

**HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
AND
HON'BLE SMT JUSTICE KIRANMAYEE MANDAVA**

Contempt Appeal Nos.34 & 35 of 2023

COMMON JUDGMENT: *(Per Hon'ble Sri Justice U.Durga Prasad Rao)*

The Contempt Appeal Nos. 34/2023 & 35/2023 are filed by the respondents No.3 & 2 respectively challenging the order dated 21.07.2023 in C.C.No.2040/2023 passed by the learned Single Judge.

Said order reads thus:

“15. Accordingly, the Contempt Case is allowed and the Contemnors/respondents No.2 and 3 are sentenced to undergo simple imprisonment for a period of one (01) month each and to pay a fine of Rs.1,000/- (Rupees one thousand only) each, in default of payment of fine, they shall undergo simple imprisonment for a period of one (01) week. The Contemnors/respondents No.2 and 3 are directed to surrender before the Registrar (Judicial), High Court of Andhra Pradesh, on or before 27.07.2023; on such surrender, the Registrar (Judicial), is directed to remand them to jail for a period of one (01) month.”

2. Heard arguments of learned Standing Counsel Sri Anup Koushik Karavadi representing the appellant in C.A.No.34/2023, learned Standing Counsel Sri V.R.Reddy Kovvuri representing the appellant in C.A.No.35/2023 and Sri K.Mruthyunjayam, learned Senior Counsel representing Sri P.Sudhakar Reddy, learned counsel for respondents.

3. The order in C.C.No.2040/2023 was passed by learned Single Judge holding that the contemnors have violated the order dated

06.09.2022 in W.P.No.28400/2022, modified in W.A.No.1028/2022 dated 22.12.2022. Now *inter alia* the argument of both the learned counsel is that under the doctrine of merger, the order dated 06.09.2022 in W.P.No.28400/2022 of learned Single Judge is merged with the order dated 22.12.2022 in W.A.No.1028/2022 of the Division Bench, and if at all the writ petitioners are of the view that the order dated 22.12.2022 in W.A.No.1028/2022 is not complied with by the present appellants, they ought to have filed Contempt Case before the Division Bench and not before the learned single Judge, since the order of learned single Judge is merged with the Division Bench order in W.A.No.1028/ 2022 and due to this grave procedural error, the contempt order is not maintainable.

(i) Learned Standing Counsel also argued on merits to sustain their stand that, in fact they complied with the order in W.A.No.1028/2022 by issuing the proceedings dated 22.02.2023 and also dated 27.06.2023 and later, to show their *bonafides* they have made it clear in para No.5 of the proceedings to the effect that ‘only those workers who claim to be working with contractors who are discharging contractual obligations to AP TRANSCO to submit a separate representation along with the details of respective contractors and unless the above details are submitted, it is impossible for the institution to

even entertain the representation'. The identical orders were passed by the APSPDCL on 23.02.2023 and 05.07.2023 and in the proceedings dated 05.07.2023, it was stated that only those workers who claim to be working with the contractors who are discharging contractual obligations to APSPDCL to submit a separate representation along with details of respective contractors and unless the above details are submitted, it is impossible for the institution to even entertain the representation.

(ii) Both the learned Standing Counsel would thus submit that, indeed, not only they complied with the order in W.P.No.28400/2022 and also the order in W.A.No.1028/2022 they gave an option to the writ petitioners to submit their representations with necessary particulars as mentioned in their proceedings dated 26.07.2023 and 05.07.2023 and therefore, on that ground also the contempt proceedings are not maintainable against them. Hence, they prayed to allow the Contempt Appeals and set aside the contempt order dated 21.07.2023 passed in C.C.No.2040/2023.

4. In oppugnation, learned counsel for respondents sought to support the order in C.C.No.2040/2023 on the submission that the appellants

have not complied with the order in writ petition as well as modified order in Writ Appeal in letter and spirit.

5. The points for consideration are:

(I) Whether the contempt proceedings are maintainable before the learned single Judge?

(II) If Point No.1 is held in affirmative, whether the appellants' claim that they have complied with the order in W.P.No.28400/2022 and in W.A.No.1028/2022 and therefore, on that ground the contempt proceedings are not maintainable is true and valid?

