

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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Contempt Case No.1922 of 2015

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Between:

M/s. Sravanthi Fertilizers,
Khilla Ghanpur village and Mandal,
Mahaboobnagar District,
Rep. by its Prop. S.V. Venugopal.

_____. .. Petitioner

And

T.K. Sreedevi, D/o late Sri Shiva Ram Singh,
District Collector, Collectorate complex,
Mahaboobnagar District.

.. Respondent

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DATE OF PRONOUNCEMENT OF ORDER: **25.04.2016**

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : YES
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : NO
3. Whether their Ladyship/Lordship wish to
see the fair copy of the Judgment? : NO

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Contempt Case No.1922 of 2015

Order:

This Contempt Case was filed alleging non-implementation of the order dated 20.07.2015 passed by this Court in WP No.20985 of 2015.

2. The facts leading to filing of Writ Petition No.20985 of 2015 are not in dispute. The petitioner was doing fertilizers business under the name and style of M/s.Sravanthi Fertilisers. An inspection of the shop was conducted on 02.07.2014 and entire stock worth Rs.50,01,723/- was seized for certain irregularities. Proceedings under Sec.6A of the Essential Commodities Act were taken. The 2nd respondent passed an order on 19.11.2014 ordering confiscation of 20% of the seized stock worth Rs.10,00,345/- out of the total stock. Challenging the same, the Petitioner preferred Criminal Appeal No.96 of 2014 before the Principal Sessions Judge, Mahaboobnagar who modified the order, to confiscation of the stock of the value of Rs.44,302/-. The petitioner deposited the said amount on 02.03.2015 and represented to the respondent for release of the seized stock. In spite of the same, the seized stock was not released. The petitioner filed W.P. No.20985 of 2015 on 30.04.2015 for a direction to the authority to release the seized stock. This Court disposed of the Writ Petition on 20.07.2015 and the relevant portion of the order reads as follows.

“The petitioner was doing fertilizer business under the name and style of ‘M/s. Sravanthi Fertilizers’. On 02.07.2014, the third respondent came to the shop and inspected the same. Based on the variation in the stock, 6A proceedings were initiated, and the stock of fertilizers of Rs.50,01,723/- was seized. Thereafter, an enquiry was conducted, and a final order was passed on 19.11.2014 ordering confiscation of 20% of seized stock worth Rs.10,00,345/-. Challenging the same, the petitioner preferred Criminal Appeal No.96 of 2014. The learned Sessions judge modified the order of confiscation of 20% seized stock to Rs.44,302/-. The petitioner deposited the amount of Rs.44,302/- and submitted a representation on 02.03.2015. The grievance of the petitioner is that, in spite of depositing the amount, stock was not released. Hence the Writ Petition.

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In the circumstances, this Court is inclined to direct the second respondent to consider the case of the petitioner, as presented by them on 02.03.2015, pursuant to the order passed by the learned Principal Sessions Judge, Mahabubnagar, in CrI.A.No.96 of 2014 dated 16.02.2015, and pass appropriate orders for release of stock, if any, within a period of thirty days from the date of receipt of a copy of this order.”

The 2nd respondent in the Writ Petition preferred W.A.No.838 of 2015 and the same was dismissed on 2-9-2015. The Counsel for the petitioner issued a notice on 4-9-2015 for release of the seized stock pursuant to the orders of this court dated 20-7-2015. The 2nd respondent passed an order on 4-9-2015 refusing to release the stock, after narrating the facts, stating as follows:

“Since Sri Venugopal, Proprietor of M/s.Sravanthi Fertilizers, Ghanpur village and Mandal has sold out (858) bags of seized fertilizers as reported by the Joint Director of Agriculture, Mahabubnagar during the pendency of 6-A proceedings, the request of the Petitioner for release of seized stock is not possible – Appropriate Action.”

3. It is not known whether the said order was communicated to the Petitioner or not, but a contempt case was filed against the respondent in this case on 13.10.2015 and notice before admission was issued on the same day. A counter affidavit was filed by the Contemnor on 31.10.2015. The counter affidavit admitted the passing of orders on 19.11.2014 confiscating 20% of the total seized stock worth of Rs.10,00,345/- out of Rs.50,01,723/- in favour of the Government and it was also admitted that the learned Principal District Judge, Mahaboobnagar in his order dated 16.02.2015 in Criminal Appeal No.96 of 2014 reduced the confiscation of stock from Rs.10,00,345/- to 45,302/-, but it was stated that the said order was ‘erroneous’. It was also stated that before concluding the 6-A proceedings pending before the respondent, the writ petitioner, with a *mala fide* intention, in

collusion with the custodian of the seized stock had sold out the seized stock and suppressing the said fact he filed a Criminal Appeal No.96 of 2014 before the learned Principal District Judge, Mahaboobnagar and 'managed' to obtain the impugned orders. Ultimately, it was stated that since the writ petitioner, in collusion with the custodian of the seized fertilisers sold out 858 bags of fertilizers out of the seized fertilizers, the request of the writ petitioner for release of the entire seized stock cannot be considered. Accordingly, an order was passed in proceedings No.CS6/525/2014 dated 02.09.2015 and served on the writ petitioner. The counter affidavit ultimately states as follows.

