

(2010) 10 MAD CK 0103

In the Madras High Court

Case No : Contempt Petition No. 489 of 2010

V. Malliga

APPELLANT

Vs

Mr. I. Krishnan President, The Central PWD Employees'
Cooperative Thrift and Credit Society Ltd. and Others

RESPONDENT

Date of Decision : 22-10-2010

Acts Referred:

Contempt of Courts Act, 1971 — Section 10, 12

Citation : (2011) 2 MLJ 813

Hon'ble Judges : M. Jeyapaul, J;D. Murugesan, J

Bench : Division Bench

Advocate : R. Arumugam, for the Appellant; S. Silambanan for Profexs Associates for RR 1 to 8 and R10, Sivakumar, for R9 and R. Subramaniam, for R11, for the Respondent

Judgement

M. Jeyapaul, J.—The petitioner was the respondent in Review Petition No. 1146 of 2009 and appeal in A.S. No. 600 of 2008 and the plaintiff in O.S. No. 6685 of 2007.

2. Factual matrix:

a) Case of the petitioner: The Central Public Works Department Cooperative Thrift & Credit Society Limited is a multi-State Co-operative

Society floated to promote the interest of all its members to attain their social and economical betterment through self-help and mutual aid in

accordance with the co-operative principles. Under the bye laws of the Society, the Secretary is an Officer of the Society. He is also an Ex-Officio

Member of the Board of Directors. He is the Chief Executive of the Society under Clause 30 of the bye laws of the Society. A notification for

selecting the Board of Directors was issued on 15.10.2007 for the election to be

held on 30.10.2007. The said notification was under challenge in O.S. No. 6685 of 2007 before the learned XII Assistant Judge, City Civil Court, Chennai. During the pendency of the suit, the respondents conducted the elections. The results of the said election was subject to the outcome of the Application filed for interim injunction. Respondents 1 to 10 alongwith late G. Arunachalam were declared elected and they assumed charge as Board of Directors of the Society during the pendency of the suit. The Trial Court was pleased to decree the suit partially. A Review Petition was filed by the respondents in I.A. No. 9438 of 2008 and the same was dismissed by the Trial Court. Civil Revision Petition No. 2400 of 2008 was preferred before this Court and the same was also dismissed on merits. First Appeal in A.S. No. 600 of 2008 was preferred before the learned III Additional Judge, City Civil Court, Chennai and the said First Appeal was also dismissed whereas the counter appeal in A.S. No. 12 of 2009 filed by the petitioner was allowed. The first appellate court appointed the Secretary of the Respondent Society, the 11th respondent herein as the Special Officer and directed to conduct the election as per the judgment and decree passed by the Trial Court. A Review Petition No. 1146 of 2009 was filed before the first appellate court to review its judgment and decree passed on 31.7.2009 in A.S. Nos. 600 of 2008 and 12 of 2009. The Review Petition ended up in a compromise and a compromise memo was also filed by the parties. The 11th respondent submitted an undertaking on 14.9.2009 before the learned III Additional Judge that the elections to the Society would be conducted and concluded within four months from the date of the memorandum filed before the court. The same was recorded by the learned III Additional Judge, City Civil Court, Chennai in his order dated 16.9.2009. The period of four months fixed by the court in the Review Petition expired on 15.1.2010. But, no election was conducted as committed before the learned III Additional Judge, City Civil Court, Chennai on 16.9.2009. The respondents wilfully and deliberately disobeyed the orders passed by the III Additional Judge, City Civil Court, Chennai. The undertaking submitted by the 11th respondent was conveniently ignored not only by the 11th respondent but also by all the Board of Directors who had no right to continue in office beyond 15.1.2010. There is a

clear and wilful disobedience of the orders passed by the learned III Additional Judge, City Civil Court, Chennai. Therefore, the respondents are

liable to be punished for contempt under Sections 10 and 12 of the Contempt of Courts Act.

b) Counter case of respondents 1 to 10:- At the outset, respondents 1 to 10 tender their unconditional apology for the contempt that might have

been committed inadvertently by the respondents. They have not disobeyed or committed any act of contempt intentionally or wilfully. The

Secretary of the Society is the Chief Executive of the Society. Respondents 1 to 10 were not parties before the court below. Only after a decree

was passed in O.S. No. 6685 of 2007 dated 17.4.2008, the Board was informed of the result of the case. The Board unanimously resolved on

