

(1992) 10 AP CK 0015

In the Andhra Pradesh High Court

Case No : Contempt Appeal No. 1 of 1992

The Project Director (R and B)

APPELLANT

Vs

Haabia Advertising (India) Pvt. Ltd.

RESPONDENT

Date of Decision : 13-10-1992

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 19

Citation : (1993) 1 ALT 71

Hon'ble Judges : S.B. Majmudar, C.J.; Bhaskar Rao, J

Bench : Division Bench

Advocate : Government Pleader for Transport, for the Appellant; Vilas V. Afzul Purkar, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Majmudar, C.J.—This appeal arises out of the order passed by the learned single Judge in Contempt Case No. 442 of 1991 whereunder the learned Judge found that the appellant herein has committed contempt of this Court in forcibly removing certain hoardings put up by the original writ petitioner-respondent herein, at Visakhapatnam by flouting the order passed by this Court in Writ Petition No. 17854 of 1986. That petition was moved by the original writ petitioner-respondent herein against three parties viz.,

(i) Visakhapatnam Urban Development Authority represented by its Vice-Chairman/Managing Director, Visakhapatnam.

(ii) Department of Roads & Buildings, National High Way Section, Visakhapatnam represented by its Executive Engineer

(iii) Department of Roads & Buildings, Seethammadhara, Visakhapatnam, represented by its Superintending Engineer.

2. The appellant herein is the Project Director, Roads and Buildings, incharge of Special National High Way No. 5, ADB Circle, Visakhapatnam. Learned single

Judge who decided the Writ petition after hearing the parties took the view that the writ petition was required to be allowed. It would be necessary to note the exact (sic) of the order passed by the learned single Judge in the writ petition:

"It is claimed by the petitioner that after obtaining permission from the Municipal Corporation, Visakhapatnam, on payment of advertisement tax and ground rent, hoardings were erected at various places in the city of Visakhapatnam. Respondents 1 to 3 have no authority whatsoever to direct the petitioner to remove the hoardings. What is more, the, impugned notice dt.23-11-86 issued by the Asst. Executive Engineer, (R & B) Visakhapatnam is vague and silent in respect of ownership of the roads on the margins of which the petitioner erected hoardings.

The impugned notice is therefore quashed and the writ petition is allowed."

3. It may be noted that the original writ petitioner-respondent herein had moved the writ petition under Article 226 of the Constitution of India praying that, in the circumstances stated in the affidavit filed the High Court will be pleased to issue a Writ, order or direction in the nature of Mandamus declaring the proposed action of the respondents in proceeding to remove and demolish the advertisements, hoardings and sky-signs etc., owned and erected by the petitioner in and around the limits of the Municipal Corporation of Visakhapatnam and on the National Highway No. 5 passing through the Visakhapatnam City as wholly illegal, unauthorised, arbitrary and without jurisdiction. It was also prayed that consequential relief may also be given.

4. In view of the aforesaid clear order of this Court it became clear that the Roads and Buildings Department represented through its concerned Officers in the field at the relevant time was held not competent to remove the hoardings in question, and that the impugned notice calling upon the original writ petitioner-respondent herein to remove the same was quashed. Of course, there was an additional ground for quashing the impugned notice viz., the same was vague.

5. Respondent's case in the contempt case was to the effect what despite this clear order of this Court representatives of the Roads and Buildings Department at Visakhapatnam, in-charge of the Special National High Way No. 5 passing through Visakhapatnam, forcibly got removed the hoardings in question between 4th and 5th May, 1991. 120 hoardings belonging to the original writ petitioner-respondent herein were removed by using sheer physical force, and in order to expedite removal and cutting, gas-cutters were used. Removed hoardings/materials were also taken away by the Department. Under those circumstances, the original writ petitioner-respondent herein moved the Contempt Case on 10-6-1991. Before the learned single Judge who heard the Contempt Case, two main contentions were urged by the appellant herein: (i) that the appellant herein was not a party to the writ petitioner and, therefore, contempt case could not lie against him; (ii) that the contempt case itself was barred by limitation. Both these contentions were negated by the learned single Judge who took the

