

(2011) 11 BOM CK 0001

In the Bombay High Court

Case No : Contempt Petition No. 276 of 2007 in W. P. No. 6582 of 2005

Suresh Subhashrao Bhoyar

APPELLANT

Vs

Manohar Bhagat and Others

RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Constitution of India, 1950 — Article 129, 215
Contempt of Courts Act, 1971 — Section 20
Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis),
Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation
of Issuance and Verification of) Caste Certificate Act, 2000 — Section 3(10)

Citation : (2012) 5 ALLMR 230 : (2012) 6 BomCR 371 : (2012) 4 MhLj 214

Hon'ble Judges : K. U. Chandiwal, J

Bench : Single Bench

Advocate : A. S. Deshpande, for the Appellant; B. L. Sagar, Killarikar, for the
Respondent

Judgement

K. U. Chandiwal, J.—Heard both the learned Counsel extensively. Rule. Rule returnable forthwith. With the consent of learned Counsel for the parties, heard finally at the stage of admission. Writ Petition No. 6582 of 2005 was moved by the petitioner before the Division Bench of this Court wherein on 19-9-2005 the Division Bench passed following order:

Heard Mr. Deshpande, learned Counsel for the petitioner. Mr. N. B. Khandare, learned AGP accepts notice on behalf of respondents 2 to 5. Issue notice to respondent No. 1, returnable within four weeks. In the meantime, ad interim relief in terms of prayer clause (E).

The prayer clause (E) to which reference is given reads as under :

(E) Pending hearing and final disposal of this petition, further proceedings in relation to Caste Scrutiny of the petitioner, may kindly be stayed, and in the event the Committee claims to have decided the Caste Claim of the petitioner, the same may kindly be ordered to be kept in abeyance.

Learned Counsel submits, in spite of the orders passed by the Division Bench conscientiously, which was in no terms an empty formality on its part and not as a luxury, it was expected of the respondents to follow the same in its spirit and to keep their hands off. Learned Counsel submits that the acts of respondent No. 1, an I.A.S. Officer demonstrated that it was to favour respondent No. 6 for certain extraneous consideration. There are no requirement of law for opinion about caste certificate in respect of a candidate holding D.Ed. degree. Still such exercises were carried dishonestly. He informs, there was no reason for the respondent to even communicate the order to the officials in the Education Department.

2. On the point of limitation in terms of section 20 of the Contempt of Courts Act, 1971, the learned Counsel submits, reliance placed by the respondent's learned Counsel to the judgment in the matter of Pallav Sheth Vs. Custodian and Others, (1) does not depict correct legal position and parities, as a decision per incuriam.

Learned Counsel submits that the decision of earlier Division Bench of the Supreme Court reported in case of Pritam Pal vs. High Court of Madhya Pradesh, Jabalpur, through Registrar, reported in 1992 AIR SCW 681 is not referred and since a decision on the aspect of applicability of Article 129 or Article 215 referring to power of Supreme Court and High Court to punish for contempt being not referred in the judgment of Pallav Sheth, the decision rendered by the Supreme Court is per incuriam and need not be strictly accelerated upon.

3. Now, first dealing with the objections raised by the learned Counsel, one has to be alive to the factual position coupled with legal parameters and also the discipline. The judgment in the matter of Pritam Pal's case dated 19-2-1992 was rendered by two Honourable Lordships of the Supreme Court, while the judgment in the matter of Pallav Sheth was by the three Honourable Judges of the Supreme Court. Consequently, no astrologer is required to comment that the later judgment rendered by the Supreme Court by the three Honourable Judges on 10-8-2001 will only hold the field. The submissions vociferously advanced needs only to be discarded.

4. Again, revert to the facts in Pritam Pal's case. It was a case where an Advocate practicing in High Court was found, having failed to wrench a decision in his favour in his own cause which he prosecuted as party in person has escalatingly scandalised the Court by making libelous allegations against the sitting Judges of that High Court which are scurrilous, highly offensive, vicious, intimidatory, malicious and beyond condonable limit the same amounts to a flagrant onslaught on the independence of the judiciary, destructive of the orderly administration of justice and a challenge to the supremacy of the Rule of Law.

