A STATE OF ORISSA AND ANR.

v.

ASWINI KUMAR BALIARSINGH

AUGUST 8, 2006

B [S.B. SINHA AND DALVEER BHANDARI, JJ.]

Contempt of Courts Act, 1971:

Contempt jurisdiction—Exercise of—Ambit and scope, explained.

C

The respondent was appointed as an Assistant Teacher. The Inspector of Schools did not approve his appointment. A writ petition was filed by him, wherein by an order dated 3.9.1997 the High Court directed the Inspector of Schools to do so. The said order was carried into effect by posting him as Assistant Teacher in a school by an order dated D **19.2.1999. He was removed from service on or about 27.5.2000 in terms of the Government Orders. These government orders are under challenge in the original application filed by the respondent before the State Administrative Tribunal which is pending. He also filed an application for initiating proceedings under Contempt of Courts Act before the High** E **Court, *inter alia,* against the Inspector of Schools for alleged disobedience of the said order dated 3.9.1997. The High Court set aside the said order of the Inspector of Schools dated 27.5.2000 and directed the appellants to take the respondent back in service and to give him appropriate posting within one month therefrom. It was further directed that arrears of salary should be paid to him as early as possible, preferably within six months** F **from the date of his joining. Hence, this appeal.**

It was contended by the appellant that the High Court exceeded its jurisdiction in issuing the aforementioned directions.

It was contended by the respondent that while exercising its contempt G **jurisdiction, the High Court may, in a given case, issue appropriate direction, although no penal action is taken against the contemnors.**

Allowing the appeal, the court

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HELD: 1.1. The cause of action for filing the contempt petition arose as the Inspector of Schools passed an order consequent upon the Government Orders which the Inspector of Schools was bound to give effect to. The said Government orders may be legal or illegal; by no stretch of imagination, it can be said that the Inspector of Schools committed contempt of court in complying with the directions of the State of Orissa. The said Government Orders having been issued subsequent to the order of the High Court, no direction indisputably had been or could be issued in that behalf in the writ petition. A contempt petition, thus, was not maintainable. The High Court in relation thereto did not have the jurisdiction. [391-C-F]

L. Chandra Kumar **v.** *Union of India and Ors.,* **AIR (1997) SC 1125: [1997] 3 SCC 261, referred to.**

1.2. While exercising its contempt jurisdiction, the High Court may, in a given case, issue appropriate direction, although no penal action is taken against the contemnors. However a finding would be required to be arrived at to the effect that the contemnors have disobeyed the order of the Court. Only when such a finding is arrived at, the court may in exercise of its inherent jurisdiction put the parties to the same position as if its order was not violated. [391-G-H; 392-A-B]

All India Regional Rural Bank Officer Federation and Ors. **v.** *Govt. of India and Ors.,* **[2002] 3 SCC 554 and** *Director of Education, Uttaranchal and Ors.* **v.** *Ved Prakash Joshi and Ors.,* **[2005] 5 SCALE 529 : [2005] 6 SCC 98, relied upon.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7472 of 2003.

From the Judgment and Order dated 18.7.2002 of the High Court of Orissa at Cuttack in Original Criminal Misc. Case No. 594/2001.

Jana Kalyan Das for the Appellants.

Rajib Roy, Anukul Chandra Pradhan and Pranab Kumar Mullick for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. The respondent herein was appointed as an Assistant Teacher. The Inspector of Schools did not approve his appointment. A writ

A petition was filed by him, wherein by an order dated 3.9.1997 the High Court directed the Inspector of Schools to do so. The said order was carried into effect by posting him as Assistant Teacher in a school by an order dated 19.2.1999. He joined the said school. He acquired the qualification in May, 1999. He was removed from services on or about 27.5.2000 in terms of the Government Orders bearing No.11667/SME dated 24.4.2000 and No.13680/ B SME dated 11.5.2000 stating that he did not have the requisite qualification as on 7.6.1994. Indisputably, an original application has been filed by the respondent before the State Administrative Tribunal bearing No.1678(C)/ 2000, which is pending. He also filed an application for initiating proceedings under Contempt of Courts Act before the High Court, inter alia, against the C Inspector of Schools for alleged disobedience of the said order dated 3.9.1997. By reason of the impugned judgment, the High Court set aside the said order of the Inspector of Schools dated 27.5.2000 and directed the appellants to take the respondent back in service and to give him appropriate posting within one month therefrom. It was further directed that arrears of salary should be paid to him as early as possible, preferably within six months from D the date of his joining.

