

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

MONDAY, THE 24TH DAY OF FEBRUARY 2025 / 5TH PHALGUNA, 1946

WA NO. 284 OF 2025

**AGAINST THE ORDER DATED 15.01.2025 IN Con.Case(C)
NO.2436 OF 2018 OF HIGH COURT OF KERALA**

APPELLANT(S)/RESPONDENTS IN COC:

- 1 KERALA STATE ELECTRICITY BOARD LTD.
VYDHYUTHI BHAVAN, PATTOM P.O., THIRUVANANTHAPURAM
REPRESENTED BY ITS SECRETARY, PIN - 695004**
- 2 THE CHIEF ENGINEER (TECHNICAL, CONTRACTS AND
MATERIALS)
KERALA STATE ELECTRICITY BOARD LTD,, VYDHYUTHI
BHAVAN, PATTOM P.O., THIRUVANANTHAPURAM, PIN -
695004**

**BY ADVS.
JOSEPH JOSE
RAJU JOSEPH (SR.)**

RESPONDENT(S)/PETITIONER IN CONC:

**RAPHAEL AND COMPANY,
CHERUPU, THRISSUR, REPRESENTED BY ITS MANAGING
PARNTER, MR.V.P.RAPHAEL., PIN - 680561
BY ADVS. PHILIP T.VARGHESE
THOMAS T.VARGHESE(K/000516/1995)
ACHU SUBHA ABRAHAM(K/001758/1999)**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
24.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

JUDGMENT**C.R.**Dated this the 24th day of February, 2025.**Nitin Jamdar, C. J.**

By this Appeal under Section 5 of the Kerala High Court Act, the Kerala Electricity Board has challenged the order passed by the learned Single Judge dated 15 January 2025 in Con. Case (C) No.2436/2018 arising from W.P.(C)No.29650/2009. The Respondent - Raphael and Company filed the writ petition for quashing Exts. P4, P4(a) and P4(b) so far as they are limited to the benefits of full price variation.

2. Raphael and Company (the Company) had entered into a contract with the Kerala State Electricity Board (the Board) in 2005-2006 for a period of five years to supply PSC poles. One of the Clauses in the contract was regarding price variation, stating that if there is a variation of 10% in the cost of components, the benefit of the price variation would be given to the contractor. The Board had taken a stand that the price variation would apply prospectively from a particular date. The same was challenged by the Company by way of a writ petition. The learned Single Judge recorded that the only issue in the writ petition was regarding the claim for price variation for the period from the date of commencement of the contract till September 2008. By judgment dated 27 October 2017, the writ petition was disposed of directing the Board to give effect to Clause 14 upto the period of September 2008. The learned Single Judge also directed that the Board has to give effect to Clause 14 for a further period covering up to September 2008. Then

the Contempt Petition was filed by the Company making a grievance that though the certified copy of the judgment dated 27 October 2017 was produced before the Board on or around 18 December 2017, the Board did not implement the judgment and also the reminders were ignored. The Petitioner Company contended that the non-compliance of the judgment by the Board amounts to wilful disobedience and deliberate defiance of the judgment, which is liable to be punished under Article 215 of the Constitution of India read with Section 12 of the Contempt of Courts Act, 1971.

3. The Contempt Petition was filed on 14 December 2018. The scope of the contempt proceedings was, whether there is wilful disobedience and, if yes, what action needs to be taken.

4. The Board filed a reply affidavit contending that the only direction given in the judgment dated 27 October 2017 was to give effect to Clause 14 of the contract up to September 2008, and no other directions were issued. The Board contended that the order passed on 27 October 2017 has already been complied with by virtue of an order passed by the Secretary of the Board on 25 May 2020.

5. In the Contempt Petition, the learned Single Judge passed an order on 10 January 2024, making certain observations and granting further time. Then again, on 13 March 2024, the learned Single Judge passed another order directing the Appellant Board to calculate the balance price variation.

6. On 15 January 2025, the learned Single Judge passed a detailed

order reiterating the earlier facts and noting that various orders are passed in the Contempt petition. The learned Single Judge observed that there is no dispute to the fact that from 2008 onwards, the price variation was given inclusive of 10%, and in view of Clause 14, the Board cannot take a stand that the price variation is not based on any difference above 10%. The Board had contended that while disposing of the writ petition, the learned Single Judge had not specifically directed payment variation up to 10%. The learned Single Judge referred to the fact that the Court had decided the matter after referring to the Board's decision and ordered that such price variation should be given from the date of inception. Reference was also made to an order dated 13 March 2024 passed in the Contempt Petition directing the Board to calculate the amount from the inception of the contract itself. Thereafter, reference was made to the statement filed on 3 July 2024, and a direction was issued to pay the price variation of ₹64,42,821/-. The learned Single Judge observed that this having not been paid, the same should be paid within one month, failing which, it will carry interest, and the hearing of the Contempt Petition was adjourned. Being aggrieved, the Board has filed the present Appeal.

7. We have heard Mr. Raju Joseph, learned Senior Advocate appearing for the Appellants, and Mr. Philip T. Varghese, learned counsel for the Respondent.

8. The learned counsel for the Board submitted that the only direction in the original order dated 27 October 2017 was to give price variation in accordance with Clause 14, and according to the Board, it

had already been complied with. Learned counsel for the Board contended that the orders passed in the contempt petition leading to the impugned order on 15 January 2025 are beyond the scope of contempt jurisdiction where fresh adjudication cannot be made. It was submitted that the order passed by the Board, Ext.R2(c), has not been challenged, and new adjudication cannot be made in the contempt jurisdiction. Learned counsel for the Company submitted that there is no fresh adjudication, and the learned Single Judge has passed the order only to grant indulgence from time to time to comply with the order dated 27 October 2017.

