

In the Court of Smt. KALPANA M. KULKARNI  
DISTRICT AND SESSIONS JUDGE BAGALKOT

Case No.: EX / 308 / 2019 CNR Number: KABK010037632019

Sadashiva S Kembavi Vs The Management of Sri. Basaveshwara Veerashiava Vidyavardhak  
Sangh Rep by Chairman

SHANMUKHSA KRISHNASA MAGAJI Advocate / K.S.DESHAPANDE, Advocate

ORDER ON MEMO DATED 7.3.2020

This memo is filed by the Advocate for J.Drs submitting as below:

2. The execution petition is filed to execute the order passed by this Court in ETA No.4/2015 passed on 19.6.2019. The said order was challenged before Hon'ble High Court of Karnataka, Dharwad Bench in two Writ Petitions. The matter regarding interim relief was heard on 3.9.2019 in writ petitions and request for interim relief was rejected. The Writ Appeal filed against the rejection of interim relief was also rejected in Writ Appeal by order dated 19.9.2019. The J.Drs have preferred Special Leave to Appeal Nos.3393-3394/2020 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India passed an order on 10.2.2020 to pay the respondent dues in terms of the impugned order of this Court without taking any work from him. These dues were to be paid within four weeks from 10.2.2020. The notice of said SLP is also issued to the respondent and matter is still pending.

3. As per the grant in Court applicable to aided section of Basaveshwar Engineering College, the salaries payable to the respondent consists of 15% from the Management i.e. J.Dr.No.1 and remaining 85% is to be paid by the Government. Accordingly, the amount payable on the part of J.Dr.No.1 in terms of the Hon'ble Supreme Court of India is calculated as below. The details of the calculation is as under.

A	15% of the Salary of the 50% of the salary ordered by this Court for the period from 5.5.2015 to 19.9.2019 (The date of impugned order before the Supreme Court) comes to	Rs.3,18,120/-
B.	15% of 100% salary payable from 20.9.2019 to 29.2.2020 comes to	Rs. 76,435/-
	Total Amount is	Rs.3,94,555/-

4. For the amount mentioned above payable as per the interim order of the Hon'ble Supreme Court of India is deposited herewith in this Court through D.D drawn for the same amount on Corporation Bank, Bagalkot bearing No.793454 dated 6.3.2020.

5. The balance 85% payable by the Government will be deposited immediately after same is released by the concerned department. The process for releasing the said amount is already under process.

6. The Advocate for D.hr has filed objections to this memo and contended as below:

The memo dated on 7.3.2020 leads to contempt of order passed by the Hon'ble Supreme Court dated 10.2.2020. The contents of para No.1 and 2 of memo dated 7.3.2020 and rejection of Writ Appeals are true and correct. It is true that the J.Drs have preferred Special Leave to Appeal Nos.3393-3394/2020 2020 and the Hon'ble Supreme Court of India passed an order on 10.2.2020 and directed the J.Drs to pay dues in terms of the impugned order passed by this Court without taking any work from him and directed to pay dues, were to be paid within four weeks i.e., within 9.3.2020. The J.Dr deposited Rs.3,94,555/- is against the

Supreme Court order and as such Government is not party to this proceedings. The J.Drs are within fully well knowledge of circular of Government of Karnataka, as per Government order Sl. No.ED.278. SEW, 2005 Karnataka State Government Bangalore dated 25.7.2005 and violated the order of Hon'ble Supreme Court. Hence, under S. 12 of Contempt Act, 1971, Code of Civil Procedure Sec.94(c), Constitution of India Article, 129, the said Act of the J.Drs are willful and deliberate disobedience of interim orders passed by the Hon'ble Supreme Court of India dated 10.2.2020. Hence, it is prayed to hold that the J.Drs are contemnors to undergo simple imprisonment for a term of two weeks.

7. Heard the Advocate for J.Drs and D.Hr.

8. During the course of arguments, the Advocate for D.hr relied on following Circular and citations.

1. Circular dated: 25.7.2005 issued by Government of Karnataka in connection to Aided Private Educational Institutions.
2. SLP (Civil) 6778-6779/2001 Supreme Court of India.
3. AIR 2008 SC 3016, Sec.12 of Contempt of Court Act, Sec.94(c) of Code of Civil Procedure, Article 129 of Constitution of India.

9. Perused the records.

10. In the opinion of this Court, it is proper to note some of chronological facts in relation to earlier proceedings of this case which may help the court to appreciate the submissions of both parties.

a) In the year 2015, the appeal in EAT No.4/2015 is filed before this Court.

