, Petitioner has to approach the second Respondent

College. Petitioner went to the college on 4.5.2011 to write the last examination. Petitioner was not permitted to write the examination on

4.5.2011 as she failed to pay Rs. 1 lakh as demanded.

(e) The Petitioner sent a telegram to the Respondents on 5.5.2011 and on 6.5.2011 again she met the first Respondent and she was informed that

the second Respondent college alone is responsible for not permitting the Petitioner to write the examination on 4.5.2011. Petitioner issued a

contempt notice to the second Respondent on 16.5.2011 for which no reply was

received. Hence the Petitioner has filed this contempt petition.

3. The contempt petition was posted for admission on 7.7.2011. Ms. N. Kavitha, Learned Counsel took notice on behalf of the first Respondent

and statutory notice was ordered to the second Respondent. On 11.8.2011 the notice issued to the second Respondent was returned unserved

with an endorsement that the second Respondent is "out of station". In the said notice an endorsement is made stating that the Correspondent is out

of station due to other work. The Principal in-charge, even though perused the notice, refused to receive the same.

4. As the second Respondent purposely evaded receipt of notice, a bailable warrant was issued to the second Respondent by this Court on

12.8.2011 giving direction to the Inspector of Police, Kangeyam, to produce the second Respondent before this Court on 19.8.2011. On

19.8.2011 the second Respondent appeared before this Court and vakalat was filed by Mr. Kandhan Doraisamy, Learned Counsel on behalf of

the second Respondent. The appearance of the second Respondent was dispensed with on the request made by the Learned Counsel and the

second Respondent prayed two weeks time to file counter affidavit.

5. The second Respondent filed a counter affidavit on 3.9.2011, signed on 28.8.2011. In the counter affidavit filed by the second Respondent it is

stated that due to misunderstanding of the Court notice and thinking that it was intended for the Chairman, she made an endorsement on the

summons and returned the same and she did not have any intention of ignoring or disrespecting the notice ordered by this Court. It is also stated in

paragraph 5 of the Counter affidavit that the examinations were conducted when Dr. Pon.Ramalingam was functioning as Principal of the second

Respondent college and that she had nothing to do with the subject matter of the this contempt petition. The second Respondent also tendered

unconditional apology for the unintentional return of the notice.

6. The Learned Counsel for the Petitioner also filed an additional typed set of papers showing the publication made by the second respondent in

the newspapers stating that there is an unique opportunity to the Plus Two and decree passed students to join in the second Respondent college. It

is stated in the said publication that a scheme is provided to pay the fee to the college after completing the course, receiving the decree and after

getting appointment and the candidates willing to join under the said scheme has to pay only the University fee and after getting employment they

can pay the college fee. It is further stated in the advertisement that the college is providing job opportunity to the students, who secure degrees

and this scheme is introduced only to help poor students, who are unable to pursue higher studies. The PG courses offered by the second

Respondent College are, M.B.A.; M.C.A.; M. Com (CA); M. Sc.(CS); M. Sc.(CT); M. Sc(AE); M.S.W; M.A.(Mass Com); M. Sc.

Elec.Media; M. Sc Maths (CS). The UG courses are B. Com; B. Com(C.A.); B.B.M.; B.B.M(CA); B.C.A., etc.

7. The Learned Counsel appearing for the Petitioner argued that the order of this Court having been violated by the second Respondent wilfully,

serious view in this matter may be taken and appropriate orders may be passed. The Learned Counsel for the Petitioner further submitted that

believing the above said advertisement of the second Respondent, Petitioner joined in the second Respondent college in bachelor of computer

applications and she passed in all subjects except the two papers for which the Petitioner was marked as absent due to the action of the second

Respondent and therefore the Petitioner is put to serious difficulties and appropriate compensation may be ordered. The Learned Counsel also

cited the decision of the Division Bench of this Court reported in 2010 (4) CTC 407 G. Rajaram v. T.K. Rajendran I.P.S. wherein this Court

awarded compensation in contempt proceeding.

8. The Learned Counsel for the first Respondent submitted that the Petitioner is the daughter of a Coolie and believing the advertisement of the

second Respondent college she joined in the course. The first Respondent issued hall ticket and the fault is entirely on the part of the second

Respondent.

9. The learned Senior Counsel for the second Respondent submitted that the then Principal has committed a mistake and the Petitioner ought to

have been permitted to appear in the examinations and the action of the second Respondent may be condoned. The learned Senior Counsel also

submitted that the Petitioner will be permitted to appear in the ensuing examinations in the two subjects for which she was denied permission to

write examinations. The satisfaction of attendance requirement of the Petitioner

is also not disputed by the Respondents.

