
(2015) 06 AP CK 0046

In the Andhra Pradesh High Court

Case No : Contempt Case No. 268 of 2015

T. Nagarathnamma

APPELLANT

Vs

G. Ram Murthy and Others

RESPONDENT

Date of Decision : 26-06-2015

Acts Referred:

Citation : (2015) 5 ALD 307 : (2015) 5 ALT 21

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : P.R. Balarami Reddy, for the Appellant

Judgement

C.V. Nagarjuna Reddy, J.

1. This Contempt Case is filed alleging willful disobedience of Order, dated 26-12-2014, in WP. No. 39906 of 2014, by the respondents.

2. The facts leading to filing of this Contempt Case are briefly stated hereunder:

"The petitioner is the authorized dealer of the fair price shop of Sunkireddipally Village, Madakasira Mandal, Adilabad District. As the supply of essential commodities was stopped to her shop, she has filed WP. No. 27332 of 2014. The said Writ Petition was disposed of by this Court, on 16-09-2014, with the observation that so long as the petitioners authorization was valid and subsisting, the respondents are bound to supply essential commodities to her fair price shop. Subsequently, one M. Bhaskar Reddy, claiming to be a card holder attached to the petitioners fair price shop, filed W.P. No. 33679 of 2014, with the allegation that though the petitioners fair price shop authorization was suspended, on the strength of the direction issued by this Court in WP. No. 27332 of 2014, the respondents are seeking to supply essential commodities to her shop. He has averred that, on 13-08-2014, respondent No. 2 has suspended the petitioners authorization and that therefore, the petitioner is not entitled to be continued as the fair price shop dealer. This Court has disposed of the said Writ Petition by Order, dated 11-11-2014, with the observation that if the

petitioners authorization was suspended on 13-08-2014, unless the said order was subsequently stayed by this Court or any other forum, she is not entitled to be continued as the fair price shop dealer. Thereafter, respondent No. 2 has issued the proceeding in Rc. No. 264/2014 (B), dated 15-12-2014, whereby he has removed the petitioner from the fair price shop dealership and appointed the fair price shop dealer of another village as the incharge dealer. Feeling aggrieved by the same, the petitioner filed WP. No. 39906 of 2014."

3. In her affidavit, filed in support of the said Writ Petition, the petitioner has alleged that the purported order, dated 13.08.2014, suspending her authorization was indeed passed after 16.09.2014 and that the same was antedated to show as if it was passed much prior to the filing of WP. No. 27332 of 2014, with a view to overreach Order, dated 16-09-2014, passed in the said Writ Petition. In support of the said plea, the petitioners Counsel has relied upon the endorsement in RC. No./2014 (B), dated NIL, which referred to the order passed by this Court in WP. No. 27332 of 2014, as if the said order was passed on 16-08-2014 and received by respondent No. 2 herein on 28.08.2014. After hearing both sides, this Court has allowed the said Writ Petition by Order, dated 26-12-2014, wherein a specific finding was rendered that the endorsement referred to above contained incorrect and inaccurate facts and that respondent No. 2 was not acting in a fair and transparent manner. This Court further held that even assuming that respondent No. 2 has passed the endorsement, suspending the petitioners authorization on 13-08-2014, it has died its natural death with the expiry of 90 days, for which the said order of suspension was passed, and that therefore, the proceeding, dated 15-12-2014, removing the petitioner purporting to rely upon the order in WP. No. 33679 of 2014 is preposterous, to say the least. This Court further observed that the fact that the petitioners authorization was suspended only for a period of 90 days was not brought to its notice in WP. No. 33679 of 2014 and that respondent No. 2 has evidently taken shelter under the order passed in the said Writ Petition to ensure displacement of the petitioner. Therefore, this Court found the conduct of respondent No. 2 herein as wholly mala fide. It was further held in the said order that respondent No. 2 has no authority or jurisdiction to pass the impugned order as it is respondent No. 1, who is the appointing authority vested with the disciplinary power. For better appreciation, the relevant portion of Order, dated 26-12-2014, in WP. No. 39906 of 2014, is reproduced herein below:

"The fact that the petitioners authorization was suspended for a period of 90 days was not brought to the notice of this Court in WP. No. 33679 of 2014. As the order of suspension, dated 13-08-2014, has died its natural death with the expiry of the period of 90 days, the petitioner is entitled to be continued as the fair price shop dealer. Respondent No. 3 has evidently taken shelter under the order passed by this Court in WP. No. 33679 of 2014 to ensure displacement of the petitioner. I find this conduct of respondent No. 3 as wholly mala fide."

4. Further more, respondent No. 3 has no authority or jurisdiction to pass the

impugned order as it is respondent No. 2, who is the appointing authority vested with the disciplinary power. It is incomprehensible as to how respondent No. 3 can take an independent decision by replacing the petitioner with another dealer. The entire conduct of respondent No. 3 is highly suspicious and his bona fides are doubtful as the impugned order passed by him is not only illegal but also without jurisdiction.

5. For the foregoing reasons, the impugned proceeding bearing Rc. No. 264/2014 (B), dated 15.12.2014, of respondent No. 3, is set aside. The respondents are directed to continue the petitioner as the fair price shop dealer.

6. The Writ Petition is, accordingly, allowed with costs of Rs. 10,000/- payable by respondent No. 3 to the petitioner from his personal funds.

7. In this Contempt Case, the petitioner averred that on 29-12-2014, she has given a representation in writing to respondent No. 2, bringing to his notice about the order, dated 26-12-2014, in WP. No. 39906 of 2014, and its brief contents, and requesting him to resume supply of essential commodities to her shop for distribution to the cardholders. She has also averred that she has sent a similar representation, on 31.12.2014, to respondent No. 1 and that as neither of the two respondents have taken any measures to restore supply of essential commodities to her shop, she has caused legal notice issued on both these respondents on 02-02-2015. As the supply of essential commodities was not resumed even after issuance of the legal notice, the petitioner has filed this Contempt Case against three respondents viz., 1. The Principal Secretary (Civil Supplies Dept.), Hyderabad, 2. The Revenue Divisional Officer, Penukonda, and 3. The Tahsildar, Madakasira Mandal. This Court, by Order, dated 20-02-2015, has struck off the name of the Principal Secretary from the array of parties. Hence, respondent Nos. 2 and 3 were rearranged as respondent Nos. 1 and 2.

8. Counter-affidavit was filed by respondent No. 1- Revenue Divisional Officer, Penukonda. On a perusal of the counter-affidavit, this Court has observed that satisfactory explanation was not furnished by him for the inordinate delay in implementation of the order of this Court. Therefore, this Court has admitted the Contempt Case on 17-04-2015.

9. After the respondents have appeared before the Court, they have filed separate additional counter-affidavits.

10. In the counter-affidavit filed by respondent No. 2-Tahsildar, Madakasira Mandal, he has averred that in compliance with Order, dated 26-12-2014, which was received by him on 24-01-2015, Kerosene Oil and other essential commodities were supplied to the petitioner on remittances made by her for the months of February, 2015, and March, 2015, respectively. He has further averred that as the last date for collection of remittances from the dealers for supply of essential commodities, other than kerosene oil, for distribution is 18th of the preceding month, essential commodities could not be supplied to her in the month of January, 2015. He has pleaded that in deference to the order of this

Court in WP. No. 39906 of 2014, he has paid a sum of Rs. 10,000/- by Demand Draft on 19-02-2015 from out of his personal funds towards costs and that he has got highest respect for the orders of this Court. He has offered conditional apology by stating that, if, for any reasons, this Court comes to the conclusion that there has been violation of order passed by this Court, he is offering unconditional apology.