- b) This court has passed considered order on merits in EAT No.4/2015 on 19.6.2019 as below:

*“The appeal filed by the appellant under S.94(1) of the Karnataka Education Act, 1983 is hereby partly allowed.*

*The order of dismissal passed by the first respondent bearing Ref. No.BVVS/15/16/546 dated 30.4.2015 and the relieving order passed by respondent No.2 bearing No.BEC/BGK/EST/2015-16 dated 5.5.2015 is hereby set aside.*

*The respondent No.1 and 2 are directed to reinstate the appellant into service with all consequential benefits. The appellant is not entitled for 50% of back salary and one immediate annual increment with cumulative effect is ordered to be withheld.”*

- c) Aggrieved by the judgment and award, J.Dr No.1 and 2 have preferred WP No.112521-112522/2019 before the Hon'ble High Court of Karnataka, Dharwad Bench.
- d) On 3.9.2019 as per the order of Hon'ble High Court of Karnataka, Dharwad Bench, prayer for grant of interim relief of stay of execution and operation of judgment and award passed by this court on 19.6.2019 came to be rejected.
- e) On 9.9.2019 the D.Hr has filed the present execution petition before this Court.
- f) Aggrieved by the said order, the J.Drs have preferred Writ Appeal Nos. 100519-520/2019 (S-RES) before the Hon'ble High Court of Karnataka, Dharwad Bench.
- g) On 19.9.2019 said writ appeals came to be dismissed.
- h) On 24.10.2019, the applicant/D.Hr. has filed I.A.I under Order XXI Rule 37 of Code of Civil Procedure to issue arrest warrant against the Chairman of Basaveshwar Vidya Vardhak Sangh, Bagalkot and detain in civil custody till the complying of order passed in EAT No.4/2015 in the interest of justice.
- i) On 18.11.2019 being aggrieved by dismissal of Writ Appeal Nos. 100519-

520/2019, the J.Dr No.1 and 2 have preferred Special Leave to Appeal Nos.3393-3394/2020 before the Hon'ble Supreme Court of India.

- j) On 7.12.2019 the J.Dr. No.1 and 2 have filed objections to I.A. No.I before this Court.
- k) On 8.1.2020 this Court has passed the orders on I.A.I, wherein this Court has fixed the matter for enquiry on I.A.I in terms of Order XXI Rule 41 of Code of Civil Procedure and accordingly, the matter is adjourned to 15.2.2020.
- l) On 15.2.2020 the counsel for D.Hr filed P.F., list of movables and memo with documents and prayed for issue of attachment warrant of movables. On the same day, the counsel for J.Dr. filed memo and produced the copy of order of the Hon'ble Supreme Court in Special Leave to Appeal (C) Nos.3393-3394/2020 dated 10.2.2020.
- m) On 10.2.2020 the Hon'ble Supreme Court of India has passed interim order in Special Leave to Appeal (C) Nos.3393-3394/2020 to the effect as below:

*“Learned senior counsel for the petitioners however submits that re-joining of the respondent No.1 in an institution against which the respondent has carried out a tirade as reflected on page No.177, in the interregnum period is not conducive for the institution. The petitioners are however willing to pay all the dues in terms of the impugned order and continue to pay the respondent amounts in terms of the said orders but would not take work from him.*

*Needful be done within four weeks.*

*Subject to the aforesaid, let notice issue to the respondents limited to the aforesaid aspects.*

*If the amounts are deposited and be paid, the respondent shall not join the petitioner-institute.”*

- m) On 15.2.2020, this court heard the arguments of both sides and fixed the matter for orders on 17.2.2020.

- n) On 17.2.2020, this Court has passed the order to the effect that in view of order passed by Hon'ble Supreme Court noted above, as because the J.Dr. No.2 has time to pay the amount due to D.Hr, hence, in the opinion of the court in the interregnum period, the prayer of D.Hr to issue attachment of movables cannot be accepted and matter is adjourned to 10.3.2010.
- o) On 7.3.2020, the matter is advanced at the instance of advocate for J.Dr No.2 and the counsel for J.Dr No.2 filed memo and deposited amount of Rs.3,94,555/- through D.D. dated 6.3.2020. Accordingly, R.O. is issued by the office of this Court.
- p) On 7.3.2020, advocate for J.Dr No.2 has filed memo stating that the J.Dr No.2 has deposited 15% of the award amount and balance 85% is payable by the Government.
- q) On 10.3.2020, the counsel for D.Hr filed objections to memo filed by J.Dr No.2 dated 7.3.2020 and also filed another memo to issue arrest warrant and also produced some documents with citations.
- r) On 10.3.2020 the court heard the arguments of counsel of D.Hr and adjourned the matter for hearing arguments of counsel of J.Drs to 19.3.2020.
- s) On 19.3.2020 the matter came to be adjourned to hear the counsel for J.Drs to 27.3.2020.
- t) In view of notification of Hon'ble High Court of Karnataka, the court is closed from 24.3.2020 to 1.6.2020 towards spread of Covid-19. Accordingly, the matter is being adjourned.
- u) It is placed on record that the learned predecessor-in-office is transferred and the present Presiding Officer has taken charge on 11.5.2020.
- v) On 1.6.2020 as per the SOP issued by the Hon'ble High Court of Karnataka dated 30.5.2020, the court is reopened for limited functioning.
- w) On 4.6.2020/27.5.2020, the advocate for D.Hr filed advancement

