

(2015) 04 CHH CK 0013

Chhattisgarh High Court

Case No: Contempt Case (C) No. 548 of 2013

Offence Reference

APPELLANT

Vs

R.B. Tripathi and Others

RESPONDENT

Date of Decision: April 28, 2015

Acts Referred:

- Constitution of India, 1950 - Article 136, 215, 338
- Contempt of Courts Act, 1971 - Section 10, 12, 3
- Criminal Procedure Code, 1973 (CrPC) - Section 195
- Evidence Act, 1872 - Section 3, 3(1)
- Orissa State Commission For Women Act, 1993 - Section 10, 10(1)(d)
- Penal Code, 1860 (IPC) - Section 193, 228
- Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 - Section 57, 58, 59, 60, 61

Citation: (2015) 3 CGLJ 143

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: N.K. Shukla, Senior Advocate and Manoj Paranjape, Amicus Curiae, for the Appellant

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Sanjay K. Agrawal, J

Invoking the contempt jurisdiction of this Court under Section 12 of the Contempt of Courts Act, 1971 (hereinafter called as, "Act of 1971") read with Article 215 of the Constitution of India, this reference has been made by the Commissioner for Persons with Disabilities Chhattisgarh, Durg herein alleging non-compliance of order dated 07.03.2013 passed by him in case No. 13 of 2012-13 "Mukesh Kumar

Sahtt v. Chhattisgarh State Power Holding Company Limited, Raipur". Shri Mukesh Kumar Sahu (hereinafter called as, "complainant") a person with disability working as a Assistant Engineer in Chhattisgarh State Power Distribution Company Limited filed a complaint under Sections 62 read with 63 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter called as, "Act of 1995") against the said company stating inter alia that the reservation for the post of persons with disabilities be made applicable to such persons working in the company on the post of Assistant Engineer w.e.f. from 2010 and he be granted promotion and other consequential service benefits.

2. The Commissioner for persons with disabilities in purported exercise of power under Sections 61 and 62 of the Act of 1995 passed an order on 07.03.2013 directing the aforesaid Company to reserve 6% post for persons with disabilities in the cadre of Assistant Engineer and the consequential benefit be granted to the complainant/Assistant Engineer and held as under:---

3. Thereafter notices were issued by the Commissioner for persons with disabilities to the Officers of the Company for compliance of his order dated 07.03.2013. The said Company filed reply to the Commissioner for persons with disabilities that they have preferred W.P.(C) No. 815 of 2013 "Chhattisgarh State Power Holding Company Limited v. Commissioner for persons with disabilities and others" before this Court which is pending consideration therefore time be granted to file reply and to await the decision of pending writ petition.

4. The Commissioner for persons with disabilities finding the reply unsatisfactory, referred the matter to this Court under Section 12 of the Act of 1971 stating inter-alia that it is a case of deliberate and willful dis-obedience of order passed by Court of Commissioner for persons with disabilities.

5. The reference petition has been registered as a contempt case. Dr. N.K. Shukla Senior Advocate was appointed as amicus curiae to assist the Court.

6. Dr. N.K. Shukla learned Senior counsel assisted by Mr. Manoj Paranjape appearing as amicus curiae would submit, that the Commissioner for persons with disabilities is not a court subordinate to the High Court within the meaning of Section 10 of the Act of 1971. Elaborating his submission he would submit that the Commissioner for persons with disabilities appointed under Section 57 of the Act of 1995 would have the powers of civil court under Section 63 of the Act only for the purpose of discharging the function under the Act, but the Commissioner has no power of a civil court including power to give definitive judgment as such the contempt petition as referred under Section 12 of the Act for non-compliance of order dated 07.03.2013 is not maintainable in law and as such the contempt petition deserves to be dismissed as not maintainable in law.

7. I have heard the Dr. N.K. Shukla, learned Senior counsel with Mr. Manoj Paranjape learned amicus curiae on the question of maintainability of reference petition made

under Section 12 of the Act of 1971.

8. At this stage, it would be appropriate to notice Section 10 of Act of 1971, which deals with powers of High Court to punish for the contempt of sub-ordinate court:--

"10. Power of High Court to punish contempts of subordinate Courts- Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of Courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860)."

9. The question for consideration would be whether "Commissioner for persons with disabilities appointed under Section 57 of the Act of 1995" is a "Court subordinate to High Court" within the meaning of Section 10 of the Act of 1971.

10. The word "Court" is not defined in Act of 1971. Section 3 of the Indian Evidence Act defines the "Court" as under:--

"Court" includes all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence."