23.4.2008 to prefer an appeal. The Society was not aware of the result of the appeal in A.S. No. 600 of 2008. Only after the Society received a

notice from the counsel for the petitioner dated 4.8.2009, Shri. S. Jagannathan, Advocate on record for the respondents intimated that the court

has extended the functioning of the Board of Directors for a period of four months and to conduct election before the expiry of the extended

period of four months. Therefore, the Board could not function between 6.8.2009 and 16.9.2009. It appears that the Secretary of the Society filed

a Review Petition in the appeal in A.S. No. 600 of 2008 before the learned III Additional Judge, City Civil Court, Chennai on 14.9.2009. A joint

memo of compromise seems to have been filed without the knowledge of the Board of Directors. The Board again met on 11.9.2009 and resolved

to take further action in the election process as soon as the certified copy of the order was obtained. The Board of Directors have no intention

whatsoever to delay the election. They once again tender their unconditional apology before this Court for the act of contempt, if any.

c) Counter case of the 11th respondent:- The petitioner is the Secretary of the Central Public Works Department Employees' Cooperative Thrift

& Credit Society Limited which is a multi-State Co-operative Society under Multi-State Co-operative Societies Act, 1984. As per the bye laws

of the Society, the power to conduct election is vested with the Board. The Board alone is empowered to appoint a Returning Officer. This

resulted in a stalemate. The 11th respondent consulted the Board of Directors and as per the consensus evolved, it was agreed to conduct election

in four months and the Board of Directors were allowed to function till then. Thus a Review Petition was filed and the compromise came to be

entered on 14.9.2009. An order was passed recording the compromise on 16.9.2009 by the learned III Additional Judge, City Civil Court,

Chennai. The copies of the orders were awaited to conduct the election. The 11th respondent was instructed by the Board of Directors to file

appeal against the judgment dated 31.7.2009. Since the elections have to be conducted by the Board of Directors by appointing a Returning

Officer, the 11th respondent was helpless. There was no intention on the part of the 11th respondent to delay the election. The 11th respondent

also tenders his unconditional apology before this Court for the act of contempt, if any, committed by him.

3. Submissions on the side of the petitioner:- Learned Counsel appearing for the petitioner would submit that the 11th respondent being the Ex-

Officio Member of the Board of Directors and Chief Executive of the Society as per the bye laws, represented the Society throughout the litigation

initiated by the petitioner. The Board of Directors were very well aware of the litigation and the directions passed by this Court. Therefore, the

Board of Directors cannot shirk their responsibility in conducting the election as stipulated by the first appellate court within the time frame fixed by

it. The 11th respondent also cannot escape from the contempt proceedings as he was instrumental in inviting the order passed in the Review

Petition by filing the memo of compromise after entering into some consultation with the Board of Directors. The very fact that the Board of

Directors, in fact, enjoyed their tenure extended by the court, but, postponed the election till about the expiry of their tenure. Such a conduct would

go to show that they wilfully disobeyed the orders of the court.

4. Submissions made on the side of respondents 1 to 10:

Learned Senior Counsel appearing for respondents 1 to 10 would submit that the unconditional apology tendered before the court may be

accepted if an act of contempt, if any, was committed inadvertently. Respondents 1 to 10 were not parties before the courts below. Inasmuch as

the memo of compromise was submitted by the 11th respondent without bringing to the knowledge of the Board of Directors, the Board of

Directors cannot be hauled up in the contempt proceedings initiated by the

petitioner herein. The Board of Directors could not function between 6.8.2009 and 16.9.2009 and it resumed its function only on 17.9.2009 based on the orders passed by the first appellate court in the review petition. The Board also awaited the orders passed by the appellate court in the review petition. The election process could not be initiated as the certified copy of the orders was not received in time. The election has now been conducted after the resolution was duly passed by the Board of Directors.

5. Submissions made on the side of the 11th respondent:- Learned Counsel appearing for the 11th respondent would contend that as the Board, which is empowered to appoint a Returning Officer, had not appointed the Returning Officer in time, the election could not be conducted. The 11th respondent was helpless as the election was not conducted by the Board of Directors by appointing a Returning Officer. The unconditional apology tendered by the 11th respondent may be accepted.

6. Discussion:- Based on the compromise memo filed by the Secretary of the Society, the first appellate court passed the order in the Review Petition. The operative portion of the order reads as follows:

1. The present Board of Directors are permitted to continue in office for another four months from the date of passing of the order in the above

Review Petition.

2. That the Board of Directors are directed to hold fresh elections to the Board of Directors and complete the said election within a period of four months from the date of this order after observing all provisions of MSCS Act, 2002 and rules framed thereunder and bye laws of the Society.

The petitioner contends that the aforesaid order has been deliberately disobeyed by the respondents.

