
(2000) 10 AP CK 0016
In the Andhra Pradesh High Court
Case No : LPA No. 178 of 2000

Prof. Pannalal, Registrar, Osmania University, Hyd.	APPELLANT
Vs	
Holy Bharathi P.G. College, Hyd. and others	RESPONDENT

Date of Decision : 30-10-2000

Acts Referred:

Contempt of Courts Act, 1971 — Section 12, 19
Contract Labour (Regulation and Abolition) Act, 1970 — Section 10

Citation : (2000) 6 ALD 674 : (2000) 6 ALT 430 : (2000) 3 APLJ 265

Hon'ble Judges : V. Eswaraiah, J; Bilal Nazki, J

Bench : Division Bench

Advocate : Mr. K. Ramakanth Reddy, SC for Osmania University, for the Appellant; Government Pleader for Education, Mr. C. Kodandaram and Mr. M.C.S. Suresh Kumar, Mr. K.V.R. Rao, appeared Party-in-person, for the Respondent

Judgement

Bilal Nazki, J

1. This appeal has been filed by the Registrar of the Osmania University who was respondent No.3 in the writ petition. Respondent No. 1 who was writ petitioner has filed counter, other respondents were not summoned as it was not felt necessary to hear them for the disposal of this appeal.

2. The order challenged in this appeal is the order in Contempt Case No.1232 of 2000 of which only the respondent No.3 in the writ petition is aggrieved. There are no directions against respondents 2 to 4 in the order passed in the contempt petition. Therefore, this Court thought it fit not to give any notice to respondents 2 to 4. This appeal is also in a very short compass and the appellant's contention is that the order passed by the learned single Judge of this Court in a contempt petition could not have been passed in the facts and circumstances of the case. It is also contended that the order enlarges the scope of the order which was passed in the writ petition. Therefore, the order would not sustain.

3. Before coming to the arguments, a short resume of facts is necessary to be

given. The respondent No. 1 (hereinafter referred to as "writ petitioner") filed the writ petition being WP No.21275 of 2000. This was allowed by judgment dated 25-7-2000. The Writ petitioners are running a college and they wanted to start course of MBA. For the purpose of starting the course of MBA they got necessary permission from the All India Council for Technical Education (hereinafter referred to as "AICTE"), but they were not able to get affiliation from the respondent University. The reliefs claimed in the Writ petition are given below :

"(a) declaring the action of the 2nd respondent University in returning the petitioner's request for grant of affiliation for the petitioner college to conduct MBA (FT) programme for the academic year 1999-2000, vide its letter dated 6-10-1999, as arbitrary, illegal without jurisdiction contrary to the provisions of the Jawaharlal Nehru Technological University Act and in violation of Article 14 of the Constitution of India and for a consequential direction to the 1st respondent herein to either direct the 2nd respondent JNTU to grant affiliation to the petitioner college for the academic year 1999-2000 forthwith, or direct the 3rd respondent Osmania University to consider the application submitted by the petitioner to the 2nd respondent JNTU treating the same as application submitted to the 3rd respondent Osmania University and then grant affiliation to the petitioner college for conducting MBA programme for the academic year 1999-2000; and pass such other order or orders as this Hon'ble Court may deem fit and proper;

(b) direct the 2nd respondent JNTU to consider grant of affiliation to the petitioner college for conducting MBA (FT) programme for the academic year 1999-2000 without any regard being shown to the grounds mentioned in the impugned proceedings dated 6-10-1999;

(c) or alternatively, direct the 3rd respondent Osmania University to consider the petitioner's request for grant of affiliation to the petitioner college for conducting MBA programme treating the application submitted by the petitioner to the 2nd respondent JNTU as the application submitted to the 3rd respondent Osmania University for grant of affiliation for conducting MBA (FT) programme for the academic year 1999-2000;

(d) direct the 4th respondent to ensure that either the 2nd respondent JNTU or the 3rd respondent Osmania University would consider the application of the petitioner on merits for grant of affiliation for conducting MBA/MCA programme, within 7 days to enable the petitioner to commence the course of study of MBA (FT) immediately."

The writ petition was resisted on various grounds by the University. One of the contentions put forth by the University was that the approval given by the AICTE to the writ petitioner was with reference to another University known as Jawaharlal Nehru Technological University (JNTU), therefore the petitioners have to seek affiliation from JNTU and not from Osmania University. Considering this

contention of the respondent University the Court held :

"This contention is rejected and a direction is given to the Osmania University to grant affiliation to the petitioner society to start MBA course for the academic year 2000-2001 if it is satisfied with other requirements by treating the approval given by the AICTE in the name of JNTU as the approval given by AICTE the petitioner was directed to approach JNTU in the name of the Osmania University for grant of affiliation in the light of the change in the policy as reflected in G.O. Ms. No.357. For this course of the AICTE has no objection. It is needless to observe that the Convenor for MBA (SET) admissions of Osmania University shall allot the candidates to the course to be started by the petitioner-society.

