IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

Date of Reserving the Judgment	*Date of Pronouncing the Judgment*
29.11.2016	**20.12.2016**

Coram

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

Cont.P.Nos.1271 to 1278 of 2016

Cont.P.No.1271 of 2016

Adapala Dayakara Reddy
Sole Proprietor,
Vijaya Cotton Traders
Flat No.305, Brundavan Apartments,
Arched South Block, Etukuru Road,
Guntur – 522 002. ... Petitioner

Vs

1.Thiru Harmander Singh
The Principal Secretary to Government,
Handlooms, Handicrafts, Textiles and Khadi
(C1) Department,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009.

2.Thiru K.Shanmugam,
The Government of Tamil Nadu,
Represented by the Secretary,
Finance Department,
Fort St. George, Chennai – 600 009.

3.Tmt.G.Latha,
The Director,
Handlooms and Textiles,
Kuralagam,
Chennai – 600 001.

4.Thiru.D.Sugumaran,
Rep. By its Liquidator,
Vellore District Co-operative Spinning Mills Ltd.,
Having Office at the Assistant Director of
Handlooms and Textiles,
District Panchayat Office Campus,
Anna Salai, Vellore – 632 001. ... Respondents

Prayer:- Contempt Petition filed under Section 11 of Contempt of Court Act to punish the respondents for the non-compliance of the order dated 28.08.2015 passed in W.A.No.525 of 2015.

For petitioner .. Mr.P.Krishnan
For Respondents .. Mr.V.Ayyadurai
Additional Advocate General
Assisted by
Mr.M.K.Subramanian
Government Pleader, For R1 to R3
Mr.C.Prakash,
Senior Counsel
M./s.Srijayanthi for R4

COMMON ORDER

T.S.SIVAGNANAM,J.

These contempt petitions have been filed by the petitioners alleging wilful disobedience of the order and direction in W.A.Nos.525

to 532 of 2015 dated 28.08.2015. The said appeals arose out of an order passed in W.P.Nos.6261 to 6268 of 2014 dated 09.12.2014.

2.The petitioners filed those writ petitions for a direction upon the respondents to consider the case of the petitioners and effect payment of amounts together with interest in terms of the payments effected to similarly placed suppliers pursuant to G.O.Ms.No.169 – Handlooms, Handicrafts, Textiles and Khadi (C1) Department dated 25.07.2013. The writ petitions were dismissed by a common order dated 09.12.2014 primarily on the ground that about 20 years had passed by after the supplies were effected by the petitioner and they cannot jump onto the bandwagon, after finding that an additional list of 92 persons were granted relief under the said Government Order. The petitioners/appellants had supplied cotton to various co-operative spinning mills in the State. As the mills became sick units, they were declared as relief undertakings by the State under Section 3 of the Tamil Nadu Relief Undertakings (Special Provisions) Act, 1969. Three schemes were evolved to settle the suppliers. Firstly, the cotton suppliers were to accept 60% of the dues as full and final settlement payable in three equal monthly instalments on or before 31.03.1999. Secondly, the suppliers were to continue to supply fresh cotton against full payment with 10% to be adjusted against the old dues prior to 01.07.1999 and thirdly, to wait till the Mills became financially sound so that the entire dues could be paid. The petitioners opted the first scheme, whereby they were entitled to payment of 60% of the total dues in three monthly instalments to be paid on or before 31.03.1999. Out of the agreed amount, 20% was paid initially and the remaining 40% was paid belatedly i.e. beyond the time agreed upon.

3.At that stage, a public interest litigation was filed before this Court in W.P.No.12316 of 1999 with regard to non-payment of the dues. One of the suppliers filed a writ petition in his individual capacity in W.P.No.6898 of 2001. The said writ petition was dismissed as the Government produced certain guidelines for effecting payment. As against which, an appeal was preferred in W.A.No.1642 of 2001 which was heard along with the public interest litigation in W.P.No.12316 of 1999. The Division Bench of this Court appointed an Arbitrator to decide how much is due, to whom and by whom. The Arbitrator passed an award on 02.05.2005. The Government of Tamil Nadu challenged the award under Section 34 of the Arbitration and Conciliation Act, which was dismissed. The spinning mills also challenged the award, which was dismissed and the State Government and one of the spinning mills filed an appeal in

O.S.A.No.56 of 2006 which was tagged along with W.A.No.1642 of 2001 and the Division Bench by judgment dated 24.07.2007 set aside the award in Arbitration Case No.1 of 2005 in so far as it makes the Government liable and confirmed the award against the spinning mill. One of the four appellants in O.S.A.No.56 of 2006 filed a review application to review the judgment which was dismissed at the S.R. Stage by judgment dated 12.04.2013. After the dismissal of the review application, the Government issued G.O.Ms.No.169 – Handlooms, Handicrafts, Textiles and Khadi (C1) Department dated 25.07.2013 and sanctioned money for settlement of the dues payable to the cotton suppliers and payments were accordingly released.

