

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

C.P.No.97/2001 in
O.A. 876/1993

24/1/2002

On 21st day of April, 1998, this Tribunal while finally disposing of OA-876/1993; Kishorkumar Balubhai Patel & 10 Ors V/s. Jacob Yohanan, Incharge Executive Engineer and 3 Ors which was filed by applicants, passed an order, operative part of which is as under:-

"In our opinion, in the absence of posts of Surveyors in the department, it will not be in the public interest to order reinstatement as well as regularisation of the applicants since the posts are not there and according to the department, they are not required. We, therefore, do not see any merit in the claim of the applicants for reinstatement and regularisation in the facts and circumstances of the case. We, however, make it clear that in case if the department considers to create the posts of Surveyors, the claim of the applicants would be considered on priority basis as and when the surveyors posts are required and the applicants would also have a right for regularisation if the department later on creates the posts of Surveyors. It is also brought to our notice that the Administrator of Dadra & Nagar Haveli has issued a letter dated 10/12/1992 wherein they have asked the names of those persons who have been serving on work charged establishment in various departments to be sponsored for interview for regular appointment if they were within the stipulated age limit when they joined their services on work charged basis. The applicants have also brought out that in some

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other department the posts of Surveyors are available. If that be the case, then according to the letter of Administrator, the claim of the applicants should be considered by the Administrator of Dadra & Nagar Haveli. Subject to above observations, the OA is dismissed with no orders as to costs."

2..... The applicants have moved this Contempt Petition No.97/2001 for wilful disobedience of order passed in the OA impleading as contemnor respondents Shri Jacob Yohanan Incharge Executive Engineer, P.W.D., Civil Division No.II, Dadra and Nagar Haveli and three others as respondents. After considering the averments in CP, this Tribunal issued notice on 29/11/2001 to contemner respondent no.1, Shri Jacob Yohanan to show cause as to why he should not be punished for wilful disobedience of the order of this Tribunal passed in OA No.876/93 making it clear that the case against contemnor respondents nos. 2 to 4 will be considered after obtaining reply of respondent no.1,. Shri Jacob Yohanan. The ground giving rise to notice is that despite there being vacancies in respect of post of Surveyors yet without first considering the applicants case for appointment, the respondents appointed some Surveyors directly and brought some Surveyors on deputation from outside which they could not do in view of judgement thus this has been done in wilful disobedience, flouting order dated 21/4/1998 passed in OA. In support of CP, an affidavit has also been filed wherein it has been stated that by order No. SUV/EST/99/276 dated 10/8/2001, two persons namely, Shri Tansukhbhai Prabhubhai Patel
B. D. J. ...3.

and Shri Jayendrasing Bhikhubhai Solanki were engaged as Daily Wage Surveyors under the Survey and Settlement Department of Dadra and Nagar Haveli. It has been stated on affidavit that ten other persons were engaged on deputation basis from Gujarat Government. To support said statement a letter dated 8/6/2000 of Gujarat Government has also been referred in CP. In reply, Shri Jacob Yohanan has stated that the matter is of department of Survey and Settlement and it has nothing to do with his department namely, P.W.D. No rejoinder has been filed.

3. We have heard Shri I.J.Naik, Counsel for Applicant and Shri V.S.Masurkar, Counsel for Respondents. As stated by Shri Jacob Yohanan in reply, the matter relates to Department of Survey and Settlement and his department has nothing to do with this matter. As no Rejoinder has been filed to rebut said stand of Jacob, the notice against him is liable to be discharged.

4. The learned counsel for applicant then argued that even if the Department of Survey and Settlement is not concerned, the notice may be issued on CP to Administrator, Shri O.P.Kelkar who is head of the Administration. This argument of learned counsel for applicant is also untenable. The appointments, which applicant alleges to be in wilful dis-obedience of order, have been made by Shri Kulanand Joshi, Assistant Secretary (Per). If there could be any wilful disobedience of order then it could be by Shri Kulanand Joshi. His argument that as all the official acts are done by Officers on behalf of Administrator and if any officer sub-ordinate to him has committed wrong then he is

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responsible. We cannot accept ~~to~~^{such} position for the purpose of wilful disobedience of order. The proceedings for action under section 11 read with section 12 of Contempts of Court ~~are~~^{are} of penal in nature where the person who wilfully disobeys the order has to reply to notice and he alone is liable to be punished. The head of administration, who has several departments under him, cannot be proceeded as vicariously liable. It is humanly impossible for Administrator of an Union Territory to administer each and every thing himself personally. As he cannot deal with each matter of state himself, he delegates his authority to officer and officer ~~who~~^{who} acts on his behalf. It is that particular officer ^{who} will be responsible for his action and we cannot hold administrator guilty for any wrong done by an officer working under him and exercising authority in his name. Thus, ^{as} stated, the order in question being passed by Kulanand Joshi, the argument of learned counsel for applicant for issueing notice to Shri O.P.Kelkar, Administrator fails.

5. We would also like to observe here that so far ^{as} 10 Surveyors released by Gujarat State to join in the Union Territory Dadra and Nagar Haveli vide Office order dated 8/6/2000 are concerned, the C.P. appears barred by limitation. To meet bar of limitation, the learned counsel for applicants argued that the time for drawing proceedings for wilful disobedience of order run from the date of appointment. However, applicant has not disclosed any date of appointment and therefore, when the 10 Surveyors were released by Gujarat Government on 8/6/2000 then we reasonably believe that they must have joined duties soon thereafter. It was for applicants to have pleaded necessary
A. B. Joshi

facts so that CP could be considered within limitation. So far respondent no.3 Smt.P.Srivastava and Respondent No.4 Shri P.K.Jalali are concerned, there appears no averments in CP as well as affidavit filed on the basis of which notice could be issued to Respondent No.3. or Respondent No.4.CP fails against them for that reason.

6. The learned counsel for applicant during course of arguments made a prayer that he be permitted to amend the CP. The amendment that he wants to make is in respect of impleading Shri Kulanand Joshi, Assistant Secretary (Per.) (as opposite party) and the two persons Mansukhbhai Prabhubhai Patel and Shri Jayendrasing Bhikubhai Solanki. He has not impleaded Kulanand Joshi as well as the said two persons as parties nor is there any averment against them in the CP. ~~and~~ We cannot allow the CP to be amended ^{as} will as question of limitation will arise, which will require virtually re-writing CP. Applicant can seek remedy by moving a separate CP in accordance with law against Shri Kulanand Joshi and said two persons, if so advised, where said aspect may also arise beside there being any wilful disobedience of the order. Thus, we do not permit amendment of CP.

7. As notice was issued to Respondent Shri Jacob Yohanan who had to defend himself, we consider that applicant without taking due care impleaded him as party when there was nothing done by him which could give slightest cause for impleading him as respondent no.1 in CP. Jacob has been made to run to this Tribunal from Silvasa for which applicant has to compensate him by paying cost. In said circumstances, we fix the cost of *p.v.sir*

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Rs.2,000/- to be paid by applicant to Shri Jacob Yohanan, Executive Engineer, PWD, Civil Division of Dadra and Nagar Haveli, Silvassa, the Respondent No.1.

8. For aforesaid reasons the notice against Respondent No.1 Shri Jacob Yohanan is discharged and CP is dismissed with Rs.2000 /- as cost to be paid by applicants to him. Subject to above direction in respect of costs, the CP is dismissed.

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(SMT.SHANTA SHASTRY)
MEMBER(A)

B. B. Dikshit

(BIRENDRA DIKSHIT)
VICE CHAIRMAN

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