11. In the additional counter-affidavit filed by respondent No. 1, he has averred that the petitioner has made representation, on 31-12-2014, through registered post with acknowledgment due, which was received by his office on 02-01-2015; that a copy of the order of this Court was received from the petitioner on 24.01.2015 through registered post; that thereupon, he has issued instructions to respondent No. 2 vide his letter, dated 27.01.2015, to implement the order of this Court and submit compliance report and that after receipt of legal notice, dated 02.02.2015, received on 06-02-2015, he had issued instructions to respondent No. 2, on 09-02-2015, directing him to submit report on the action taken for implementing the order of this Court. He has further averred that he has received Order, dated 26-12-2014, in WP. No. 39906 of 2014, from the Registry of this Court on 09-02-2015; that respondent No. 2 has issued notice in RC. No. 264/2014, dated 16-02-2015, directing the petitioner to remit the amount for supply of essential commodities for the month of March, 2015, on or before 18.02.2015; that pursuant to the said notice, the petitioner has remitted the amount for supply of essential commodities for the month of March, 2015, on 18-02-2015; and that, simultaneously, she has paid the amount for supply of Kerosene oil for the month of February, 2015. Respondent No. 1 has, accordingly, pleaded that after receipt of the copy of the order of this Court on 24-01-2015, as well as legal notice on 06.02.2015, he has issued instructions to respondent No. 2 to implement the order of this Court. He has denied committing of any intentional or deliberate delay in implementation of the order of this Court and submitted that he has acted upon the order of this Court sent by the petitioner through registered post. Similar apology, as expressed by respondent No. 2, was tendered by respondent No. 1 also.

12. In his additional counter-affidavit, respondent No. 2 has admitted receipt of representation, dated 29-12-2014, but he has stated that the same was received without a copy of the order; that the copy of the order was received by his office on 23-01-2015; that he has received instructions from respondent No. 1 vide his letter, dated 27-01-2015, for implementation of the order of this Court; and that as the time for receipt of demand draft for supply of essential commodities for the month of February, 2015, has already lapsed on 18-01-2015, essential commodities could not be supplied for the said month. Respondent No. 2 has also raised the similar defence, as respondent No. 1 has raised viz., non-receipt of the order of this Court before 18-01-2015, the last date for remittance of demand draft for allotment of quota for February, 2015.

13. I have heard Mr. P.R. Balarami Reddy, learned Counsel for the petitioner, and

the learned Government Pleader for Civil Supplies (AP), representing the respondents, at length.

14. As could be culled out from the facts narrated above, this Court in WP. No. 39906 of 2014 has termed the action of respondent No. 2 in terminating the petitioners fair price shop dealership as wholly mala fide and also mulcted him with costs of Rs. 10,000/- payable by him from his personal funds. It is not in dispute that much before the remittances for allotment of the essential commodities for distribution for the month of February, 2015, fell due, this Court has allowed the Writ Petition. To be precise, the Writ Petition was allowed almost 25 days before the due date for remittances for allotment of the quota for the month of February, 2015. Both the respondents have categorically admitted the fact that the petitioners representations made in writing were received by both of them, latest by 02-01-2015. The only reason, under which both the respondents have taken shelter for non-supply of essential commodities (other than kerosene oil) to the petitioner in the month of February, 2015, is non-receipt of the order of this Court in WP. No. 39906 of 2014 by them.

15. The law is well settled that a party cannot violate judicial orders of the Courts, having come to knowledge of such orders, only on the ground that they have not received the orders. In Aligarh Municipal Board and others v. Ekka Tonga Mazdoor Union and others, the Supreme Court held that the omission to annex a certified copy of the stay order is not material and that in order to justify action for Contempt of Court for breach of a prohibitive order, it is not necessary that the order should have been officially served on the party against whom it is granted, if it is proved that he had notice of the order aliunde and he knew that it was intended to be enforced.