4.The petitioners on coming to know that the Government have sanctioned funds and payments were made to suppliers like them, submitted a representation for payment of their dues. This was not considered and a batch of writ petitions were filed in W.P.Nos.6261 to 6268 of 2014, which was dismissed by a common order dated 09.12.2014. As against which, the writ appeals were preferred which were heard by us and were allowed and the respondents were directed to settle the claims of the payments as has been done to the other suppliers pursuant to the Government Order dated 25.07.2013 on the same terms within a period of three months from the date of receipt of a copy of the order. The Government preferred an appeal to the Hon'ble Supreme Court, which was dismissed.

5.At this juncture, it would be relevant to take note of certain paragraphs of the judgment to have a broad over view as to on what basis and for what reasons, the appeals were allowed, which reads as follows:

> "14.It is not in dispute that in the Public Interest Litigation the claims of only 122 suppliers were mentioned. But the Claim Petitions were not restricted to 122 suppliers and the award was passed in favour of more than the claimants whose claims were focused in the Public Interest Litigation. When this was put to challenge before the Division Bench both initially in the appeal and subsequently in the Review Application the plea raised by the Co-operative Spinning Mills was rejected and it was pointed out that partial payments were made to all those persons and there is no dispute regarding the identity of the persons and it is not as if, those persons are not entitled to receive the award amount. It was further pointed out that while there were transactions between the parties, orders passed by this Court earlier cannot be confined to 122 persons alone and if it is restricted only to 122 persons, then it would not be a Public Interest Litigation and all the suppliers of

cotton are identically placed and they came under the same scheme.

15.In the background of these facts, it has to be seen as to whether the petitioners can be non-suited on the sole ground that, they have belatedly approached for settlement of their dues. After the award of the Arbitrator become final, the respondent Spinning Mills were bound to effect payment to the suppliers. As the Spinning Mills were already sick units had no money to pay the dues, they approached the Government for advancing monies to settle the dues to the Cotton suppliers. The Government after taking note of the orders passed by this Court confirming the award of the Arbitrator, sanctioned a sum of Rs.2055.11 lakhs by way of advance to settle the dues to the cotton suppliers which not only included the suppliers who are covered by the award, but 92 other suppliers as well. This fact is not in dispute. The 92 persons who got benefit pursuant to the Government Order, were not covered in the Public Interest Litigation, but got the benefit only by virtue of the Government Order. In the impugned order this fact was taken note of, yet the Writ Petitions were dismissed stating that after about 20 years, the appellants cannot jump into the bandwagon after finding that 92 persons have been added by the Government who were not covered in the Arbitration award.

16.Admittedly, when the First Bench by order dated 04.01.2005 referred the matter for arbitration was conscious of the fact that large number of farmers of Andhra Pradesh and Tamil Nadu had been affected on account of the non payment of the dues for the cotton supplied to the respondent Co-operative Spinning Mills. The Court took into consideration the plight of the farmers that they have been languishing without payment and since the matter pertains to a money claim and there were controversies, though the claimants could have been relegated to the Civil Court to file suits for recovery of their money, with a view to resolve the controversy thought fit to refer the matter to Arbitration. In such circumstances, when the Government extended the benefit and settled the dues to persons, who were not covered in the Arbitration award, there was no valid reason by which the appellants could have been singled out, when admittedly they were also similarly placed as other suppliers whose dues were settled inspite of not being parties to the Arbitration award.

17.Furthermore, we wish to point out that the appellants could not have been non-suited on the ground of delay, as the claimants were able to realise the fruits of the award only after the Government advanced monies to the respondent Co-operative Spinning Mills pursuant to Government Order, dated 25.07.2013. Only at that juncture, the appellants came to know that apart from the persons covered in the award 92 other similarly placed persons like them were granted benefit. This one reason is sufficient to hold that the appellants could not have been singled out and owing to such fact, the claim of the appellants cannot be thrown out as being a belated claim. Had the Government restricted the payment to the persons, who were covered by the Arbitration award i.e., claimants before the Arbitrator, it would be a different matter, but the Government thought fit to extend the benefit to an additional 92 suppliers and there is no reason assigned by the respondents as to why the appellants alone who are 8 in number should have been excluded.

