

(2018) 02 J&K CK 0059

In the Jammu And Kashmir High Court

Case No : CPSW No.56, 212, 57, 252, 53, 233, 59, 100, 261, 70, 61, 71, 107, 60, 108, 62, 336, 72 OF 2017 in SWP No.1947 OF 2015

PARSHOTAM KUMAR SHARMA AND ORS

APPELLANT

Vs

B R SHARMA, CHIEF SECRETARY AND ORS

RESPONDENT

Date of Decision : 23-02-2018

Acts Referred:

Citation : (2018) 02 J&K CK 0059

Hon'ble Judges : ALOK ARADHE

Bench : Single Bench

Judgement

This Court on 05.02.2018 had passed the order, the relevant extract of which reads as under:

â??In view of the fact that subsequently a Committee has been constituted and a statement has been made by the Sr. Additional Advocate General

that in case where the Committee decides not to file the SLP, the decision of this Court shall be implemented, I am inclined to grant a weekâ??s

further time to the respondents to submit the compliance report, failing which Commissioner/ Secretary to Government, General Administration

Department; Administrative Secretary of the concerned Departments; and Secretary, Department of Law, Justice and Parliamentary Affairs shall

remain present before this Court positively. It is also made clear that no application seeking exemption of their personal appearance shall be

entertained and in case of non-compliance, the aforesaid Officers shall positively remain present before this Court on 13th February, 2018 failing

which this Court shall be constrained to issue bailable warrants for presence of the aforesaid Officers.â??

2. Being aggrieved of the aforesaid order, the respondents filed an appeal before

the Division Bench in which the Division Bench passed the following order, the relevant extract of which reads as under:

â??Issue notice, returnable on 26.02.2018.

In the meanwhile, the direction given by the learned Single Judge, fixing the date as 13.02.2018 for compliance and in default requiring the presence of batch of officials on 13.02.2018 shall be kept in abeyance only to the extent of the presence of the officials.

The next date before the learned Single Judge is directed to be fixed on 23.02.2018, on which date, if the directions of the learned Single Judge are not carried out, the officials, who are required to be present by virtue of the impugned order, shall be present before the learned Single Judge.â??

3.In compliance of the order passed by this Court on 05.02.2018 and as directed by Division Bench of this Court vide order dated 12.02.2018, the

Secretary, Department of Law, Justice and Parliamentary Affairs, and Commissioner/Secretary, General Administrative Department are present before this Court.

4.Mr. B. S. Salathia, learned senior counsel for the petitioners submitted that despite repeated orders of this Court, the order passed by this Court in

CPSW No.59/2017 has not been complied with. It is further submitted that action of the respondents in constituting the Committee to scrutinize the

order passed by Single Bench of this Court as well as Division Bench of this Court is per se amounts to contempt and in fact the Committee should

have been constituted for implementation of the judgment.

5.Mr. D. C. Raina, learned Senior Counsel submits that in the instant cases, even the appeal has not been filed and the Supreme Court in the case of

Dr. H, Phunindre Singh and Others v. K K Sethi and Another, 1998 (8) SCC 640 has submitted that merely pendency of an appeal cannot deter the

Court from disposing of the contempt proceeding. It is further submitted that in some cases neither the appeals have been filed nor any stay has been

granted in favour of the respondents and therefore they are under a legal obligation to implement the judgment. It is also submitted that a Robkar

should be framed against the respondents.

6.Mr. Abhinav Sharma, learned counsel in some of the contempt petitions submitted that the conduct of the respondents in not complying with the

directions of this Court amounts to willful disobedience of this Court and, therefore, the respondents deserve to be strictly dealt with in accordance with law.

7.Mr. Sunil Sethi, learned senior counsel in CPSW No.108/2017 submitted that neither in the case of the petitioner any order of stay has been passed by the Division Bench of this Court nor any SLP has been preferred.Â Learned counsel for the petitioner in CPSW No.112/2017 submitted that in his case, no decision has been taken to file the SLP.