Accordingly the writ petition is allowed to the extent indicated above with a consequential direction to the petitioner society to approach the Osmania University seeking affiliation for the MBA course to be started for the academic year 2000-2001 and the University shall pass orders within four weeks from the date of receipt of a copy of this order. No order as to costs".

The net result was that the Court had not accepted the contention of the University that they were not bound to consider the application of the writ petitioner for grant of affiliation. The writ petition was allowed and it was further directed that the Osmania University should consider the application of the petitioner institution seeking affiliation for the MBA course to be started for the academic year 2000-2001. The University was further directed to pass an order within four weeks from the date of receipt of copy of the order. Thereafter, it appears that the University did not do the needful within the prescribed period and a contempt petition was filed. The argument made in this contempt petition was that, the judgment delivered by the Court in the writ petition on 25-7-2000 was brought to the notice of the respondents on 31-7-2000 along with their representation. Thereafter reminders were also given on 30th and 31st August, 2000 to the respondent University for grant of affiliation. In the contempt application it was further stated that, although the four weeks period had expired on 28-8-2000 the order of the Court had not been complied with, therefore he sought initiation of contempt proceedings against the respondent in the writ petition. In the meantime, it appears that the writ petitioner received a notice asking him to be present on a particular date so that the University authorities may inspect the premises. So, he filed an additional affidavit on 25th September, 2000.

4. From the order of learned single Judge it appears that, on 11-9-2000 the Counsel for the University had stated that the report of the Inspection committee was awaited. He had also stated that in all probability the University would be giving affiliation. But, an order was passed on 22-9-2000 rejecting the request of the writ petitioner by giving reasons. The reasons have been reproduced by the learned single Judge in the order passed in contempt petition. The learned Judge found that the reasons given were non-germane to the controversy and according to him the University had no business to go into the aspects relating to

infrastructure as according to the learned single Judge these were matters which had to be considered by the AICTE, since AICTE had already given permission therefore the University authorities could not go in such questions.

5. Now the only point, in the light of these facts, which has to be considered by this Court is, whether in a contempt petition the Court could have gone into the question of legality of the order passed by the University on 22-9-2000. The learned single Judge had ordered consideration of the application of the writ petitioner for affiliation. Admittedly, this consideration has been given by the University, but they have not accorded the affiliation and have rejected the application seeking affiliation. Whether such a conduct would be contempt of Court or not is the question which will have to be gone into.

6. The learned Counsel appearing for the University submits that law is well settled that in contempt proceedings the scope of the order passed of which the disobedience is alleged cannot be enlarged. He further contends that the University was supposed only to consider the application and they were not bound to accord affiliation in terms of the order passed in the Writ petition. Whether the affiliation has been rejected on good, bad or indifferent reasons, it cannot be tested in proceedings under contempt. The Writ petitioner was at liberty to challenge the order of the University dated 22-9-2000 in appropriate proceedings where its legality could be decided. He relies on various judgments of this Court and also of Supreme Court. He relies on T.V. Chowdary Vs. Riata Industrial Corporation, . In this case, the Court had given directions in a Writ petition that the application of the petitioner for grant of mining lease be considered. It was considered by the competent authority and rejected. A contempt petition was filed in which it was stated that the order of the Court was flouted. The learned single Judge examined each and every ground on which the Mining lease application had been rejected and he found those grounds as nonexistent grounds, therefore, he gave the following directions :

"Therefore, the respondents are liable for contempt. However, having regard to the facts and circumstances of the case and having regard to the fact that the Civil contempt is remedial, the primary object being to enforce the order for the benefit of the party in whose favour the order has been made, I direct the respondent to implement the decision of this Court in WP No.12386 of 1991 dated 18-10-1996 on or before 14th of November, 1997, failing which the respondent is liable for punishment for contempt of Court."