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19.As pointed out earlier the plight of the farmers was taken note of by the Division Bench while referring the matter for arbitration. It appears that the appellants as suppliers had with the bonafide belief effected supplies to the respondent Co-operative Spinning Mills with a fond hope that the payments would be promptly settled, since all the Mills were managed by the Government by appointing Special Officers. All their hopes were shattered when the respondent Mills breached their promises, miserably failed in settlement of their dues. Thus in the peculiar facts and circumstances and more importantly taking note of the fact that the Government extended the benefit to 92 other similarly placed suppliers like the appellants, we are of the firm view that the appellants are also entitled to the same benefit as that of the other suppliers who were granted the benefit under G.O.Ms.No.169, dated 25.07.2013."

6.The case of the petitioners is that the order and direction issued in the appeals have not been complied with. The contempt petitions were admitted and statutory notice was issued by order dated 14.07.2016. The contempt petitions were heard on 11.08.2016 on which date this Court recorded the dismissal of S.L.P.(C)Nos.35778-35785 of 2015 by the Hon'ble Supreme Court by order dated 25.07.2016 and the prayer for deferment of the contempt petitions to comply with the order within eight weeks was recorded as well as the submission of the learned Additional Advocate General that the compliance shall be done within the time stipulated by the Hon'ble Supreme Court. Therefore, the contempt petitions were closed and the matters were listed on 22.09.2016 to ensure compliance. It was made clear that in case, eventuality arises for non-compliance within the time stipulated by the Hon'ble Supreme Court, we will revive the contempt petitions and the contemnors would be required to be present in Court on the next hearing date. Subsequently, the matter was heard on various dates and the respondents/contemnors took a definite stand that they have complied with the order and direction in its entirety.

7.The second respondent, namely, the Additional Chief Secretary to Government, Finance Department filed a counter affidavit on 09.08.2016 stating that since the respondent Mills have been wound up long back, the Government had to follow administrative procedure for passing the orders for sanction of the amount and sought for direction to the petitioners to furnish the invoice numbers and documents to prove their identity along with the bank account details, Company registration papers, etc. Accordingly, the contempt proceedings were deferred with direction to the petitioners and the respondents to sit across and sort out all the disputed factual issues.

8.It is not in dispute that the payments have been effected to the petitioners. But the grievance of the petitioners is that it is not full and effective compliance of the order and direction issued by this Court.

9.The learned counsel appearing for the petitioners had produced a calculation sheet and contended that the respondents have not paid the petitioners in terms of the direction issued in the appeals. By way of illustration, the learned counsel referred the supplier to Vellore Co-operative spinning mill and submitted that the petitioner/supplier is entitled to the principal amount as awarded, the interest on the said principal amount, interest calculated towards 100% related payments to suppliers and interest from 02.04.2005 to 30.04.2013 and 22.06.2002 to 30.04.2013 and the total interest being payable is the interest awarded in the Arbitration Award plus the interest up-to-date which has to be added to the principal. Whereas, the respondents have paid interest on the balance 40% of the amount from 01.07.1996 to 15.11.1999 @ 18% per annum, interest on 40% of the amount from 01.07.1996 to 01.04.2005 @ 18% per annum and interest on 40% amount from 02.04.2005 to 30.04.2013 @ 14% per annum. Therefore, it is submitted that the total interest payable to the petitioner has not been paid and therefore, the respondents are liable to be punished for contempt. The calculation sheet sought to be explained by giving the tabulated statement.

10.We heard the matter on more than three occasions, during which, neither the petitioner was able to clearly put forth their grievance nor the respondents were able to definitely controvert the stand taken. Therefore, the matter stood adjourned to enable the learned Additional Advocate General to have discussion with the officials of the spinning mill as well as the counsel for the petitioners to reconcile the differences. After discussion, they came back to the Court and position remained as it was on the previous hearing dates.

11.The learned senior counsel appearing for the fourth respondent Spinning Mill raised a preliminary objection by contending that the petitioner has filed the additional typed set of documents in the hearing held on 20.10.2016 and by producing new materials and evidences in support of their exorbitant and enlarged claim and this cannot be adjudicated in a contempt proceedings when there is no allegation of wilful non-compliance. By referring to the claims made in the tabulated statement filed by the petitioner, it was contended that the petitioners are repeatedly changing their claims on their own and after receiving the eligible amount which was paid by the Government in compliance of the Court order, the petitioners are attempting to enlarge the scope of the contempt petition. The learned senior counsel referred to the decision in the case of ***R.N.Dey and others vs. Bhagyabati Pramanik and others*** reported in ***(2000) 4 SCC 400*** as to the jurisdiction of this Court in a contempt proceedings.

