
(2017) 03 MAD CK 0076
In the Madras High Court
Case No : Cont. P.No. 1652 of 2016

S.V. Chennakrishnan

APPELLANT

Vs

K.S. Ganapathy Subramanian, Chennai-600 002

RESPONDENT

Date of Decision : 22-03-2017

Acts Referred:

Contempt of Courts Act, 1971 — Section 12

Citation : (2017) 3 MLJ 720

Hon'ble Judges : Mr. M.V. Muralidaran, J.

Bench : Single Bench

Advocate : Mr. K. Ravi Anantha Padmanaban, Advocate, for the Petitioner; Mr. N.G.R. Prasad, Advocate, for the Respondents

Final Decision : Allowed

Judgement

Mr. M.V. Muralidaran, J.—The petitioner an employee of Indian Overseas Bank attained his superannuation on 31.05.2016 has filed the instant contempt petition against the Respondents by stating that the common order dated 25.05.2016 passed in W.M.P. Nos. 16066 and 16067 of 2016 in WP.No. 18368 and 18369 of 2016 respectively has been violated by the respondent. Though two miscellaneous petitions, two Writ petitions are filed, the petitioner confined his relief in respect of W.M.P. No. 16066 of 2016 in W.P.No. 18368 of 2016 only.

2. It is the admitted case that the first respondent is the Disciplinary Authority of the petitioner who issued two charge sheets dated 03.06.2014 and 30.01.2015. Those charge sheets were issued relating to a big scam, concerning the recruitment of some employees in the Bank. Including the petitioner, some other employees of the Bank also, earlier filed writ petitions sought for stay of the disciplinary proceeding till the finality of the criminal case instituted against the petitioner as both the proceedings consisted of similar charges and allegation. But the writ petitions filed in this regard were dismissed by this Court. When the Writ Appeal Nos. 1559 to 1570 of 2014 were filed, they were also dismissed by a common order dated 31.03.2015. Against the dismissal of the writ appeals,

Special Leave petitions were filed before the Hon''ble Supreme Court in SLP.Nos. 12968 to 12979 of 2016 and 13795 to 13797 of 2016. However by a common order dated 10.05.2016, the Hon''ble Supreme Court dismissed all the above Special Leave Petitions at the admission stage itself.

3. It is the case of the petitioner that when the Hon''ble Supreme Court dismisses the Special Leave Petitions at the admission stage, it will not amount to affirming the order of this Court on merits. The petitioner further contended that as per the Judgment of the Hon''ble Supreme Court reported in (2000) 6 SCC page 359 it has been held that the High Court order gets revived and the person aggrieved can even file a review petition before the High Court under article 226 of Constitution of India. At this juncture, it is useful to set out the order passed in the Writ Appeals in W.A.Nos. 1559 to 1570 of 2014 "that the only course open to the appellants that is the petitioner and other delinquents was to face the criminal prosecution and to appear before the 1st respondent as well after the issuance of notice of personal hearing within 4 weeks from the date of copy of receipt of the order. Admittedly the copy of the order was made ready on 02.05.2006 and the petitioner received the same on 19.05.2016. In the meanwhile the petitioner was required to appear before the 1st respondent on 25.05.2016 in respect of the charge sheet dated 03.05.2016 and another charge sheet dated 30.01.2015. So, the petitioner filed two 2 writ petitions in W.P.No.18368 and 18367 of 2016, seeking to forbear the 1st respondent from requiring the petitioner to appear before him as disciplinary authority on 25.05.2016. Earlier the petitioner sent a reply dated 23.05.2016 and informed that he is not legally liable to appear before the 1st respondent 25.05.2016. However, taking into consideration of the entire facts of the case, this court on 25.05.2016 passed the order as follows, "Notice of Motion, returnable in 4 weeks, post after 4 weeks, in the meantime there shall be an order of Interim Stay for a period of 4 weeks".

4. However, the respondents filed a vacate stay petition in W.M.P.Nos. 16250 and 16251 of 2016 seeking to vacate the order of interim stay of this court dated 25.05.2016. On 30.05.2016 the matter was argued and reserved the same for passing appropriate orders. On the other hand, even on the very same day, the 1st respondent issued a notice for personal hearing upon the petitioner dated 30.05.2016 by instructed him to appear for enquiry on 31.05.2016 at 11.00 a.m. and 12.30 p.m. for the respective charge sheets. The said notice for personal hearing would further say that "it is informed that the interim stay granted on your writ petition in W.P.No. 16067 of 2016 has been vacated by this Court on 30.05.2016. The petitioner would contend that when the arguments on the vacate stay petition were over on 30.05.2016, the matter was simply reserved for passing orders and according to him, no order was pronounced on that particular day. So, the personal hearing notice dated 30.05.2016 with information that the interim stay granted on the writ petition in W.M.P.No. 16066 of 2016 has been vacated.