5. The matter before the larger Bench in Pallav Sheth's case was discussing the judgment rendered in the matter of Om Prakash Jaiswal vs. D. K. Mittal, reported in 2001(1) Mh.L.J. (S.C.) 333 = 2000 AIR SCW 722 and also the observations in

the matter of Baradakanta Mishra Vs. Justice Gatikrushna Misra, Chief Justice of the Orissa High Court, . The larger Bench, on analysing the legal position has demonstrated in paragraphs 30, 31, 32 in the judgment of Pallav Sheth overrule observations in the matter of Om Prakash (supra) and also held Baradakanta Mishra Vs. Justice Gatikrushna Misra, Chief Justice of the Orissa High Court, to be obiter.

6. The observations in the matter of Pallav Sheth, reading from any angle deals with the legal position vis-a-vis the Contempt of Courts Act 1971 and powers of High Court under Article 215 of Constitution. The Honourable Supreme Court has observed, section 20 deals not only with criminal contempt, but also with civil contempt. It applies not only to the contempt committed in the face of the High Court or the Supreme Court but would also be applicable in the case of contempt of the subordinate court. The procedure which is to be followed in each of these cases is different. Section 20, as framed, is not happily worded. The heading of the section, however, indicates what it was to provide for "Limitation for actions for contempt". The wording of the section are negative but it is clear that terminus ad quern is the initiation of proceedings for contempt. The crucial question that arise as to how or when are the proceedings for contempt initiated. The Honourable Supreme Court, in paragraph 38 of the said judgment observed that, "The Rules so framed by all the Courts in India do show that proceedings are initiated inter alia with the filing of an application or a petition in that behalf. If, however, proceedings are not initiated by filing of an application within a period of one year from the date on which the contempt is alleged to have been committed then the Court shall not have jurisdiction to punish for contempt. If, on the other hand, proceedings are properly initiated by the filing of an application, in the case of civil contempt like the present before the Court within the period of limitation then the provisions of section 20 will not stand in the way of the Court exercising its jurisdiction." The observations of the Honourable Supreme Court expressly illustrate scope, ambit and applicability of section 20 vis-a-vis civil Contempt and essentiality of filing an application. The situation, as desired by the petitioner herein need not be dissected to mean that his petition being under Article 215 of the Constitution, the effect of provisions of Contempt of Courts Act, 1971 are defused or deflated or non est. The theme in the language of the Apex Court in the matter of Pallav Sheth illustrates both the provisions i.e. Article 215 and Contempt of Courts Act, 1971, is to be read harmoniously. This is more so, from section 20 of the said Act. In the situation, I hold that even for a petition purported to be under Article 215 of Constitution of India, since the body of the petition itself in form contempt of particular orders of the Court, it would attract provisions of section 20 of the Contempt of Courts Act, 1971. If the Supreme Court or High Court takes action of flouting of its order blatantly and a calculated fraud was played, then the Article 215 comes with it stronger teeth to activate.

7. The learned Counsel for the petitioner suggested that the attitude of respondents 1 and 5 is contemptuous, defiant and activated with malice. It is not

so, record does not support to highlight the same. Dismissal of the writ petition this way or that way will not change colour and complexion of decision to be rendered in the present Contempt Petition. The grievance that without any reason, the order was surreptitiously communicated to the authority not concerned, is again illusory divorced from the statutory provisions under the scheme of section 3(10) of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance of Verification of) Castes Certificate Act, 2000. The authorities of Caste Scrutiny Committee are oblige to communicate its decision either way to the Officer concerned or authorities from whom the matter is referred to. In the situation, the submissions advanced about the mala fides of respondent No.1 or for that purpose respondent No.5 are simply to be ignored as this Court is not expected to dwell upon these aspects. Re-visiting the facts and survey illustrates, the petitioner has indeed proceeded in an escalating manner to ensure that a hanging sword swings against the respondents under the banner of Contempt Petition. It is even beyond the period of limitation. Contempt Petition lacs merit. Dismissed. Notices, if issued, discharged. Rule discharged.