The submission of Mr. J.K. Das, learned counsel appearing for the appellant was that the High Court exceeded its jurisdiction in issuing the aforementioned directions.

E Mr. Rajib Roy, learned counsel appearing on behalf of the respondent, on the other hand, submitted that the High Court had the requisite jurisdiction to pass the impugned order in terms of the provisions of Contempt of Courts Act.

F Our attention was also drawn to the fact that even on a previous occasion the Inspector of Schools did not comply with the order of the High Court dated 3.9.1997 and the respondent had initiated a proceeding for contempt against them.

The contemnors were not impleaded in the contempt proceedings in G their personal capacity, but were impleaded in their official capacity. In O.J.C. No.3298/96 the High Court in issuing the direction by its order dated 3.9.1997, relied on an earlier judgment dated 27.6.1997 [*Bibekananda Das* v. *State of Orissa*) passed in O.J.C. No.1012/96, stating :

"For the reasons stated in the aforesaid judgment dated 27.6.1997 H and the subsequent order dated 3.9.1997, we direct the Inspector of

Schools to approve the appointment of the petitioner with effect from 7.6.1994 and pay him the scale of pay of an assistant teacher (untrained graduate) with effect from the said date. The arrears, if not already paid, may be calculated and paid to him within a period of four months of receipt of writ. The Inspector of Schools will continue to pay to the petitioner the current salary in the untrained graduate scale of pay. We make it clear that the Inspector of Schools will give the petitioner reasonable time to acquire the B.Ed. qualification (unless he gets exemption under the relevant rules). Annexure-4 is accordingly quashed."

Thus no direction was issued by the High Court against the State of Orissa. It is not in dispute that the cause of action for filing the contempt petition arose as the Inspector of Schools passed an order consequent upon the Government Orders issued by the Government of Orissa on or about 24.4.2000. The Inspector of Schools was bound to give effect to the said orders. The said Government orders may be legal or illegal; but by no stretch of imagination, it can be said that the Inspector of Schools committed contempt of court in complying with the directions of the State of Orissa. For the purpose of setting aside the order of the Inspector of Schools, the Government Orders were required to be set aside. The said Government Orders having been issued subsequent to the order of the High Court, no direction indisputably had been or could be issued in that behalf in the writ petition. A contempt petition, in our opinion, thus, was not maintainable.

Further more, as noticed hereinbefore, the respondent had already initiated a proceeding before the State Administrative Tribunal questioning the legality of the said action on the part of the State of Orissa. The High Court in relation thereto did not have the jurisdiction, as an appropriate proceeding was required to be initiated before the Tribunal at the first instance in view of the judgment of this Court in *L. Chandra Kumar* v. *Union of India & Ors.*, AIR (1997) SC 1125 : [1997] 3 SCC 261. The contemnors, in any event, having not been impleaded as parties in their personal capacity. In the contempt petition only Director of Secondary Education and Inspector of Schools were impleaded as parties in their official capacity. Even the State of Orissa was not impleaded as a party respondent therein.

The learned counsel, however, may be correct in contending that while exercising its contempt jurisdiction, the High Court may, in a given case, issue appropriate direction, although no penal action is taken against the

A contemnors. But, even in respect thereof, a finding would be required to be arrived at to the effect that the contemnors have disobeyed the order of the Court. Only when such a finding is arrived at, the court may in exercise of its inherent jurisdiction put the parties to the same position as if its order was not violated.

B In *All India Regional Rural Bank Officer Federation & Ors.* v. *Govt. of India & Ors.*, [2002] 3 SCC 554, whereupon reliance has been placed, such a direction was issued, but only after a finding was arrived at, that the Central Government had issued a notification in utter violation of the orders passed by this Court.

C In *Director of Education, Uttaranchal & Ors.* v. *Ved Prakash Joshi & Ors.*, (2005) 5 SCALE 529 : [2005] 6 SCC 98, whereupon again reliance has been placed by Mr. Roy, this Court opined:

> ".....The court exercising contempt jurisdiction is primarily concerned
> D 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 concerned party 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
> E contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the Court passing the judgment or order. 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
> F 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
> G proceedings. The same would be impermissible and indefensible."

In the instant case, the action taken by the respondents in purported violation of the Court's order arose owing to a subsequent cause of action, namely, orders passed by the state of Orissa and unless the said orders were set aside, the Inspector of Schools can be said to have flouted the order of
H the High Court. The said decisions, therefore, have no application in the

instant case. A

For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. No costs.

B.K. Appeal allowed.