

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

FRIDAY, THE TWENTY EIGHTH DAY OF JUNE
TWO THOUSAND AND TWENTY FOUR

PRESENT



THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

CONTEMPT CASE No.6916 of 2023

Contempt case filed under Sections 10 to 12 of Contempt of Courts Act 1971 to punish the Respondents herein for willfully and deliberately violating the orders of this Hon'ble Court dated 12.05.2023 passed in W.P. No. 13125 of 2023.

Between:

S. Venkatesh, S/o. S. Pandu Ranga Rao, Age 56 years, Occ: Revenue Officer, Machilipatnam Municipal Corporation, Machilipatnam, Krishna District.

...Petitioner

AND

Sri G. Chandraiah, Commissioner, Machilipatnam Municipal Corporation, Machilipatnam, Krishna District.

...Respondent

Counsel for the Petitioner : Sri T S N Sudhakar

**Counsel for the Respondent : Sri K Sreedhara Murthy (SC for
Municipalities and Municipal Corporation services)**

The Court made the following:

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

CONTEMPT CASE No.6916 OF 2023

ORDER:-

1. This Contempt Case has been filed complaining alleged willful disobedience in implementing the order dated 12.05.2023 passed by this Court in W.P.No.13125 of 2023.
2. The petitioner filed W.P No.13125 of 2023 to declare the action of the 3rd respondent in not implementing the orders vide proceedings Roc.No.R-4905666/2021/C1/C2 dated 17.10.2022 issued by the 2nd respondent and not allowing the petitioner to joining report as Revenue Officer as highly illegal, arbitrary, unjust, improper insubordination and violative of Articles 14, 16 and 21 of the Constitution of India and consequently direct the 3rd respondent to allow the petitioner to joining report as revenue Officer with all consequential benefits.
3. Upon hearing both the parties, on 12.05.2023, this Court disposed of the writ petition with the following direction:

"Having heard the submissions made by learned counsel for both the parties, this Court is of the considered view that the present Writ Petition can be disposed of directing the petitioner to approach the 3rd respondent seeking reinstatement of his services in view of the order dated 17.10.2022 passed by the 2nd respondent within a

period of ten (10) days from today. Thereupon, the 3rd respondent shall consider the same and pass appropriate orders within a period of two (02) weeks, thereafter."

4. Learned counsel submits that, after obtaining order from this Court, the petitioner submitted representation along with order copy to the respondent on 26.05.2023. But, the respondent did not implement the orders of this Court inspite of receiving the copy of the order of this Court
5. Learned counsel for the petitioner submits that, without proper consideration and without taking into account of the Municipal laws and contrary to the orders of this Hon'ble Court, the respondent passed orders vide proceedings Roc.No.1289/2022-C1 dated 13.06.2023 not permitting the petitioner to duty on the ground of incidents of irregularities. Further, the respondent informed the petitioner to approach the Commissioner & Director of Municipal Administration, A.P., Vaddeswaram, Guntur.
6. Learned counsel for the petitioner submits that, the petitioner submitted a representation to the Commissioner & Director of Municipal Administration, wherein, the Commissioner & Director of

Municipal Administration vide proceedings Roc.No.R-4905666/2021/C1/C2 dated 06.07.2023 found fault with the action of the respondent and directed to comply with the orders dated 17.10.2022. But, till date, the same is not complied by the respondent.

7. Learned counsel for the petitioner submits that, the respondent being aware about the direction issued by this Court, obviously for reasons best known to him, did not implement the order of this Court which amounts to contempt, as defined under Section 2(b) of the Contempt of Courts Act and that the respondent is liable for punishment as per Section 12 of Contempt of Courts Act and requested to punish him in accordance with law.

8. Respondent – Former Commissioner, Municipal Corporation, Machilipatnam and presently working as Additional Commissioner, Eluru Municipal Corporation filed counter affidavit stating that, responding to the reinstatement orders issue by the Commissioner & Director of Municipal Administration, Guntur dated 17.10.2022, the Mayor of the Municipal Corporation, Machilipatnam submitted a letter stating that the petitioner did not work anywhere except in

Machilipatnam Municipality since his date of appointment and due to his long standing of continuous service in Machilipatnam Municipality leaded and caused to receiving so many complaints and leveled so many allegations against the petitioner during his working tenure in Machilipatnam Municipal Corporation and the Mayor requested the Commissioner & Director of Municipal Administration to transfer the petitioner to any other suitable Municipality as per his equivalent cadre of Revenue Officer (Grade-III) whereas the Machilipatnam Municipal Corporation, Revenue Officer present Cadre is Grade-I Revenue Officer and to avoid complaints and allegations of long standing continuation and irregularities said to have been committed and pointed out by the ACB Authorities.

