

(2009) 05 BOM CK 0009

In the Bombay High Court

Case No : Contempt Petition (Main) No. 7 of 2009

Sanyogita Kashinath Shetye and Anr

APPELLANT

Vs

H.D. Mashelkar

RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Citation : (2009) 05 BOM CK 0009

Hon'ble Judges : R.S. Dalvi, J

Bench : Single Bench

Advocate : Ryan Menezes, for the Appellant; S.R. Rivonkar, Government Advocate, for the Respondent

Judgement

Smt. R.S. Dalvi, J.—Rule, returnable forthwith. Heard by consent. 1. The contempt that is alleged in this petition is that the respondent who was the Additional Director of Panchayats required to pass orders in appeal under the Panchayat Raj Act and who dismissed the appeal of the petitioners, was in contempt for not having obeyed the directions passed by this Court with regard to passing of orders under the order dated 24.08.2006 in writ petition No.281/2006. Under that order the High Court laid down guidelines for all subordinate Courts as well as quasi-judicial authorities exercising functions under the Special and Local Acts. The guidelines inter alia lay down that the judgment should be pronounced within specified period of 90 days from conclusion of arguments, how and when it should be communicated to the parties and how the order should be reserved etc. The authorities are required to pronounce the judgment in open Court after notifying the parties of the date of the order. In fact that is much in consonance with the CPC and the practice followed by the High Court also. It is contended that the arguments were heard last on 8.7.2008 in this case. Hence by 8.10.2008 the order in appeal should have been pronounced. It was not pronounced until February 2009. It is the case of the petitioners that on enquiry with the office of the respondent it was told that the order was not ready. The last such enquiry was made on 16.2.2009 when he moved the

application for taking up matter on regular board for rehearing the arguments and to dispose of the appeal. It is their case that the application was received by the office of the respondent on 16.2.2009. They have produced the rubber stamp of Directorate of Panchayats showing the receipt of that date.

2. What is contended is that the order has been passed on 6.2.2009 instead and hence, the petitioners contend that that has been antedated.

3. The respondent has refuted that allegation. It is the respondent's case that the order was passed on 6.2.2009. The petitioners' appeal was dismissed. The operative part of the order was served upon the petitioners. The respondent's office sought to serve it by sending the order under the Outward Register form under Item No.516 on 6.2.2009. The parties have been issued the notice/ order which has been received by the Block Development Officer on 17.2.2009. It has been received by the petitioner on 19.2.2009 after having been posted on 18.2.2009.

4. It is the case of the respondent that the fact of the passing of the order on 6.2.2009 was informed to the petitioners (the appellants therein) on 16.2.2009 when they sought to make the application for rehearing the matter. The respondent has produced original application received by the respondent signed by the petitioners herein. The application is dated 13.2.2009 which is signed on 13.2.2009 on page 3. Page No.1 bears a handwritten order on the foot of the page thus:

Since the order has already been passed on 6.2.2009, the application received be filed." It is signed by the respondent on 13.2.2009. The respondent states that after the petitioners met him on 13.2.2009 with the application for rehearing the arguments the above order was passed. The respondent sought to tender the order in his office on 16.2.2009 and obtained endorsement, but since the application was already tendered to the respondent himself and the order was passed thereon it was not entered in the inward register.

5. Upon this case it became necessary to check and verify the documents, specially Inward and Outward Register maintained by the respondent's office. The respondent has produced the Outward Register containing inter alia entry No.516 dated 6.2.2009. It shows Panchayat Appeal No.12/2008 being served upon five persons including the petitioners. The summary of its contents shows that it is a notice/ order. I have gone through several pages of the register before and after entry No.516. I find that it is maintained in the normal course of the conduct of the respondent's office. Entry No.516 is not an interpolated entry. Entry No.516 is not at the head or foot of the page. Entry No.516 takes up a good portion of about 7 lines of the register. Entry No.516 is dated 6.2.2009 having entry No.515 on the same page bearing the same date and showing the esoteric mark below the date. The same practice is followed on the several pages as well. The fact that the order has been passed on 6.2.2009 is, therefore, unmistakably clear.

6. The respondent's Advocate rightly reasoned that if the respondent had to antedate that entry he would have antedated it to show it before 8.10.2008 to bring it within the directions and guidelines issued by the High Court for passing such orders.

