

HIGH COURT OF CHHATTISGARH, BILASPUR**CONT No. 103 of 2017**

In Reference High Court Of Chhattisgarh On Its Own Motion **Versus** Jitendra
Gupta

For Respondent : Shri Manoj Paranjpe, Advocate

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****04/07/2017**

1. Heard.
2. This contempt petition has been initiated on the basis of the observations made by this Court vide order dated 03.02.2017 passed in W.P.(S) No.1818/2015 (Ku. Ruchi Sahu Vs. State of Chhattisgarh & Others), which reads as under:

“03/02/2017 Shri Mateen Siddiqui, Advocate for the Petitioner.
Shri Ravindra Agrawal, Panel Lawyer for the
State/Respondent No.1
Shri Shashank Thakur, Advocate for Respondent No.3.
On the last date of hearing i.e. on 20.01.2017, Learned
Counsel for respondent No.3 stated that subject of Dairy
Farming was not a subject being taught in the institution, for
which the post was advertised. Therefore, this Court had
passed the following order:-

“Shri Mateen Siddiqui, Advocate for the Petitioner”
Shri Ravindra Agrawal, Panel Lawyer for the
State/Respondent No.1.

Dr. N.K.Shukla, Senior Advocate with Ms. Priya
Mishra, Advocate for respondent No.2.

Shri Shashank Thakur, Advocate for respondent
No.3.

The grievance of the Petitioner is that Nagar
Panchayat, Sitapur, District Surguja issued an
advertisement inviting applications for filling up various
posts of Lecturers in different subjects including the
subject of Dairy Farming. The case of the Petitioner is
that she was in Sr.No.1 in the select list in the subject of
Dairy Farming but no appointment order was issued to
her till date.

On 21.10.2016 on behalf of Respondent No.3
submitted that there was some confusion with regard to
the qualification of the Petitioner for which clarification

has been sought from the State of Chhattisgarh.

Today, Shri Thakur, Learned Counsel for Respondent No.3 submits that in fact post of Dairy Farming did not exist and the Dairy Farming is not taught as a subject and it is for this reason, post of Dairy Farming was not filled up.

The Chief Municipal Officer, Nagar Panchayat, Sitapur shall appear in person before the Court on the next date along with entire records of the case including the record on the basis of which post of Lecturer in Dairy Farming was advertised. If in fact it was not a subject, was there is a proposal to advertise the post. This question shall be specifically answered by him.

The Chief Municipal Officer, Nagar panchayat, Sitapur shall also explain to this Court why almost for two years this fact has not been brought to the notice of this Court and it has been stated for the first time today that there is no post of Lecturer in Dairy Farming.

List the matter on 3.2.2017, on which date the entire record shall be produced before the Court.”

Today, Shri Shashank Thakur, Learned Counsel for Respondent No.3 has taken a totally different plea and states that statement made on 20.1.2017 was incorrect and was made on wrong instruction imparted to him.

Today, Shri Sushil Kumar Tiwari, Chief Municipal Officer, Nagar Panchayat, Sitapur, District Surguja is present and he states that in fact, Dairy Farming is being taught as a subject. On the last date in the order we had indicated that something is not correct. If I had disposed of the matter only on the submission of Learned Counsel for respondent No.3, grave injustice would have been caused. A lawyer is expected to verify facts at the responsible officer before making such statement. In this case, Learned Counsel for Respondent No.3 has taken instructions from the Head Clerk of Nagar Panchayat, Sitapur concerned, namely Shri Jitendra Gupta.

Notice of contempt be issued to Shri Jitendra Gupta to explain why action should not be taken under the Contempt of Court's Act against him for trying to mislead the Court.

This contempt petition be drawn up separately and listed before this Bench on 17.3.2017.”

3. On the basis of the aforesaid observation and direction, notice was issued to the contemnor Jitendra Gupta, who is performing and discharging his duties as Head Clerk in the Office of Nagar Panchayat, Sitapur, District Surguja. The contemnor has submitted his reply in response to the aforesaid direction and stated at paras 4 – 5 as under:

“4] That, on 03.02.2017 learned counsel appearing on behalf of respondent

No.3 has submitted before the Hon'ble Court that the statement made on 20.01.2017 was incorrect and was made on wrong instruction imparted to him. On 03.02.2017 the Chief Municipal Officer Nagar Panchayat was present before the Hon'ble Court and he submitted that in fact the dairy farming is being taught as a subject. It was submitted before the Hon'ble Court that the instructions were taken from the head Clerk of Nagar Panchayat Sitapur concerned namely Jitendra Gupta.

