

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 2425 of 2023

Applicant :- Vinay Jaiswal

Opposite Party :- Central Expert Committee, Thru. Its Chairman Having Its Office At Cdsco, New Delhi And Others

Counsel for Applicant :- Rohit Jaiswal, Shankar Dayal Jaiswal, Shishir Singh Chauhan

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Rohit Jaiswal, learned counsel for the petitioner and Sri S.B. Pandey, learned Deputy Solicitor General of India and learned Senior Advocate, assisted by Sri Varun Pandey, who has filed Vakalatnama on behalf of all the respondents. Said Vakalatnama is taken on record.

2. This Court has passed the order dated 05.10.2023, which reads as under:-

"1. Heard.

2. This Court has passed order dated 14.09.2023, which reads as under:-

"1. On account of call of boycott by the Bar Association, learned counsel for the applicant/ petitioner is not present, however, Shri Vinod Jaiswal, applicant/ petitioner has appeared in person.

2. As per office report dated 13.09.2023, the service upon the opposite party nos.2, 3 and 6 is still awaited, however, the notice has been served upon the opposite party nos.4 and 5.

3. List again on 05.10.2023 within top ten cases.

4. Office is directed to file service report in respect of opposite party nos.2, 3 and 6, however, in the meantime, the opposite party nos.4 and 5 may file affidavit of compliance.

5. Learned counsel for the petitioner shall intimate this order to opposite party nos.4, 5 and to all other opposite parties personally/ through registered post/ any other convenient mode for its compliance."

3. Sri Rohit Jaiswal has filed affidavit of service serving the notice/ order of the Court upon opposite parties no.4 & 5, the same is taken on record.

4. As per the aforesaid affidavit of service, notice has been served upon opposite parties no.4 & 5 as track report to that effect has been enclosed with the said affidavit. Despite the service of notice upon opposite parties no.4 & 5, no one has put in appearance.

5. Notably, the notice has already been served upon opposite parties no.4 & 5 as has been indicated in the earlier order of the Court dated 14.09.2023, therefore, it appears that opposite parties no.4 & 5 are deliberately avoiding the proceedings of the Court.

6. List this case on 06.11.2023.

7. On that date, opposite parties no.4 & 5 shall appear in person and information of this order shall be delivered to opposite party no.4 through Chief Judicial Magistrate, Lucknow and to opposite party no.5 through Chief Judicial Magistrate, Chandigarh.

8. Learned counsel for the petitioner prays for and is granted two weeks' time to take necessary steps to serve the notice upon other opposite parties in terms of the order dated 14.09.2023 and he shall file a fresh affidavit of service in respect of opposite parties no.2, 3 & 6.

9. The Senior Registrar of this Court shall intimate this order to the aforesaid authorities for its compliance."

3. In compliance of the aforesaid order, Professor Vineet Sharma, who is presently posted as Professor in the Department of Orthopedic Surgery and is former Head of the said Department in the King George Medical University, Lucknow is present in person.

4. Sri S.B. Pandey has filed application for exemption of personal appearance of respondent no.5 supported with an affidavit, application for exemption of personal appearance of respondent no.4 supported with an affidavit and reply affidavit on behalf of all respondents through Chairman, Central Expert Committee CDSCO, Head Quarter, FDA Bhawan, Kotla Road, New Delhi, the same are taken on record.

5. Attention has been drawn towards the order of the writ court dated 11.01.2023 passed in Writ-C No.8480 of 2022, which reads as under:-

"Heard learned counsel for the petitioner and Shri S.B. Pandey, learned Senior Counsel-Deputy Solicitor General of India assisted by Shri Varun Pandey, learned counsel for the respondent nos. 2 and 3.

Learned counsel for the petitioner has drawn attention of this Court towards the order passed by this Court dated 29.11.2022, which is as follows:-

" The claim put forth by the petitioner is for compensation on account of faulty hip implant. The petitioner has made an application to the Chairman, Central Expert Committee which has been enclosed as Annexure No.1 to the writ petition. It has been informed by learned counsel for the petitioner that the said application seeking compensation has been made in terms of the policy decision of the Central Government which is contained in a circular dated 30.11.2018 issued by the Government of India, Directorate General of Health Services, Central

Drugs Standard Control Organization (Medical Devices & Diagnostics Division).

We have been informed that the said policy decision contained in the letter/circular dated 30.11.2018 has been accorded sanction by Hon'ble Supreme Court by means of the order dated 11.01.2019 passed in the case of Arun Kumar Goenka vs. Union of India and others in Writ Petition (C) No.1085 of 2018.

List this case on 06.12.2022 as fresh to enable Sri S.B.Pandey, learned Senior Advocate/Deputy Solicitor General of India to seek instructions from the respondent no.2 as to why the application made by the petitioner has yet not been decided."

