

(1977) 08 GUJ CK 0022
In the Gujarat High Court

S.R. Patel and Others

APPELLANT

Vs

Manager, Sharda Vidyalaya and Others

RESPONDENT

Date of Decision : 24-08-1977

Acts Referred:

Contempt of Courts Act, 1971 — Section 2(b)

Citation : (1978) 19 GLR 751

Hon'ble Judges : J.B. Mehta, Acting C.J.; P.D. Desai, J

Bench : Division Bench

Judgement

J.B. Mehta, Ag. C.J.

1. The petitioners, members of the teaching and non-teaching staff of Sharda Vidyalaya, Bhat village Daskroi Taluka, Ahmedabad District, which

is a private registered Secondary School, have filed this contempt petition against the Manager of the school, joined as Respondents Nos. 1 and 2,

Chandubhai P. Amin, who is also the Managing Trustee of the trust in question and against the District Education Officer, who is joined as

Respondent No. 3.

2. The case of the petitioners is that they had not been paid their salary and that is why they had approached, by an application under the Gujarat

Secondary Education Act, 1972 to the Education Tribunal. The Tribunal has disposed of this matter by the final order dated October 15, 1976.

The Managing Trustee, Chandubhai P Amin, appeared in that matter. His plea was that he had not received the grant from the Government. He

assured the Tribunal to take adequate steps to pay the arrears of salary of all these persons. The Tribunal held that it was not proper on the part of

the management not to take any steps for the payment of the salary of these

employees including the teachers on the ground that administration of the school was to be handed over to the village people. There was even no evidence on record to show that the school was to be handed over to the village people. As the management had flouted its obligation to pay salary to all these employees including the teachers concerned, the Tribunal had passed the following order:

The application succeeds. It is declared that Shri S.R. Patel, Shri Haribhai Patel and Shri Valand are entitled to receive their salary from March, 1976 till to-date. Shri P.B. Patel, Shri P.K. Chauhan and Shri V.R. Patel should be paid their salary from July, 1976 and Shri R.G. Darji should be paid his salary from the date of his appointment till 14-6-1976 as a clerk and thereafter as a peon. The management is directed to pay their arrears of salary forthwith. The D.E.O. is requested to see that the management paid their salary. He is also requested to see that Government paid the instalment of the grant which the school may be entitled to receive so that the arrears of salary may be paid to the employees at an early date.

3. It is the case of the petitioners that after the said award of the Tribunal, the petitioners applied to the President, Bhavan Education Trust, which was the trust running the respondent school, for making payment of the salary as directed by the Tribunal. A similar application was made by the petitioners to the District Education Officer on the same day as per Annexure ""B"" on November 16, 1976. A letter was also addressed to the Managing Trustee, Chandubhai P. Amin, on November 12, 1976 as per Annexure ""C"" with a request to make the payment. As no payment whatever was made and the award of the Tribunal had been flouted, the present contempt application was filed by these petitioners. The Rule in this matter was issued on March 24, 1977.

4. The respondents Nos. 1 and 2, the Manager who is also the Managing Trustee, Chandubhai P. Amin, has not appeared. The learned Government Pleader appears for the District Education Officer and he has stated that so far as he is concerned, the payment of the salary of these petitioners to the tune of Rs. 12,320/- towards the salary of Shri S.R. Patel, Shri Haribhai Patel and Shri Valand which had been due from March 1976 and which amounted to Rs. 16,519-10 ps. had been paid from the first instalment of the Government grant. The learned Government

Pleader also made a statement that from the subsequent instalment, they would first pay the other employees when that instalment becomes due.

5. At the outset, before securing the presence of the alleged contemner, the Manager and Managing Trustee, respondent No. 2, Chandubhai P.

Amin, as a question has arisen even in other matters and has been pending before us in Miscellaneous Civil Application No. 340 of 1977, we

would dispose of that question as to whether the contempt of the Education Tribunal functioning under the Secondary Education Act would be

punishable within our contempt jurisdiction under the Contempt of Courts Act, 1971. u/s 2(b), "civil contempt" means 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. Section enacts-

10. Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in

respect of contempts of Courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where

such contempt is an offence punishable under the Indian Penal Code.

Therefore, if the order of such an Education Tribunal has been wilfully disobeyed, it would amount to a civil contempt within the meaning of Section

2(b) and this High Court would have jurisdiction to deal with such a contempt u/s 10 provided two essentials are satisfied that the said Tribunal

fulfils the definition of a "Court" and secondly, it is found to be subordinate to this High Court.

