

(2014) 08 JH CK 0035
In the Jharkhand High Court
Case No : Cont. Case (Civil) No. 510 of 2013

Anshul Agrochemicals

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 29-08-2014

Acts Referred:

Citation : (2014) 08 JH CK 0035

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Sujit Narayan Prasad, Advocate for the Appellant; Jai Prakash, A.A.G, Advocate for the Respondent

Judgement

Rakesh Ranjan Prasad, J.—Before I proceed with the matter, the order passed by this Court on 13/03/2014, needs to be reproduced, which reads as follows:-

"Mr. S.N. Prasad, learned counsel appearing for the petitioner submits that pursuant to the order passed by this Court in a writ application, directing the Secretary to pass a fresh order after taking into account the ground taken by the petitioner in his representation and also the report submitted by the Director, the Secretary passed an order on 31/07/2013, but he did not take into account the fact, which was there in the report of the Director, rather he based his finding on the report of Mr. B.B. Mishra, though there was no such direction. At the same time, the ground taken in the show cause was also not taken into account.

After hearing, when this Court did find the submission to be correct, the Secretary was again directed to reconsider it and to pass an order. Thereupon, an order was passed on 09/10/2013, but again it was not in consonance with the order passed by this Court. Subsequently, the Secretary, on his own, passed an order on 16/12/2013, perhaps on account of observation made by this Court during hearing of this case.

In this regard, it was submitted that the Secretary, while passing such order has again reiterated that since the samples of Micro-nutrient (Fertilizer) supplied by

the petitioner could be tested for only four Districts, i.e. Latehar, Simdega, Dhanbad and Ranchi, no order for payment would be passed for supply of Micro-nutrient at other Districts, unless and until report of the quality of the Micro-nutrient, supplied by the petitioner is received from the laboratory at Navi Mumbai. From the report it is evident that for rest of the Districts Micro-nutrient had never been sent for its chemical examination and in that event the concerned Districts may not get report in this regard and, therefore, it can be said that in order to deny the rightful claim of the petitioner, this order has been passed, which is not in consonance with the order passed by this Court.

Further, it was submitted that Mr. B.B. Mishra, in his report has raised doubt over certain documents relating to supply of the Micro-nutrient in different Districts, but the Director, in his report, has categorically stated that the material, which had been supplied, has been entered in the relevant register, maintained by each Districts and if that is so, there has been no reason on the part of any other authority to dispute about supply of the materials. Any such doubt raised by the Secretary on the basis of the report of Mr. B.B. Mishra, would not be proper and under the circumstances, it becomes quite obvious that O.P. No. 2 has not complied the order passed by this Court and has made himself liable to be prosecuted under the Court of Contempt Act.

As against this, Mr. Rajesh Kumar, learned counsel appearing for the State submits that it is evident that the sample Micro-nutrient, which had been supplied by this petitioner in all the Districts of Jharkhand could be tested only for four Districts and, therefore, the order has been passed to the effect that unless and until report is received, the petitioner would not be entitled to get payment.

On this issue, when Mr. Rajesh Kumar was asked as to whether Micro-nutrient, which had been supplied by the petitioner in the year 2009 is still available, he raised his doubt that it may not be available. If it is not available, how it can be tested in a laboratory. Moreover, even if, it is available in the Districts the quality or the ingredients of Micro-nutrient may not be same after passing of such a long time.

Under the circumstances, the Secretary may not have had report in this regard. Further, I do find that Mr. Mishra had raised doubt over supply of the materials to the different District on account of some discrepancies found with the documents related to supply of the materials, but the Director, in his report, has reported that the materials, which were supplied, had been entered in the stock of other Districts. Nothing has been placed to raise doubt over such entries made by the authorities in different Districts, still doubt has been raised over the quantity, which was supplied by the petitioner in each District. Under the circumstances, the authority is again required to reconsider the matter and to pass a fresh order within a period of three weeks from today.

Let this matter be listed on 03/04/2014.

Let a copy of this order be handed over to Mr. Rajesh Kumar, learned counsel appearing for the State."

2. Pursuant to that direction an order was passed on 24/03/2014, wherein the same thing has been reiterated which was there in the order dated 16/12/2013, in spite of the fact that direction had been given for reconsideration of the matter. Only, one additional ground was recorded to the effect that the Director, Agriculture, had not given his opinion with respect to the matter pertaining to column Nos. 7 & 9 and, therefore, it has been recorded that the report of the Director was not worth considerable.

