

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Misc. Application No. 040/00029/2021
In
Contempt Petition No. 040/00024/2020
In
Original Application No. 040/00152/2018

Date of Order: This, the 26th Day of February, 2021



THE HON'BLE SMT. MANJULA DAS, MEMBER (J)

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)

Smt. Vasudha Mishra, IAS
Secretary, Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi – 110069.

... Petitioner

-Versus-

1. Sri Brahmananda Patiri
Resident of Saukusi
Balijan, P.O. – Kahilipara
Guwahati – 781029
District – Kamrup (M), Assam.

...Opposite Party.

For the Petitioner : Sri B.P. Todi, Sr. Advocate
Sri A. Todi & Sri A. Nath

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ORDER (ORAL)

MANJULA DAS, MEMBER (J):-



By this M.A., petitioner prays for modification of the order dated 20.01.2021 by deleting/expunging the observation regarding disobedience and sitting over the matter by the petitioner and to waive the imposition of the cost of Rs. 10000/- imposed with direction to be recovered from the pocket of the petitioner.

2. Sri B.P. Todi, Sr. Advocate assisted by Sri A. Nath, learned counsel appearing for the petitioner (alleged sole contemnor in C.P. No. 24 of 2020) submits that while this Tribunal heard the matter i.e. C.P. No. 24 of 2020 on 20.01.2021, it was observed as follows:-

"The sole contemnor was sitting over the matter and did not challenge the order before the Hon'ble High Court if aggrieved immediately and only after filing of this CP and after issuance of notice vide order dated 20.10.2020, the sole contemnor has approached the Hon'ble Gauhati High Court on 11.11.2020. Thus it is candid clear that the sole contemnor wilfully disobeyed the orders of this Tribunal by sitting over the matter."

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3. To that aspect, Sr. Advocate as drawn our attention to para 4, page 3 to the instant M.A. wherein it has been clearly mentioned that petitioner has received the order dated 28.11.2019 passed by this Tribunal on 28.02.2020 and on receipt of the order, the counsel of the Commission was requested to obtain certified copy of the order, which was furnished to her after 20.05.2020. Thereafter, on 26.05.2020, the Commission decided to challenge the order and requested the counsel to do needful. On 23.06.2020, the counsel submitted the draft Writ Petition for approval. On 29.06.2020, the Commission approved the draft Writ Petition and by its letter No. 11/WP/6/2020/AIS dated 07.07.2020, the Commission sent approval for filing Writ Petition before the Hon'ble High Court. The counsel could file the Writ Petition only on 09.11.2020 due to Covid-19 Pandemic. On 01.12.2020, the Hon'ble High Court heard the case and issued notice fixing next date 18.01.2021.

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According to the Sr. Advocate, the factual aspect of the matter to highlight as to the fact that there is no wilful disobedience on the part of the petitioner/sole contemnor was incorporated in the affidavit filed before this Tribunal. The reply affidavit was sent through email as well as Speed Post on 12.01.2021.



4. It was further submitted by Sri B.P. Todi, Sr. Advocate for the petitioner that though in the draft affidavit, it was highlighted, but unfortunately same was not brought to the notice of this Tribunal at the time of hearing of the Contempt Petition on 18.11.2020 and consequently this Tribunal did not have the occasion to consider this aspect before arriving at the conclusion of the said order that there has been wilful disobedience of the order of this Tribunal by the Commission by sleeping over the matter. He fairly submitted that the sole contemnor is the Secretary of Union Public Service Commission and she did her job immediately as and when the order of this Tribunal has been received and forwarded the same before the Chairman of the

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Commission. The petitioner/sole contemnor is not the appropriate authority to comply with the order dated 28.11.2019 passed in O.A. No. 152 of 2018 by convening meeting whereas the competent authority is the Chairman of the Union Public Service Commission. Moreover, the Chairman of the Union Public Service Commission is not arrayed as alleged contemnor in the Contempt Petition No. 24 of 2020.



