

(2013) 10 MP CK 0198

In the Madhya Pradesh High Court

Case No : Contempt Case No. 367 of 2013

Om Construction Company (A partnership firm)

APPELLANT

Vs

Shri K.K. Singh and Another

RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : (2014) 1 MPHT 499 : (2014) 2 MPLJ 181

Hon'ble Judges : Vimla Jain, J;A.K. Shrivastava, J

Bench : Division Bench

Advocate : Amit Seth, for the Appellant; Rahul Jain, Dy. Advocate General, for the Respondent

Final Decision : Disposed Off

Judgement

A.K. Shrivastava, J.—This is an application under Article 215 of the Constitution of India praying to punish the respondents/contemnors for willfully and deliberately non-complying the order dated 9-10-2012 passed by a Division Bench of this Court in Writ Petition No. 14675/2011 (Om Construction Company v. State of M.P. and another). Certified copy of the order passed in the said writ petition has been filed alongwith the application for contempt. On bare perusal of the said order, we find that this Court specifically held that the Government and its functionaries were not having any wisdom to deduct a sum of Rs. 3,90,566/- from the balance 50% of the performance security furnished by the applicant. Ex consequenti the writ petition was allowed by giving direction to the respondents to release the balance amount and by giving further direction to make the payment within a period of thirty days from the date of communication of the order. We think it apposite to quote operative portion of the order passed in the aforesaid writ petition, which reads thus:--

We find no rationality in the decision taken by the State Government and its functionaries in deducting Rs. 3,90,566/- from the balance 50% of performance security furnished by the petitioner.

In view whereof we allow the petition with a direction to the respondents to release the balance amount of performance security which was deposited in furtherance to additional conditions agreed upon at vide Agreement No. 169/EE/03-04. Let the same be done within a period of 30 days from the date of communication of this order. There shall be no costs.

2. De jure, it has been contended by Shri Amit Seth, learned Counsel appearing for the applicant that having attained finality of the aforesaid order passed by the Division Bench of this Court on 9-10-2012 by which direction was given to the respondents in the writ petition to make the payment within a period of thirty days from the date of communication of the said order and because the payment was to be made by contemnor No. 2 Ishrar Ahmed Sheikh, who is holding the post of Executive Engineer, Public Works Department (B & R) Division, Satna, deliberately the payment was not made to the applicant by flouting the order passed by this Court. It has also been put forth by him that despite the order was communicated to contemnor No. 2 and his attention was drawn by the applicant vide its letter dated 26-10-2012 (Annexure C-2), which was followed by another letter dated 29-10-2012 (Annexure C-3), but requisite payment was not made to him by contemnor No. 2. According to learned Counsel, when a specific order was passed by the Court, immediately within the span of thirty days, the payment ought to have been made but the payment was not made to the applicant. Hence, it has been prayed that although the payment has been made as directed by this Court on 26-10-2013, but, necessary order may be passed against the applicant for making the delayed payment.

3. On the contrary, Shri Rahul Jain, learned Deputy Advocate General appearing for the contemnors has submitted that an amount to the tune of Rs. 2,89,211 has been retained by the contemnor No. 2 for the reason, which is mentioned in the order dated 23-9-2013 (Annexure R-1) and further because the order has now been complied though late, therefore, the contempt proceedings may be dropped. It has also been put forth by him that contemnor No. 2 has tendered his unconditional apology also which has been stated in Paragraph No. 2 of the reply.

4. Indeed, the partial compliance of the order was made on 23-9-2013, i.e., about more than 11 months and remaining compliance of the order was made on 26-10-2013. Thus, the order passed in the writ petition has not been complied with within the specified period fixed by this Court. We have also gone through the Annexure R-1, dated 23-9-2013 by which the partial payment of Rs. 2,89,211/- was retained but we do not find any reason for retaining the same and not making it to the applicant within the stipulated period fixed by this Court. Indeed from 0-11-2012, the contemnor No. 2 is flouting with the order of this Court continuously. Undisputedly, the payment was to be made by the contemnor No. 2 only, but contemnor No. 1 has also been made as a party in this contempt case. There is nothing on record that on the insistence of contemnor No. 1, the payment was not made by contemnor No. 2 and, therefore, we find

that contemnor No. 1 K.K. Singh holding the post of Principal Secretary, Public Works Department, Bhopal has not committed the contempt, but, according to us, once the mandamus has been issued by this Court, the Principal Secretary, Public Works Department should have specifically directed contemnor No. 2 to make the payment immediately and within the stipulated period fixed by this Court, but because the payment was to be made by contemnor No. 2, therefore, we hereby exonerate contemnor No. 1 from this contempt proceedings and contempt proceedings are dropped and the notice is discharged against him.

5. However, since it was in the domain of contemnor No. 2 to make the requisite payment to the applicant and in the absence of any material on record that he was not having necessary funds with him to make the payment, deliberately the payment was not made to the applicant by him and he has thus flouted the aforesaid order passed in the writ petition from 10-11-2012 and no reasonable explanation has been given by him that why the requisite payment was not made by him within specific period fixed by this Court. Hence, according to us, the so called apology is not an act of penitence, contrition or regret, but, it is willful. In these facts and circumstances of the case, no case is made out to ward off contemnor No. 2 from the provisions of Article 215 of the Constitution of India so also Section 12 of the Contempt of Courts Act, 1971. Hence, we are not accepting his unconditional apology and we hereby hold that he has flouted the aforesaid order of this Court and has committed the Contempt of Court. But, instead of passing any harsh order against him, looking to the facts and circumstances of the case, we hereby warn him by giving direction that in future each and every order of the Court should be complied with within the specified period as directed by the Court. Let warning be kept in the service record of contemnor No. 2.

6. A copy of this order be sent to the Chief Secretary of the State of M.P. and also to Principal Secretary of Public Works Department, Bhopal to keep this order as well as the warning in the service record of contemnor No. 2 since he has willfully and deliberately made the contempt by not complying with the order passed by this Court. This contempt petition is accordingly disposed of with cost. Counsel fee is quantified at Rs. 2000/-, which shall be paid by contemnor No. 2 within a period of thirty days from today, failing which it shall carry interest @ 6% per annum.