

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

CONTEMPT CASE No.2723 of 2023

ORDER:

1. This Contempt Case has been filed under Sections 10 and 12 of the Contempt of Courts Act, 1971 for wilfully disobeying the orders of this Court in W.P.No.18919 of 2021, dated 22.11.2022.

2. The petitioner herein filed Writ Petition No.18919 of 2021 against the respondents before this Court and the same was disposed of by this Court on 22.11.2022, wherein the operative portion of the order reads as follows:

“Having regard to the facts and circumstances as stated above and also in view of the foregoing discussions, this Court is of the view to dispose of the Writ Petition, directing the respondent authorities, more particularly, respondent Nos.1 and 2 to consider the case of the petitioners against the vacancies available in respect of Ward Welfare and Development Secretary Grade(II) and to pass appropriate orders after providing opportunity of hearing to the petitioners within a period of two months(2) from the date of receipt of a copy of this Order.”

3. The complaint of the petitioner is that, the order passed by this Court in Writ Petition No.18919 of 2021, dated 22.11.2022 is not

complied with by the respondents/contemnors. Hence, the present Contempt Case is preferred against the respondents/contemnors.

4. Respondent No.1/Principal Secretary filed counter-affidavit, denying material allegations, wherein, in Paragraph No.6 it is stated that immediately upon receipt of the order dated 22.11.2022, the 2nd respondent being a competent authority has directed the petitioner to attend for hearing along with all the relevant documents on 18.01.2023 at 11.00 a.m. at the office of the 2nd respondent. It is also stated that as per the direction of the 2nd respondent, the petitioner attended the hearing and requested the 2nd respondent to reconsider his case for appointment.

5. Respondent No.2/Commissioner and Director of Municipal Administration filed counter-affidavit, denying material allegations, wherein in Paragraph No. 10 it is stated that, as per the factual report submitted by RDMA, the office of the 2nd respondent has issued endorsement which reads as follows:

“As per notification No.06/2019, dated 26.07.2019 and further clarification of CDMA, AP, Guntur in their letter Roc.No.20026/17/2019-A1, dated 26.09.2019, the candidates who are having educational qualification in Arts & Humanities and above are only selected”

6. Further it is stated that, aggrieved by the said office endorsement, the above Writ Petition No.18919 of 2021 has been filed. The order passed by this Court in Writ Petition No.18919 of 2021, dated 22.11.2022, has already been complied with by the respondents in their true letter and spirit by passing the speaking order dated 23.02.2023.

7. Respondent No.2 filed additional counter-affidavit stating that the petitioner was called for certificates verification on 26.11.2019 at 10.00 am vide letter No.DSC/106/15/1901185000717, dated 25.11.2019 along with the other candidates in the District. Pursuant to the said letter, all the candidates from various far places and Districts were attended the certificates verification on 26.11.2019. But the petitioner failed to attend the same within the stipulated period and attended on 27.11.2019. It is further stated that as the petitioner failed to attend the certificate verification on 26.11.2019, as per the condition stipulated in Note-2 of the call letter, the next eligible candidate got selection under the open category i.e., BC-A(G) category and thus, the 20% of earmarked open competition posts were exhausted. It is stated that one Sri Anil Kumar, whose hall ticket number is 190615001625 has got 53.25 marks and 1833 rank has got appointment as Ward Welfare and Development Secretaries of 80% local candidates of Krishna District. But whereas the petitioner

is a non-local candidate belongs to Srikakulam District. Hence, the case of the petitioner was not considered for appointment to the post of Ward Welfare and Development Secretary in Open Category.

8. Further it is stated in the counter affidavit, that the procedure and policy was adopted for the entire state for the selection and appointments of Village Ward Secretariats and if the petitioner's case is entertained, it will cause prejudice to the policy decision of the State. Moreover, in the conditions of notification, it is made clear that the recruitment will be made to the vacancies notified and there shall be no waiting list and posts, if any unfilled for any reason whatsoever shall be carried forward for future recruitment. It is also stated in the notification that the number of candidates selected shall not be more than the number of vacancies notified. Even if any vacancies are available there, the petitioner cannot be appointed, since the 20% of posts earmarked for open competition were exhausted and requested to dismiss the contempt case against the contemnors.