7. The order is certainly delayed. The respondent admits that fact. It has to be seen whether a single delay by the officer must bring the act of the officer done in the usual course of his office within the purview of the contempt jurisdiction to require punitive action to be taken against him. It is known fact that all Judicial as well as Quasi- Judicial Officers have more than their share of work. It is also a known fact that various vacancies are not filled up as soon as they are required to be filled up. The Judicial or Quasi-Judicial officers may pass the orders well within time, but due to pendency of files they are unable to cope up with their work. Judicial as well as Quasi Judicial officers have to work under tremendous constraint. They may or may not able to stand up to the said directions passed by the High Court. The directions have certainly to be complied. The spirit of the compliance is required to be seen. What must be seen is whether there is persistent default or willful neglect of the directions passed by this Court.

8. The directions with regard to passing of orders within time limit fixed by the High Court also contain directions with regard to the liability of the Judicial and Quasi-Judicial Officers for disciplinary action. The disciplinary action would have to be taken by the High Court or the State Government as required. That disciplinary action is for persistent failure to comply with the directions passed in the order dated 24th August, 2006.

9. The petitioners must, therefore, show that the modus operandi of the respondent is to delay or to pass the orders as alleged by him. The petitioners must, therefore, show several instances of such persistent failure of the respondent. The petitioners have not shown any of those.

10. It is also contended that the orders are required to be pronounced in open Court after notifying the parties of the date of the order. That aspect actually goes without saying as it is a part of the Civil Procedure Code. If the orders of Judicial as well as Quasi- Judicial authorities are not passed as enjoined under that procedure, it would certainly be a lapse on the part of that officer. The respondent has not passed orders strictly in terms of the directions passed which are in keeping with the procedure laid down in procedure code. It has to be seen whether such passing of orders would tantamount to contempt such as would show a willful default on the part of the respondent.

11. The willful intention of the respondent is not shown. The respondent has produced an Outward Register containing the notice/order which has gone through his office. I have gone through the Outward Register. I have found number of similar orders served upon the Block Development Officer and other private parties under entry Nos. 242, 273 to 276, 277, 327, 353, 394, 434, 476, 488, 522, 533, 544 etc. I have not gone through the entire register. This would

show despatch of orders of several Judicial Officers. I am told that they are four Judicial Officers in this office. They passed orders against the directions No.9 in the aforesaid order. Upon taking instructions from the respondent, the respondent's Advocate states that the respondent pronounces the order in the Court and when the parties are not present, he then, sends the order through Block Development Officer to the parties under such entries. He states that the rojnamas of the matters before the respondent, would show the date fixed for pronouncement of the order. In this case no such date is shown. Hence, the petitioners have made grievance that rule is not complied.

12. If the orders are kept for pronouncement and are pronounced and then are communicated to the parties, if they have remained absent, there would be more than sufficient compliance of the directions passed in the aforesaid order on this aspect.

13. The respondent, who is present in the Court states that he has never communicated the order passed by him to the parties without pronouncement of the judgment in open Court as reflected in the Outward Register. He states that since four such officers are there other entries relate to the other officers.

14. It would have to be seen whether the admitted act of the respondent in not keeping the order for pronouncement and communicating the order to the parties through Block Development Officer would tantamount to such contempt of Court as would require punitive action to be taken against him. The petitioners have shown only one such case. The respondent states to Court that this is the only such case that remained with him on file for pronouncement of order.

15. The Court must consider not only the discipline to be maintained by adherence to rules and directions by all authorities but with an understanding and humane approach to the discipline. The statement of the respondent that this is the only case of lapse on his part, the petitioners not having shown otherwise, must be accepted in the facts of this case. Upon showing that the order was passed on 6.2.2009 and was also sought to be communicated to the parties on that date itself and upon showing the act of the petitioners in trying to overreach the office of the respondent by tendering an order to his office on 16.2.2009 and obtaining rubber stamp of the office which is without corresponding outward entry, a punitive action is not required to be taken. Hence, there shall be no order on the contempt petition. The contempt petition is disposed of accordingly. The register produced by the respondent as well as original application showing his order on the foot on page 1 dated 13.2.2009 are returned to the respondent's Advocate. The petitioners' Advocate is returned the original endorsement contained on the application dated 13.2.2009 in the rubber stamp of the respondent's office signed on 16.2.2009 along with the contempt petition also bearing the same rubber stamp dated 26.2.2009 of the respondent's office.