application through physical filing submitting to take up the matter on board as D.Hr is willing to get an urgent order from this Court.

- x) On 11.6.2020 with due notice to both side, this court has taken up the matter on board in the open court.
- y) On 11.6.2020/27.5.2020 the D.Hr has filed application under S.151 of Code of Civil Procedure at I.A.II seeking payment of deposited amount in this case. On that day itself, the counsel for D.Hr pressed I.A.I dated 24.10.2019 and submitted that D.Hr is seeking orders on I.A.I on merits.
- z) On hearing both sides, this court has passed order on 16.6.2020, wherein the matter is fixed for hearing on memo dated 7.3.2020 which is under consideration under this order.

11. In view of submissions, now the matter is fixed for orders on memo dated 7.3.2020. In the background of these earlier proceedings of parties in this case, now the present memo dated 7.3.2020 is to be addressed.

12. At the cost of repetition, it is placed on record that as per the order of Hon'ble Supreme Court dated 10.2.2020, it is noted that the petitioners/present J.Drs have submitted that they are willing to pay all the dues in terms of the impugned order and continue to pay the respondent amounts in terms of the said orders but would not take work from him.

13. The contents of the memo dated 7.3.2020 is that as per the grant in Code applicable to added Section of said College, the salaries payable to the D.Hr consists of 15% from the Management and remaining 85% is to be paid by the Government and in terms of the order of Hon'ble Supreme Court, J.Dr. No.1 has deposited the amount of Rs.3,94,555/-. On the other hand, the objection of D.Hr is that as per the order of Hon'ble Supreme Court, J.Drs have not deposited all the

due amount, hence, J.Drs are contemnors.

14. In the backdrop of these respective assertion of parties, it is noted that as per the contents of memo itself, the J.Drs have not paid/deposited all the due amount payable to the present D.Hr within 4 weeks from the date of order of the Hon'ble Supreme Court.

15. In the humble opinion of this Court, in the backdrop of circulars noted above and the principles laid down by Hon'ble Supreme Court of India in the above said decision noted above in Special Leave Petition (Civil) 6778-6779/2001, the apportionment of liability of Management and Government to pay the dues to the D.Hr would be in between the J.Drs and Government and the said aspect is out of scope of present proceedings. In the present proceedings, government is not party. Hence, the contents of memo that the balance of 85% payable by the government will be deposited immediately after same is released by the concerned department is not tenable in the eye of law in this proceedings before this court at the stage of proceedings, as it is out of the scope of these proceedings.

16. As such, it is noted that as per the records, within 4 weeks of time, the J.Drs have not deposited all due amount payable to the D.Hr in this case.

17. As such, keeping in mind the principles of law laid down in the decision reported in AIR 2008 SC 3016 noted above, the prayer of D.Hr that in view of S. 12 of Contempt Act, 1971, Code of Civil Procedure Sec.94(c), Constitution of India Article, 129, the said Act of the J.Drs are willful and deliberate disobedience of interim orders passed by the Hon'ble Supreme Court of India dated 10.2.2020, the J.Drs are contemnors is to be decided on merits in accordance with law.

18. In the result, the following order is passed:

ORDER

It is placed on record that as stated in memo dated 7.3.2020 itself, the J.Drs have not deposited all the due amount payable to D.Hr within 4 weeks from the date of order of Hon'ble Supreme Court dated 10.2.2020 in Special Leave to Appeal Nos.3393-3394/2020 in this case.

It is ordered that as because all the due amount payable to D.Hr is not paid/deposited on or before 9.3.2020, the present proceedings are to be continued in accordance with law.

Call on for orders on payment application filed by D.Hr and objection to calculation memo by 8.7.2020.

Pril. District and Sessions Judge, Bagalkot.