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HIGH COURT OF ORISSA : CUTTACK.

CONTC No. 5464 of 2022

(In the matter of an application under
Section 12 of the Contempt of Courts Act, 1971)

ANIL KUMAR SWAIN

Petitioner

SON OF

MANMATH KUMAR SWAIN

Mr. Prasanta Kumar
Satapathy, Advocate.

VILLAGE: NARENDRAPUR

P.O.: ALABHA, P.S.: AUL

DISTRICT: KENDRAPARA

...
VERSUS

MR. SANJAY KUMAR SINGH,
I.A.S.

COMMISSIONER-CUM-
SECRETARY TO GOVERNMENT
RURAL DEVELOPMENT
DEPARTMENT

LOK SEVA BHAWAN

BHUBANESWAR

DISTRICT: KHURDA

Opposite party-contemnor

Mr. Prasanna Kumar
Mohanty,
Additional Standing Counsel

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This matter is taken up by virtual/physical mode.

Date of Hearing & Judgment: 29.09.2022

CORAM:

MR. JUSTICE JASWANT SINGH
AND

MR. JUSTICE MURAHARI SRI RAMAN

P.T.O.

JUDGMENT

Murahari Sri Raman, J.—

1. Aggrieved by non-compliance of direction of this Court issued in exercise of extraordinary jurisdiction under Article 226/227 of the Constitution of India *vide* Order dated 8th September, 2021 passed in W.P.(C) No.11161 of 2021, the petitioner, an unemployed Diploma Engineer (Electrical) holding B-Class Contractor's License, has prayed for invocation of the provisions of the Contempt of Courts Act, 1971 by awarding punishment to the opposite party-contemnor, Sri Sanjay Kumar Singh, who is functioning as Commissioner-*cum*-Secretary to the Government of Odisha in Rural Development Department, who is alleged to have deliberately disobeyed such a direction.
2. Arraying Commissioner-*cum*-Secretary to Government of Odisha, Rural Development Department (opposite party No.1) and Engineer-in-Chief, Rural Works Department (opposite party No.2), the petitioner approached this Court by way of filing writ petition, being W.P.(C) No.11161 of 2021, for issue of writ of *mandamus* for awarding contract work, such as earth work, metal filling, construction of road and canal, for execution in terms of Clause (v) of the Office Memorandum No.26178-Code-11/86, dated 14th October, 1987 *vide* Appendix-XXXIII—“DEPARTMENTAL EXECUTION OF WORK”, Volume-II of the Odisha Public Works Department Code.
- 2.1. Considering the fact that the petitioner had made representation to the Executive Engineer for grant of work to execute, this Court

disposed of the writ petition with the following observation and direction *vide* Order dated 08.09.2021:

- “3. *In this writ petition, the petitioner has prayed that a writ in the nature of mandamus may be issued directing opposite party No.4-Executive Engineer, R.W. Division-II, Kendrapara to consider the application of the petitioner and take a decision within a stipulated period. The petitioner has made a representation to the Executive Engineer to grant him work because he is unemployed and he is a Diploma Engineer (Electrical). However, the OPWD Code does not provide any special treatment of a newly gradated Diploma Engineer.*
4. *So, instead of issuing a mandamus, we give liberty to the petitioner to file a properly articulated and comprehensive representation before the Commissioner-Cum-Secretary, Rural Development Department, Lok Seva Bhawan, Bhubaneswar-Opposite Party No.1 ventilating his grievances and annexing certified copy of this order along with a copy of the brief within a period of ten days hence. On such event, the Opposite Party no.1 shall consider the representation and dispose of the same, after affording reasonable opportunity of hearing to the petitioner, within a period of one month there from, by a speaking and reasoned order. The Opposite Party No.1 may also consider, if it is desirable on the part of the State Government, which is a welfare State, to give certain incentive to new graduates both unemployed graduate engineers and diploma holders, who opt (s) to take up the profession of executing public works.*
5. *The writ petition is disposed of.”*

- 2.2. Sri Prasanta Kumar Satapathy, learned counsel for the petitioner submitted that even though the petitioner having referred to earlier representation dated 04.02.2020, filed a representation (Annexure-1series to the Contempt Petition) before the Commissioner-cum-Secretary to Government, Rural Development Department, on 16.09.2021, the opposite party-contemnor has not yet decided and thereby deliberately not complied the direction of this Court.