Thereafter, the case has been listed on several occasions but this Court has not found it necessary to issue notice to the private respondent nos. 4 to 6 from whom the petitioner claims compensation.

Learned counsel for the petitioner says that the petitioner's application dated 04.12.2019 is pending before the respondent nos. 2 and 3 for compensation of faulty DePuy ASR XL Acetabular System Total(ASR) Hip Replacement and the Depuy ASR Hip Resurfacing System (hereinafter referred to as, the DePuy ASR Implants) supplied by the respondent nos. 4 to 6, as per the formula decided by the Government of India and affirmed by the Supreme Court in its order dated 11.01.2019.

The learned counsel for the petitioner has pointed out that faulty DePuy ASR Implants were being supplied by the respondent nos. 4 to 6 which resulted in various complications for patients, who were the receivers of the said DePuy ASR Implants.

A P.I.L. (Civil) No. 1085 of 2018 (Arun Kumar Goenka vs. Union of India and others) was filed before the Apex Court in the matter wherein Supreme Court took cognizance on the grievance raised in the said P.I.L. directing the Government of India to evolve a scheme/formula. Pursuant thereto, the Government of India formulated a scheme and formula for determining compensation for the aggrieved persons, which was affirmed by the Supreme Court in its order.

When the petitioner has filed an application for compensation before the respondent no. 2, he was informed through an e-mail dated 08.03.2021 that further processing of his application for compensation cannot be done for the reason that a writ petition has been filed by the respondent nos. 4 to 6 before the High Court of Delhi namely Writ C No. 13395 of 2018 which pertains to compensation for faulty DePuy ASR Implants manufactured by the respondent nos. 4 to 6. In fact, the respondent no. 2 has failed to discharge its responsibility of determining compensation only because of pendency of writ petition filed by the respondent nos. 4 to 6 before the High Court of Delhi.

Learned counsel for the petitioner says that till date the High Court of Delhi has not been pleased to stay the functioning of the respondent nos. 2 and 3 insofar as their responsibility for determining compensation is concerned.

Learned counsel for the respondent nos. 2 and 3 has pointed out from the

e-mail dated 08.03.2021 that the State Level Committee has not made any recommendation in favour of the petitioner. However, learned counsel for the petitioner has pointed out that the State Level Committee has forwarded his application for compensation made before it to the respondent no. 2 for its consideration and now, it is up to the respondent no. 2 to decide the amount of compensation payable to the petitioner.

Learned counsel for the respondent nos. 2 and 3 states that the petitioner has not provided documents relating to the revision surgery and the compensation would only be given to the petitioner if the documents pertaining to the revision surgery is annexed with the application.

Rebutting the aforesaid submission, learned counsel for the petitioner states that although petitioner was directed to submit the document regarding revision surgery, if any, carried out in pursuance of the faulty DePuy ASR Implants, but, the formula that has been approved by the Supreme Court does not require revision surgery to be actually undertaken by the patient concerned.

Let the petitioner submit his case in pursuance of the orders passed by the Supreme Court through another email to the respondent no. 2 who shall consider the claim of compensation of the petitioner and pass appropriate order with regard to whether compensation is payable to the petitioner and what amount is payable to the petitioner within a period of three months. However, such payment shall be made by the respondent nos. 4 to 6 subject to the decision in Writ C No. 13395 of 2018 which is said to be pending before the High Court of Delhi.

Writ petition stands disposed of."

6. Sri S.B. Pandey has drawn attention of this Court towards reply affidavit on behalf of all the respondents through Chairman, Central Expert Committee CDSCO, Head Quarter, FDA Bhawan, Kotla Road, New Delhi by submitting that the aforesaid reply may be treated as affidavit of compliance inasmuch as the minutes of meeting dated 25.10.2023 of four Members Committee headed by Chairman Dr. R.K. Arya has been enclosed whereby the direction of the writ court has been complied with. Further attention has been drawn towards Annexure No.R-2 of the aforesaid reply, which is a letter dated 25.10.2023 preferred by Dr. Rajeev Singh Raghuvanshi, Drugs Controller General (I) to M/s Johnson & Johnson, 30, Forjett Street, Mumbai, India in respect of payment of compensation to ASR Hip Implant patient named as Shri Vinay Jaiswal. Therefore, Sri Pandey has submitted that since the order has been passed by the competent authority and letter has been preferred to M/s Johnson & Johnson Company, this contempt petition may be dismissed considering that the order of the writ court has been complied with. Sri Pandey has also filed photocopy of the letter dated 25.10.2023 (supra) alongwith the minutes of meeting showing that all the four authorities have signed on the aforesaid letter, the same is also taken on record.

7. In the wake of aforesaid development, nothing remains to be adjudicated in the present contempt petition.

8. Accordingly, the present contempt petition is **dismissed**.

9. Notices are discharged.

[Rajesh Singh Chauhan,J.]

Order Date :- 6.11.2023

RBS/-