

(2008) 06 GUJ CK 0029

In the Gujarat High Court

Case No : Misc. Civil Application (Contempt Petition) No. 2011 of 1992

Sitasinh Babbansinh and Others

APPELLANT

Vs

Virendra Bahudar Bhadriprasad and Others

RESPONDENT

Date of Decision : 19-06-2008

Acts Referred:

Citation : (2008) 06 GUJ CK 0029

Hon'ble Judges : Jayant M. Patel, J

Bench : Division Bench

Advocate : P.K. Shukla, 1 - 5, for the Appellant; Mehul S. Shah, for Opponent 1, Suresh M. Shah, for Opponent 1 and S.N. Shelat, for Opponent 2, for the Respondent

Judgement

Jayant Patel, J.—The present petition is preferred for non-compliance to the Judgment of the Gujarat Primary Education Tribunal (as per Annexure-A), whereby, together with the other application, by common judgement, the Tribunal directed for reinstatement of the petitioners with full backwages.

2. We have heard Mr. Shukla for the petitioners and Mr. Shah for the respondent No. 1.

3. As such, it is well settled proposition of law that in normal circumstances, if order which is the basis for initiation for contempt proceeding is executable, the party complaining the breach thereof should resort to the proceedings for execution of such order. The reference may be made to the decision of the Apex Court in the case of Anil K. Surana and Anr. v. State Bank of Hyderabad reported in 2003 (10) SC 580 and more particularly the observations at Para 7 of the said decision.

4. Even in the present case, the basis is that the Judgement and Order of the Tribunal is not complied with.

5. It is true that at the time when the petition came to be admitted in the year

1992, it was a gray area as to whether the Tribunal itself could exercise the power for executing its own order or not. However thereafter, the Division Bench of this Court (Coram's considered the matter. Sony & R.R. Jain, J.J.) in the case of Girischandra R. Bhatt v. Dineshbhai N. Sanghvi and Ors. reported at 1996(1) GLH 523 and ultimately, the view taken by the Division Bench of this Court is that the Tribunal has inherent power to execute its own order. Therefore, the order, which is the basis of the present contempt proceedings, can be executed by resorting to appropriate proceedings, by the petitioners before the Tribunal and hence, we are of the view that it would not be a case for exercise of the power under the Contempt of Courts Act at this stage.

6. The aforesaid is coupled with the circumstance that the petitioners as such, have not approached before the Tribunal for execution of the order which is the basis of the present application, may be on account of the law prevailing then at the time when the present Contempt Petition was filed. But as observed earlier, in view of the above referred decision of this Court in the case of Girischandra R. Bhatt (Supra), the petitioners are in a position to get the order of the Tribunal executed through its own machinery. If the petitioners are so advised, the petitioners may resort to such proceedings before the Tribunal for execution of the order.

7. Mr. Shukla, learned Counsel appearing for the petitioners voiced the grievance that the present matter came to be filed in the year 1992 and if the petitioners prefer an application before the Tribunal for execution of the Award, the delay may operate against the petitioners or that the Tribunal may not exercise power on account of the delay and therefore, he submitted that this Court may take the action for contempt.

8. Considering the facts and circumstances, as the matter remained pending before this Court from 1992 till today, the petitioners will have the justifiable cause for explaining the delay, if any objection is raised on such ground and in any event, the Tribunal will be required to consider the matter on its merit for the purpose of execution of its Award subject to other contentions on merits of the respondents therein.

9. In view of the above, subject to the aforesaid observations, the proceedings under the contempt are dropped at this stage giving liberty to the petitioners to move the Tribunal for execution of that very order, in accordance with law.

10. Petition disposed of accordingly. Rule discharged.