"I most humbly submit that the contention of the writ petitioner that I have violated that orders dated 20.07.2015 in WP No.20985 of 2015 of this Hon'ble Court is not correct. During the pendency of 6-A case the writ petitioner has sold out the seized stock in collusion with the custodian. In view of non-availability of seized stock, it was not possible to release and Joint Director of Agriculture, Mahaboobnagar is directed to take Criminal Action in this regard. **As per Hon'ble High Court directions I passed the speaking orders in this regard.** A copy of it is enclosed. Suppressing the above facts, the writ petitioner herein has filed Criminal Appeal No.96 of 2014 before the Principal Sessions Judge, at Mahaboobnagar and **managed to obtain orders** reducing the confiscation value of seized stock from Rs.10,00,345/- to Rs.45,302/-. I have highest respect to this Hon'ble Court and there was no intention to contempt (sic) the orders of this Hon'ble Court.

I most humbly submit that in view of the facts discussed in the paras cited supra and as per the directions of the higher authorities, SLP is being filed in the Hon'ble Supreme Court of India against the orders dated 16.02.2015 in CrI.Appeal No.96 of 2014 of the Principal Sessions Judge, Mahaboobnagar and orders dated 20.07.2015 in WP No.20985 of 2015 of the Hon'ble High Court of Judicature at Hyderabad." (emphasis added)

4. A perusal of the above counter affidavit clearly shows that the writ petitioner "managed" to obtain an order in Criminal Appeal No. 96 of 2014 and the learned Principal Sessions Judge 'erred' in passing

such an order. The Contemnor came to the conclusion that the seized stock cannot be released in spite of the order of the learned Principal Sessions Judge and that of this court as she came to the conclusion that the writ petitioner, in collusion with the custodian of the seized stock, sold 858 bags of fertilizers. It is also stated that SLP was being filed in the Hon'ble Supreme Court of India against the orders of the learned Principal Sessions Judge, Mahaboobnagar passed in Criminal Appeal No. 96 of 2014, dated 16.02.2015 and of this Court dated 20.07.2015. The details of such SLP are not forthcoming. The respondent could not have sit in appeal over the order of the learned Principal Sessions Judge, Mahaboobnagar and should not have decided to ignore the orders passed by this Court in the above writ petition, without challenging them in appropriate forum.

5. When this Court noticed the above stand of the Contemnor, the learned Government Pleader was directed to produce the record and impressed upon him the need for compliance of the order. Accordingly, the case was adjourned five times and in spite of giving sufficient time, when the stock was not released, contempt case was admitted on 06.01.2016. The Contemnor was present in person pursuant to the notice issued by this Court on 03.02.2016, and sought time for filing counter to the additional affidavit filed by the petitioner. A counter affidavit was filed by stating the entire quantity was released and this court took note of the same on 22.02.2016. The case was posted to 26.02.2016 as the counsel for the petitioner was absent. On 26.02.2016, learned counsel for the petitioner submitted that, as a vengeance, immediately after release of the stock, the shop of the petitioner was seized again and separate proceedings were taken. This Court pointed out that he has a separate remedy against the subsequent seizure.

6. Learned counsel for the petitioner filed an additional affidavit of the petitioner, as stated above stating that the respondent, vide order

dated 23.12.2015 in proceedings No.CS6/525/14, directed release of all seized stock of fertilizers which was seized by the Mandal Agricultural Officer on 02.07.2014 except 20:20:0:13 brand fertilizers in favour of the petitioner. It was also stated that on 31.12.2015 the officials of the Agricultural Department along with the Tahsildar, Ghanapur and Village Revenue Officer visited the godown and verified the stock by taking photographs. They noticed that the petitioner kept new stock in the godown and started selling the released stock along with new stocks and seized the entire godown along with the released stocks and new stocks at about 7.00 PM on 31.12.2015 on the ground that the Hamalies are not co-operating to count the stock since it has become dark. They again came on 02.01.2016, opened the seal and noticed that 800 bags of seized stocks were damaged, spoiled and were not fit for use or sale. It was thrown out of the godown and godown was again sealed by the officials on 02.01.2016. It was stated that the value of the damaged stock was about 12.00 Lakhs and the same was not released in spite of payment of the amount on 02.03.2015 in compliance with the order dated 16.02.2015 in Criminal Appeal No.96 of 2014. The stock was spoiled solely due to the attitude of the respondent officials.