9. It is further submitted in the counter affidavit that, in view of the above circumstances and in obedience to the orders of the Hon'ble Court dated 12.05.2023, the respondent – Commissioner, Municipal Corporation, Machilipatnam passed appropriate orders dated 09.06.2023 within a period of two weeks, not permitting the petitioner to join and informing the petitioner to approach the Commissioner & Director of Municipal Administration, Guntur, as such, there is no

disobedience of the orders of this Court and prayed to close the Contempt Case against him.

10. Learned counsel for the petitioner submits that, the respondent/contemnor wantonly and intentionally failed to pass appropriate orders considering the order passed by the Commissioner & Director of Municipal Administration in Roc.No.R-4905666/2021/C1/C2 dated 17.10.2022 and thus, the respondent in his official capacity is liable for punishment in terms of Sections 10 to 12 of the Contempt of Courts Act.

11. The other contention of the petitioner is that the respondent did not implement the orders of this Court dated 12.05.2023 wantonly, deliberately with an intention to deprive this petitioner from discharging his duties, as an employee in the Machilipatnam Municipal Corporation. Whereas, learned counsel for the respondent contended that the order of this Court was implemented in it's letter and spirit.

12. Whereas, learned counsel for the respondents denied intentional or deliberate violation of the direction issued by this Court. He would submit that, upon receiving the orders of this Court dated

12.05.2023, the respondent passed appropriate orders with a period of two weeks vide proceedings dated 09.06.2023 not permitting the petitioner to join his duties, in view of his long standing alleged irregularities said to have been committed and pointed out by the ACB Authorities and further informed the petitioner to approach the Commissioner & Director of Municipal Administration, Guntur and requested to dismiss the contempt case against the respondent.

13. The contention of the respondent is that, in obedience of the orders passed by this Court on 12.05.2023, the respondent – Commissioner, Machilipatnam Municipal Corporation passed appropriate orders within a period of two weeks vide proceedings in Roc.No.1298/2022-C1 dated 09.06.2023 not permitting the petitioner to join duty and informing the petitioner to approach the Commissioner & Director of Municipal Administration, Vaddeswaram, Guntur, for further orders. Thus, the respondent did not violate the orders, muchless, willfully or intentionally and thereby, not liable for contempt. The respondent also made several allegations with regard to conduct of the petitioner, but they are not relevant for the purpose of deciding the controversy in the contempt case, more particularly, to decide whether the respondent willfully, deliberately or intentionally violated the orders

of this Court dated 12.05.2023. Therefore, they are not required to be extracted in the present contempt case.

14. Heard Sri T.S.N. Sudhakar, learned counsel for the petitioner and Sri Sreedhar Murthy, learned counsel appearing for the respondent and perused the record.

15. Before advertng to the facts of the case, I find it apposite to narrate the legal position for better appreciation of the case and application of law.

16. The Contempt of Court is defined under Section 2(a) as follows: "contempt of court means, civil contempt or criminal contempt", Whereas clause (b) of Section 2 defines Civil Contempt as "willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court."

17. The Contempt jurisdiction is not conferred on the Subordinate Courts and it is only conferred on the Court of record, in view of Article 215 of the Constitution of India. According to it, the High Court shall be a Court of record and shall have all the powers of such a

Court, including the power to punish for contempt of itself. The jurisdiction of contempt is independent jurisdiction of its original nature. Therefore, this Court is competent to exercise such power to punish a person, who is guilty of contempt and this jurisdiction is enjoyed by Courts, is only for the purpose of upholding the jurisdiction of the judicial system that exists. While exercising this power, the Court must not react by the emotion, but must act judicially. Contempt proceedings are intended to ensure compliance of the orders of the Court and strict adherence of rule of law. Once, the essentials for initiation of contempt proceedings are satisfied, the Court shall initiate action, uninfluenced by the nature of direction in a *pending lis* before the Court vide judgment in ***Priya Gupta and others vs. Additional Secretary, Ministry of Health and Family Welfare and others***¹). Contempt jurisdiction enjoyed by the Courts is only for the purpose of upholding the majesty of judicial system that exists. While exercising this power, the Courts must not be hyper sensitive or swang by emotions, but must act judicially (Vide:

¹ 2012 (12) SCALE 789

Chairman, West Bengal Administrative Tribunal vs. SK. Monobbor Hossain².

