

(2016) 09 AHC CK 0207

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

Case No: Special Appeal Defective No. 413 of 2016.

C/M Madarsa
Ehl-E-Sunnat
Noor-Ul-Uloom Atiqya
and Another -
Appellants @HASH Sri
Prakash Singh, Secy.,
Minority Welfare and
3 Ors

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 26, 2016

Acts Referred:

- Contempt of Courts Act, 1971 - Section 2(c)

Citation: (2016) 10 ADJ 626 : (2016) 6 ALLJ 266 : (2016) 6 ALLWC 6520

Hon'ble Judges: Amreshwar Pratap Sahi and Dr. Vijay Laxmi, JJ.

Bench: Division Bench

Advocate: Laltaprasad Misra and Sharad Pathak, Advocates, for the Appellants

Final Decision: Disposed Off

Judgement

1. This appeal has been filed under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 as an intra-Court Appeal in a matter arising out of a Civil Contempt Application No. 2171 of 2014 that had been filed alleging disobedience of the judgment dated 8.1.2014 in Writ Petition No. 2071 (MS) of 2011. A dispute had arisen in relation to extending the benefit of grant-in-aid to the petitioner-Madarsa which was brought to this Court assailing the Government Order dated 13.12.2006 and an order dated 29.9.2006 in Writ Petition No.78 (MS) of 2007. The orders were quashed and a direction was given to the State Government to reconsider the case of the petitioners for extension of such benefits. The writ petition had been allowed on 23.7.2008 only on the issue of violation of principles of natural justice.

2. The State Government passed an order dated 17.2.2010 denying the benefit of grant-in-aid to the petitioner on the ground that there is a dispute about the Management of the Committee of the institution. The order was challenged that merely because there was a dispute, the same cannot result in denial of the benefit of grant-in-aid. The said order was quashed on 3.12.2010 and it was held that the grant-in-aid cannot be denied or withdrawn on account of such a dispute.

3. An order thereafter came to be passed by the State Government on 14.1.2011 whereby the inclusion of the name of the petitioner-Madarsa in the grant-in-aid list initially was cancelled. This writ petition No. 2071 (MS) of 2011 was allowed vide judgment dated 8.1.2014.

4. Owing to non-compliance of the aforesaid judgment dated 8.1.2014, contempt application No.2171 of 2014 was filed.

5. It appears that an affidavit was filed on behalf of the State bringing on record the order dated 19.11.2014 indicating compliance of the judgment and extension of the benefit to the petitioner-institution. The learned Judge dealing with contempt matters, on such an affidavit being filed, has treated the same to be a substantial compliance of the directions of the Writ Court and has accordingly terminated the contempt proceedings.

6. Dr. L.P. Misra has raised a grievance that since the learned Single Judge has failed to exercise his jurisdiction, then keeping in view the judgment in the case of *Midnapore Peoples' Cooperative Bank Ltd. v. Chunilal Nanda* (2006) 5 SCC 399 as also the judgment of the Apex Court in *Special Deputy Collector (LA) v. N. Vasudeva Rao and others* (2007) 14 SCC 165, a Special Appeal is maintainable for the redressal of the grievances of the appellants.

7. He further submits that on account of the termination of the proceedings, an appeal under the Contempt of Courts Act, 1971 cannot be preferred under Section 19 thereof and consequently, the present appeal would be maintainable. For this, he has placed reliance on the Division Bench Judgment in the case of *S.M.A. Abdi, the Principal Secretary (Law), Government of U.P., U.P. Secretariat, Lucknow and another v. Private Secretaries Brotherhood, Office of the U.P. State Law Officers and others* 2010 (81) ALR 351 : 2010(4) ALJ 686.

8. We have considered the aforesaid submissions raised and what we find is that the Division Bench judgment in the case of *S.M.A. Abdi* (supra), in paragraph - 2 thereof, has clearly indicated that the compliance of the judgment in that case was in relation to protection and bifurcation of a cadre of Private Secretaries in the Office of U.P. State Law Officers that had been interpreted by the learned Judge dealing with a contempt application in a manner which was found to be travelling beyond the directions that had already been issued by the Writ Court on the merits of the matter. The judgments cited by the learned Counsel for the appellants in the other two decisions referred to here-in-above also relate to directions being issued by the

Contempt Court which can be termed to be beyond the directions of the Writ Court. Here, the contention is that the learned Judge has failed to exercise jurisdiction.

9. We have examined the same and we find that the learned Single Judge has clearly recorded that the compliance indicates "a substantial compliance". The learned Judge dealing with the contempt matter has not overstepped his authority in issuing any directions which may run counter to the directions of the Writ Court.

10. The grievance of the appellants is to the effect that the authority by not complying with the directions in it's entirety is not respecting the Majesty of this Court and therefore, the Court itself should take action as the matter of contempt is between the Court and the contemnor. It is urged that since there is a failure on this count, an appeal would be maintainable under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 against a failure to exercise jurisdiction.

11. The issue which appears to be is of whether there is a substantial compliance or only a minuscule compliance of the directions of the Writ Court. In our opinion, the fact that there is a compliance has not been disputed. It is the degree of compliance which is being stated to be deficient and on that count, the enforcement has been prayed for by taking action.

12. A civil contempt has to be tested on the anvil of the existence of a positive command and it's wilful or deliberate disobedience by the contemnor.

13. An avoidance to comply by a ploy of mist or a pretence of obedience must be investigated before arriving at any conclusion of substantial compliance.

14. A compliance should not be a mere device to avoid punishment. The genuineness of the attempt and desire to obey the command should not be doubtful or deceitful.

15. The weapon of contempt is to ensure the existence of rule of law and this is achieved by instilling a fear of punishment on wilful disobedience.

16. The very purpose of contempt would be frustrated if disobedience is not suitably dealt with and is allowed to be perpetuated with impunity by observing abstinence.

17. The majesty of law, and the institution of Courts created to protect and enforce laws, would be at peril if situations of contempt are not dealt with deftly and promptly.

18. Compliance of a command has to be complete and effective so as to execute it in pith and substance. Any superficial handling or an intentional avoidance or a careless and casual approach would be skipping over the tolerant limits of judicial commands.

19. We find that the learned Single Judge has not committed any error in arriving at the conclusion of a substantial compliance, but at the same time, we may observe

that the State Authorities are duty bound to ensure compliance effectively. We therefore do not find any ground to interfere with the order impugned, but keeping in view the nature of the relief that has been claimed by the appellants, we deem it fit and proper in the peculiar facts of this case to enable the authorities to proceed for compliance of the judgment dated 8.1.2014 in it's entirety that may be necessary keeping in view the contents of paragraph - 10 of the order of the State Government dated 19.11.2014. The disposal of this appeal or the termination of the contempt proceedings will not be an impediment in the passage of the appellants to seek any further remedy in law before this Court.

20. The Special Appeal stands disposed off accordingly.