8.On the other hand, learned Senior Additional Advocate General for the respondents has produced the compliance report in which it is pointed that in following cases, the orders have been complied with and the petitioners have been reinstated, the particulars of which are as under:

- 1.CPSW No.212/2017, Sher Mohd Khan v. K A Shah, Secy GAD and Anr.
- 2.CPSW No.57/2017, Prem Nath v. Sanjeev Verma, Secy PHE Deptt. and Anr.
- 3.CPSW No.252/2017, Fida Hussain v. K A Shah, Secy GAD and anr.
- 4.CPSW No.233/2017, Kishore Kumar Gupta v. K A Shah, Secy GAD and anr.
- 5.CPSW No.100/2017, Sher Singh v. K A Shah, Secy GAD and anr.
- 6.CPSW No.107/2017, T P Singh v. K A Shah, Secy GAD and anr.
- 7.CPSW No.72/2017, Syed Ikhlâq Hussain v. K A Shah, Secy GAD and anr.

The aforesaid contempt petitions concerned respondents are directed to grant all consequential benefits to the petitioners within a period of two

months from today and compliance report be filed before the Registrar Judicial within one week thereafter.Â Needless to state that in case the

compliance report is not filed by the respondents the Registrar Judicial shall place the matter before this Court for necessary orders.Â The orders

passed by this Court shall be complied with by the respondents in contempt petitions where the decision has not been taken to file SLP within a period

of two months and compliance report shall be filed before the Registrar Judicial within one week thereafter, failing which the Registrar Judicial shall

place the contempt petitions before this Court.Â

9.It is further submitted that in following seven cases, there is difference of opinion between the Committee and the Advocate General, the particulars of which are as under:

- 1.CPSW 53/2017, Babu Ram vs. B R Sharma, C. Secy. and Ors
- 2.CPSW 59/2017, Tarsem Lal vs. K A Shah, Secy GAD and anr.
- 3.CPSW 61/2017, Girdhari La vs. K A Shah, Secy GAD and anr.
- 4.CPSW 71/2017, Mumtaz Hussain Bhat vs. Gazzanfer Hussain, Secy. GAD and ors.
- 5.CPSW 108/2017, Shabir Ahmed vs. K A Shah, Secy GAD and anr.
- 6.CPSW 62/2017, Dr. Manoj Bhagat vs. K A Shah, Secy GAD and anr.
- 7.CPSW 336/2017, Kamal Mahendru vs. K A Shah, Secy GAD and anr.

10.It is also submitted that the aforesaid issue shall be resolved within three days and the respondents shall produce the compliance report.

11.I have considered the submissions made by learned counsel for the parties and have perused the record. In the instant case, admittedly, the orders

except in seven cases have not been complied with. The order passed by this Court has been upheld by the Division Bench and even the SLP has not

been filed. It is well settled in law that even filing of SLP would not preclude this Court from proceeding ahead with the contempt proceeding.

Reference in this connection may be made to the decision of the Supreme Court in the case of Dr. H, Phunindre Singh and Others supra. Therefore,

there appears to be prima facie no justification for non compliance with the orders passed by this Court. In view of law laid down in Mazdoor Sangh

vs. Bangalore Jute Factory, (2017) 5 SCC 506, this Court can issue directions in the contempt proceedings ensure compliance of the order.

However, in view of averments made in the compliance report and in peculiar fact situation of the case and taking into account the fact that LPA

against the order dated 05.02.2018 is pending before the Division Bench and is fixed for 26.02.2018, I deem it appropriate to direct the respondents to

submit the compliance report on or before 06.03.2018 and to purge the contempt failing which this Court shall be constrained to take appropriate

action against the respondents for willful disobedience of the order passed by this Court including framing of Robkar against them. The presence of

Secretary, Department of Law, Justice and Parliamentary Affairs and Commissioner/ Secretary to Government, General Administration Department

is dispensed with for the time being.

A copy of this order be supplied to Mrs. Seema Shekhar, senior Additional

Advocate General by the Bench Secretary of this Court.