3. In order to invoke contempt jurisdiction, there must be:
- i. an order;
 - ii. its violation; and
 - iii. wilful disobedience so as to fall within ambit of connotation of “contempt” under Section 2(b) so as to attract punishment under Section 12 of the Contempt of Courts Act, 1971;

It is, therefore, to be established that notwithstanding the knowledge of such an order the individual/authority concerned had deliberately and wilfully violated the same with an intention of lowering the dignity and image of the Court, as per decision of Hon’ble Supreme Court *Salauddin Ahmed Vrs. Samta Andolan* reported in (2012) 10 SCC 235 = (2012) 4 SCC (Civ) 1141 = (2012) 2 SCC (L&S) 958 = 2012 SCC OnLine SC 645 = 2012 *Criminal Law Journal* 4564 (SC).

4. Clause (v) of the Office Memorandum No.26178-Code-11/86, dated 14th October, 1987 vide Appendix-XXXIII—“DEPARTMENTAL EXECUTION OF WORK”, Volume-II of the Odisha Public Works Department Code reads as follows:

“Unemployed graduate engineers and Diploma holders of the State shall be engaged in supervision survey investigation etc. of departmental execution of works under the direction of departmental engineers and their pay and allowances shall be provided for in the estimates under a separate unit ‘overhead expenses’ for such survey, investigation, supervision of works, etc. The expenditure on this account shall not exceed the 12-1/2 per cent of the estimate in each case.”

4.1. It transpires from the above clause as referred to and relied on by the counsel for the petitioner that the diploma holders like the petitioner “shall be engaged in supervision survey in investigation etc. of departmental execution of works under the direction of departmental engineers”, but not “for award of two works in one year to execute” as prayed for in the representation dated 16.09.2021. The prayer made in the representation dated 16.09.2021 addressed to the Commissioner-cum-Secretary to Government-opposite party runs as follows:

*“I, therefore, requested your good office kindly consider my difficulties and unemployment and I am being a Diploma Holder possessing ‘B’ Class contract license, necessary direction may be issued for **award of two works in one year to execute the same** under the control of your departmental authorities for a period of five years, so that I can earn my livelihood and satisfy the department by discharging the work systematically and honestly.”*

4.2. However, there is nothing placed on record to suggest that there is supervision, survey, investigation, etc. of “departmental execution of works under the direction of departmental engineers” requiring diploma holders.

4.3. Furthermore, perusal of aforesaid Office Memorandum dated 14th October, 1987 specifies powers of the following authorities competent to accord permission for execution of works departmentally:

	<i>Estimated cost of the work</i>	<i>Authority competent to accord permission</i>
1.	<i>Works costing up to Rs.10.00 lakhs</i>	<i>Superintending Engineer concerned</i>
2.	<i>Works costing above Rs.10.00 lakhs up to Rs.20.00</i>	<i>Chief Engineer concerned</i>

3.	<i>Works costing above Rs.20.00 lakhs up to 50.00 lakhs</i>	<i>Administrative Department</i>
4.	<i>Works costing more than Rs.50.00 lakhs</i>	<i>Finance Department</i>

4.4. At paragraph 6 of the writ petition, the following averment is found:

“That the petitioner being a poor unemployed Diploma Engineer is not able to apply for big tender works. As per the OPWD Code small works having estimated cost less than 10.00 lakhs are executed Departmentally. Therefore, it is difficult for the present petitioner to get a work from the State due to his financial difficulties.”

