

(1991) 06 CAL CK 0028
In the Calcutta High Court
Case No : F.M.A.T. No. 2646 of 1988

Ranjugopal Mukherjee and Others

APPELLANT

Vs

Ramapada Mahalder and Others

RESPONDENT

Date of Decision : 03-06-1991

Acts Referred:

Contempt of Courts Act, 1971 — Section 2

Citation : (1991) 2 CALLT 366

Hon'ble Judges : Monoj Kumar Mukherjee, J; Haridas Das, J

Bench : Division Bench

Advocate : A.P. Sarkar and R.L. Maitra, for the Appellant; R.N. Mitra and H.S. Majumder for the Respondent No. 1, S. Dasgupta, for the Respondent

Final Decision : Allowed

Judgement

Monoj Kumar Mukherjee, J.—The Secretary of the Panchayat Junior High School ("School" for short), under the Police Station of Raigunj, in the district of West Dinajpur and the guardians of five students of the School jointly filed a petition under Article 226 of the Constitution of India before a learned Judge of this Court alleging that the West Bengal Board of Secondary Education ("Board" for short) and the Director of Secondary Education, Government of West Bengal ("Director" for short) were illegally and unjustly withholding recognition of their School. By an order dated May 5, 1989, the learned Judge disposed of the said petition with the following directions :-

"The Board is directed to go into the question of granting of recognition to the petitioner's school, Panchayat Junior High School, Police Station--Raigunj, District-West Dinajpur. The Director of Secondary Education is directed to forward all the records along with the report to the Board within four weeks from date and the Board must pass the order within four weeks thereafter."

2. Alleging wilful disobedience of and non-compliance with the said order, the writ petitioners filed an application before the learned Judge for initiating a

proceeding for contempt against the President and the Secretary of the Board and the Director. On that application, a Rule Nisi, being Civil Rule No. 9404(W) of 1989 was issued and it was disposed of by the learned Judge by his judgment and order dated August 31, 1990, the operative part of which reads as follows :-

"..... .the Board is directed to grant unequivocal recognition of the School without fail within a fortnight from date. If the consequence of the grant of recognition is to give financial assistance, such financial assistance must be given without fail. The costs of this application, assessed at two hundred gold mohurs must be paid to the writ petitioners by the respondents concerned within a fortnight from the date hereof."

3. The above order is under challenge in the instant appeal, filed by the President and Secretary of the Board.

4. A cursory glance at the preamble to the Contempt of Courts Act, 1971 ("Act" for short) and the provisions thereof makes it abundantly clear that the Act has been brought in the statute book to define and limit the powers of certain Courts, including the High Courts, to punish for Contempt of Courts and it has laid down the procedure for exercise of such powers. "Contempt of Court" has been defined u/s 2(a) of the Act to mean "Civil Contempt" or "Criminal Contempt" and "Civil Contempt" has been defined u/s 2(b) of the Act to mean wilful disobedience to any judgment, decree, direction, order, Writ or other process of a Court or wilful breach of an undertaking given to a Court. If, therefore, it is alleged before the High Court that a person has wilfully violated its order, it can invoke its jurisdiction under the Act to enquire whether the allegation is true or not and if found true, it can punish the offenders for having committed "Civil Contempt" and if need be, can pass consequential orders for enforcement and execution of the order as the case may be, for violation of which, the proceeding for contempt was initiated. In other words, while exercising its powers under the Act in respect of Civil Contempt, the Court's enquiry is limited to the question whether its order has been wilfully disobeyed or not. While exercising its powers under the Act, it is therefore not open to the Court to pass an order, which will materially add to or alter the order for alleged disobedience of which its contempt jurisdiction was invoked.

5. When judged in the context of the above principles, there is no escape from the conclusion that the learned Judge went beyond his jurisdiction in passing the order under appeal. By the order disposing of the writ petition, the learned Judge had directed the Board to go into the "question of grant of recognition" and to pass an order. In compliance with the above direction, the Board might have, considering the facts and circumstances of the case and the law applicable to them refused recognition or granted conditional recognition but in view of the impugned order, the Board is bound to grant unconditional recognition. That necessarily means that the writ petitioners have, in the contempt jurisdiction got more relief than what they got in the writ jurisdiction, even though the former jurisdiction was invoked--and could be invoked--for alleged wilful disobedience of

the order passed in the latter jurisdiction.

6. On merits also, the impugned order cannot be supported. From the records, we find that after the application for initiating the proceeding for contempt was filed, the Government of West Bengal, through one of its Deputy Secretary of the Education Department, passed an order directing the Board to grant recognition to the School as a Junior High School with effect from May 1, 1990 without any financial assistance from the Government. The learned trial Judge, however, felt that the above order of the Government was highly irregular. We next get that the learned Judge's attention having been drawn to a noting made by the concerned Minister that the Government was short of funds and therefore, no funds could be allotted to the School, the learned Judge observed that it clearly, showed that the Government was not prepared to grant recognition to the School and passed the impugned order. In our considered view, on the basis of the above observations only, the learned Judge could not have asked the Board to grant unequivocal recognition and to pay costs of the contempt application. At the risk of repetition, we may point out that before the Board could be made liable for wilful disobedience of the order earlier passed, it was necessary for the learned Judge to record a finding that the Board had disobeyed the Court's order dated May 5, 1989 and that such disobedience was wilful. As we have already pointed out that there is no such finding nor has the learned Judge referred to any material justifying such a finding. On the contrary, from the materials on record, we find that the Board has fulfilled the direction given to it by the Court. It appears that after the writ petition was disposed of on May 5, 1989, the Secretary of the Board wrote two letters on May 22, 1989, one to the Director and the other to the Joint Secretary to the Government of West Bengal, Education Department (Secondary Branch) asking them to forward their report as directed by the Court to enable it (the Board) to comply with the order of the Court within the time specified. In reply thereto, the director, by his letter dated May 26, 1989 forwarded an report of inspection of the School in the year 1986 to the Board for its consideration. The report was placed in the meeting of the Recognition Committee of the Board for taking a decision in terms of the order of this Court dated May 5, 1989. The Recognition Committee after going through the inspection report, decided that in absence of the views of the State Government expressed in terms of the extant Rules, it was not possible to grant recognition to the School and adopted an unanimous decision to communicate its such views in the matter of recognition of the School. The above decision was approved by the Executive Committee of the Board in its meeting held on June 19, 1989 and the decision was communicated to the Director. According to the Board, as the views of the State Government were not received the order of the Court could not be complied with by the stipulated date. From the above facts, it cannot be said that the Board has wilfully disobeyed the order of this Court dated May 5, 1989 as it took adequate steps to decide upon the question of recognition and, as the order of this Court itself shows, the decision on the question of recognition, could be taken by the Board only on receipt of the report to be

submitted by the Director. While on this point, we cannot lose sight of the fact that the financial liability to run the School on such recognition has to be undertaken by the Government.

7. On the conclusion as above, we allow this appeal and set aside the impugned order. Since, however, the School has been granted conditional recognition after filing of the contempt application, such recognition should not be disturbed.

There will be no order as to costs.

Haridas Das, J.

8. I agree.