Further, the case of the petitioner is that when no such order was pronounced on 30.05.2016, the personal hearing notice dated 30.05.2016 issued by the 1st respondent is not legal and the subsequent communication of the 1st respondent dated 31.05.2016 by imposing a punishment upon a petitioner dismissed from service is illegal. Moreover, the 2nd respondent by his letter dated 03.06.2016 justified the act of the 1st respondent hence the act of the 2nd respondent is also an act of contempt. Both the respondents were so particular in imposing punishment upon the petitioner by intentionally violated the order passed by this Court in the Stay Petition.

5. Whereas per contra, the learned counsel for the respondents based on the affidavit filed by the 1st respondent and 2nd respondents has contended that the petitioner has not field any undertaking letter in terms of the order passed by the Hon"ble Supreme Court on 10.05.2016 in which, case above the petitioner will be entitled 4 weeks time for personal hearing. Further, it is case of the 1st respondent as per his affidavit that "on 30.05.2016 both our Counsel and Counsel for the petitioner appeared and argued the vacate stay petition the petitioner as well as himself were also present. After the arguments were over the Hon"ble Judge asked all of us to wait outside for dictating the orders, the order in the vacate stay petition was passed on that date." Further, the counsel for the respondents would justify that there is no specific provision for continuing the further departmental proceedings after the superannuation of the workmen category in the absence of the undertaking. Therefore the 1st respondent does not have any intention to violate the order of this Court. Further he has tendered his unconditional apology to this Court, if he has committed any wrong.

6. Heard Mr. K. Ravi Anantha Padmanaban, learned counsel appearing for the petitioner and Mr. N.G.R. Prasad, learned counsel appearing for the respondents and all the connected records have been perused.

7. It is the case that the petitioner has taken up a long legal battle up to the Hon"ble Supreme Court to get rid of the charge sheets issued by the respondents for serious allegation. Though the Special Leave Petition filed by the petitioner was dismissed, the order passed by the Hon"ble Division Bench of this Court got revived as the SLP was dismissed at the stage of admission. This factor has not been disputed by the respondent. Further, the 2nd round of legal battle of the petitioner commenced by the filing two instant writ petitions in W.P.Nos. 18368 and 18369 of 2016 along with the application for stay.

Taking it into consideration of the totality of the case, this court by its order dated 25.05.2016 granted stay for a period of 4 weeks. It is not in dispute that the vacate stay petitions were filed in W.V.M.P. Nos. 16250 and 16251 of 2016. However, I have to make it clear that whether arguments were heard in W.V.M.P on 30.05.2016, my answer is yes that the arguments were heard on 30.05.2016.

However, it is a specific direction in the order as held in Para No.15 that the letter given by writ petitioner dated 14.05.2016 will be taken by the Hon"ble Supreme

Court, the interim stay will continue, otherwise the interim stay granted by this court in W.M.P. Nos. 16066 and 16067 of 2016 dated 25.05.2016 is vacated.

8. It is quiet astonishing to peruse the letter of the 1st respondent dated 30.05.2016 wherein it is instructed the writ petitioner that the interim stay granted on his writ petition in W.P.No. 18386 in W.P.(MD)No. 16067 of 2016 has been vacated by this Court on 30.05.2016. Because in the order passed in the vacate stay petition, I had specifically ordered that "if the letter given by the writ petitioner dated 14.05.2016 is to be taken by the writ petitioner as undertaking as per the order of Hon"ble Supreme Court". So, the notice dated 30.05.2016 of the 1st respondent ought to have clarified that the letter given by the writ petitioner dated 14.05.2016 has been taken as undertaking by him or not and thereafter he was legally entitled to proceed with further. I find no such averments in the notice of the 1st respondent dated 30.05.2016. Moreover, it is clarified that if at all the letter of the writ petitioner dated 14.05.2016 is not been taken as undertaking then only the interim order of stay would get vacated. So it is for the respondents to ascertain that whether the letter of writ petitioner, was taken up as undertaking or not. As no such averment is made then it would show that the respondents are having the intention to violate the order of this court to suit their convenience. Moreover, it is against the principle of natural justice and the basic principles of law that the aggrieved party of any order must be given reasonable breathing time to challenge the order passed against him. If it all the 1st respondent was present, as stated, in the court on the day of the order, he must have clarified as to whether he ascertained that the letter of the writ petitioner dated 14.05.2016 will be taken by him as undertaking or not then only he is entitled to proceed with further as against the writ petitioner.

9. That apart the conduct of the 1st respondent in passing the final order of dismissal against the writ petitioner dated 31.05.2016 is without the copy of the order passed by this court in the vacate stay petition. I am not able to understand as to why the 1st respondent was so hurry in passing the final order of dismissal upon the petitioner that too without the order passed in the vacate stay petition. According to the writ petitioner, the order passed in the stay petition is intentionally violated by the respondents as the stay will continue if his letter dated 14.05.2016 is taken up as undertaking.

Further, without rejecting the aforesaid letter of the writ petitioner, the respondent cannot say that the interim stay is vacated.