11. Their Lordships of the Supreme Court in the case of [Brajnandan Sinha Vs. Jyoti Narain](#), AIR 1956 SC 66 : (1956) CriLJ 156 : (1955) 2 SCR 955 has held that the word "Court" is not defined in the Contempt of Courts Act and the expression "Courts subordinate to the High Courts" in Section 3(1) would prima facie mean the courts of law subordinate to the High Courts in hierarchy of Courts established for the purpose of administration of justice throughout the Union. The definition of "Court" in Section 3 of the Evidence Act is not exhaustive but framed only for the purpose of that Act and is not to be extended where such an extension is not warranted.

12. In [Brajnandan Sinha Vs. Jyoti Narain](#), AIR 1956 SC 66 : (1956) CriLJ 156 : (1955) 2 SCR 955 , their Lordships while considering whether a Commissioner appointed under Public Servant (Inquiries) Act, 1985 is a Court within the meaning of the term used in Act of 1971 laid down the test for determining what is a Court within the connotation of term as used in Act of 1971 and held as under:--

"14. The pronouncement of a definitive judgment is thus considered the essential "sine qua non" of a Court and unless and until a binding and authoritative judgment can be pronounced by a person or body of persons it cannot be predicated that he or they constitute a Court.

18. It is clear, therefore, that in order to constitute a Court in the strict sense of the term, an, essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a

judicial pronouncement."

13. In the case of [Thakur Kamta Prasad Singh \(Dead\) by Lrs. Vs. The State of Bihar](#), AIR 1976 SC 2219 : (1967) CriLJ 1380 : (1976) 3 SCC 772 : (1976) 3 SCR 585 : (1976) 8 UJ 326 , has held as under:--

"The subordination for the purpose of Section 3 of the Contempt of Courts Act means judicial subordination and not subordination under the hierarchy of Courts under the Civil Procedure Code or the Criminal Procedure Code."

14. The Supreme Court, in the case of [The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees" Union, Delhi](#), AIR 1950 SC 188 : (1950) 1 LLJ 921 : (1950) 1 SCR 459 , has held that the Industrial Tribunal, though discharges judicial functions, is not a "Court". The functions and duties of the Industrial Tribunal are very much like those of a body discharging judicial functions although it is not a "Court" in the technical sense of the word as under:--

"7. Now there can be no doubt that the industrial tribunal has, to use a well-known expression, "all the trappings of a Court" and performs functions which cannot but be regarded as judicial. [...]

23. [...] There can be no doubt that to be a Court, the person or persons who constitute it must be entrusted with judicial functions, that is, of deciding litigated questions according to law. However, by agreement between parties arbitrators may be called upon to exercise judicial powers and to decide a dispute according to law but that would not make the arbitrators a Court. It appears to me that before a person or persons can be said to constitute a Court, it must be held that they derive their powers from the State and are exercising the judicial powers of the State. In R. v. London Country Council (1931) 2 K.B. 215 : (100 L.J. K.B. 760), Savilla L.J. gave the following meaning to the word "Court" or "judicial authority":--

"It is not necessary that it should be a Court in the sense that this Court is a Court; it is enough if it is exercising, after hearing evidence, judicial functions in the sense that it has to decide on evidence between a proposal and an opposition; and it is not necessary to be strictly a Court; if it is a tribunal which has to decide rightly after hearing evidence and opposition."

As pointed out in picturesque language by Lord Sankey L.C. in *Shell Cc. of Australia v. Federal Commissioner of Taxation*, (1931) A.C. 275 : (100 L.J. P.C. 55), there are tribunals with many of the trappings of a Court which, nevertheless, are not Courts in the strict sense of exercising judicial power. It seems to me that such tribunals though they are not full-fledged Courts, yet exercise quasi-judicial functions are within the ambit of the word "tribunal" in Art. 136 of the Constitution. It was pointed out in the above case that a tribunal is not necessarily a Court in this strict sense because it gives a final decision, nor because it hears witnesses on oath, nor because two or more contending parties appear before it between whom it has to

decide, not because it gives decisions which affect the rights of subjects nor because there is an appeal to a Court, nor because it is a body to which a matter is referred by another body. [...]"