This order was challenged before the Division Bench and the Division Bench held that, in fact the learned single Judge had gone beyond the scope of the direction granted in the writ petition by virtually granting the lease to the writ petitioner, therefore the Division Bench set aside the order passed by the learned single Judge of this Court. While coming to the conclusion that, in contempt proceedings the Court cannot go beyond the scope or enhance the scope of the directions given in the judgment, the Division Bench relied on a judgment of Supreme Court reported in J. Parihar Vs. Ganpat Duggar and others, . In this

case the directions given were with respect to fixation of seniority. Admittedly the respondents had prepared the seniority list and on the basis of that seniority list promotions had been given. It was alleged that the seniority list had not been prepared in accordance with the directions of the Court therefore contempt proceedings were initiated. In this background the Supreme Court raised a question for an answer. The question was, "Whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches". The Supreme Court found :

"It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court; there arises a fresh cause of action to seek redressal in an appropriate Forum. The preparation of the seniority list may be wrong or may be right or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the single Judge of the High Court cannot be given to redraw the seniority list. In other words, the single Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible u/s 12 of the Contempt of Courts Act."

Another judgment to which a reference is made is, *Indian Airports Employees Union v. Ranjan Chatterjee* 1999 (1) SC 178. This judgment also lays down the scope of contempt proceedings. The relevant paras i.e., Para 9 and Para 11 are reproduced :

"9. It is true that these six sweepers names are shown in the annexure to the WP No.2362 of 1990 in the High Court. But, the question is whether there is wilful disobedience to the orders of this Court. In the counter-affidavit of the respondent, it is stated that there is no specific direction in the judgment of this Court for absorption of these sweepers, if any, working in the Car park area, and that the directions given in the judgment were in relation to the sweepers working at the "International Airport, National Airport Cargo complex and Import Warehouse". It is stated that the cleaners employed by the licensee incharge of Maintenance of the Car park area do not, on a proper interpretation of the order, come within the sweep of these directions. It is contended that even assuming that they were included in the category of sweepers working at the "International Airport", inasmuch as they were not employed for the purpose of cleaning, dusting and watching the buildings, as mentioned in the notification abolishing contract labour, they were not covered by the judgment. It is also contended that the case of such sweepers at the Car park area was not even referred to the Advisory Board u/s 10 of the Contract Labour (Prohibition) Act and it was highly doubtful if they were covered by the notification.

10.

11. In our view, these rival contentions involve an interpretation of the order of

this Court, the notification and other relevant documents. We are not deciding in this contempt case whether the interpretation put forward by the respondents or the petitioners is correct. That question has to be decided in appropriate proceedings. For the purpose of this contempt case, it is sufficient to say that the non-absorption of these six sweepers were bona fide and was based on an interpretation of the above orders and notification etc. and cannot be said to amount to "wilful disobedience" of the orders of this Court".

There is another judgment of Supreme Court being *State of J & K v. Sayeed Zaffar Mehdi*, (1997) 9 SCC 640 . In this case, a public servant who overstayed leave was terminated from service, the High Court had allowed the writ petition and it was directed that he should be deemed to have in continuous service and all consequential benefits as admissible under rules should be given to him, he was not given promotion, he filed a contempt petition and the matter finally went to the Supreme Court. It is a small judgment which is reproduced :

"(1) Special leave granted.

(2) Heard Counsel on both sides.

(3) It is true that by the judgment delivered in Writ Petition No. 169 of 1984 the Court directed that the petitioner should be deemed to be in continuous service with all consequential benefits as admissible under the Rules. It was further stated that if any action is proposed to be taken on him for alleged overstaying on leave it shall be taken in accordance with the principles of law and of natural justice after making proper inquiry in the matter under the Rules. It is true that this order not having been carried in appeal became final. That, however, does not mean that the respondent when refused promotion can move the contempt application in the same matter and seek the Court's order for granting him promotion. The scope of the original Writ petition was limited and did not include matters in regard to future promotions. In the contempt application it was not open to the Court to enlarge the scope of the original petition and also direct promotion. It is necessary to impress upon the High Court that contempt being a quasi-criminal matter, care should be taken to see that the scope of the original petition is not enlarged while making orders in contempt matters. The proper course for the respondent was to challenge the decision of the Government refusing to grant him promotion and examine the same in accordance with law. We, therefore, set aside the impugned order dated 30-11-1994 as well as the order of the Division Bench dated 11-10-1996 and hold that the contempt application was misconceived and not competent. However, this will not preclude the respondent from questioning the refusal to grant promotion through proper process, if so advised. The appeal will stand so disposed of with no order as to costs."

7. In view of the law laid down by the Apex Court and also this Court, it becomes abundantly clear that, what a petitioner fails to get in writ petition he cannot get in contempt proceedings. The present case is one where the writ petitioner has

now got what he did not even claim in the writ petition. The prayers made in the writ petition have been reproduced hereinabove. He did not claim the relief against respondents that affiliation should be granted to the institution for starting the course of MBA, he only claimed that his representation seeking affiliation should be considered and the same relief was granted to him in the writ petition. But, now by the order passed in contempt petition he has been granted the relief of affiliation. Clearly this is outside the scope of even the writ petition. The order passed by the learned single Judge is not only outside the scope of the judgment passed in the writ petition but even outside the scope of the pleadings and of the relief claimed by the Writ petitioner. Therefore, such an order ought not to have been passed.