9. Learned counsel for the petitioner submits that the respondents deliberately flouted the orders of this Court. The failure on the part of the respondents in implementing the orders of this Court would amount to disobedience of the orders of this Hon'ble

Court, and therefore, he is liable for punishment under Sections 10 to 12 of the Contempt of Courts Act, 1971.

10. Learned counsel for the petitioner submits that this Court categorically held that “the entire selection for the post of Ward Welfare and Development Secretary Grade (II) transpired, contrary to the notification in respect of qualification prescribed in the notification”. He further submits that this Court, upon recording the submissions of the respondents that relaxation in favour of candidates possessing graduation and post graduation, other than Arts and Humanities was as per Rules vide G.O.Ms.No.282, date d02.09.2003 i.e. Adhoc Rule, was held to be untenable and not valid for the reason that if once the notification for selection was issued, the selection authorities cannot deviate from the terms and conditions of the said notification.

11. Learned counsel for the petitioner further submitted that this Court also held that the action of the respondents in taking aid of Adhoc Rule, framed in G.O.Ms.No.282, dated 02.09.2003 and also G.O.Rt.No.25, dated 08.01.2020 is also not tenable. Further in respect of vacancies existing, this Court vide W.P.No.18919 of 2021 dated 22.11.2022, has directed the respondents herein, to consider the case of petitioner against the vacancies available in respect of

Ward Welfare and Development Secretary Grade (II) and pass appropriate orders. Learned counsel for the petitioner submits that in view of the above observations made by this Court, the respondents are bound to consider for appointment of the petitioner, in the existing vacancies. But in violation of the orders of this Court, 2nd respondent has issued proceedings in Roc.No.22/7/2023-N-13, dated 23.02.2023, captioning the same as Speaking Order rejected the case of the petitioner on the ground that the petitioner has failed to attend the certificate verification on 26.11.2019 and the petitioner appeared for verification and submitted the certificates on 27.11.2019. Further it is submitted that as the petitioner was called for verification, by issuing messages on 25.11.2019 at 7 p.m. it is highly impossible for any candidate from Srikakulam, to attend by 10.00 a.m. on next day itself.

12. Learned counsel for the petitioner further submits that the 2nd respondent categorically stated that though the petitioner become meritorious candidate, having been selected under non-local category with 72.75 marks (rank 434) in Krishna District, he was not selected on the ground that he failed to attend certificate verification on 26.11.2019 and attended the certificate verification on 27.11.2019. Basing upon the said ground the 2nd respondent stated that the petitioner cannot be considered for vacancies left unfilled in

notification dated 26.07.2019 and further notified in 2nd notification i.e., notification No.03/2020, dated 10.01.2020. The 2nd respondent has been still relying upon Adhoc Rule issued in G.O.Ms.No.282, dated 02.09.2003, to deny the case of petitioner though this Court held that action of 2nd respondent “in taking aid” of Rules framed in G.O.Ms.NO.282, dated 02.09.2003, Adhoc Rule and also G.O.Rt.No.25, dated 08.01.2020, for making selection “is also not tenable”.

13. Learned counsel appearing for respondent Nos.1 and 2 submits that it is a fact that this Court issued directions to consider the case of the petitioner against the vacancies available in respect of Ward Welfare Development Secretary to pass appropriate orders, after providing opportunity of hearing to the petitioner within a period of two months from the date of receipt of copy of the order. It is further submitted that the respondents have considered the representation of the petitioner, provided opportunity of hearing to the petitioner and passed appropriate orders. As such, there is no violation on the part of the respondents and requested to dismiss the Contempt Case against the respondents.

14. Heard the learned counsel for the petitioner and learned counsel appearing for the respondents/contemnors and perused the material available on record.