15. The Supreme Court in the matter of [Ningamma and Another Vs. United India Insurance Co. Ltd.,](#) (2009) ACJ 2020 : AIR 2009 SC 3056 : (2009) CLT 1334 : (2009) 8 JT 262 : (2009) 156 PLR 796 : (2009) 8 SCALE 244 : (2009) 13 SCC 710 : (2009) 8 SCR 683 : (2009) 6 UJ 2949 : (2009) AIRSCW 4916 : (2009) 5 Supreme 127 , has held as under:--

"9. It is now well settled principle of law and having regard to the definition of the Court contained in various statutes like Code of Civil Procedure or the Evidence Act would mean a Tribunal, whose decision shall be final and/or would be entitled to take evidence in terms of the provisions of the Evidence Act. It is also well settled that although a Tribunal may exercise some of its powers in terms of the Code of Civil Procedure or Code of Criminal Procedure and have all the trappings of a Court but still would not be treated as a Court....."

16. In the matter of [P. Sarathy Vs. State Bank of India,](#) (2000) 3 CTC 552 : (2000) 86 FLR 477 : (2000) 7 JT 12 : (2000) 2 LLJ 661 : (2000) 5 SCALE 116 : (2000) 5 SCC 355 : (2000) SCC(L&S) 699 : (2000) 1 SCR 402 Supp : (2000) AIRSCW 1978 : (2000) 4 Supreme 383 , their Lordships of the Supreme Court has laid down the essential test of judicial pronouncement by observing as under:--

"13. in order to constitute a court in the strict sense of the term, an essential condition is that the court should have apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement."

17. It would be appropriate at this stage, to note the relevant provision of Act of 1995 to determine whether the Commissioner appointed under Act of 1995 is a Court subordinate to High Court under Section 12 of the Act of 1971. The Act of 1995 was passed to give effect to the proclamation on the full participation on equality of the people with disabilities in the Asian and pacific region.

18. The Chief Commissioner for persons with disabilities has to be appointed by the Central Government by notification under Section 57 of the Act. The Commissioner for persons with disabilities has to be appointed by the State Government under Section 60 of the Act. The functions of the Chief Commissioner and are enumerated in Section 58 and Section 59 of the Act of 1995. The powers of the Commissioner is provided in Section 61 of the Act and under Section 62 of the Act of 1995. The Commissioner has to look into the complaints with respect to matters relating to deprivation of rights of the persons with disabilities. Sections 61 and 62 of the Act of 1995 provides as under :

"61. Powers of the Commissioner.--The Commissioner within the State shall -

- (a) co-ordinate with the departments of the State Government for the programmes and schemes for the benefit of persons with disabilities;
- (b) monitor the utilisation of funds disbursed by the State Government.;
- (c) take step to safeguard the rights and facilities made available to persons with disabilities;
- (d) submit reports to the State Government on the implementation of the Act at such intervals as that Government may prescribe and forward a copy thereof to the Chief Commissioner.

62. Commissioner to look into complaints with respect to matters relating to deprivation of rights of persons with disabilities - Without prejudice to the provisions of Section 61 the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matter relating to -

- (a) deprivation of rights of persons with disabilities;
- (b) non-implementation of laws, rules, bye-laws, regulations, executive order, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights or persons with disabilities, and take up the matter with the appropriate authorities."

19. Section 63 of the Act provides that the Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely - (a) summoning and enforcing the attendance of witnesses; (b) requiring the discovery and production of any document; (c) requisitioning any public record or copy thereof from any court or office; (d) receiving evidence on affidavits; and (e) issuing commissions for the examination of witnesses or documents.

20. Reading the aforesaid provisions, it is clear that the Commissioner for persons with disabilities though having trappings of Civil Court under the Code of Civil Procedure and on the other hand, by virtue" of provision contained in Section 63 of the Act of 1995, it will have same power of civil court in respect of enforcing the attendance of any person and examining him on oath, compelling production of documents and the proceedings before the Chief Commissioner and Commissioner shall be judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Chief Commissioner, the Commissioner, the competent authority, shall be deemed to be a civil court for the purposes of Section 195 and Chapter-XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

21. In the matter of [All India Indian Overseas Bank SC and ST Employees" Welfare Association and Others Vs. Union of India \(UOI\) and Others](#), (1996) 8 AD 564 : (1996)

10 JT 287 : (1999) 1 SCALE 5(1) : (1996) 6 SCC 606 : (1996) 8 SCR 295 Supp : (1997) 1 UJ 70 , their Lordships of the Supreme Court while considering the provision similar to Section 63 of Act of 1995 held as under:--

"5. It can be seen from a plain reading of clause (8) that the Commission has the power of the civil court for the purpose of conducting an investigation contemplated in sub-clause (a) and an inquiry into a complaint referred to in sub-clause (b) of clause (5) of Article 338 of the Constitution.

