
(2008) 04 MAD CK 0091

Madras High Court

Case No: Contempt Petition No. 988 of 2006

R. Gopi and Others

APPELLANT

Vs

Saravanan Gopalan
and M. Prabhakaran

RESPONDENT

Date of Decision: April 8, 2008

Acts Referred:

- Industrial Disputes Act, 1947 - Section 17B, 33

Citation: (2008) 4 MLJ 928

Hon'ble Judges: M. Jaichandren, J

Bench: Single Bench

Advocate: M. Vaidyanathan, for the Appellant; N. Thiagarajan, for R2, for the Respondent

Final Decision: Dismissed

Judgement

M. Jaichandren, J.

This petition has been filed praying that this Court may be pleased to punish the respondents for willfully and

deliberately disobeying the order of this Court, dated 21.4.2006, made in W.P.M.P. No. 24902 of 2004 and W.V.M.P. No. 2025 of 2005 in

W.P. No. 20685 of 2006.

2. It is stated that the first petitioner in the present petition is the first respondent in the writ petition in W.P. No. 20685 of 2006.

3. It is further stated that the Labour Court, Chennai, had computed the amount due to the petitioner in C.P. No. 372 of 2003. A stay order had

been obtained by the Management in W.P.M.P. No. 24902 of 2004 in W.P. No. 20685 of 2006, filed before this Court challenging the award,

dated 31.5.2004, passed in Claim Petition No. 372 of 2003, on the file of the Principal Labour Court, Chennai.

4. The Management had admitted that an amount of Rs. 5,08,000/- is due to 27 workers. By an order, dated 21.4.2006, this Court had directed

the respondents to disburse the amount to the petitioners in the claim petition. The respondents had paid a sum of Rs. 3,87,387/- only and the

payment had not been made to all the workers as directed by this Court. The demand draft charges had also been deducted from the amount due

to the workers. The short payment of the amount due to the workers is in violation of the orders passed by this Court.

5. In the counter affidavit filed by the first respondent, it has been stated that no contempt had been committed, as alleged by the petitioners. The

amount admitted in the evidence by the alleged contemnor was in respect of the unsettled employees of the Company. It cannot be construed to be

the amount payable for the 27 persons alone. The un-disbursed amount is lying with the bank as some of the employees had not come forward to

get their dues settled. In fact, some of the employees had independently approached the management for settlement of their dues. Therefore, the

amount due to such employees had also been settled.

6. It has been further stated that the petitioners have not clarified as to how they are entitled to be paid amounts more than what is due to them

under the settlement scheme. The respondents are only residential directors of the Company without any share or stake in the Company. The

deduction of the demand draft commission was only due to the non availability of the cheque facility, after the closure of the Company. Even

though the petitioners claim that they are 27 in number only 22 employees were able to produce the letters of authority. Therefore, the amounts

due to such persons alone have been disbursed. The procedure followed for nearly 800 employees of the Company was to settle their dues by

getting settlement letters from them before disbursing the amounts.

7. The learned Counsel appearing for the petitioners had submitted that the Labour Court had computed the amount due to 27 employees in C.P.

No. 372 of 2003. Some of the employees had settled their claims during the pendency of the claim petition and the writ petition. The Management

has not paid the amounts due to the 27 workmen concerned in the contempt petition. There is no direction in the order passed by this Court to

deduct the demand draft charges. It is the respondents who have to bear the said charges. The short payment of the amounts due to the workers

amounts to violation of the order passed by this Court. Since it was admitted before the Labour Court that the amount of Rs. 5,08,000/- was due

to the 27 employees who had come before the said Court, the respondents ought to have disbursed the amount only to those 27 employees and

not to the others. Since the respondents had settled the claims of the five employees during the pendency of the claim petition, the balance amount

is payable to the remaining 22 employees.

8. The learned Counsel appearing for the respondents had submitted that the respondents have not committed contempt of Court as they have

taken all possible steps to disburse the amounts due to the employees who had made their claims by giving Letters of Authorisation. The other

employees have not approached the respondents so far. In case, they approach the respondents for settling their dues, along with the required

documents, the respondents may be in a position to settle their dues as prescribed by law and the orders passed by this Court. Since the Company

had been closed, no cheque facility was available and therefore, the amounts due to the workers ought to be paid only by way of demand drafts.

9. It has been stated that since the respondents did not have other funds, except the amount allocated for the payment to the workers, the demand

draft charges ought to be deducted from the said amount. There is no wilful disobedience of the order passed by this Court and the respondents

have high regard and respect for this Court and therefore, the respondents would never intentionally and willfully disobey the orders passed by this

Court. It was also stated that this Court may be pleased to discharge the respondents from the charge of contempt as they tender an unconditional

apology if it is found by this Court that they have committed contempt of Court.