3. From the submissions advanced and also from the order passed on 13/03/2014, two things get emerged out; (1) In spite of sample of Micro-nutrient, supplied in the Districts other than four Districts namely, Ranchi, Latehar, Dhanbad and Simdega, being not sent for its chemical examination, still order is being recorded that until and unless report in this regard is received, no order would be passed with respect to payment. (2) Certain objection has been taken by Mr. Mishra in its report regarding supply of Micro-nutrient, but the Director in its report has not said anything in this respect and, therefore, doubt has been raised as to whether the claim of the petitioner of supplying certain quantity of Micro-nutrient is genuine or not?

4. With respect to first objection it be stated that when the samples of Micro-nutrient supplied to the other Districts as stated above, have not been sent for its chemical examination how the report in this regard would be received and, as such, objection taken in this regard appears to be quite irrational beyond comprehension of any person of ordinary prudence, arbitrary and illegal. So far as second objection is concerned, it has been reported by the Director in its report that the quantity of the Micro-nutrient, supplied by the petitioner in the Districts can be verified from the records of the Districts. Admittedly, it has not been verified, still order has been passed that the petitioner has not supplied the quantity to the extent, which the appellant has. There any opinion framed is without any basis.

5. However, Mr. Jai Prakash, learned Additional Advocate General submits that in spite of all these facts, no case of contempt is made out as the order, which has been passed in the writ application and also on 13/03/2014 in the contempt case was for consideration of the matter in context of the show cause and also the report of the Director. From the order passed by the authority it would appear that the authority has taken into account both; the report of the Director and also the show cause and if that has been done, no case of contempt is made out in view of the decision rendered in a case of Union of India (UOI) and Others Vs. Subedar Devassy PV, wherein in para-6, it has been observed as follows:-

"6. If any party concerned is aggrieved by the order which in its opinion is wrong or against the rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke

jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt, the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test the correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible."

6. Thus, it was submitted that the proceeding for contempt be dropped.

7. As against this, Mr. S.N. Prasad, learned counsel for the petitioner submits that a number of opportunities have been given to the authority to pass the order in accordance with the direction given in the writ application and subsequently, in this contempt petition, but order never seems to have been passed in consonance with the direction given there under, rather the order is not only erroneous but in the facts and circumstances, it is irrational, which does not stand to simple logic and if that is so then the authority will not purge himself by passing the order not in consonance with the order passed by this Court and take a plea that since the order has been passed, no contempt lies. In support of his submissions, learned counsel has referred to a decision rendered in a case of *Promotee Telecom Engineers Forum and Others Vs. D.S. Mathur, Secretary, Department of Telecommunications*,

8. Having heard counsel appearing for the parties and on perusal of the records, it be stated that the authority never seems to have passed the order in consonance with the direction given by this Court in a writ application and subsequently, by the order passed in this contempt petition. In spite of that a plea is being taken that since the order has been passed, the authority has complied the order passed by this Court. I have already indicated about the order being not only erroneous but irrational on account of the facts stated above and in such situation where the order is not only erroneous but irrational, it never conforms the order passed by this Court. In this regard, I may refer to a decision rendered in a case of "*Promotee Telecom Engineers Forum and Others*" (*supra*) wherein Their Lordships in para-20, have observed as follows:-

"20. We are not impressed at all by the contention of the learned counsel appearing on behalf of the respondent that since the respondent has passed the orders disposing of the representations of the petitioners, the only way left for the petitioners was to challenge the same by way of an independent original application before the Tribunal. It is more than a decade that the petitioners are fighting for their rights. Their rights had already been crystallised by various, orders passed by the Tribunals and the courts which fact is not denied by the respondent. On the top of it, the petitioners were again required to come before this Court by way of an interim application being I.A. No. 16 and that has

resulted in denial of the fruits of the orders which were passed in their favour by the Tribunals and courts. Under such circumstances, to push them again to file original application challenging the obviously erroneous orders passed by the respondent disposing of the representations of the petitioners would be a travesty of justice."

9. Under the circumstances, the authority is hereby again directed to pass the order taking into account the records relating to the entries made in the records of the Districts with regard to the supply of the Micro-nutrient and also reconsider its earlier decision with respect to non-availability of the report relating to chemical examination of the Micro-nutrient, supplied to the Districts other than four Districts. The order be passed within three weeks from the date of receipt/production of a copy of this order.

10. Put up this case on 19/09/2014.

11. Let a copy of this order be handed over to the learned Additional Advocate General.