18. "Contempt" is disorderly conduct of contemnor causing serious damage to the institution of justice administration. Such conduct, with reference to its adverse effects and consequences, can be discernibly classified into two categories one which has a transient effect on the system and/or the person concerned and is likely to wither by the passage of time while the other causes permanent damage to the institution and administration of Justice (Vide: ***Kalyaneshwari vs. Union of India and others³***).

19. As seen from the order of the Commissioner & Director of Municipal Administration, Guntur dated 17.10.2022, it is clear that the order of suspension passed against the petitioner – S. Venkatesh, Revenue Officer is revoked and he was reinstated into service, pending examination of the explanation dated 04.10.2022 submitted by him. The operative portion of the order of the Commissioner & Director of Municipal Administration dated 17.10.2022 is as follows:

² (2012)3 SCALE 534

³ (2011) 6 SCALE 220

"In view of the above, the suspension of Sri S. Venkatesh, Revenue Officer (u/s), Municipal Corporation, Machilipatnam, is hereby revoked and reinstated into service pending examination of the explanation dated 04.10.2022 submitted by Sri S. Venkatesh, Revenue Officer (u/s), Municipal Corporation, Machilipatnam."

20. Since the respondent herein did not implement the order passed by the Commissioner & Director of Municipal Administration dated 17.10.2022, the petitioner filed the present contempt case.

21. It is to be noted that this Court passed order on 12.05.2023 directing this petitioner to approach the Commissioner, Machilipatnam Municipal Corporation for implementation of the order and directed the Commissioner, Machilipatnam Municipal Corporation to pass appropriate orders, keeping in view the orders passed by the Commissioner & Director of Municipal Administration dated 17.10.2022. Accordingly, the petitioner approached the respondent - Commissioner, Machilipatnam Municipal Corporation. But, the respondent issued proceedings in Roc.No.1298/2022-C1 dated 13.06.2023 not permitting the petitioner to join and informed the petitioner to approach Commissioner & Director of Municipal

Administration for further orders. The operative portion of the order dated 13.06.2023 reads as follows:

"In obedience to the Hon'ble High Court orders in W.P.No.13125 of 2023 dated 12.05.2023 vide reference 4th cited, and as per the representation submitted by Sri S. Venkatesh, Revenue Officer dated 27.05.2023 vide reference 5th cited, appropriate orders were passed stating that due to long standing stay of the individual in Machilipatnam Municipal Corporation such type of irregularities and loss of revenue of collection were detected by the ACB authorities and there is every possibility to continue such type of incidents like causing of financial loss of collection of Revenue in this Municipal Corporation if Sri S. Venkatesh, Revenue Officer is continued for further period even after detection of certain irregularities by the ACB authorities and also Sri S. Venkatesh is a III-Category Revenue Officer where the sanction post of Revenue Officer of Machilipatnam Municipal Corporation is the post of Category-II Revenue Officer and the individual is not entitled to post in Category-II Revenue Officer in Machilipatnam Municipal Corporation.

In view of the above circumstances, I request the Commissioner & Director of Municipal Administration to kindly post Sri S. Venkatesh, Revenue Officer category-III to any other Municipality or Municipal Corporation in the interest of smooth administration and to avoid further allegations & irregularities expected to be taken place."

22. It appears from the orders of the respondent that he not only violated the orders of this Court dated 12.05.2023, but also violated the order of the higher authority dated 17.10.2022. The respondent is only an implementing authority to permit the petitioner to join his duties and if for any reason, no post in Category-III Revenue Officer is available, the respondent would have addressed a letter to the Commissioner & Director of Municipal Administration for transfer of the petitioner to any other station/place. Instead of implementing the order, the respondent, by considering the letter dated 29.03.2023 addressed by the Machilipatnam Municipal Corporation, even without making any reference in the proceedings, did not permit the petitioner to join in service as Revenue Officer of Machilipatnam Municipal Corporation. Thus, the act of the respondent in passing the proceedings in Roc.No.1298/2022-C-1 dated 13.06.2023, directing this petitioner to approach the Commissioner & Director of Municipal Administration for appropriate orders is not only an intentional avoidance to implement the order of this Court.