6. The entire scheme of this legislation has been interpreted by this Court in *Satsangi Shishuvihar Kelaroni Trust v. P.N. Patel*. The relevant

provision in Section 38(1) provides that (1911) 18 G.L.R. 615 that where there is any dispute or difference between the manager of a registered

private school and any person in service of such school as headmaster, a teacher or a member of non-teaching staff, which was connected with the

conditions of service of such person, the manager, or, as the case may be, the person concerned may make an application to the Tribunal for the

decision of the dispute. It was pointed out at page 620 that both the original and the appellate jurisdiction had been conferred on the Tribunal and

even pending disputes were to stand transferred to the Tribunal. The Tribunal was an independent Tribunal constituted u/s 39(1), of a person with high judicial status and experience as was provided in Section 39(3). The Tribunal was empowered to entertain and decide original disputes u/s 33(1), the disputes transferred u/s 38(2) or u/s 40(2), which were suits and proceedings pending in a civil Court on the appointed day which were also to stand transferred and to be continued before the Tribunal, and it could also entertain and decide appeals in the matter of approval of action taken u/s 35(1) by virtue of Section 36(5). It was pointed out that the Tribunal was for this purpose invested with powers of a civil Court when trying a suit u/s 39(6) by enforcing attendance of any person and examining him on oath; compelling the production of documents and material objects; issuing commissions for the examination of witnesses and as regards other prescribed matters. The general order which had been issued u/s 39(5) known as Gujarat Secondary Education Tribunal (Procedure) Order, 1974, by the State Government was in terms referred to in which under paragraph 13 the Tribunal was to follow, as far as such procedure was applicable, the procedure in the CPC in respect of matters not provided for in that order. u/s 38(7), the Tribunal was deemed to be Court for condoning delay for the purpose of Section 5 of the Limitation Act, 1-963. It was further held that the whole scheme was to provide a complete and exhaustive Code of service conditions and security of tenure not only providing statutory regulations enacted by the Board which were to prevail u/s 37, as any inconsistent contract was to that extent made null and void, but the procedure for resolving a dispute between the manager of this registered private secondary school and any person in service of such school as a headmaster, teacher or a member of a non-teaching staff had been laid down and the decision of the Tribunal was made final u/s 39(8), and no suit could lie in any Civil Court in respect of matters decided by it. Section 40 specifically barred the jurisdiction of Civil Courts to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Tribunal, and pending suits and proceedings were to be transferred to and continued before the Tribunal.

7. The entire historical perspective was examined and it was pointed out that to remedy the situation prevailing under the Grants-in Aid Code

which could only regulate the teachers' conditions by way of administrative instructions, the Legislature had intervened for improving the plight of

this weaker section of the ill-paid teachers by enacting this statutory Code with the assent of the President, which laid down these statutory

conditions with these fetters on the management's contractual right of hire and fire so that the teachers would have a security of tenure and would

be able to enforce their special rights created by these statutory conditions in this newly created forum of the Tribunal which granted them this

exclusive, cheap and efficacious remedy and to that extent the Civil Court's jurisdiction had been taken away by enacting this completely

exhaustive Code. Even at page 630, it was pointed out that this new cheap and effective remedy was in suppression of the jurisdiction of the Civil

Courts for giving relief to this poorly paid weak section of the teachers when guaranteeing them tenure of service and that is why the Tribunal had

been given such wide jurisdiction to take evidence and come to its own conclusion on merits of the dispute, exercising all powers of the Civil Court

u/s 39(6) as supplemented by the other procedural provisions of Code of Civil Procedure. It was pointed out how the Legislature had advisedly

invested the Tribunal with a very wide jurisdiction to do complete justice in the matter by enabling the teacher to have recourse to this efficacious,

adequate, cheap remedy in suppression of the ordinary Courts so that they would have a proper security of tenure and arbitrary right of firing a

teacher by the management would be effectively checked from being abused so as to subserve the larger public interest. The Tribunal could,

therefore, give just directions even for back wages at the time of reinstatement keeping in mind the facts and circumstances of each case so that

real and complete justice is done bearing in mind the guidelines pointed out therein so that the wide power was exercised in public interest to

guarantee security of tenure to the weak, hard-hit teachers while granting this cheap efficacious relief u/s 38 and 39.

