

(2005) 03 KL CK 0020
In the High Court Of Kerala
Case No : Con. A.P.P. (C) No. 4 of 2005

Rajappan Nair

APPELLANT

Vs

Stephen Joseph

RESPONDENT

Date of Decision : 14-03-2005

Acts Referred:

Constitution of India, 1950 — Article 225, 5
Contempt of Courts (High Court of Kerala) Rules, 1971 — Rule 5, 6, 9
Contempt of Courts Act, 1971 — Section 11, 12, 14, 23

Citation : (2005) 2 ILR (Ker) 131 : (2005) 2 KLT 345

Hon'ble Judges : Thottathil B. Radhakrishnan, J; K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : V. Philip Mathew, for the Appellant; John Joseph, for the Respondent

Judgement

K.S. Radhakrishnan, J.—W.P.(C) No. 39412 of 2003 was preferred for enforcing the order dated 23.8.2003 passed by the Registrar of Co-operative Societies rescinding the resolution dated 18.9.2002 passed by the Board of Directors of a Society reinstating the petitioner. Second respondent had submitted before the learned Single Judge that the order of Registrar has been appealed against before the Government. Learned Single Judge disposed of the Writ Petition on 31.3.2004 by issuing the following directions:

"The second respondent will produce a copy of this judgment before the Secretary to Government Co-operative Department along with a copy of the Writ Petition within a period of one month from today. In case there is no interim order as of now against the implementation of Ext.P2, the second respondent will implement Ext.P2 by reinstating the petitioner subject to the result of the appeal."

Second respondent Co-operative Society aggrieved by the judgment of the learned Single Judge filed W.A.No. 880 of 2004 which was disposed of by this Court on 18.5.2004 stating as follows:

"Since the question of stay was not examined by the learned Single Judge and the direction was issued subject to the condition that there was no stay order operating in favour of the appellant, we are clearly of the view that it is open to the latter to approach the Appellate Authority and ask for stay of the operation of the order passed by the Registrar rescinding the resolution terminating the services of the first respondent. We therefore, dispose of this appeal with a direction to the Appellate Authority to consider the prayer for stay made by the appellant in accordance with law after hearing the parties without being influenced by any of the observations made by the learned Single Judge."

Stay petition was later heard by the Government and was rejected by order dated 24.8.2004. Since the direction of the learned Single Judge was not implemented respondent herein filed Contempt Case (Civil) No. 1542 of 2004. Contention was raised before the learned Single Judge that in view of the judgment in W.A. No. 880 of 2004 the direction given by the learned Single Judge is no more survives and the same has merged in the judgment of the Division Bench. Contention was also raised before the learned Single Judge in the contempt case that reinstatement was not effected due to lack of clarity in the direction given by the learned Single Judge. Under such circumstance the learned Single Judge passed an order in the contempt case on 1.3.2005 stating as follows:

"However, in view of the stand taken by respondents 1 and 2 in the affidavit that the reinstatement is not made due to lack of clarity regarding the direction, pending further orders in the matter, it is only in the interests of justice and for securing the ends of justice that a positive direction is issued. Therefore, there will be a direction to respondents 1 and 2 to reinstate the writ petitioner, who is also the petitioner herein, in service. The order reinstating the petitioner shall be passed within two days from today and the same shall be produced before this Court on 4.3.2005."

This appeal has been preferred aggrieved by the direction of the learned Judge. We heard counsel for the appellant Sri. V. Philip Mathew and the counsel appearing for respondents Sri. John Joseph. Counsel appearing for the appellant submitted that learned Single Judge has exceeded his jurisdiction in giving a positive direction to reinstate the first respondent. Further, counsel also submitted before issuing positive direction, second respondent was not heard and no notice was issued to him calling for his explanation. Counsel also submitted, learned Single Judge was not justified in reaching a conclusion that the Court was misled by the Society.

2. Counsel appearing for the respondent Sri John Joseph submitted that there is deliberate defiance of the orders passed by this Court. Counsel submitted, first order was as early as 31.3.2004 and though an appeal was preferred the Division Bench did not interfere with the direction of the learned Single Judge. Later they moved the Government and Government rejected the stay petition and consequently counsel submitted the learned Single Judge is justified in giving a

positive direction in the contempt case as well.

3. The High Court of Kerala in exercise of the powers under Articles 5 and 225 of the Constitution of India, Section 23 of the Contempt of Courts Act, 1971 have framed the Contempt of Courts (High Court of Kerala) Rules. Rule 5 deals with contents of the petition and Rule 6 deals with the procedure for taking cognizance. Rule 6 reads as follows:

"6. Taking cognizance:- Every proceeding for contempt shall be dealt with by a Bench of not less than two Judges:

Provided that a proceeding u/s 14 of the Act shall be dealt with by the Judge or Judges, in whose presence or hearing the offence is alleged to have been committed and in accordance with the provisions thereof;

Provided further that where civil contempt is alleged in respect of the judgment, decree, direction, order, writ or other process of a Single Judge, the matter shall be posted before that Judge who shall hold the preliminary enquiry in the matter. The Judge, if satisfied that no prima facie case has been made out, or it is not expedient to proceed with the matter, may dismiss the petition. If a prima facie case is made out and unconditional apology is not tendered by the respondent and accepted by the Court, the Judge may direct that the matter be posted before the Bench dealing with contempt matters.

Provided that where the Judge concerned is not available, the Chief Justice may direct the application be posted before some other Judge for orders."

Rule 9 deals with preliminary hearing and notice which says that every petition, reference, information or direction shall be placed for preliminary hearing before the appropriate Bench. The Court, if satisfied that a prima facie case has been made out, may direct issue of notice to the respondent, otherwise, it shall dismiss the petition or drop the proceedings. The notice shall be in Form No. 1 and shall be accompanied by a copy of the petition, reference, information or direction and annexures, if any, thereto.

4. We may indicate so far as this case is concerned the learned Single Judge need only to examine the question whether the direction already given has been complied with or not and whether the party has committed contempt. Learned Single Judge cannot give any positive direction in the contempt case but can only examine whether the order already passed has been complied with or not. This legal position is well settled by a recent decision of the Apex Court in *Prithowi Nathram v. State of Jharkhand* ((2004) 57 SCC 261) It is alleged in that case that the direction given by the learned Single Judge of Patna High Court was not complied with. While dealing with the application the learned Single Judge has passed judgment holding that it would not be proper to take any action for contempt. Learned Single Judge proceeded to examine the correctness of the order and called upon the parties to satisfy him that the direction of the kind contained in the order dated 30.3.1999 could be passed. Later learned Single

Judge gave various directions, the legality of which came up for consideration before the Apex Court. Court held as follows:

"If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the Court that passed the order or invoke jurisdiction of the Appellate Court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. While dealing with an application for contempt the Court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation or contempt proceedings. The same would be impermissible and indefensible."

Learned Single Judge in contempt case can only examine as to whether the direction already given by the learned Single Judge has been complied with or not. In a contempt case no positive direction can be given, lest it would be beyond the jurisdiction of contempt Court exercising powers under Sections 11 and 12 of the Contempt of Court Act, 1971 read with Rule 6 of the Contempt of Court (High Court of Kerala) Rules. Under such circumstance the direction given by the learned Single Judge in his order dt. 1.3.2005 is set aside. Learned Single Judge would proceed with the Contempt Case No. 1542 of 2004 in accordance with law. We make it clear that we have not expressed any opinion on the merits of the case.