12.The learned Additional Advocate General appearing for the State submitted that the Spinning Mills having been wound up, the Government has sanctioned funds and they have paid the entire amount to which the petitioners are entitled and there has been full and effective compliance of the order and direction issued by this court.

13.After elaborately hearing the learned counsel for the parties and carefully perusing the materials placed on record, we find that all the petitioners have been paid together with interest as arrived at by the respondents and a total amount of Rs.87,99,003/- has been paid for all the eight petitioners. The petitioners now claims that the total amount payable together with interest is Rs.1,68,65,533/-. In the statement of accounts produced by the petitioner, they have claimed interest upto 31.08.2016. We make it clear that in our judgment in W.A.Nos.525 to 532 of 2015, while allowing the appeals no such order was passed to pay the interest till 31.08.2016. The direction was to effect payment in terms of the Government Order dated 25.07.2013. The dispute now raised by the petitioner is with regard to the claim of interest at 14% per annum on the principal amount, interest on 40% amount from 01.07.1996 to 15.11.1999 @ 18% per annum, interest on 40% amount from 01.07.1996 to 01.04.2005 @ 18% per annum and after adding the principal and two interest components, interest to be paid @ 14% per annum on the said amount from 02.04.2005 to 31.08.2016. Thus, it appears that the claim of the petitioner is interest @ 14% per annum calculated on the principal plus two interest components which have been sanctioned by the Government. However, this being in the nature of serious disputed questions of fact cannot be adjudicated in a contempt proceedings. We find there is no wilful non-compliance.

14.The Hon'ble Supreme Court in the case of ***R.N.Dey and others*** (supra) has held that normally the weapon of contempt cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Under the coercion of contempt proceedings, the State cannot be directed to pay the compensation amount which they are disputing and the aggrieved party cannot insist that the Court should exercise such jurisdiction as contempt is between the contemnor and the Court. Thus, considering the disputed questions of fact and finding that the petitioners have been effected payment of certain sums of money which according to the respondents is full and faithful compliance of our order, we refrain from passing any orders in these contempt petitions.

15.We find that the dispute is with regard to the period up to which the interest has to be calculated. The petitioners contend that the calculation of interest upto 30.04.2013 is not correct since as per the Government Order, the interest is to be calculated till the date of payment. This contention deserves to be rejected for the simple reason that the Court did not grant interest upto the date of payment. Thus the plea raised by the petitioners in this regard is misconceived. Therefore, we make it clear that the claim of interest upto the date of payment i.e. upto 2016 cannot be claimed as there was no direction in the writ appeals to the said effect. The other contention is that the Claim No.7 in the Annexure filed by the petitioner with regard to the interest has been omitted. We may note that while allowing the writ appeals, no such specific direction was given referring the date upto which interest would be payable and on what quantum. Therefore, if the petitioners are still not satisfied with the payments effected, their remedy lies elsewhere and such disputed claim cannot be adjudicated in these contempt petitions. We leave it open to the petitioners to agitate the said claim before the appropriate forum, if so advised. Accordingly, the contempt petitions are closed. No costs.

(S.K.K.,CJ.) **(T.S.S., J.)**

20.12.2016

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To

1.Thiru Harmander Singh
The Principal Secretary to Government,
Handlooms, Handicrafts, Textiles and Khadi
(C1) Department, Government of Tamil Nadu,
Fort St. George, Chennai – 600 009.

2.Thiru K.Shanmugam,
The Government of Tamil Nadu,
Represented by the Secretary,
Finance Department,
Fort St. George, Chennai – 600 009.

3.Tmt.G.Latha,
The Director, Handlooms and Textiles,
Kuralagam, Chennai – 600 001.

4.Thiru.D.Sugumaran,
Rep. By its Liquidator,
Vellore District Co-operative Spinning Mills Ltd.,
Having Office at the Assistant Director of
Handlooms and Textiles,
District Panchayat Office Campus,
Anna Salai, Vellore – 632 001.

The Hon'ble The Chief Justice
and
T.S.SIVAGNANAM, J.

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Pre-Delivery Order in

Cont.P.Nos.1271 to 1278 of 2016

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