7. The 11th respondent is none other than the Secretary representing the Central Public Works Department Cooperative Thrift & Credit Society

Limited. As per the bye laws of the Society, the Secretary is an Officer of the Society and Ex-Officio Member of the Board of Directors. He,

being the Chief Executive of the Society, has been authorised to contest the suit laid by the petitioner. The 11th respondent has categorically

admitted in para 10 of the counter filed by him that he consulted the Board of Directors prior to filing of the memo of compromise before the first

appellate court. Therefore, the stand taken by respondents 1 to 10 that the compromise was entered into by the Secretary of the Society with the petitioner without their knowledge cannot be accepted by us. When the Society is represented by the Secretary, who is the Chief Executive and Ex-Officio Member of the Board of Directors, all the actions done by the 11th respondent would be binding on the Board of Directors. The Board of Directors also are supposed to have knowledge of the acts of the Secretary done on behalf of the Society. The counter affidavit filed by respondents 1 to 10 would go to establish that they were, in fact, aware of the litigation at least from the stage when an adverse decision was rendered by the Trial Court. An appeal has been preferred only as per the resolution passed by the Board of Directors. They were also aware of the decision rendered by the first appellate court in the Review Petition filed by the Society represented by the 11th respondent. The respondents are well educated persons holding responsible positions in the Central Public Works Department under the Union of India. Therefore, they cannot also plead that out of ignorance of law, they could not comply with the directions of the court. In fact, the Board of Directors were permitted to continue in office for four months from the date of passing the order and they were also directed to hold fresh election for the Board of Directors and complete the election process within the said four months period.

8. It is the admitted case of the Board of directors that they were very well aware of the orders passed in the Review Petition and only on account of the orders passed in the Review Petition, they were permitted to continue in office for four months time. They were also aware that election was to be conducted within four months time fixed by the court in the Review Petition.

9. When the order would read that the four months time granted by the court would start running from the date of passing the order, the Board of Directors would have no occasion to wait for the certified copy of the orders passed by the first appellate court. The very fact that respondents 1 to 10 continued in office beyond the said period of four months fixed by the first appellate court and showed indifference to the orders of the first appellate court to complete the election process within four months, would demonstrate that respondents 1 to 11 had an intention to hold the office illegally and complete their term of office even by flouting the orders of the first

appellate court. The Board of Directors are not supposed to pass some resolutions violating the very spirit of the orders passed by the court.

10. It is found that the respondents have successfully completed their tenure of three years in office despite the fact that the election notification dated 15.10.2007 was declared as null and void and the respondents were directed to hold the office only for four months from 16.9.2009 and complete the election process on or before 15.1.2010. Unfortunately, the respondents continued in office and conducted election only on 29.9.2010 for the next session i.e., from 2010 to 2013.

11. As already pointed out, the Secretary of the Society filed the memo of compromise before the first appellate court only with the consultation and concurrence of the Board of Directors. That being the case, we fail to understand the stand taken by the Board of Directors that they were not aware of the terms of compromise presented before the first appellate court. The Board of Directors chose to enjoy the tenure of four months given by the first appellate court based on the memo of compromise filed before it. But, they have chosen to disobey wilfully the directions flowed from the first appellate court based on the undertaking given by them to conduct election within the said four months period.

12. In the above facts and circumstances, we have no hesitation to hold that an order passed by the first appellate court has been wilfully disobeyed not only by the 11th respondent but also by respondents 1 to 10. The connivance of the Board of Directors could be smelt from the very fact that they continued to hold the office beyond 15.1.2010 without any objection from any of the Board of Directors. The Board of Directors, for whose benefit, the order was passed by the court at the instance of their representative, cannot now complain that they were not parties to the proceedings and therefore, they were not liable to answer the contempt proceedings initiated by the petitioner. The 11th respondent, being the Chief Executive and Ex-Officio Member, cannot also put the blame on the Board of Directors and walk out of the contempt proceedings initiated as against him also.

13. Of course, every disobedience of the orders of the court cannot be classified as a civil contempt. There may be a case where due to some unavoidable circumstances or inadvertence, the orders of the court could not be

complied with. In the instant case, it is found that the respondents want to cling on their position till the expiry of their tenure. Therefore, they have deliberately and consciously disregarded the orders of the court.

Their intention to flout the orders of the court is writ large in their conduct.

14. When the order was clear, unambiguous and unequivocal, the Board of directors have chosen to pass a resolution to await the certified copy of the orders passed by the court in order to initiate the election process. Their intention is not found to be bona fide or honest.

15. Of course, respondents 1 to 11 have tendered unconditional apology through their counter affidavit. In our considered opinion, such an unconditional apology has been tendered by respondents 1 to 11 only to escape from the contempt proceedings having wilfully and deliberately disobeyed the orders of the court. Therefore, no weight can be given to such an apology tendered by the contemnors.

16. In the above facts and circumstances, respondents 1 to 11 are found guilty of civil contempt and each of them is imposed with a fine of Rs.

1000/- which shall be paid within a period of seven days from the date of this order failing which each of them shall undergo simple imprisonment for one month. The contempt petition is ordered accordingly.