

HON'BLE SRI JUSTICE R.KANTHA RAO

Contempt Case No.614 of 2015

Judgment:

This contempt case is filed to punish the respondents for their wilful and deliberate violation of the orders of this Court dated 11-12-2014 in W.P.M.P.No.47844 of 2014 in W.P.No.38238 of 2014.

2. The brief facts giving rise to the contempt case may be stated as follows:

(a) In the auction held by Debt Recovery Tribunal (DRT), Calcutta, Global Cements Limited obtained loan from Indian Bank, Calcutta by mortgaging the moveable and immoveable properties of the factory and Kistna Cements Limited stood as guarantor for the said transaction. As the Global Cements defaulted in repayment of the above debt, Indian Bank filed O.A.No.142 of 1998 before the DRT, Calcutta. The DRT, Calcutta appointed a Receiver to auction the moveable and immoveable properties of the above factory and the properties of the said factory were sold on 18-9-2003. The properties of the said factory were sold on '*as is whatever and wherever is basis*'. It is submitted by the petitioner that as per the terms of the auction settled by the DRT by order dated 27-02-2003, the purchaser is liable to pay all legal impositions, taxes and any other legal dues payable under any statute.

It is submitted that when one Bhalabhanu Enterprises,

Bengaluru was the successful bidder in the said auction, the property was authorised to be registered in the name of its directors.

(b) Nextly, it is submitted that as the said factory was illegally closed following the procedure laid down under the Industrial Disputes Act, (the I.D. Act, for short), the petitioner and other workers filed cases under Section 33C(2) of the I.D. Act in M.P.No.49 of 1999 and batch before the Labour Court, Guntur, claiming wages from 01-5-1993 onwards and subsequently, the cases were transferred to the Central Labour Court, Hyderabad and were numbered as M.P.70 of 2002 and batch. The Central Labour Court after conducting enquiry passed a common order dated 28-8-2014 directing the two companies viz., Global Cements, Calcutta and Kistna Cements Limited, Calcutta to pay the amounts mentioned in the respective M.Ps., with interest at the rate of 12% per annum from the date of filing of the M.Ps. As the respondents in the M.Ps failed to comply with the order of the

Central Labour Court, the petitioner filed an application under Section 33C(1) of the I.D. Act for recovery of the amount due to the above order of the Central Labour Court. As the respondents did not act upon the application of the petitioner, the petitioner filed W.P.No.38238 of 2014 before this Court and this Court passed an interim order dated 11-12-2014 in

W.P.M.P.No.47844 of 2014 directing the respondents to take steps to recover the amount due under the common order dated 28-8-2014 in M.P.No.70 of 2002 and batch in accordance with the procedure laid down under Section 33C of the I.D. Act within a period of two months from the date of receipt of a copy of that order.

3. It is contended by the respondents 1 to 3 in their respective counter affidavits as follows:

(a) The schedule of landed property proposed to be auctioned has not been mentioned in the Certificate. Therefore, the 3rd respondent directed the Tahsildar, Tadepalle to send ownership details for Survey Nos.357/B, 357/C, 361, 355, 359/1, 349, 350, 347/15/A, 347/15/B, 347/17, 370, 373/2, 331/1, 324/A, 335/A, 335/4, 358/1, 357/A1 and 360, which have been mentioned by the petitioner in the name of K.C. Works as per the Revenue records and also directed him to obtain ground position and to verify the Revenue records whether the debtors mentioned in Form-2 Notice of the Regional Labour Commissioner, Hyderabad are having any property in Tedepalle Mandal including the Survey numbers noted above to take further steps for recovery of the amount as per the orders of this Court dated 11-12-2014.

(b) Nextly, it is submitted that the Tahsildar, Tadepalle has inspected the site of Krishna Cement Works, located in Krishna Nagar, Tadepalle and

submitted a report. He reported that at present the total land is vacant and covered with bushes and there are no structures on the ground except a High School which is being run with the aid of the Government. There is no office and no representative in the location or in the vicinity of Tadepalle village and there is no scope to consult the names of 12 companies mentioned in Form-2 Certificate of debtors as they are all at Kolkata and Bengaluru. On enquiry, it was revealed that all the structures of the company i.e. buildings, factory, quarters etc., were demolished during the years 2003, 2006 and 2010.

The Tahsildar further reported that on verification of the official records, an extent of Ac.137-24 cents of land in Tadepalle village, Krishna Nagar Gram Panchayat, Tadepalle Mandal was purchased by NRI Academy of Science, Chinakakani village, Mangalagiri Mandal in public auction conducted by Kolkata Debts Recovery Tribunal-1, Government of India, Ministry of Finance Department of Economic Affairs (Banking Division) and the Recovery Officer of the said Tribunal has issued a Certificate in confirmation of sale in favour of Sri V.Bala Sowri and 11 others vide letter dated 23-12-2003 and it was registered in favour of Sri V.Bala Sowry, son of N.J. Naidu, and 11 others vide Registered Document No.6/2008 and the name of the NRI Academy was recorded previously. It is further contended that there are no properties belonging to the employer

available to be attached and sold in auction and also not even a single Director/ employer is available in and around Guntur district and their whereabouts are not known. It is also the contention of the respondents that the schedule property proposed to be sold has not been mentioned in the Certificate.

(c) Mainly it is contended that the petitioner is required to make the employers of Kistna Cement Works, Guntur and HMP Cements Ltd., Kolkata, Global Cements Ltd., Kolkata as respondents in the writ petition so as to facilitate the recovery procedure and to ensure that the action of the respondents may not be infructuous. It is submitted that the respondents have not wilfully or intentionally disobeyed the orders of this Court and therefore they are not guilty of contempt.

4. I have heard Sri M.Pitchaiah, learned counsel appearing for the petitioner, Sri B.Narayana Reddy, learned Assistant Solicitor General for the 1st respondent and the learned Government Pleader for Revenue for the respondents 2 and 3.

5. The petitioner filed the writ petition only making the Government of India, Regional Labour Commissioner (Central) and the District Collector, Guntur as respondents. He did not add the persons from whom the amount is recoverable as respondents

in the writ petition. It is submitted in the writ petition that the petitioner submitted a representation to the respondents 1 and 2 but they have not acted on the said representation so far and the petitioner came to know of the said fact as there was no communication from the respondents 1 and 2. It is further stated by the petitioner in the writ petition that it is open to the District Collector, Guntur to act upon his representations, but he failed to do so.

6. After passing of the interim order by this Court, the

3rd respondent-District Collector, Guntur verified certain facts and found some details. The petitioner did not even make the persons liable to pay the dues as parties to the writ petition. Therefore, it has to be seen as to whether without their presence, the writ petition is maintainable. The petitioner also did not state specifically as to whether he availed the alternative remedy under Section 33-C of the Industrial Disputes Act before the appropriate authority and the result of the said application filed by him. From the averments made in the affidavit filed in support of the writ petition, it seems that representation made by the petitioner is pending with the appropriate authority. On account of non-furnishing the complete details of the property and also omitting the persons liable to pay the dues as the respondents in the writ petition, the question whether the writ petition itself is maintainable

or not has to be examined in the writ petition. In any event, this Court does not find any wilful disobedience on the part of the respondents to the order passed by this Court. Therefore, they cannot be held liable for contempt.

7. Consequently, the contempt case is dismissed. The miscellaneous petitions, if any, pending in this contempt case are closed.

R.KANTHA RAO, J.

09th May, 2016.
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HON'BLE SRI JUSTICE R.KANTHA RAO

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