8. In view of the aforesaid scheme such an Education Tribunal would be clearly satisfying the settled tests of a Court as laid down by Their

Lordships in *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, . There the question had arisen before Their

Lordships whether the Assistant Registrar discharging functions of Registrar under the Bihar and Orissa Co-operative Societies Act was a Court

so that contempt jurisdiction could be exercised. Their Lordships pointed out at page 1499 that a Registrar exercising powers u/s 48 of the Act

which provided the machinery for domestic adjudication of these disputes was discharging the duties which would otherwise have fallen on the

ordinary civil and revenue Courts of the land. The Registrar had not merely the trappings of a Court but in many respects he was given the same

powers as were given to ordinary Civil Courts of the land by the CPC including the power to summon and examine witnesses on oath, the power

to order inspection of documents, to hear the parties after framing issues, to review his own order and even exercise the inherent jurisdiction of

Courts mentioned in Section 151 of the Code of Civil Procedure. In adjudicating upon a dispute referred u/s 48 of the Act, the Registrar was to all

intents and purposes, a Court discharging the same functions and duties in the same manner as a Court of law was expected to do. The settled

principles were followed where it had been held that in order to constitute a Court in the strict sense of the term, an essential condition was that the

Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which had

finality and authoritativeness which were the essential tests of a judicial pronouncement. Here the Registrar was to all intents and purposes, a

Court, and therefore, it was held that such a Registrar deciding a co-operative reference u/s 48 was a Court. At page 1500 it was pointed out that

a true judicial decision presupposes an existing dispute between two or more parties, and then involved four requisites: (1) The presentation (not

necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by

means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence;

(3) if the dispute between them is a question of law, the submission of legal arguments by the parties; and (4) a decision which disposes of the

whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling

upon any disputed question of law. All these requisites were found present in that case because the Assistant Registrar had almost all the powers

which an ordinary Civil Court possessed and after considering the evidence he had to come to a conclusion on the evidence adduced and the

arguments advanced. Parties could be represented even by legal practitioners. The result was the same as if a decree was pronounced by a Court

of law. The adjudication was not based upon a private reference but it was his decision arrived at not in a summary manner, but with all the

paraphernalia of a Court and the powers of an ordinary civil Court of the land.

9. At page 1504, Their Lordships had concluded even the question of subordination of Courts to the High Court. Their Lordships pointed out that

so far as Article 227 was concerned; it was of a wider ambit and it did not limit the jurisdiction of the High Court to the hierarchy of Courts

functioning directly under it-under the CPC and Code of Criminal Procedure but it gave the High Court power to correct errors of various kinds of

all Courts and Tribunals in appropriate cases. Their Lordships in terms held that the subordination for the purpose of Section 3 of the Contempt of

Courts Act, 1952, also meant judicial subordination and not subordination under the hierarchy of Courts under the CPC or the Code of Criminal

Procedure.

10. If the same tests are to be adopted, the Education Tribunal has not only merely trappings of a Court but for all intents and purposes it is a

Court invested with all the powers of a Court and it has to decide these disputes by finally pronouncing a judgment after taking evidence if adduced

and hearing the arguments advanced and disposing of the dispute as per the law and following the correct settled legal principles. We have already

pointed out that because of Section 40, the Education Tribunal really functions in suppression of the ordinary Civil Courts of the land and therefore,

so far as an Education Tribunal is concerned, there could never be any doubt as to its being a Court in view of the aforesaid settled legal position.

11. Even the other question gets concluded because the subordination contemplated under the corresponding Section 3 of the earlier Contempt of

Courts Act was in terms held to mean judicial subordination and not subordination under the hierarchy of Courts under the CPC or the Code of

Criminal Procedure. Therefore, even though the Education Tribunal may not have any hierarchial subordination, so long as its decisions are capable

of correction by the exercise of judicial supervision under the Constitutional mandate of Article 226, there would be clearly judicial subordination as

envisaged in the aforesaid decision. It would be the saying that a writ of

certiorari could always be issued in exercise of supervisory jurisdiction for correcting errors of jurisdiction committed by inferior Courts or Tribunals though that jurisdiction is different from the appellate jurisdiction. *Sawarn Singh and Another Vs. State of Punjab and Others*, What was pointed out in the context of Article 227 would still be applicable even under the new package deal of amendments in the Forty second Constitutional Amendment so far as Article 226 is concerned because the decisions of the Education Tribunal could still be corrected in the supervisory writ jurisdiction exercised by this Court within the limits of Article 226. Therefore, both the tests that an Education Tribunal is a Court and a Court subordinate for the purpose of exercising this contempt jurisdiction are clearly fulfilled and the petition would be clearly maintainable.

11.1 Once this petition is held maintainable, we will have to go into the question as to whether the contempt has been committed by the respondents, As the respondents No. 2, Chandubhai P. Amin, has even after service of the Rule not remained present and has filed no return, before going into this question we would first secure his presence so that he could be properly heard before-we finally conclude this question. We would, therefore, adjourn the matter to August 26,1977 and a bailable warrant shall issue in the sum of Rs. 500/- requiring that respondent No. 2, Chandubhai P. Amin, shall remain present before this Court on that day at 11 o'clock. Petition is adjourned to August 26, 1977.