view that Respondents 2 and 3 clearly represented the National High Way Division, Roads & Buildings Department, Visakhapatnam which managed the national High Way passing through Visakhapatnam City on the marginal land whereof the hoardings were erected and for which the Court granted relief as aforesaid after hearing Counsel for the parties. Therefore, the appellant could not contend that he was not a party to the writ petition and the order was not binding on him. On the question of limitation, it was held that the removal of the hoardings for which contempt case was moved took place between 4th and 5th May, 1991 and within one month and few days thereafter the contempt case was moved. Therefore, there was no question of the same being barred by limitation. Having taken that view the learned Judge proceeded to consider the moot-question whether the appellant herein was guilty of contempt, and it was held that when once the High Court judgment operated and was binding on the authorities forcible removal of the hoardings was in contravention of the High Court's directive and, therefore, the appellant herein was clearly guilty of contemptuous conduct. However, instead of ordering any punishment to be meted out to the appellant herein the learned single Judge thought it fit, in exercise of his jurisdiction under Article 215 of the Constitution of India, to pass appropriate consequential orders in the contempt case. Learned Judge found that 120 hoardings which were very costly were forcibly removed, and observed that the original writ petitioner-respondent herein could be relegated to the remedy of civil suit for recovery of appropriate damages. However, by way of token amount at the rate of Rs. 500/- per hoarding could be awarded as, according to the original writ petitioner-respondent herein, the cost of each hoarding was Rs. 25,000/-. Accordingly, the appellant was directed to pay a total amount of compensation of Rs. 60,000/- for 120 hoardings to the original writ petitioner-respondent herein for violation of the High Court's order, and the Department was given six months" time to pay off the same. Costs of Rs. 500/- was also awarded to the original writ petitioner-respondent herein.

6. As noted earlier, the aforesaid order of the learned single Judge has resulted in this appeal. At the time Of the final hearing of this appeal, learned Government Pleader for Transport appearing for the appellant herein raised the following contentions:

(i) The appellant was not bound by the High Court's order as he was not a party to the proceedings which culminated into the order in the writ petition. Therefore, there is no question of he being guilty of any contempt.

(ii) Even assuming that he was bound by the High Court's order, all that the High Court's order directed was that the impugned notice being vague was required to be quashed and it was accordingly quashed. But, there was no permanent injunction issued against any of the respondents restricting them from removing the hoardings. Hence, there is no question of any contempt on the part of the appellant.

(iii) In any case, damages to the tune of Rs. 60,000/- could not have been

awarded to the original writ petitioner-respondent herein in contempt proceedings especially when the original writ petitioner-respondent was already relegated to the remedy of civil suit by the learned single Judge if he was advised to sue for appropriate damages. It is, therefore, submitted that the impugned order is without jurisdiction.

7. We have heard the learned counsel for the parties on these contentions, and we have reached the conclusion that there is no substance in any of these contentions and this appeal is liable to fail. We now proceed to give our reasons for the said conclusion.

8. First Contention: So far as this contention is concerned, it is not in dispute between the parties that the hoardings in question which existed on spot were on the marginal land round about that segment of National High Way No. 5 which passes through Visakhapatnam City which was monitored and controlled by the Roads and Buildings Department of the State in-charge of National High Way No. 5. That department was duly represented in the writ petition by Respondents 2 and 3, as noted earlier, and the High Court after hearing the concerned parties clearly took the view that the concerned respondents has no authority to remove the hoardings put up by the original writ petitioner. Under these circumstances, it is too late in the day for the appellant herein to contend that a new Circle was created at Visakhapatnam for monitoring this segment of the National High Way and the appellant was the Project Director of that newly created Circle, as such, he is not liable for contempt. Even if subsequently a new Circle is created, the parent Roads and Buildings Department which was duly represented before the High Court in the writ petition through competent and concerned officers would not avoid responsibility which would remain fastened on the concerned authorities working in the Department when clear order of the High Court was passed against the Department represented by competent and concerned officers viz., Respondents 2 and 3. Therefore, we fully concur with the reasoning adopted by the learned single Judge in rejecting this contention, and hold that the appellant herein would be bound by the order of the High Court in the writ petition.

