

(2010) 10 BOM CK 0002
In the Bombay High Court
Case No : Contempt Petition No. 28 Of 2010

Shri Kashinath Shetye and Others

APPELLANT

Vs

Shri Nirmal Braganza, Chief Electrical Engineer and Shri
Umeshchandra Joshi Under Secretary Personnel I

RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Citation : (2010) 10 BOM CK 0002

Hon'ble Judges : A. P. Lavande, J

Bench : Single Bench

Advocate : Nigel D''Costa Frias, for the Appellant; S. S. Kantak, Advocate General and Mr. P. Talaulikar, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A. P. Lavande, J.—Heard petitioner no.1 and Mr. S. S. Kantak, learned Advocate General for the respondents in Contempt Petition no.28/2010 and Mr. Nigel D''costa Frias, learned Counsel for the petitioner and Mr. S. S. Kantak, learned Advocate General in Contempt Petition No.33/2010. Both these contempt petitions are taken up together since the facts involved in both the petitions are almost identical.

2. In Contempt Petition no.28/2010, the case of the petitioners is that the respondents have committed contempt of this Court by reappointing Shri R. A. Ghali on contract basis as an Electrical Inspector by order dated 14th July, 2010 and by reappointing Shri P. V. Kadnekar, Retired Joint Secretary (Law) as a Special Secretary (Law) on contract basis from the date he assumes charge till 31st December, 2011.

3. According to the petitioners, by order dated 1st December, 2009 passed in Miscellaneous Civil Application no.724/2009 in W.P. No.438 of 2009-the application filed by the Under Secretary (Personal) for extension, was granted for

a period of 5 months in respect of Shri R. A. Ghali as an Electrical Inspector. According to the petitioners, by order dated 14th July, 2010, the State Government has reappointed Mr. R. A. Ghali on contract basis as an Electrical Inspector and thereby committed contempt of this Court by violating order dated 1st December, 2009.

4. In Contempt Petition no.33/2010, the case of the petitioners is that Shri R. A. Ghali has been reappointed as an Electrical Inspector by order dated 14th July, 2010 till 24th August, 2010 and thereafter, he is again reappointed by the order dated 24th August, 2010 and thereby the respondents have committed contempt of this Court by acting in violation of the said order dated 1st December, 2009.

5. Petitioner no.1 in Contempt Petition no.28/2010 submitted that by making appointments contrary to the interim order dated 1st December, 2009 passed in Miscellaneous Civil Application no.724/2009 in W.P. No.438 of 2009, the respondents in the said contempt petition, have committed contempt of this Court. Petitioner no.1 further submitted that the learned Advocate General is not entitled to appear for contemnors. In support of his submissions, he relied upon the judgments in the case of Rohtas Singh Vs. Commissioner, Agra Division and others; AIR 1997 All 278 and Yumnam Dimbajit Singh Vs. D.S. Poonia and Another, (Gauhati High Court).

6. Mr. D"Costa Frias, learned Counsel appearing for the petitioners in Contempt Petition no.33/2010 also submitted that the respondent has violated the order dated 1st December, 2009 and thereby committed contempt of this Court. Mr. D"Costa Frias further urged that even if the interim order is vacated or relief in the main proceedings is granted, the party cannot disobey the interim order passed by the Court. In support of his submissions, he relied upon the judgment in the case of Prithawi Nath Ram Vs. State of Jharkhand and Others, .

7. Per contra, Mr. S. S. Kantak, learned Advocate General submitted that W.P. No.438/2009 has been finally disposed of by the judgment and order dated 14th June, 2010 specifically upholding the power of the Government to make contractual appointments as well as to extend the services of persons, who are superannuated from service of the State Government. In the said judgment, this Court has held that this power is inherent, but circumscribed and limited by the policy of the State Government as contained in the Office Memorandas dated 12th July, 2001, 4th April, 2007 and 15th January, 2008 and 17th August, 2009. Learned Advocate General further submitted that in view of the final disposal of the petition, the interim orders passed by the Division Bench has been merged in the final order and as such, by no stretch of imagination, it can be said that the respondents in both the petitions, have committed contempt of this Court by violating the order dated 1st December, 2009, which was only the interim order by which the State Government was permitted to extend the appointment of Mr. R. A. Ghali as an Electrical Inspector for a period of 5 months, which expired on 30th April, 2010. Mr. Kantak further submitted that after final disposal of the petition, the State Government was entitled to appoint Mr. R. A. Ghali as an

Electrical Inspector on contract basis in terms of the judgment passed in W.P. No.438/2009 dated 14th June, 2010 and as such, by issuing orders dated 14th July, 2010 and 24th August, 2010, the respondents have not committed any contempt. He further submitted that the judgment of Rohtas Singh (supra) has been expressly overruled by the Apex Court in the Case of Commissioner, Agra and Others Vs. Rohtas Singh and Others, . In support of his submissions, he relied upon the following judgments :

(i) Commissioner, Agra and Others Vs. Rohtas Singh and Others, .

(ii) Amarjeet Singh and Others Vs. Devi Ratan and Others, .

Mr. Kantak, learned Advocate General submitted that in so far as Mr. P. V. Kadnekar is concerned, the State Government by order dated 23rd September, 2010 has withdrawn the order dated 6th July, 2010 reappointing him as Special Secretary (Law) and has placed a copy of the said order on record.

8. Having considered the rival submissions and having perused the record, I am of considered opinion that no case has been made out for initiation of contempt proceeding against the respondents in both the petitions. Admittedly, W.P. No.438/2009 was disposed of on 14th June, 2010. Having regard to the nature of the relief granted in Miscellaneous Civil Application no.724/2009 in W.P. No.438 of 2009 by the order dated 1st December, 2009 is concerned, I am of the considered opinion that after the disposal of the main writ petition, the interim order would not survive. In any case, it is not the case of the petitioner that any appointment was made before the disposal of the W.P. No.438/2009 on 14th June, 2010. The orders passed by the State Government for which contempt proceedings have been initiated against the respondents, have been passed in July and August, 2010. This being the position, I am unable to accept the submission made on behalf of the petitioners in both the petitions that the respondents are guilty of contempt of this Court. Having regard to the nature of the relief granted in Miscellaneous Civil Application no.724/2009 in W.P. No.438 of 2009 by the order dated 1st December, 2009, the said order stood merged in the judgment dated 14th June, 2010 in terms of which Writ Petition no.438/2009 was disposed of. The learned Advocate General is right in placing reliance upon the judgment of the Apex Court in the case of Amarjeet Singh (supra), in which it has been held that after passing of the final order, the interim order merges with the final order. In so far as the judgment in the Prithawi Nath Ram (supra) relied upon by Mr. D''Costa Frias is concerned, the same does not advance the case of the petitioners. In the said case, the Apex Court held that even if the interim order is vacated subsequently, the other party cannot disobey the interim order passed by the Court. This has to be construed as the party against whom the interim order is passed after the final disposal of the matter cannot contend that interim order passed was either not binding on him or such directions given in the said order could not have been given. The ratio of the said judgment is not applicable in the present case having regard to the factual background in the present case. In so far as the judgment in the case of Yumnal D. Singh (supra)

relied upon by the petitioners in Contempt Petition no.28/2010 is concerned, the same also does not advance the case of the petitioners, the facts being entirely different. In so far as appearance by the learned Advocate General on behalf of the contemnors is concerned, in view of the judgment of the Apex Court in the case of Rohtas Singh (supra) I find that the objection has absolutely no merit. In view of the above, I do not find any merit in both the contempt petitions and hence, both the contempt petitions are dismissed.