23. The Municipal Corporation is a local authority, Mayor is only a People's Representative, but not the administrative head. Even

otherwise, when this Court issued a direction to the respondent to pass an appropriate order, keeping in view the order passed by Commissioner & Director of Municipal Administration dated 17.10.2022, despite revoking the suspension order passed by the authorities, the action of the respondent in not implementing the order of this Court clearly amounts to intentional and deliberate violation of the order not only of this Court, but also higher authorities.

24. In the present facts of the case, Respondent with scant respect to the order passed by this Court dated 12.05.2023, did not permit the petitioner to join duty. The admission made in the counter affidavit filed by the Respondent is suffice to hold that, Respondent violated or disobeyed the order of this Court willfully, knowing the ill-consequences that flow from such violation i.e. conscious violation of the order of this Court dated 12.05.2023, which amounts to violation of Rule of Law. Therefore, the act of Respondent – Commissioner, Machilipatnam Municipal Corporation by his disorderly conduct caused serious damage to the institution of justice administration. Such conduct, with reference to its adverse effects and consequences, can be discernibly classified into two categories one which has a transient effect on the system and/or the person concerned and is likely to wither away by the passage

of time while the other causes permanent damage to the institution and administration of justice. (vide **Kalyaneshwari vs. Union of India**⁴)

25. When once an order is passed, it is the duty of the authorities to implement the same without giving any interpretation and if the order is contrary to law, they are at liberty to file appropriate appeal before the appellate authority. But, without preferring an appeal, the respondent/contemnor cannot interpret the order and give different meaning to the order passed by the Court, which is sought to be implemented, as directed by this Court. Such act of the respondent/contemnor is illegal in view of the law declared by the Hon'ble Apex Court in **Commissioner, Karnataka Housing Board vs. C. Muddaiah**⁵, wherein, it is held as follows:

31. We are of the considered opinion that once a direction is issued by a competent Court, it has to be obeyed and implemented without any reservation. If an order passed by a Court of Law is not complied with or is ignored, there will be an end of Rule of Law. If a party against whom such order is made has grievance, the only remedy available to him is to challenge the order by taking appropriate proceedings known to law. But it cannot be made ineffective by not complying with the directions on a specious plea that no such directions could have been issued by the Court. In our judgment, upholding of such

⁴ (2011) 6 SCALE 220

⁵ (2007) 7 SCC 689

argument would result in chaos and confusion and would seriously affect and impair administration of justice. The argument of the Board, therefore, has no force and must be rejected.

32. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the Court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the Court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where *ex facie* injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a Court of Law. The Court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The Court, in the circumstances, directs the Authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the Authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged. We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a Court of Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the Authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of

consequential benefits can be granted by a Court of Law and if such directions are issued by a Court, the Authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected.

26. The same view is expressed by the Hon'ble Apex Court in ***Prithawi Nath Ram vs. State of Jharkhand and others***⁶, where the Court held that, 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 the view different than what was taken in the earlier decision. 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

⁶ [2004] 7 SCC 261

cannot traverse beyond the order, non-compliance of which is alleged 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.

27. In *The State of Bihar vs. Rani Sonabati Kumari*⁷, the Hon'ble Supreme Court while dealing with violation of order passed under Order XXXIX Rules 1 & 2 of Civil Procedure Court, held that, a party proceeded against Order XXXIX Rule 2(3) of C.P.C for disobedience of an order of injunction cannot be held to have willfully disobeyed the order provided two conditions are satisfied viz., (1) that the order was ambiguous and was reasonably capable of more than one interpretation (2) that the party being proceeded against in fact did not intend to disobey the order, but conducted himself in accordance with his interpretation of the order. The question whether a party has understood an order in a particular manner and has conducted himself in accordance with such a construction is primarily one of-fact, and where the materials before the Court do not support such a state of affairs, the

⁷ AIR 1961 SCC 221

Court cannot attribute an innocent intention based on presumptions, for the only reason, that ingenuity of Counsel can discover equivocation in the order which is the subject of enforcement. Though undoubtedly proceedings under Order XXXIX Rule 2(3) of C.P.C have a punitive aspect – as is evident from the contemnor being liable to be ordered to be detained in civil prison, they are in substance designed to effect the enforcement of or to execute the order. This is clearly brought out by their identity with the procedure prescribed by Order XXI Rule 32 of C.P.C for execution of a decree for permanent injunction. No doubt the State Government not being a natural person could not be ordered to be detained in civil prison, On the analogy of Corporations; for which special provision is made in Order XXXIX Rule V C.P.C, but beyond that, both when a decree for a permanent injunction is executed and when an order of temporary injunction is enforced the liability of the State Government to be proceeded against appears to us clear.