5. It was further drawn our attention by Sri Todi, Sr. Advocate on the letter dated 7th July 2020 of Under Secretary (AIS), Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi, addressed to Smt. Ranu Borah, Advocate, Santipur, Ashram Road, Guwahati, Assam on the subject of **WP (c) NO.....**
to be filed on behalf of the UP:SC Vs. Brahma Nanda Patiri & Others before the Hon'ble Guwahati High Court-Reg. It is noted that said letter was sent to the learned counsel by the UPSC on 07.07.2020 to file Writ Petition before the Gauhati High Court. It is further noted that the respondent authority i.e. sole contemnor had

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approached the Hon'ble Gauhati High Court to challenge the order of this Tribunal dated 28.11.2019 only on 11.11.2020 where notice in the C.P. was issued by this Tribunal on 20.10.2020. Accordingly, this Tribunal vide order dated 20.01.2021 observed as follows:-



"Notice in this CP was issued on 20.10.2020. It appears that though this court directed to comply the directions within two months, the sole contemnor was sitting over the matter and did not challenge the order before the Hon'ble High Court if aggrieved immediately and only after filing of this CP and after issuance of notice vide order dated 20.10.2020, the sole contemnor has approached the Hon'ble Gauhati High Court on 11.11.2020. Thus it is candid clear that the sole contemnor wilfully disobeyed the orders of this Tribunal by sitting over the matter."

6. In this aspect, learned Sr. Advocate Sri Todi submitted that whatever statements made in the reply affidavit was not brought to the notice of the court at the time of hearing when this observation was made by this Tribunal i.e. lapse occurred on the part of the advocate and not any wilful disobedience on the part of the petitioner/sole contemnor. The petitioner/sole contemnor all along having Regard to this court and as wished of the competent authority and with the

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approval, decision was taken for challenging the order of this Tribunal dated 28.11.2019 before the Hon'ble Gauhati High Court. But unfortunately, that was neither highlighted before this Tribunal nor even filed the Writ Petition before filing of the C.P.



7. We have again perused our order dated 20.01.2021 wherein it was categorically observed that – *“only after filing of this CP and after issuance of notice vide order dated 20.10.2020, the sole contemnor has approached the Hon'ble Gauhati High Court on 11.11.2020”*. However, the letter of Under Secretary (AIS), Union Public Service Commission dated 7th July, 2020 has convinced us that the decision for filing Writ Petition before the Hon'ble High Court against the order of this Tribunal dated 28.11.2019 was taken by the petitioner/ alleged sole contemnor before filing the C.P. and due to lapse on the part the engaged learned counsel, Writ Petition was filed only on 11.11.2020.

8. From the relevant paras including para 8 of the instant M.A. as shown by the learned Sr. Advocate, Sri

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Todi, we deem it feel that definitely the lapse or mistake was crept on the part of the advocate for which the alleged sole contemnor/petitioner shall not be suffered. There is a general principle that – ***“for the lapse on the part of the advocate, petitioner shall not be suffered”***.



9. From the statement and pleadings made in this M.A. as well as argument advanced by the learned Sr. Advocate Sri Todi, we, the court, convinced that there is no deliberate and wilful negligence on the part of the sole contemnor/petitioner herein to comply the order as stated above and accordingly, we modify and expunge the order dated 20.01.2021 passed in C.P. No. 040/00024/2020 to the extent that –

“Thus it is candid clear that the sole contemnor wilfully disobeyed the orders of this Tribunal by sitting over the matter.”

Further, we waive the cost of Rs. 10,000/- imposed upon the alleged sole contemnor/petitioner which was to be paid from her own pocket.

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9. We, the court, hope and trust that the petitioner/alleged sole contemnor, shall comply with the order of this Tribunal, as stated above, if no bar from the higher forum by granting any stay.

10. M.A. stands allowed to the extent as indicated above. No costs.



(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

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