15. Having perused the material available on record, it appears that this Court passed an order on 22.11.2022, directing the respondents to consider the case of the petitioner against the vacancies available in respect of Ward Welfare and Development Secretary Grade(II) and to pass appropriate orders after providing an opportunity of hearing to the petitioners within a period of two months from the date of receipt of a copy of the order. Accordingly, upon receipt of the orders passed by this Court, the 2nd respondent has directed the petitioner to attend for hearing on 18.01.2023 at 11.00 am at the office of the 2nd respondent along with all relevant documents. Thereafter, the 2nd respondent has issued speaking order to the petitioner vide proceedings in Roc.No.22/7/2023-N-13, dated 23.02.2023 duly informing the petitioner that his request for appointment to the post of Ward Welfare & Development Secretary (Grade-II) cannot be considered and therefore rejected his case as not feasible on the ground that the District Selection Committee has completed recruitment process by appointing the eligible candidates by strictly following the rules and regulations.

16. On perusal of the entire material on record, it appears that the respondents have complied with the orders passed by this Court on 22.11.2022 by considering the application of the petitioner by providing him with a fair and reasonable opportunity of hearing.

17. This Court is of the considered opinion that the scope of the Contempt of Courts Act cannot be extended for the purpose of granting the relief, which was not considered by the Court in a writ petition or such prayer falls beyond the scope of the contempt proceedings. In the present case, a direction was issued by this Court directing the Respondent Nos.1 and 2 to consider the case of the petitioner against the vacancies available in respect of Ward Welfare and Development Secretary Grade (II) and to pass appropriate orders after providing opportunity of hearing to the petitioner. The observations made by the Court could not be a ground to seek a positive relief from the Court. A direction to consider the case of the petitioner would not confer any right for the petitioner to seek a positive relief in contempt petition beyond the scope of the directions issued by the Court in the writ petition. The petitioner should establish his/her right before the authorities competent. The right, if any, established before the competent authority alone be considered for the purpose of considering the representation/case. Thus, the order of this Court to consider the representation/case, at no

circumstances, be misconstrued for the purpose of filing a contempt petition as if the rights of the petitioner are crystallised by the Court. Even in case of issuing direction to consider the representation/case, the petitioner is bound to establish the right. In the absence of any such right, the petitioner is not entitled for any relief before the authorities.

18. Contempt proceedings cannot be allowed for undue advantage of by the petitioner merely based on the order of direction to consider the representation. Once a direction is issued to consider the representation, the observations made by the Court would not be binding on the respondents, as all such observations require scrutinization and verification and the Courts under that context, direct the authorities to consider the representation. Once the writ petition is disposed of with a direction to consider the representation, then it is to be construed that all the merits of the case are to be adjudicated or considered by the authorities and any observation made by the Court is only for the consideration and cannot be taken as an order.

19. In the present case, the petitioner's candidature was sought to be considered against the vacancies available in respect of Ward Welfare and Development Secretary Grade. In obedience of the orders

of this Court, the respondents have provided an opportunity of hearing to the petitioner on 18.01.2023 at 11:00 A.M, for which the petitioner has attended and submitted his representation. Furthermore, the respondents have passed speaking orders vide Roc.No.22/7/2023-N-13 dated 23.02.2023 after providing an opportunity of hearing. Therefore, the authorities cannot be unnecessarily pressurized by admitting the contempt petition, which would cause prejudice to the interest of the administration.

20. On over all consideration of the matter, it is concluded that the respondents have complied with the orders of this Court in W.P.No.18919 of 2021, dated 22.11.2022 through letter and spirit as such they did not flout the orders of this Court. However, the petitioner is at liberty to challenge the Speaking Order in Roc.No.22/7/2023-N-13 dated 23.02.2023, if advised.

21. Accordingly, the Contempt Case is closed. There shall be no order as to costs.

22. Consequently petitions pending, if any, pending in this Contempt Case, shall stand closed.

VENKATESWARLU NIMMAGADDA, J

Dated: 07.10.2023
TPS/SP

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

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