28. While dealing with an application for contempt, the Court is really concerned with the question as to whether the earlier decision which has received its finality had been complied with or not. This Court is primarily concerned with the question of conduct of the party who is alleged to have committed default in complying with the directions in the

judgment or order. If there is any ambiguity or indefiniteness in the order, it is for the concerned party to approach the Higher Court, if according to him/her the same is not legally tenable and such a question has necessarily to be agitated before the Higher Court. Assuming that a question arose about impossibility of complying with the order, if that was the case, atleast the respondent could have done was to assail correctness of the order/judgment before the Higher Court. But, the respondent and failed to comply with the order of this Court. 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 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.

29. That apart, According to Rule 3 of Andhra Pradesh Civil Services (Conduct) Rules, 1964, disobeying the order of the Commissioner & Director of Municipal Administration is nothing but insubordination, which amounts to misconduct. Therefore, the respondent is not only liable for punishment for Contempt of Court, but also liable for

disobeying the order of both the Court and higher authority i.e Commissioner & Director of Municipal Administration.

30. Applying the principle laid down by the Hon'ble Supreme Court to the present facts of the case, this Court can safely conclude that respondent – Sri G.Chandraiah, Commissioner, Machilipatnam Municipal Corporation *ex facie* committed Contempt of Court, as defined under Section 2(c) of the Contempt of Courts Act, 1971 and liable for punishment under Section 12 of the Act. However, it is left open to the Commissioner & Director of Municipal Administration to initiate appropriate disciplinary proceedings against the respondent/contemnor, since such conduct would amount to misconduct and cannot be encouraged for smooth administration in the office. Hence, this Court is of the opinion that the respondent, in utter disobedience of the order passed by this Court dated 12.05.2023, consciously violated the order passed by this Court and did not permit him to join the petitioner into duty as Revenue Officer. Such conduct would not only impede the rule of law, but also cause serious damage to the judicial institution and judicial administration. Therefore, such conduct of the respondent cannot be encouraged by this Court, taking

lenient view against such person who caused serious damage to the judicial institution itself.

31. As discussed above, and in view of the findings recorded by this Court in the above paragraphs, Respondent – Commissioner, Machilipatnam Municipal Corporation is liable for punishment as per Section 12 of the Contempt of Courts Act, 1971, and thereby he is punished sentencing him to undergo simple imprisonment for a term of six (06) months and to pay a fine of Rs.2,000/- (Rupees two thousand only).

32. In the result, contempt case is allowed, directing Respondent – Commissioner, Machilipatnam Municipal Corporation to undergo simple imprisonment for a term of six (06) months and to pay a fine of Rs.2,000/- (Rupees two thousand only).

33. Consequently, miscellaneous applications pending if any, shall stand closed.

34. After dictating the above order, learned counsel for Respondent/Contemnor requested this Court to suspend the above order, so as to enable her to prefer an appeal.

35. At request of the learned counsel for the Respondent/Contemnor, the above order is suspended for a period of four (04) weeks to prefer an appeal. In case no appeal is preferred or no stay is granted by the Appellate Court in the appeal if any preferred, Respondent/Contemnor shall surrender before Registrar (Judicial), High Court of Andhra Pradesh on 26.07.2024 before 05.00 p.m to undergo sentence.

//TRUE COPY//

SD/- K TATA RAO
DEPUTY REGISTRAR

SECTION OFFICER

To,

1. The Registrar(Judicial), High Court of Andhra Pradesh at Amaravathi.
2. Sri G. Chandraiah, Commissioner, Machilipatnam Municipal Corporation, Machilipatnam, Krishna District. (Special Messenger/Speed Post)

3. One CC to Sri T S N Sudhakar, Advocate [OPUC]
4. One CC to Sri K Sreedhara Murthy (SC for Municipalities and Municipal Corporation services) [OPUC]
5. The Section Officer, O.S. Section, High Court of Andhra Pradesh.
6. The Section Officer, Accounts Section, High Court of Andhra Pradesh.
7. **Three CD Copies**

TK

stcc

HIGH COURT

DATED:28/06/2024

ORDER

CC.No.6916 of 2023



ALLOWING THE CONTEMPT CASE