16. A similar view was reiterated by the Supreme Court in Bunna Prasad and others v. The State of U.P. and another.

17. As noted above, both the respondents have admitted the fact that they had the knowledge of passing of the order by this Court by 02-02-2015. In both their additional counter-affidavits, the respondents, as observed above, have taken asylum under the fact that till 24-01-2015, they have not received the order from this Court. The audacity of the respondents is reflected from the fact that neither of them have taken any action to procure the order of this Court. If they were under the bona fide belief that they cannot act without such a copy of the order, they ought to have approached the office of the Government Pleader for advice. On the contrary, almost after three weeks of receipt of notice in writing from the petitioner about the order of this Court, the respondents have issued release order, on 21-01-2015, in favour of another dealer for distribution of essential commodities for the month of February, 2015, and they have released the stocks in favour of the said dealer on 02-02-2015. Significantly, on 16-02-2015, this Contempt Case was received by the office of the Government Pleader and on the same day, respondent No. 2 has sent a letter to the petitioner asking her to remit the amount by way of Demand Draft by 18-02-2015 for

release of kerosene quota for distribution for that month.

18. From this fact, it is evident that the respondents have completely ignored the order of this Court till the Contempt Case was received by the office of the Government Pleader and the fact that respondent No. 1 has issued instructions to respondent No. 2 on 27-01-2015 after receipt of order of this Court would not, in any manner, absolve him of his liability for ignoring the order of this Court for nearly one month.

19. The respondents being public servants cannot be expected to ignore the orders of this Court by raising a specious plea that they have not received the order of this Court despite the fact that they had knowledge of the same. It is not the pleaded case of the respondents that they had any doubt about the factum of disposal of WP. No. 39906 of 2014 or its result or that they have, at any point of time, consulted the Government Pleaders office for instructions before denying the February quota to the petitioner. From these facts, the irresistible conclusion that needs to be drawn is that the respondents have willfully, consciously and deliberately violated the order of this Court and they are liable for appropriate punishment.

20. The learned Government Pleader has pleaded that a lenient view may be taken against the respondents.

21. I have given my thoughtful consideration to this submission. The background of the case would clearly reveal that respondent No. 2 has acted with malice against the petitioner although and this Court, upon rendering a clear finding that his conduct was wholly malafide, has even mulcted him with exemplary costs of Rs. 10,000/- payable from his pocket. Viewed from this background, non-implementation of the order of this Court for the month of February, 2015, by him cannot be perceived as a bona fide lapse on his part. On the contrary, his action suggests deliberate attempts to overreach as many as two orders of this Court i.e., the order passed in WP. No. 27332 of 2014 and the order passed in WP. No. 39906 of 2014, out of which the present Contempt Case arises.

22. Therefore, I do not find any mitigating circumstances to spare respondent No. 2 by imposing a lighter punishment. Therefore, respondent No. 2 is sentenced to simple imprisonment of one month and fine of Rs. 2,000/- (Rupees two thousand only). The subsistence allowance is fixed at Rs. (Rupees hundred only) per day to be borne by the petitioner under Rule 32(3) of the Contempt of Court Rules, 1980.

23. As regards respondent No. 1, though he is equally guilty of deliberate violation of the order of this Court, by not taking any action on receipt of notice from the petitioner on 02.01.2015 to implement the order of this Court and wiled away his time till 27.01.2015 by reason of jejune ground that he has received the order copy from the petitioner only on 24.01.2015, the only mitigating circumstance in his favour is that on receipt of the order, he has addressed a letter, dated 27.01.2015, directing respondent No. 2 to implement the order of

this Court. Hence, I am inclined to impose lighter punishment on respondent No. 1. Accordingly, respondent No. 1 is sentenced to pay fine of Rs. 2,000/- (Rupees two thousand only).

24. The Registrar (Judicial) shall take necessary steps for execution of this Judgment under Rules 31 and 33 of the said Rules.

25. The Contempt Case is, accordingly, allowed.

26. At this stage, the learned Government Pleader for Civil Supplies (AP) has requested for suspension of the order to enable the respondents to avail the remedy of appeal.

27. Having regard to this request, the order is suspended for a period of one month from today.