4.5. While noting down the prayer of the petitioner to issue writ of *mandamus* to the opposite party No.4 of the writ petition, viz., Executive Engineer, Rural Works Division-II, Kendrapara, this Court *vide* Order dated 08.09.2022 in paragraph 4 has directed the opposite party No.1-Commissioner-cum-Secretary to Government, Rural Development Department as follows:

*“*** The opposite party No.1 may also consider, if it is desirable on the part of the State Government, which is a welfare State, to give certain incentive to new graduates both unemployed graduate engineers and diploma holders, who opt(s) to take up the profession of executing public works.”*

4.6. The petitioner in the present case has not sought for modification of the order dated 08.09.2021 passed in the writ petition, though in the prayer made in the writ petition he has claimed relief against the Executive Engineer, arrayed as opposite party No.4. There is no iota of material placed before this Court neither in the writ petition nor in the present contempt petition to show that the Commissioner-cum-Secretary to Government (arrayed as opposite party No.4 in the writ petition and contemnor in the contempt

petition) and the Executive Engineer, arrayed as opposite party No.4 in the writ petition, are competent and in seizin of the works of the pecuniary limits as stipulated in the Office Memorandum dated 14.10.1987; as such, this court is not persuaded that contempt of court is made out against Sri Sanjay Kumar Singh, I.A.S., Commissioner-cum-Secretary to Government so as to attract punishment under Section 12 of the Contempt of Courts Act.

4.7. Therefore, this Court does not find wilful or deliberate defiance of direction contained in the Order dated 08.09.2021.

5. In the case of *Dushyant Somal Vrs. Sushma Somal*, reported in *AIR 1981 SC 1026 = (1981) 2 SCC 277*, the Hon'ble Supreme Court observed as under:

“Nor is a person to be punished for contempt of court for disobeying an order of court except when the disobedience is established beyond reasonable doubt, the standard of proof being similar, even if not the same, as in a criminal proceeding. Where the person alleged to be in contempt is able to place before the court sufficient material to conclude that it is impossible to obey the order. The court will not be justified in punishing the alleged contemnor.”

5.1. In the case of *Niaz Mohd. Vrs. State of Haryana*, (1994) 6 SCC 332, it has been discussed as follows:

“9. Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as ‘the Act’) defines ‘civil contempt’ to mean ‘wilful disobedience to any judgment, decree, direction, order, writ or other process of a court ...’. Where the contempt consists in failure to comply with or carry out an order of a court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the court for initiating proceeding for contempt against the

alleged contemner, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemner should be punished for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemner is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the contemner to comply with the order, the court may not punish the alleged contemner.”

6. In view of the fact that this Court while passing order dated 08.09.2021 left it for the contemnor-opposite party to apply his discretion to “consider” the desirability on the part of the “State Government” to grant certain incentive to new graduates both unemployed graduate engineers and diploma holders. When the entire Order dated 08.09.2021 is read as a whole, it is understood that the representation of the petitioner was required to be

considered in the event the State Government desires to grant advantage to “unemployed graduate engineers and diploma holders”.

7. Taking into consideration the aforesaid factual position, that neither the Commissioner-cum-Secretary to Government (arrayed as opposite party No.1 in the writ petition and contemnor in the contempt petition) nor the Executive Engineer, arrayed as opposite party No.4 in the writ petition is competent to grant any relief in terms of Clause (v) of Appendix-XXXIII of the Office Memorandum dated 14.10.1987 and in the teeth of observation of this Court in the order dated 08.09.2021 that “*The Opposite Party No.1 may also consider, if it is desirable on the part of the State Government, which is a welfare State, to give certain incentive to new graduates both unemployed graduate engineers and diploma holders, who opt (s) to take up the profession of executing public works.*”, this Court does not warrant it to proceed any further with the contempt petition and, therefore, the contempt petition is dismissed.

(JASWANT SINGH)
JUDGE

(M.S. RAMAN)
JUDGE