10. Interestingly, here, in clause (8) of Article 338, the words used are "the Commission shall... have all the powers of the Civil Court trying a suit". But the words "all the powers of a Civil Court" have to be exercised "while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause 5". All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause (8) of Article 338 of the Constitution."

22. Similarly, the Supreme Court in the matter of [Bhabani Prasad Jena Vs. Convenor Secretary, Orissa State Commission for Women and Another](#), AIR 2010 SC 2851 : (2011) 1 CTC 111 : (2010) 2 DMC 307 : (2010) 8 JT 85 : (2010) 7 SCALE 582 : (2010) 8 SCC 633 : (2010) 9 SCR 457 : (2010) 8 UJ 3795 : (2010) AIRSCW 5307 : (2010) 6 Supreme 247 , while considering Section 10 of Orissa State Commission for Women Act, 1993 has held that the State Commission under Section 10 of the Act of 1993 has no authority or competence to direct for DNA test:--

"11. Mr. Ranjan Mukherjee, learned counsel for Respondent 2 submitted that once a power has been given to the State Commission to receive complaints including the matter concerning deprivation of women of their rights, it is implied that the State Commission is authorised to decide these complaints. We are afraid, no such implied power can be read into Section 10(1)(d) as suggested by the learned counsel. The provision contained in Section 10(1)(d) is expressly clear that the State Commission may receive complaints in relation to the matters specified therein and on receipt of such complaints take up the matter with the authorities concerned for appropriate remedial measures. The 1993 Act has not entrusted the State Commission with the power to take up the role of a court or an adjudicatory tribunal and determine the rights of the parties. The State Commission is not a tribunal discharging the functions of a judicial character or a court."

23. Recently in the matter of [State Bank of Patiala and Others Vs. Vinesh Kumar Bhasin](#), AIR 2010 SC 1542 : (2010) 125 FLR 623 : (2010) 2 JT 507 : (2010) 3 LLJ 609 : (2010) 2 SCALE 353 : (2010) 4 SCC 368 : (2010) 1 SCC(L&S) 1044 : (2010) 3 SCR 6 : (2010) 2 SLJ 273 : (2010) AIRSCW 5152 : (2010) 6 Supreme 102 , their Lordships of the

Supreme Court considering the power of Commissioner for person with disabilities under Section 63 of the Act of 1995 has clearly held that the an authority functioning under the Act of 1995 has no power to issue any mandatory injunction and certain powers of the civil court has been conferred for discharge of their function and Commissioner cannot assume the powers of the civil court and held as under in paragraph 18:--

"18. It is evident from the said provisions, that neither the Chief Commissioner nor any Commissioner functioning under the Disabilities Act has power to issue any mandatory or prohibitory injunction or other interim directions. The fact that the Disabilities Act clothes them with certain powers of a civil court for discharge of their functions (which include the power to look into complaints), does not enable them to assume the other powers of a civil court which are not vested in them by the provisions of the Disabilities Act....."

24. Thus applying the test laid down for determining whether the Commissioner appointed under the Act of 1995 is a Court subordinate to High Court within the meaning of terms as used in Act of 1971, it would appear that the status and position of the Commissioner for persons with disabilities under the Act of 1995 is to look into the complaints with respect to matters relating to deprivation of rights of persons with disabilities and to take steps to safeguard the rights and facilities made available to the persons with disabilities and submit report to the State Government, on the implementation of the Act and report/order of Commissioner lacks both finality and authoritativeness which are essential tests of a judicial pronouncement as the Commissioner is having only some of the trappings of the judicial tribunal having no power to grant any mandatory or prohibitory injunction, therefore the Commissioner of persons with disabilities is clearly not a "Court subordinate to the High Court" for the purpose of Section 10 of the Contempt of Courts Act, 1971. It is held so accordingly and as such reference made by the Commissioner under Section 12 of Act of 1971 is held to be incompetent and not maintainable in law.

25. As a fall out and consequence of aforesaid discussion the reference made under Section 12 of the Act of 1971 by the Commissioner for persons with disabilities under the Act of 1995 is dismissed as not maintainable in law. Before, parting with the case, this Court appreciates the valuable assistance rendered to this Court by Dr. N.K. Shukla, Sr. Advocate assisted by Mr. Manoj Paranjape, Advocate as amicus curiae. No order as to cost(s).

HEAD NOTE

Commissioner for persons with disabilities is not a Court subordinate to High Court for the purpose of Section 10 of Contempt of Courts Act, 1971.