10. The learned Counsel appearing for the petitioners had relied on the following decisions in support of his contentions:

10.1. In Union of India (UOI) and Others Vs. Subedar Devassy PV, , the Supreme Court has held as follows:

2. While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received

its finality had been complied with or not. It would not be permissible for a court to examine the correctness of the earlier decision which had not

been assailed and to take a view different from what was taken in the earlier decision. A similar view was taken in K.G.Derasari v. Union of India.

The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have

committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the

party concerned to approach the higher court if according to him the same is not legally tenable. Such a question has necessarily to be agitated

before the higher court. The court exercising contempt jurisdiction cannot take upon itself the power to decide the original proceedings in a manner

not dealt with by the court passing the judgment or order. Though strong reliance was placed by learned Counsel for the appellants on a three-

Judge Bench decision in Niaz Mohd. v. State of Haryana, we find that the same has no application to the facts of the present case. In that case the

question arose about the impossibility to obey the order. If that was the stand of the appellants, the least it could have done was to assail

correctness of the judgment before the higher court.

3. The above position was highlighted in Prithawi Nath Ram v. State of Jharkhand.

4. On the question of impossibility to carry out the direction, the views expressed in T.R. Dhananjaya V. J. Vasudevan need to be noted. It was

held that when the claim inter se had been adjudicated and had attained finality, it is not open to the respondent to go behind the orders and

truncate the effect thereof by hovering over the rules to get around the result, to legitimise legal alibi to circumvent the order passed by a Court.

5. In *Mohd. Iqbal Khanday v. Abdul Majid Rather* it was held that if a party is aggrieved by the order, he should take prompt steps to invoke

appellate proceedings and cannot ignore the order and plead about the difficulties of implementation at the time contempt proceedings are initiated.

6. If any party concerned is aggrieved by the order which in its opinion is wrong or against the rules or its implementation is neither practicable nor

feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of

the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party

liable for contempt. While dealing with an application for contempt, the Court cannot traverse beyond the order, non-compliance with which is

alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It

cannot test the correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review

jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible.

10.2. In *Prithawi Nath Ram Vs. State of Jharkhand and Others*, , the Supreme Court has held as follows:

8. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor

feasible, it should always either approach to the Court that passed the order or invoke jurisdiction of the Appellate Court. Rightness or wrongness

of the order cannot be urged in contempt proceedings. Right or wrong the order has to be obeyed. Flouting an order of the Court would render

the party liable for contempt. While dealing with an application for contempt the Court cannot traverse beyond the order, non-compliance of which

is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It

cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction

while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the

matter, the order of the High Court is set aside and the matter is remitted for fresh consideration. It shall deal with the application in its proper

perspective in accordance with law afresh. We make it clear that we have not expressed any opinion regarding acceptability or otherwise of the

application for initiation of contempt proceedings.

10.3. In Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another, , the Supreme Court had held that the imposition

of punishment for contempt would not denude the Court of its power to issue directions to remedy the wrong done by the contemnor including

those so as not to enable the contemnor to retain the benefit derived from the contempt. Such a power vested in the Court cannot be defeated on

procedural or other technical objections.

10.4. In India Forge & Drop Stampings, Ltd. v. Employees' Union 1991 I L.L.N. 845, this Court had held that merely because an order of the

Court could be executed or was capable of being enforced through a manner known to law, it does not allow the party disobeying that order to

escape the consequence of wilful disobedience of the order under the Contempt of Courts Act, 1971.

10.5. In K.K. Bheeman v. Mgmt. of High Forest Estates 2001 (3) L.L.N. 696, this Court had held that non compliance of the order passed by

the Court to pay the last drawn wages to the employees u/s 17B of the Industrial Disputes Act is maintainable even though an alternate remedy of

execution of the award may be opened to the petitioner u/s 33(C)(2) of the said Act.

11. On analysing the contentions raised on behalf of the petitioners as well as the respondents and in view of the cases cited before this Court, this

Court is of the considered view that the petitioners have not shown sufficient cause or reason to punish the respondents for contempt of Court.

There is nothing on record to show that the respondents have intentionally or wilfully disobeyed the orders passed by this Court, as alleged by the

petitioners. Once it is shown by the respondents that they have taken sufficient steps to substantially comply with the directions issued by this Court

the allegations of wilful disobedience of the order passed by this Court would not arise for serious consideration.

12. In the present case, it is seen that the respondents have substantially complied with the directions issued by this Court, even though there might

have been some discrepancies in the payments made to the workers, including deduction of the demand draft charges from the amounts due to the

workers. In such circumstances, this Court is of the considered view that the contempt petition is not sustainable and therefore, it stands dismissed.

No costs.