

(2009) 11 MAD CK 0027

In the Madras High Court

Case No : Contempt Petition No. 934 of 2009

R. Maheswari

APPELLANT

Vs

P. Senthilkumar, Commissioner of Municipal Administration
and P. Janaki Ravindran, Commissioner, Nagercoil
Municipality

RESPONDENT

Date of Decision : 25-11-2009

Acts Referred:

Contempt of Courts Act, 1971 — Section 10, 12

Citation : (2009) 11 MAD CK 0027

Hon'ble Judges : M.M. Sundresh, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : S.V. Selvaraj, for the Appellant; R. Thirugnanam, Special Government Pleader for Respondent 1 and S. Srimathi, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—This contempt application is filed under Sections 10 and 12 of the Contempt of Courts Act, 1971 (Act No. 70 of

1971) praying to punish the respondents for disobeying the order dated 21.04.2009 passed by this Court in Writ Appeal No. 1199 of 2008.

2. The petitioner herein filed writ petition No. 13966 of 2006 seeking for issuance of writ of mandamus forbearing the respondents from interfering

with the functioning of the petitioner in the regular post of Building Inspector, as per the orders passed by the second respondent in Na. Ka. No.

1017/2006/C1 dated 22.03.2006 with all attendant and service benefits including the salary except by due process of law. That writ petition was

heard along with six other writ petitions and the learned single Judge non suited the petitioner for the relief sought for. However, on appeal, the

Division Bench of this Court passed the following order:

In such view of the matter, we are unable to subscribe to the reasons given by the learned single Judge and accordingly, these writ appeals are

allowed and the order of the learned single Judge is set aside. The respondents are directed to consider the case of the writ petitioners for

regularisation, in the light of the discussion made above and as per the terms of G.O. Ms. No. 21, Municipal Administration and Water Supply

Department dated 23.02.2006, and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this judgment

granting such benefits to them. However, the writ petitioners would be entitled to monetary and other benefits only from the date of such order,

which may be passed by the respondents.

3. Pursuant to the order, the petitioner's services have been regularised, along with the other writ appellants, by the second respondent, i.e., the

Commissioner of Nagercoil Municipality, by his proceedings in Na. Ka. No. 1017/2006/C1 dated 13.07.2009 and 27.07.2009 as Typist, Junior

Assistants, Work Inspector and Revenue Assistant as per the seniority list maintained for NMRs. The petitioner, not satisfied with such

regularisation, filed a contempt petition on the ground that she is entitled to be regularised as Building Inspector.

4. The respondent filed a counter, wherein, it is stated that the post of Building Inspector/Town Planning Inspector is to be filled up by promotion

from the Town Planning Assistant Draughtsman post as per the Tamil Nadu Municipal Town Planning Service Rules, 1970. Hence, the Town

Planning Inspector post is not an entry level post. According to her seniority, no entry level post was vacant during her appointment either in Town

Planning Services or in Engineering Service in Nagercoil Municipality. Hence, she was regularised in the vacant post of Revenue Assistant

according to her basic level educational qualification.

5. From this counter, it is clear that pursuant to the direction given by this Court by the Division Bench, with reference to the relief sought for in the

writ petition, which has culminated in the passing of the order dated 21.04.2009. The order has been passed by regularising the services of the

petitioner, but, in which post the petitioner's services were regularised is another issue to be considered by appropriate forum. In this petition filed

under Sections 10 and 12 of the Contempt of Courts Act, the Court has to satisfy whether the respondent has committed any contempt, i.e., did

the respondents disobey the order of this Court willfully and deliberately.

6. The contempt jurisdiction has to be used sparingly, is the law laid down by the apex Court. While dealing with the application for contempt, the

Court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. The Court

cannot expand or go beyond the order of the Court. The Court exercising contempt jurisdiction is primarily concerned with the question of

contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. vide Union

of India v. Subedar Devassy PV 2006 AIR SCW 342 and K.G. Derasari and Another Vs. Union of India (UOI) and Others, .

7. Yet another judgment on the subject is in the case of Jhareswar Prasad Paul and Another Vs. Tarak Nath Ganguly and Others, , in which the

apex Court observed as under:

The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law, since the respect and authority commanded by the

courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is

undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the

people in general for true and proper administration of justice in the country. The power to punish for contempt of court is a special power vested

under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It

should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court

exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the

parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court

and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is

not entitled to enter into questions which have not been dealt with and decided

in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained.

8. From the facts narrated above, we are of the view that the petitioner has not made out a case to haul up the respondents for contempt. The action of the respondents, cannot, at any stretch of imagination, be regarded as deliberate disobedience of the order of the Division Bench of this Court.

9. Mr. Selvaraj, learned Counsel for the petitioner sought for permission to move the Division Bench for clarification of its order. It is always open to the petitioner to seek for clarification of the order, if he so desires, if it is permitted in law.

10. In the result, the contempt petition is closed. No costs. The sub application is consequently closed.