10. The learned counsel for the petitioner has brought to notice of this court that if the 1st respondent was physically present on the day of the order passed in the vacate stay petition, he would have clarified as to the letter of writ petitioner dated 14.05.2016 was taken up for consideration or not? However, when the aforesaid letter given by the writ petitioner is no longer rejected by the respondents, they cannot proceed with this matter further, as the stay granted by this Court is in force.

11. Moreover this court observes the conduct of the 1st respondent and his hastiness in passing the final order of dismissal subsequent to the order passed in the vacate stay petition. He cannot take the sword when the writ petitioner is without any shield. It is not in dispute that order copy would be available on 01.06.2016 but before that even on the very next day of the date of the order of this Court, the order of dismissal was passed by the 1st respondent. This would show that without getting the copy of order of this Court, he came to the conclusion as if the stay would be vacated. There is no question would arise as to the vacation of stay, unless the letter of the writ petitioner dated 14.05.2016 is taken up as undertaking.

12. I do clarify here that unless and until the letter of the writ petitioner is rejected by the respondents for any reason, the order of the stay would be in force, here I would find that on the letter of writ petitioner no order is passed and in that event the personal hearing notice 30.05.2016 and the order of dismissal dated 31.05.2016 would be a nullity and cannot be justified and recognised as legal. It is for the respondent to deal with the aforesaid letter of the petitioner on their own, but the order of this court is that the stay would be in force if the letter of writ petitioner will be taken by him as undertaking.

13. The respondents being public servant should have given utmost respect to the order passed by the High Court of judicature in order to preserve the majesty of law. Any conduct by which the course of justice is perverted either by a party or even a stranger is contempt. I could find that reasonable legal force on the arguments of the Counsel for the petitioner that contempt of court is a matter which concerns the administration of the justice and the dignity of High Court of law. The law of contempt stems from the right of the courts to punish by imprisonment or fines, persons guilty of words or acts.

Further, the 1st respondent cannot say that he passed the order of dismissal as per law. It is held in 1991 AIR 2176; the Hon"ble Supreme Court has held that High Courts as Courts of Record have inherent power and jurisdiction to take action for contempt. It is relevant to refer Section 2(c) of the Contempt of Court Acts, 1971 which defines:

In this Act, unless context otherwise required,

"Criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever whichi-

i) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of any court, or

ii) Prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings or

iii) Interferes, or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

Moreover, in *Amicus Curiae v. Prashanth Bhushan and Another*, reported in (2010) 7 SCC 592 the Hon"ble Supreme Court has considered the earlier judgment and held that in a rare case, even if the cognizance is deemed to have been taken in terms of Rule 3(c) of the Rules to Regulate proceedings for contempt of Supreme Court without the consent of the Attorney General or the Solicitor General, the proceedings must be held maintainable in view of the fact that the issues involved in the proceedings had far reaching greater ramifications and impact on the administration of justice and on justice delivery system and the credibility of the court in the eyes of general public. Further, if the issue involved in the proceedings had greater impact on the administration of justice and on the justice delivery system, the court is competent to go into the contempt proceeding even without the consent of the Advocate General as the case may be.

14. Here, the case on hand is without complying with the order of this court, the 1st respondent in a hasty manner imposed the order of dismissal of the writ petitioner even without receiving the order copy. This would show that the 1st respondent has simply ignored the order of this court which would directly affect the Majesty of Justice.

15. Further in *O. Mohammed Vomin v. Om Prakash*, reported in (1982) 1 CRLR 322 at page 330 that in the matter of procedure to be followed in taking proceeding in contempt of court, no particular procedure has been prescribed. The court is guided by its own procedure to be followed in the facts and circumstances of the such individual case and to see the condemner is getting full opportunity to make his defense and no principles of natural justice is violated in following such procedure.

16. Here, in this case the counter affidavit has been filed by the respondents by meeting out the all the contention of the writ petition. Though 1st respondent has dealt with the operative portion of the order of this court in respect of the letter given by the writ petitioner dated 14.05.2016, instead of getting clarification from the petitioner, the 1st respondent has passed the order of punishment of dismissal.

17. From the foregoing discussion, the 1st respondent knowing fully well about the ambit of the order of this court in the vacate stay petition, he has intentionally and wilfully violated the order of this court. So, this Court has no hesitation to protect the Majesty of Justice and as the conduct of the condemners, prima facie fatal in the way of administration of justice.

18. Therefore the respondents are hereby liable for punishment for contempt of Court as defined under Section 12 of the Contempt of Courts Acts, 1971 and thereby both the respondents are liable for punishment and thereby they are imposed with a simple imprisonment for a period of one week and also imposed a fine amount of Rs.2000/- each. The fine amount shall be deposited with the Tamil Nadu Mediation Conciliation Centre attached with this Court immediately

and the registry is also directed to ensure the respondents whether to undergo the imprisonment for a period of one week. With the above direction the contempt petition is allowed.