5] That, it is being humbly submitted by the answering respondent that the answering respondent has joined on the post of cashier on 04.10.2013 and further in August, 2014 the answering respondent has been given the additional charge of the head clerk due to transfer of earlier incumbent. The answering respondent was holding the additional charge of Head Clerk and neither he is having any knowledge in respect of the appointment and recruitment process. In fact he is working as a cashier in the Nagar Panchayat, Sitapur. Admittedly neither the cashier nor the head clerk of Nagar Panchayat Sitapur was party to the writ petition. The Chief Municipal Officer was impleaded as a party respondent No.3 and on behalf of Nagar Panchayat the reply was filed by the Chief Municipal Officer. Therefore in all fairness the instructions should have been taken from the Chief Municipal Officer. The reply was already being filed by the Chief Municipal Officer taking the stand for not appointing the petitioner. Once the reply has already been filed by Chief Municipal Officer, there was no occasion to obtain any instruction from the Head Clerk. In all fairness the answering respondent/contemnor submits before this Hon'ble Court that the concerned government advocate has called to the Chief Municipal Officer on his personal mobile phone and further the Chief Municipal Officer has handed over the mobile to the answering respondent/contemnor with the directions to satisfy the queries of the concerned advocate and being the directions of the senior officer the answering respondent/contemnor has tried to satisfy the queries and the questions of the learned advocate. The learned advocate has asked the specific question to the contemnor and the contemnor has answered those questions to the best of his ability and knowledge, the questions and answers are quoted below:-

प्रश्न :- अ. व्याख्याता डेरी फार्मिंग की भर्ती आज दिनांक तक क्यों नहीं हो सकी ?

उत्तर :- हाँ, आज दिनांक तक उक्त पद पर भर्ती नहीं हो सकी, चूंकि उस पद की शैक्षणिक योग्यता के संबंध में उलझन होने के कारण राज्य शासन से उक्त संबंध में निर्देश जारी नहीं होने के कारण भर्ती नहीं हो सकी।

प्रश्न :- ब. क्या व्याख्याता डेरी फार्मिंग का पद नगर पंचायत सीतापुर में है अथवा नहीं?

उत्तर :- हाँ, उक्त पद नगर पंचायत सीतापुर में नहीं है। (the answering contemnor has answered the question with the context that no one is working as a lecturer Dairy Farming since the time of his joining in the said department)

प्रश्न :- स. क्या, व्याख्याता डेरी फार्मिंग विषय के रूप में पढ़ाया जा रहा है अथवा नहीं?

उत्तर :- नहीं। (the answering contemnor has answered the question with the context that no lecturer, Dairy Farming is working in Nagar Panchayat Seetapur at that time)”

4. On going through the aforesaid submissions as made by him, particularly, with regard to the aforesaid telephonic conversation with the concerned counsel for the State, it is clear that there was no willful intention of the contemnor to

make such a statement as stated before the Court in the said W.P.(S) No.1818/2015. It, however, appears that such an information was provided without proper understanding the queries made by the concerned counsel for the State and has been made due to lack of proper communication with regard to the real controversy involved in the matter as he was not a party in the said writ petition.

5. Be that as it may, the proceedings in contempt are in the nature of quasi-criminal proceedings, and therefore, it must be shown that the litigant in defiance or disobedience of the Court's direction, proceeded to do anything, which was in violation thereof. However, that is not the situation here as the contemnor Jitender Gupta was admittedly not a party in the said writ petition and has been answering the queries put by the learned Government Advocate as per the instructions of his senior officer, i.e., the Chief Municipal Officer of Nagar Panchayat, Sitapur, District Surguja, who was impleaded as one of the respondents in the said writ petition. Being a subordinate he was under an obligation to obey the direction of his senior officer and, as such, he was just satisfying the queries of the said Government Advocate. In any case, the contemnor was not going to be benefited in the said writ petition and, there was no occasion for him either to reply incorrectly to the said counsel or even to think of disobeying the direction of the Court so as to hold that he was giving said information willfully. Consequently, I am inclined to drop these contempt proceedings initiated against him. Accordingly, the same are hereby dropped.

6. Contempt petition stands disposed of accordingly.

Sd/-

(Sanjay Agrawal)
Judge