9. The law regarding the ambit of civil contempt jurisdiction in the context of passing new orders is settled. The contempt jurisdiction is vested with the Court to uphold its majesty and dignity. It is a special jurisdiction and carries certain limitations in its ambit. One of the limitations is that the Court will not pass new orders in continuation of the earlier *lis* between the parties on merits assuming continuous review or original jurisdiction. When the civil contempt alleged is of willful disobedience of the order of the Court, the Court will either discharge the proceedings or proceed to punish for contempt. If there is any doubt or lacuna in the original order, it is a matter of review jurisdiction and not contempt jurisdiction. The Hon'ble Supreme Court, in various decisions, has disapproved passing new orders in contempt jurisdiction, which are referred to hereinafter.

10. In *Jharieswar Prasad Paul v. Tarak Nath Ganguly*,¹ the Hon'ble

¹ (2002) 5 SCC 352

Supreme Court was considering an appeal from the order passed by the Division Bench of the High Court which held that the respondent-contemners had not complied with the order in an appropriate manner, but there is some doubt and the respondent-contemners were entitled to benefit of doubt. However, the Division Bench issued new orders different than the original one which were disapproved by the Supreme Court observing thus:

“11. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law, since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of court is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to

consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes levelled against the courts exercising contempt of court jurisdiction “that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute” in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts.

13. In the facts and circumstances of the case, we are constrained to hold that the judgment/order passed by the High Court was without jurisdiction. In the result, the appeals are allowed. The judgment/order under challenge is set aside. The petition filed by the writ petitioners for taking action for contempt of court against the respondents is dismissed.”

(emphasis supplied)

This view was followed in *V.M. Manohar Prasad v. N. Ratnam Raju*². The Hon'ble Supreme Court observed that the position of law is that in contempt proceedings no further directions could be issued by the Court. If it is found that there is a violation of the order passed by the Court, the Court may punish the contemnor; otherwise, notice of contempt is to be discharged. The order passed in the contempt petition could not be a supplemental order to the main order granting relief. Then in *Sudhir Vasudeva v. M. George Ravishekar*,³ the Hon'ble Supreme Court held as follows:

“19. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or wilful violation of the same. Decided issues cannot be reopened; nor can the plea of equities be considered. The Courts must also ensure that while

² (2004) 13 SCC 610

³ (2014) 3 SCC 373

considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the Bar, namely, Jhareswar Prasad Paul v. Tarak Nath Ganguly [(2002) 5 SCC 352 : 2002 SCC (L&S) 703] , V.M. Manohar Prasad v. N. Ratnam Raju [(2004) 13 SCC 610 : 2006 SCC (L&S) 907] , Bihar Finance Service House Construction Coop. Society Ltd. v. Gautam Goswami [(2008) 5 SCC 339] and Union of India v. Subedar Devassy PV[(2006) 1 SCC 613].

(emphasis supplied)

11. In the case of *Senthur v. T.N. Public Service Commission*⁴, the Hon'ble Supreme Court held that in contempt jurisdiction, the Court will not travel beyond the original judgment and direction; neither would it be permissible for the Court to issue any supplementary or incidental directions, which are not to be found in the original judgment and order. While dealing with civil contempt, the Court is only concerned with the wilful or deliberate non-compliance of the directions issued in the original judgment and order. The Appellants have also relied on the decisions in *Prithawi Nath Ram v. State of Jharkhand*⁵ and *Abhishek Kumar Singh v. G. Pattanaik and Other.*⁶ which laid down the same position of law.

⁴ (2022) 17 SCC 568

⁵ (2004) 7 SCC 261

⁶ (2021) 7 SCC 613

12. Thus, the legal position is settled that civil contempt jurisdiction is meant to ensure compliance with the orders of the Court and maintain the dignity of the Court. This jurisdiction is not to be executed to supplement or modify earlier judicial decisions. In contempt jurisdiction Courts have to limit the determination to whether there has been willful disobedience to a self-evident order. It is not permissible to travel beyond the original judgment or enter into issues that were not previously adjudicated. Directions that are not contained in the judgment cannot be enforced through contempt proceedings. If an order is ambiguous, seeking clarification through review or appeal is the appropriate remedy. Thus, if a substantive relief that alters the original order or a new order is executed in civil contempt, proceedings will be beyond jurisdiction.

13. As regards the case at hand, the contempt petition is still pending and has not been disposed of. The learned Single Judge has not concluded that there is any wilful disobedience on the part of the Appellant Board to proceed to take action for contempt. There is no discussion in the order dated 15 January 2025 as to whether it is passed to implement the order dated 27 October 2017, or it introduces new directions or it adjudicates issues not covered in the original order, in the context of the principle laid down by the Hon'ble Supreme Court in the case of *Jharieswar Prasad Paul* and other decisions cited above.

14. Since the impugned order dated 15 January 2025 does refer to the above legal position which has direct bearing on the issue of jurisdiction, the impugned order dated 15 January 2025 will have to be

set aside. Ordered accordingly.

15. However, it will be open to the learned Single Judge to decide whether directions such as the ones in the order dated 15 January 2025 are only to give effect to the order dated 27 October 2017 and whether they need to be issued, keeping in mind the law laid down by Hon'ble Supreme Court in the decisions as above.

16. The Contempt Petition will be heard on its own merits. The Appeal is disposed of in the above terms.

Sd/-

**NITIN JAMDAR
CHIEF JUSTICE**

Sd/-

**S. MANU
JUDGE**

Eb/uu