
(2005) 03 BOM CK 0150

In the Bombay High Court

Case No : Contempt Petition No. 21 of 2004 in Writ Petition No. 298 of 2002

Sunil Suratkhar and Others

APPELLANT

Vs

N.B. Pasalkar and Others

RESPONDENT

Date of Decision : 09-03-2005

Acts Referred:

Constitution of India, 1950 — Article 141, 215, 226
Contempt of Courts Act, 1971 — Section 12

Citation : (2005) 3 ALLMR 697 : (2005) 5 BomCR 797 : (2005) 3 MhLj 25

Hon'ble Judges : K.J. Rohee, J

Bench : Single Bench

Advocate : P.B. Patil and A.D. Dangore, for the Appellant; N.S. Khubalkar, Assistant Government Pleader for respondent Nos. 1 and 2 and A.M. Gordey, for the Respondent

Final Decision : Dismissed

Judgement

K.J. Rohee, J.—Heard the learned counsel for the petitioners, the learned Assistant Government Pleader for respondent Nos. 1 and 2 and the learned counsel for respondent Nos. 3 and 4.

2. This is a petition under Article 215 of the Constitution of India read with Section 12 of the Contempt of Courts Act.

3. Respondent No. 3 is the President of Janta Shikshan Prasarak Mandal, Pusad which runs private unaided Polytechnic College at Pusad. Respondent No. 4 is the in-charge Principal of the said College. Petitioner Nos. 1 to 4 are the members of teaching staff whereas petitioner Nos. 5 to 16 are the members of non-teaching staff of the said College.

4. On 29-9-1995 the Director of Technical Education, Maharashtra State, Mumbai issued a Circular to all the Principals, Presidents, Secretaries of unaided educational institutes informing them that they were bound to pay salary, allowances and other facilities to the teaching and non-teaching staff as per the

rules prescribed by the Government from time to time. It was also a condition while granting permission to run the institutes. The Director called upon them to implement those rules and warned them that in case the rules are not implemented, necessary action would be taken against them.

5. For implementation of the said Circular, the Teachers Association for Non-Aided Polytechnics had instituted Writ Petition No. 364 of 1999 before Aurangabad Bench of this Court, The Division Bench comprising of B.H. Marlapalle and N.V. Dabholkar, JJ. decided the said writ petition by order dated 3-7-2001. The Division Bench allowed the said petition and directed the management (respondent Nos. 1 and 2 therein) to implement the said Circular. The said judgment was followed by the Division Bench of this Court at Bombay comprising of A. P. Shah and Smt. Ranjana Desai, JJ. in Writ Petition No. 3793 of 2002 by its order dated 27-9-2002.

6. The present petitioners filed Writ Petition No. 298 of 2002 against the management which was decided by the Division Bench of this Court comprising of R. J. Kochar and S. T. Kharche, JJ by order dated 9-7-2003. The grievance of the petitioners is that despite order dated 9-7-2003 the management failed to implement the said Circular dated 29-9-1995.

7. According to the petitioners the management made 5th Pay Commission applicable to the teaching staff from 1-1-2004 instead of 1-1-1996 and to the non-teaching staff from 1-9-2004 instead of 1-1-1996. The petitioners further alleged that the Dearness Allowance at the rate of 55% should have been granted to them, whereas it is being given at 5% only. Their further grievance is that the arrears of salary as per the 4th Pay Commission as well as 5th Pay Commission is not paid to them by the management. Thus the management is guilty of contempt of court.

8. According to the respondents they are trying to implement the Circular but for stringent financial crisis they are unable to implement it in its entirety. Thus, according to the management, there is no wilful disobedience of the order of this court by them and that they have not committed contempt of court.

9. In support of this defence, Mr. A. M. Gordey, the learned counsel for respondent Nos. 3 and 4, submitted that in fact the order dated 9-7-2003 passed in Writ Petition No. 298 of 2002 is merely declaratory in nature and there is no command to the management to implement the Circular dated 29-9-1995. He submitted that an order which is in the nature of declaratory decree is not executable. It may give certain right to the petitioners, but it requires further adjudication and as such it cannot be said that the respondents have committed wilful disobedience of the command of this Court.

10. In support of this submission the learned counsel for the respondents relied on the following cases :

i) In Rajesh Kumar Shukla Vs. S.S. Dubey and Others, , (Allahabad High Court -

DB), it is held that:

"When the order merely stated the position of law and did not issue any mandamus (to the Management Committee) it or its office bearers are not guilty of wilful disobedience of the court's order".

ii) In *Parkash Chand Vs. S.S. Grewal and Others*, , (Punjab and Haryana High Court - Full Bench), it is held that:

"Suit for declaration wherein declaratory decree was passed. It was held that the since there is no command issued to the judgment-debtor to obey, the civil process cannot be issued for the compliance of that mandate or command".

iii) In *Ashok Paper Kamgar Union v. Dharan Godha and Ors.* (2003)11 SCC 1, it is held that:

"In order to constitute contempt the order of the court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extra-ordinary effort nor should be dependent (either wholly or in part) upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case".

iv) In *Packraft (India) Pvt. Ltd. through its Director V.S. Mann Vs. U.P.F.C. through its M.D. R.M. Sethi and Others*, , it is held that:

"The law laid down by this Court in *Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others*, is the law under Article 141. It is needless to say that everyone is bound by the law. But, if there is any infraction of the action in violation of the law laid down by this Court, appropriate remedy is to have it corrected by a judicial review but not by way of contempt proceedings in this Court."