8. However, on the other hand, the learned Counsel for the respondent defends the order on two grounds. Firstly, he contended that the appeal is not maintainable as no punishment had been awarded to the appellants, secondly he contends that, whenever there is colourful exercise of power by a person with a view to defeat the order of the Court the Court always has the power to pass necessary directions. Since the Court was of the view that the respondent-University had, by a design, tried to refuse the affiliation, therefore there was no alternative for the learned single Judge but to give directions which would do justice in the matter and stop the mischief being played continuously by the respondent on the writ petitioner.

9. Coming to the first ground that appeal is not maintainable as no punishment had been awarded to the present appellants, it is true that u/s 19 of Contempt of Courts Act appeal can be filed if the person has been punished. Section 19 of the Contempt of Courts Act lays down :

"79. Appeals :--(1) An appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt--

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court."

Relying on this provision of the Contempt of Courts Act the learned Counsel for the petitioner submits that the appellant in the present appeal was not punished in exercise of the contempt jurisdiction of this Court, therefore the appeal is not maintainable. We have gone through the order of the learned single Judge passed in the contempt proceedings. It appears that the learned single Judge held the respondents-appellants guilty of contempt but he did not proceed in the matter further for reasons given in the order, but all the same he issued a warning to the respondents. The Court said :

"In the normal course I would have initiated contempt proceedings for the hostile attitude shown by the members of the Committee deputed by the Osmania University from time to time to show their place. I am restraining myself for the

simple reason that, the academic year has already started and the petitioner-society was not able to start the courses having obtained approval way-back in 1996 because of the objections that are being raised by the Osmania University and if I proceed with the contempt case, the petitioner-society loses its opportunity to establish the college even for the academic year 2000-2001 also.

It is made clear that if the members of the Inspection team are come to the adverse notice of this Court again, they will be properly dealt with. For the present I am letting them off with a stern warning".

Whether issuing a warning and holding the respondents guilty of contempt would be punishment within the meaning of Section 12 of the Contempt of Courts Act or not is a question to be decided, but presently we are not expressing any opinion on this question because it is not necessary for us to do so in view of the fact that the learned single Judge has decided the fate of the order dated 22-9-2000 on merits, the learned single Judge has found the order to be bad and therefore he has decided the matter finally between the parties pertaining to the legality of order dated 22-9-2000 rejecting the request of the writ petitioner for grant of affiliation, therefore even if it is accepted that this Court has no power u/s 19 of the Contempt of Courts Act, this Court has the power under clause 15 of the Letters Patent. Same view was taken by the Supreme Court in *J.S. Parihar v. Ganpat Duggar* (supra). In that case, the Court in contempt proceedings directed re-drafting of seniority list, appeal was filed before the Division Bench which allowed the appeal and the matter went to the Supreme Court. An argument was raised before the Supreme Court that the Court had no jurisdiction u/s 19 of the Contempt of Courts Act to entertain the appeal as there had been no finding by the learned single Judge that contempt had been committed. The Supreme Court found that the Division Bench had exercised the power u/s 18 of the Rajasthan High Court Ordinance. Therefore, going by this judgment we are of the view that the order impugned in this Appeal could have been challenged under clause 15 of the Letters Patent, if not u/s 19 of the Contempt of Courts Act. Therefore, the appeal is maintainable and the contention raised by the learned Counsel for respondent is rejected.

10. Secondly he contended that the order passed by the University was result of colourable exercise of power. This may, or may not be true but for the reasons given by us hereinabove, this could not be gone into in contempt proceedings. Whether the power exercised by the appellant-respondent in rejecting the application for affiliation was colourable exercise of power or not could be gone into in appropriate proceedings. Even otherwise, no material has been placed before this Court by which this Court could come to the conclusion that it was a colourable exercise of power.

11. For all these reasons, we find that the order of the learned single Judge cannot sustain. Therefore, the appeal is allowed. The order of learned single Judge is set aside. The contempt is closed. However, the writ petitioner shall be at liberty to challenge the order dated 22-9-2000 in appropriate proceedings, if

so advised. No costs.

12. This Court has refrained from making any observation or expressing any view about the legality or otherwise of the order dated 22-9-2000 for obvious reasons, but in order to decide this appeal, if at all any such view is evident, that shall not be taken as expression of any opinion on the legality or otherwise of the order dated 22-9-2000.