



GAHC010203622023

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REPORTABLE



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Cont.Cas(C)/556/2023

ABDUL JALIL SARKAR
S/O LATE ABDULLAH SARKAR, VILL- CHALAKURA POYESTI CHAR, P.O.-
MAJER CHAR, DIST- DHUBRI, ASSAM, PIN-783301

VERSUS

MASI TOPNO, ACS
THE IN-CHARGE DISTRICT ELEMENTARY EDUCATION OFFICER, DHUBRI,
P.O. AND DIST- DHUBRI, ASSAM, PIN-783301

Advocate for the Petitioner : MR. D A KAIYUM

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT & ORDER (ORAL)

Date : 03-10-2023

Heard Mr. D.A. Kaiyum, learned counsel for the petitioner.

2. This contempt petition is instituted alleging wilful and deliberate violation of the order dated 31.03.2023 in WP(C) No. 1792/2023. By the order dated



31.03.2023 in the interim, and having given its reasons, the order impugned therein dated 24.03.2023 allowing the respondent No. 6 therein, namely, Abdul Jalil Sarkar from being the In-charge Headmaster of Poyesti Chalakura Nuria M.E. Madrassa was stayed. The interim order clearly provides that without obtaining any clarification from the higher authorities, the District Elementary Education Officer, Dhubri ought not to have disturbed the position of the writ petitioner therein i.e. Ala Uddin Sheikh. In compliance of the interim order dated 31.03.2023, the In-charge District Elementary Education Officer, Dhubri had passed an order dated 04.05.2023 by allowing the writ petitioner Ala Uddin Sheikh to continue as the In-charge Headmaster of the school.

3. This contempt petition is instituted in the premises that the interim order provided that the impugned order therein dated 24.03.2023 would remain stayed till the next date of listing and the next date of listing was ordered to be 08.05.2023. But the District Elementary Education Officer had allowed Ala Uddin Sheikh to be the In-charge Headmaster till the final judgment of the Court.

4. A contempt petition is maintainable upon wilful and deliberate violation of an order of the Court and not on a mere aberration by any authority. Firstly, Mr. D.A. Kayum, learned counsel for the petitioner submits that the order allowing the writ petitioner to be the In-charge Headmaster was beyond the next date fixed in the interim order, but the said statement appears to be incorrect as the next date was fixed on 08.05.2023, where the order allowing Ala Uddin Sheikh to be the In-charge Headmaster is dated 04.05.2023. If the order dated 04.05.2023 had allowed the writ petitioner to remain the In-charge Headmaster until the final judgment of the Court, whereas in the interim order it was provided that the interim order was up to 08.05.2023 and extension thereof would be considered on the next date, the same by itself cannot be held to be

an act of wilful and deliberate violation of the Court.

5. A contempt jurisdiction neither can be allowed to be invoked by any of the aggrieved parties merely on a premise of a slight aberration by the officials in their acts, unless it is also shown that the intent and purport of such act is to wilfully and deliberately violate the orders of the Court. Nor a contempt jurisdiction can be allowed to be invoked merely to achieve the purposes of one of the litigants or the other by making it a Sword of Damocles to be hanging over the head of the respondent Government authorities that unless the orders are passed to the complete satisfaction, the litigant would invoke the consequences of a contempt jurisdiction which may ultimately lead to imprisonment of the alleged contemnor.

6. It is also noticed that against the order dated 04.05.2023, writ petition WP(C) No. 3368/2023 has already been instituted by the contempt petitioner wherein notice was issued on 14.06.2023, but no such interim order was passed, whereas on the other hand this contempt petition is filed on 11.09.2023 i.e. during the pendency of WP(C) No. 3368/2023, which gives credence to the view that the contempt petition is more in the nature of achieving an oblique purpose which could not be obtained in WP(C) No. 3368/2023.

7. The entire approach of the contempt petitioner appears to be not only misconceived but also with the purpose of achieving an oblique purpose by invoking the contempt jurisdiction. If any such minor aberration was noticed, the same could have easily been corrected by filing an appropriate interlocutory application in the writ petition itself rather than invoking the contempt jurisdiction.

8. Accordingly, for the reasons stated above, contempt petition stands dismissed. However, for the misuse of the contempt jurisdiction, the petitioner



to pay a cost of Rs. 10,000/- payable to the Gauhati High Court Legal Services Authority.

9. Contempt petition stands dismissed as indicated above.

JUDGE

Comparing Assistant