11. In order to appreciate the above submissions, it is worthwhile firstly to consider the prayer and the order dated 3-7-2001 deciding writ petition No. 364 of 1999. In the said writ petition prayer Clause (c) reads as under :

"Writ of Mandamus or writ in the nature of Mandamus or appropriate writ, Direction or Order under Article 226 of the Constitution of India may be issued directing the respondent Nos. 1 and 2 to pay to the teaching and non-teaching staff including the petitioner Nos. 2 to 31 pay and allowances and other service benefits such as bonus, travelling allowances/medical facilities, provident fund, gratuity and leave benefits as per the instructions issued in the Circular/Letter dated 29th September, 1995 issued by the Directorate of Technical Education, Maharashtra State, Mumbai including the arrears of pay and allowance since the dates of their initial appointments".

12. The Court allowed the petition partly and directed the management therein to implement the Circular dated 29th September, 1995 issued by respondent No. 4 therein (Director of Technical Education , Maharashtra State, Mumbai) and rule

was made absolute to that extent.

13. In Writ Petition No. 298 of 2002 the specific prayer made by the petitioners was as under :

"It is, therefore, most respectfully prayed that this Hon"ble Court may kindly be issued writ of mandamus or any other appropriate writ order or direction; and :

(a) direct respondent Nos. 1 to 4 to compel respondent Nos. 5 and 6 to pay 4th Pay Commission's arrears to the petitioners as per Government Resolution dated 26th May, 1992 and further implement Government Resolution dated 18-12-1999 and Circulars dated 29-9-1995 and 7-3-2000 forthwith and to pay arrears of salary and all other benefits to the petitioners with 12% compound interest on it in accordance with pay scales, their placements and allowances as well as pay the salary positively in accordance with government pay scales and allowances applicable to the posts held by the petitioners and to raise gratuity fund to make future liability of the gratuity to the petitioners by issuing appropriate writ, orders or directions and further pleaded to direct respondent Nos. 1 to 4 to compel respondent Nos. 5 and 6 to deposit death-cum-retirement gratuity payable according to rules to the petitioners".

14. C. A. No. 3608/2003 was moved by the petitioners in the said writ petition for dismissal of the said writ in view of the judgment of Aurangabad Bench in Writ Petition No. 364/1999. The Court passed order on 9-7-2003 and disposed of the Civil Application. The court observed as under :

"The dispute in the writ petition is covered by the judgment dated 3-7-2001 passed by the Division Bench of this Court at Aurangabad in Writ Petition No. 364/1999, submits the learned Advocate for the petitioner. It also appears that the Supreme Court has declined to interfere with the said judgment. The respondents are, therefore, legally bound by the Circular dated 29-9-1995 and it is duty bound to implement the same. In view of this, the writ petition is disposed of with no order as to costs".

15. Relying on the meaning of the words "Bound" and "Duty" as given in Black's Law Dictionary, Mr. P. B. Patil, the learned counsel for the petitioners, submitted that "Bound" denotes the condition of being constrained by the obligations of a bond, contract, covenant or other moral or legal obligation and "Duty" means obligatory conduct or service and mandatory obligation to perform. He, therefore, submitted that the order dated 9-7-2003 passed by the Division Bench of this Court clearly shows that the management was bound to implement the Circular dated 29-9-1995 and thus it was a command to the management. According to him no more direction was needed.

16. The fallacy of this submission can be seen from the fact that the petitioners moved Civil Application No. 4584 of 2003 on 25-7-2003 i.e within two weeks of the order dated 9-7-2003 wherein a prayer was made as under :

"it is, therefore, most humbly prayed that this Hon"ble Court be pleased to

command the respondents to implement the Circular dated 29-9-1995 and grant all admissible benefits to the applicants/petitioners, within a period of two months from the date of order, in the interest of justice."

17. The said civil application was decided by Division Bench comprising of R. M. Lodha and S. B. Deshmukh, JJ. by order dated 13-8-2003, which reads as under:

"Heard.

The application is misconceived and does not deserve to be entertained. The order dated 9th July, 2003 speaks for itself and no further direction is required. C. A. stands disposed of. "

18. Had there been a command in the order dated 9-7-2003, as suggested by the learned counsel for the petitioners, there was no need for the petitioners to move Civil Application No. 4584 of 2003 praying the Court to command the respondents to implement the Circular dated 29-9-1995 within a specified period.

19. It is thus obvious that the order dated 9-7-2003 does not contain any command to the management to implement the Circular dated 29-9-1995. It only declares that the management is legally bound by the said Circular and duty bound to implement the same. In view of this declaration the petitioners have to move necessary authorities for implementing the said Circular.

20. From the record it appears that the management is making efforts to implement the said Circular to the best of its financial ability. Thus the provisions of Article 215 of the Constitution of India read with Section 12 of the Contempt of Courts Act are not attracted to the present case. Hence the order.

21. The contempt petition is dismissed. The respondents are discharged.