6. **Point No.1:**

As can be seen in W.P.No.28400/2022, the learned single Judge passed the following order:

“5. Having regard to the facts and circumstances and without touching the merits of the case, the 3rd respondent is directed to consider and pass appropriate orders on the representation dated 27.07.2022 of the petitioners, following the law laid down by the Hon'ble Supreme Court in the case of State of Punjab and others v. Jagjith Singh and others cited supra, for payment minimum pay scale to the petitioners, within a period of (08) eight weeks from the date of receipt of the order.”

7. Aggrieved, the respondent No.3 therein filed W.A.No.1028/2022, wherein the Division Bench passed the following order:

“Writ Petitioners are at liberty to submit appropriate representations before all the concerned authorities for redressal of their grievances within a period of two weeks from the date of receipt of this Order. On receipt of such representations, the same be examined and appropriate orders be passed by the authorities concerned strictly in

accordance with law, within a period of six weeks thereafter. It is also made clear that the Writ Petitioners are entitled to place on record the relevant Judgments, if any, for consideration of the same by the authorities concerned.”

8. As can be seen from the order in Writ Appeal, in essence, the Division Bench has modified the order passed by the learned single Judge and passed its order. Therefore, applying the doctrine of merger, the order of learned single Judge merged with the order of the Division Bench in W.A.No.1028/2022. Needless to emphasize that the doctrine of merger is founded on the principle ‘*in the hierarchy of judicial system there shall be only one final judgment*’. This principle has been well explained by the Hon’ble Apex Court in its judgment in **Kunhayammed v. State of Kerala**¹, wherein it was held thus:

“44. To sum up, our conclusions are:

(i) Where an appeal or revision is provided against an order passed by a court, tribunal, or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.”

9. In view of the above jurisprudence on the point in issue, it is needless to emphasize that the writ petitioners, if aggrieved, ought to have filed contempt proceedings before the Division Bench in respect of the order in W.A.No.1028/2022, but not before the learned single Judge

¹ (2000) 6 SCC 359=2000 SCC OnLine SC 1008

and to that extent we agree with the arguments of learned Standing Counsel for the appellants. Therefore, at the threshold, the contempt proceedings are not maintainable before the learned single Judge as argued by the learned Standing Counsel for appellants and accordingly, the contempt order in C.C.No.2040/2023 is unsustainable under law and liable to be set aside. The point No.1 is answered accordingly in favour of the appellants and against the respondents.

10. Point No.2:

In view of the above findings in Point No.1, we do not deem it apposite to deal with Point No.2 to give findings.

11. Thus, the contempt order in C.C.No.2040/2023 is liable to be set aside. However, before parting, we must hasten to add that in the proceedings dated 27.06.2023 as well as 05.07.2023, the appellants have made it clear and even suggested to writ petitioners that only those workers who claim to be working with contractors who are discharging contractual obligations to AP TRANSCO/APSPDCL to submit a separate representation along with details of respective contractors and unless those details are submitted, it would be impossible for the institution to even entertain the representation. It goes without saying

that the appellants kept open option for the writ petitioners to submit their representations in a proper manner by giving relevant particulars as referred to in their proceedings dated 27.06.2023 and 05.07.2023 respectively.

12. In that view of the matter, the interest of justice requires, the writ petitioners shall be given an opportunity to submit their representations with relevant particulars as mentioned above for consideration of the appellants herein to enable the AP TRANSCO and APSPDCL to consider and pass appropriate orders strictly in accordance with law as ordered in W.A.No.1028/2023 dated 22.12.2022.

13. Thus, on a conspectus of facts and law, the order dated 21.07.2023 in C.C.No.2040/2023 is hereby set aside with a liberty to the writ petitioners to submit their representations with relevant particulars as referred to in the proceedings dated 27.06.2023 and 05.07.2023 and to submit to the concerned authorities of AP TRANSCO and APSPDCL within two (2) weeks from today, so as to enable the concerned authorities of AP TRANSCO and APSPDCL to examine and to pass appropriate orders strictly in accordance with law within a period of six (6) weeks as ordered in W.A.No.1028/2022.

14. The Contempt Appeals are ordered accordingly. No costs.

As a sequel, interlocutory applications, pending if any, shall stand closed.

U. DURGA PRASAD RAO, J

KIRANMAYEE MANDAVA, J

28.11.2023
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