

**(2010) 11 MAD CK 0254**

**Madras High Court (Madurai Bench)**

**Case No:** Cont.P. (MD) No. 625 of 2010 in Writ Petition (MD) No. 12568 of 2010

A. Belthazar

APPELLANT

Vs

S. Neela, The Chairman, Child  
Welfare Committee and  
Pandiammal, The Authorised  
Officer, Child Care Centre,  
Gandhigram University

RESPONDENT

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**Date of Decision:** Nov. 18, 2010

**Acts Referred:**

- Contempt of Courts Act, 1971 - Section 11

**Hon'ble Judges:** M. Jaichandren, J

**Bench:** Single Bench

**Advocate:** G. Thalaimutharasu, for the Appellant; R. Nandakumar, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

M. Jaichandren, J.

This Contempt Petition has been filed, u/s 11 of the Contempt of Courts Act, 1971, to punish the Respondents for their wilful disobedience of the order, passed by this Court, on 06.10.2010, in W.P.(MD) No. 12568 of 2010.

2. It has been stated that this Court had passed an order, on 06.10.2010, in W.P.(MD) No. 12568 of 2010, permitting the seventeen children, whose names had been mentioned therein, to attend the funeral of the Petitioner's wife Shelina, held at Nilakkottai, Dindigul District, at 4.30 p.m, on 06.10.2010. By the said order, the Petitioner had been directed to take the children, safely, to attend the funeral, from the second Respondent, Child Care Centre, Gandhigram University, Gandhigram, Dindigul District. It had also been directed that the children shall be accompanied by at least two responsible officers of the second Respondent, Child Care Centre.

3. It had also been stated that it shall be the responsibility of the Petitioner, as well as the Respondents, to ensure that sufficient arrangements are made for the convenience of the children, by providing them the basic amenities, during their trip. In the said order, it had also been stated that all the children, who had attended the funeral, should be taken back to the second Respondent, Child Care Centre, Gandhigram University, Gandhigram, Dindigul District, by 6 p.m. on 06.10.2010. Further, it was made clear that the custody of the children should remain only with the authorised officer of the second Respondent, namely, the Child Care Centre, Gandhigram University, Gandhigram, Dindigul District. In spite of such an order being passed by this Court and the same having been communicated to the contemnors, by Mr. K.M. Vijayakumar, the learned Special Government Pleader, appearing on behalf of the Respondents in the Writ Petition, by way of a telephonic message, the contemnors had wilfully disobeyed the order passed by this Court.

4. It has also been stated that in spite of contemnors having knowledge of the order, they had successfully prevented the children from attending the funeral of Shelina, the wife of the Petitioner, deliberately, with mala fide motives. Thus, they had committed contempt of court by their wilful disobedience of the order passed by this Court, in W.P.(MD). No. 12568 of 2010, dated 06.10.2010. Therefore, they are liable to be punished, as per the provisions of the contempt of Courts Act, 1971,

5. In the counter affidavit filed on behalf of the Respondents, it has been stated that they had not disobeyed the order passed by this Court, on 06.10.2010, in W.P.(MD). No. 12568 of 2010, either wilfully or wantonly. It has also been stated that they had not been heard at the time of the passing of the order, though Mr. K.M. Vijayakumar, the learned Special Government Pleader, appearing on behalf of the Respondents, had taken notice on their behalf.

6. It has been further stated that the telegram sent by the Assistant Registrar (P&A), Madurai Bench of Madras High Court, on 06.10.2010, had been received by the Respondents only, on 09.10.2010. Immediately, thereafter, the second Respondent had sent a communication to the first Respondent stating the reason for not being in a position to comply with the said order. The reasons for not obeying the order of this Court, in W.P.(MD). No. 12568 of 2010, dated 06.10.2010, has also been sent to the Assistant Registrar (P&A), Madurai Bench of the Madras High Court. Since, the Respondents had not received any written communication, on 06.10.2010, the children could not be sent to Nilakkottai, to attend the funeral of the Petitioner's wife. There was no wrongful intention on the part of the Respondents to disobey the order, dated 06.10.2010, made in W.P.(MD). No. 12568 of 2010.

7. It had been stated that if the Respondents had knowledge of the order, on 06.10.2010, they would have obeyed the order, both in letter and spirit. It had also been stated that the Respondents tender their unconditional apology, if this Court, for some reason, finds that the Respondents had committed contempt of Court.

8. In view of the averments made in the affidavit filed in support of the Contempt Petition and in view of the submissions made on behalf of the Petitioner, as well as the Respondents, and in view of the counter affidavit filed on behalf of the Respondents, this Court does not find sufficient cause or reason to punish the Respondents for contempt of Court for their wilful disobedience of the order passed by this Court, on 06.10.2010, in W.P.(MD). No. 12568 of 2010. It is not in dispute that the copy of the order passed by this Court, on 06.10.2010, could not be served on the Respondents before the funeral had taken place, at 4.30 p.m., on 06.10.2010, at Nilakkottai. The Petitioner had booked the telegram at the telegraph office, Dindigul, at 5.18 p.m., on 06.10.2010, and it had been received by the second Respondent only, at 18.30 hours, on the same day. As the funeral of the Petitioner's wife had taken place, at 4.30 p.m., at Nilakkottai it had not been possible for the Respondents to permit the children to attend the said funeral, as this Court had also directed that the children should be taken back to the second Respondent, Child Care Centre, Gandhigram, Dindigul District, by 6.00 p.m., on 06.10.2010, after their visit to Nilakkottai, in Dindigul District.

9. It is also noted that even though there is no dispute regarding the fact that Mr. K.M. Vijayakumar, the learned Special Government Pleader, had sent a telephonic message to the Respondents, with regard to the order passed by this Court, on 06.10.2010, in W.P.(MD). No. 12568 of 2010, the Respondents were not in a position to verify the authenticity of the said message. The Respondents had also stated that they have the greatest regard for the orders passed by this Court and that they would have implemented the order passed by this Court, if it had reached them in time. There is nothing to show, on behalf of the Petitioner, that the copy of the order had been received by the Respondents well before the funeral had commenced, at 4.30 p.m., at Nilakkottai.

10. Further, the Respondents had tendered their unconditional apology, if this Court, for some reason, finds that they had committed contempt by disobeying the order passed by this Court, on 06.10.2010, in W.P.(MD). No. 12568 of 2010. In such circumstances, it cannot be said that the Respondents had committed contempt of Court by their wilful disobedience of the order passed by this Court, on 06.10.2010, in W.P.(MD) No. 12568 of 2010. Therefore, this Contempt Petition stands closed.