9. Second Contention: So far as this contention is concerned, we have already extracted the exact wordings of the order passed by the learned single Judge in the writ petition. That order has become final. It is true that there is no permanent prohibitory injunction issued against the concerned respondents. But when the entire order is seen it becomes clear that the Court has given a clear declaration that the concerned respondents had no jurisdiction or authority to remove the hoardings. The impugned notice was no doubt quashed as being vague. But that was not the sole reason for quashing the impugned notice. That was an additional reason given by the learned Judge for quashing the impugned notice. The main reason remains that the respondents had no authority to remove the hoardings and that finding and declaration got reflected in the final order quashing the impugned notice. Though there is a clear-cut declaration by

the High Court after hearing the parties that the respondents had no authority to remove the hoardings, it cannot be said that they gain immunity through their other officers who may be subsequently occupying office and can blissfully ignore this mandate of the High Court which had thus culminated in a Writ of Mandamus, and seek to remove the hoardings by declaring that they have jurisdiction and authority to do so which was denied by the High Court to them. Consequently, it cannot be said that the removal of the hoardings despite the order of the High Court would not amount to any contempt or violation of the High Court direction by the appellant. The second contention, therefore, fails and is rejected.

10. Third Contention: So far as this contention is concerned, it is true that, under the four corners of the Contempt of Courts Act, 1971 the Court may not be able to award any damages. But it cannot be forgotten that contempt alleged is that of the High Court. Under Article 215 of the Constitution of India, High Court as a Court of record has all powers to punish contemnor who is guilty of contempt of the order of the High Court, and High Court would equally be competent to pass appropriate consequential orders in contempt petition once contempt is established. In the present case, contempt is clearly established as the hoardings have all been removed forcibly as found from the record and for which there cannot be any serious controversy. Under these circumstances and as a consequence, the learned single Judge, instead of punishing the appellant, passed a milder order of awarding token damages to the original writ petitioner-respondent herein, was worth Rs. 25,000/- each. It cannot, therefore, be said that the consequential order was beyond the competence of the Court. Even this aspect of the matter is squarely covered by a Division Bench decision of this Court in Kanedena Veeraiah and Others Vs. Narra Venkateswarlu and Others, ., wherein Justice K. Jayachandra Reddy (as he then was) speaking for the Division Bench laid down as under:

"The High Court as a Court of record has undoubtedly inherent power as enshrined in Article 215 to punish for its contempt and all the powers of such court to pass orders to help the administration of justice; merely because third parties have intervened that by itself cannot come in the way of exercise of inherent jurisdiction of the High Court to pass just and necessary orders while disposing of the contempt application. If the Court finds that interests of justice warrant to give relief and it is possible to give such relief nothing prevents the Court from passing appropriate orders giving such relief."

We respectfully concur with the aforesaid decision. Applying the said ratio to the present case it cannot be said that the High Court was not competent to pass appropriate consequential order pursuant to the finding that the appellant was guilty of contempt of the High Court's order, and the Court directed him to pay token compensation of Rs. 500/- for each removed hoarding. It is true that the total amount works out to Rs. 60,000/-. This is only because extent of violation

was so gross that 120 hoardings were removed. That would not, therefore, have any effect on the power of the Court in awarding token compensation by way of consequential relief. It is obvious that the original writ petitioner-respondent herein can pursue his appropriate remedy in the civil Court as observed by the learned single Judge. The last contention, therefore, is also found to be without any merits and hence rejected.

11. These three are the only contentions canvassed in this appeal, and there is no substance in any one of the same.

12. The appeal fails and is dismissed with costs. Interim order vacated.

13. As the ultimate order of the learned single Judge was suspended during pendency of this appeal, the appellant will get clear six months from today to comply with the order of the learned single Judge.