10. Considering the entire background of the case and after hearing all the respective counsels, on 6.9.2011 this Court requested the learned

Senior Counsel for the second Respondent to ascertain as to whether the second Respondent is in a position to pay some amount of compensation

to the Petitioner for not permitting her to write the examinations. The learned Senior Counsel for the second Respondent requested time to

ascertain the same and the matter was adjourned to 7.9.2011.

11. On 7.9.2011 the learned Senior Counsel as well as the Learned Counsel on record of the second Respondent submitted that they are

withdrawing from the contempt proceedings.

12. Since arguments in this case was already heard on 6.9.2011 and order alone is to be passed, this Court reserved the case for orders on

7.9.2011.

13. It is an admitted fact that the Petitioner was permitted to undergo the course in terms of the paper advertisement and no fee was demanded

from the Petitioner by the second Respondent for five semesters. Only at the fag end of the course, the second Respondent demanded a sum of

Rs. 1,00,000/- and the same is not disputed by the second Respondent in the counter affidavit. The Petitioner is also not lacking attendance

requirement.

14. As per the advertisement issued by the second Respondent, the students are to pay their fees only after completion of the course and after

getting employment. Thus, the second Respondent was not justified in not only demanding the fee just prior to the final examinations, but also

wilfully disobeyed the order of this Court in not permitting the Petitioner to appear for the examinations held on 4.5.2011. Thus, the second

Respondent has committed contempt of court by violating the order of this Court dated 26.4.2011. The only contention raised by the second

Respondent in the counter affidavit is that the then Principal was responsible for this state of affair.

15. The Division Bench of this Court in the decision reported in 2010 (4) CTC 407 G. Rajaram v. T.K. Rajendran I.P.S. in paragraphs 16 and 17

held thus,

16. The power of Court to entertain and consider the act of contempt of Court is two fold. The Court is empowered to proceed against a

contemner for civil contempt as well as criminal contempt in terms of the provisions of Sections 10, 11 and 12 of the Contempt of Courts Act

either with regard to the alleged disobedience of the Court's orders or in regard to the interference or obstruction to the administration of justice.

Apart from the said power, this Court being a Court of record, is empowered to punish for contempt of itself in terms of Article 215 of the

Constitution of India. The High Courts are the superior Courts of record and they have inherent and plenary powers independent of the provisions

of the Contempt of Courts Act. The power of the High Court to punish for contempt can exclusively be based on Article 215 of the Constitution of

India. As against the provisions of Section 12 of the Contempt of Courts Act fixing a specified punishment, Article 215 does not restrict the power

of the Court to impose the punishment which it considers to be appropriate and justifiable. u/s 12 of the Contempt of Courts Act, though the High

Court is empowered to only impose the punishment of simple imprisonment for a period not exceeding six months and send the contemner to civil

prison and impose a fine upto a maximum of Rs. 2,000/-, under Article 215 of the Constitution, all that the High Court should consider as to

whether the quantum of punishment and for that matter, the nature of the orders be it by way of cost or compensation, could meet the ends of

justice.

17. The laws and rules governing contempt have developed overtime and given wide discretion to the Courts in determining both what constitutes

contempt and how it should be dealt with. As against the imposition of punishment where the Court would consider the willful disobedience of the

orders of the Court, while awarding costs or compensation, the Court must also consider the prejudice and hardship caused to the complainant

due to the act of the contemner and such prejudice and hardship must be real and the interference in the administration of justice is substantial.

(Emphasis Supplied)

The said judgment was rendered following the decisions of the Supreme Court reported in M.C. Mehta Vs. Union of India (UOI) and Others, and

Banwar Lal and Others Vs. G. Kalavathi (Dead) by LRs. and Others, . From the

perusal of the above decision it is evident that as per Article 215 of the Constitution of India, the power of the High Court in a contempt proceeding is not restricted to impose punishment alone. The High Court is also empowered to consider as to whether any compensation could meet the ends of justice if prejudice and hardship is shown by the petitioner. In the said decision the Division Bench after giving a finding about the intentional violation of the Court order as well as the prejudice, hardships and mental agony faced by the Petitioner, awarded a sum of Rs. 1,00,000/- (Rupees One lakh) as compensation.

16. Applying the said principle to the facts of this case, I am of the view that clear violation of this Court's order is established. Instead of punishing the second Respondent for contempt, ends of justice will be met by directing the second Respondent to pay a compensation of Rs. 15,000/- to the Petitioner within a period of two weeks from today, for the hardships, loss and mental agony caused to the Petitioner.

The contempt petition is disposed of with the above direction. The Registry is directed to post this matter on 28.9.2011 for reporting payment of compensation to the Petitioner by the second Respondent.