7. An additional counter was also filed by the Contemnor stating that aggrieved by the orders dated 20.07.2015 in WP No.20985 of 2015, the department filed Writ Appeal No. 838 of 2015 and the same was dismissed by this Court on 02.09.2015. The stocks were released on 23.12.2015 in pursuance of the proceedings dated 23.12.2015. However, out of 26 items, one item i.e., 20:20:0:13 brand of fertilizers of 1987 bags were not released as there was a variation in the quantity that was available at the site. It was admitted that the Agricultural Officer visited the shop of the petitioner on the direction of the Joint Collector on 30.01.2016 (for 31.12.2015) and came back in the absence of Hamalies. Again they went on 02.01.2016 and noticed that

only 1159 bags were available, out of which 303 bags were manufactured before the date of seizure and 856 bags were manufactured after the date of seizure. The entire process of verification was done in the presence of witnesses and the fertilizers were kept in a separate godown, locked it and the remaining stock was released. She ultimately stated that the entire available stock of 1159 bags were released to the petitioner on 08.02.2016 in pursuance of her proceedings dated 05.02.2016 under a cover of panchanama.

8. But, the point that remains for consideration is, whether, in view of the stand taken by the Contemnor that the petitioner “managed” to obtain an order from the learned Principal District Judge, Mahaboobnagar and the learned Principal District Judge committing an error in passing such an order, the order passed on 02.09.2015 refusing to release the seized stock in spite of the order of this Court dated 20.07.2015 in WP No.20985 of 2015 amounts to wilful disobedience of the orders of this Court or not. It has also to be seen whether the subsequent release of the stocks during the pendency of contempt proceedings after taking a stand as above could purge the contempt.

9. *(1) When a learned District Judge, in exercise of his jurisdiction passes an order which has become final, is it open to any executive authority to sit in judgment over the said order and comment that the order was obtained by managing it? The comment itself is a serious slur on the functioning of the judiciary in general and the order of the learned District Judge in particular.*

(2) When the role of executive authority is involved, this Court normally does not exercise the power vested in executive authority, but directs the authority to act in accordance with law when an aggrieved person alleges inaction. This does not give any scope for the executive authority to sit in judgment over the order which he/she is supposed to implement.

(3) When this court directs the executive authority to pass an appropriate order, can it be a ground for challenging

the said order before a Division Bench merely because a provision for appeal lies?

10. The Criminal Appeal was disposed of on 16.02.2015 and the order in the Writ Petition was passed on 20.07.2015. An order was passed on 02.09.2015 refusing to release the stock commenting as above. The subsequent release of the stock on the threat of contempt cannot be an act of purging the contempt and the proceedings of contempt cannot act as a scare crow. It cannot be held to be in obedience to the orders of this court. Should this court threaten the officers with action under Contempt of Courts Act when the order, in the normal course, ought to be implemented? Certainly not. This court is not an executing court. Bureaucracy is supposed to implement the policies of the political Executive and orders of the Judiciary. If any Officer feels that an order is erroneous, an appeal can be preferred after due deliberation with the law officer. If the order becomes final, the concerned Officer has no choice except to implement. But that is not done in this case. The petitioner has to wait for nearly 11 months for enjoying the fruits of the orders of the Courts. This Court has to spend considerable time explaining the need for implementing the orders.

11. In view of the above circumstances, this Court is of the opinion that the Contemnor had violated the orders of this Court and is liable to be convicted. Accordingly, this court imposes a fine of Rs.1,116/- (Rupees One thousand one hundred and sixteen only) to be payable by her from her person to Telangana State Legal Services Authority within a period of eight (8) weeks from today, failing which she shall undergo simple imprisonment for a period of seven days.

12. After allowing the case as above, before parting with the case, this court is of the opinion that the Government should examine the record in this case and see whether the decision of the respondent in

preferring a Writ Appeal against an innocuous order of this court dated 20.07.2015 warrants filing of an appeal at all. The decision to challenge such orders in appeals at the expense of public money and time should be strictly scrutinised by the superior officers. The Government should evolve a mechanism for preferring appeals as it would reduce the burden on the docket and also saves public money. In preferring unnecessary appeals, the opinion of the concerned executive authority should not be held to be final and a mechanism should be evolved in such cases for avoiding appeals. It has to be seen that the Officer did not challenge the order dated 16.02.2015 in Criminal Appeal No.96 of 2014 passed by the learned District Judge, Mahaboobnagar and allowed it to become final. But, so much avoidable litigation, money and time were allowed to take place.

13. The Contempt Case is accordingly allowed.

14. As a sequel thereto, the miscellaneous applications, if any pending in this Contempt Case shall stand closed.

A.

Date: 25th April, 2016
Nsr

RAMALINGESWARA RAO, J