

IN THE HIGH COURT OF ORISSA AT CUTTACK

I.A. No.11348 of 2023
(Arising out of W.P.(C) No.24000 of 2019)

Satyashri Mohapatra ***Petitioner***

Mr. R.N. Parija,
Advocate

-versus-

State of Odisha & others ***Opposite Parties***

Mr. G.N. Rout,
Additional Standing Counsel

CORAM: JUSTICE SANJAY KUMAR MISHRA

Date of Hearing : 24.08.2023

Date of Order: 02.09.2023

Order No.

ORDER

08.

This I.A. has been filed by the State-Opposite Party No.4 to waive out the interest imposed upon the Opposite Parties vide Judgment dated 07.12.2022 passed in W.P.(C) No.24000 of 2019, operative portions of which are extracted below.

“24. The Opposite Parties are directed to release all the service and financial benefits to the Petitioner, as has already been granted to the counterparts of the Petitioners under Annexure-8, within a period of three months from the date of communication of the certified copy of this order.

25. Accordingly, the Writ Petition stands

disposed of. No Order as to costs.

26. Needless to mention here that if the financial benefits in terms of the direction given by this Court is not granted to the Petitioner within the time stipulated, the same shall carry 8% interest from the date of Order till the date of actual payment is made by the Opposite Parties.”

2. It has been stated in the I.A. that after due approval from the Finance Department, the direction given in the Judgment dated 07.12.2022 passed in W.P.(C) No.24000 of 2019 has been implemented. However, the said process of approval took six months to comply the order passed by this Court. The said delay in implementation of the direction of this Court is neither intentional nor deliberate. Hence, a prayer has been made to waive out the interest imposed upon the Opposite Parties by condoning the delay caused in compliance of the aforesaid Judgment passed by this Court. That apart, averments have been made on merits of the case to justify the delay in implementation of the Judgment passed by this Court. Paragraphs 3 of the said I.A. being relevant, is extracted below:

“3. That soon after the receipt of order of this Hon’ble Court the Opposite Parties moved the Law Department for opinion and after due approval from that Department, the Finance Department was moved and after due concurrence from the Finance Department again the matter was placed before the

government for approval as per the requirement and after obtaining order from the Government, systematic procedure was followed for drawing and disbursing of the Financial Benefits as per the direction in favour of the Petitioner. In the process it took about six months in complying the order of this Hon'ble Court. The delay in complying the order of this Hon'ble Court was neither intentional nor deliberate. So also there is no laches on the part of the Opposite Parties in complying the order of this Hon'ble Court rather prompt steps have taken in the matter to comply the direction as early as possible and in the process the Opposite Parties only became successful to comply the order on 26.06.2023."

3. In response to the averments so also the prayer made in the I.A., an objection has been filed by the Petitioner opposing to the said prayer for waiving out the conditional interest imposed on the Opposite Parties, apart from maintainability of the I.A. It has been stated in the objection that the Judgment dated 07.12.2022 passed by this Court having not been challenged before any higher forum, has attained finality. Therefore, alteration of the Judgment in shape of modification in I.A. is not permissible in the eye of law and is liable to be dismissed. It has also been stated that after the Judgment was delivered in the Writ Petition, this Court became functus officio and has no jurisdiction to entertain the I.A. touching the subject matter of the Judgment or

merits of the case. Further, it has been stated in the objection that the delay in process of compliance of the Judgment was due to awaiting approvals from different departments is not sustainable in the eye of law to condone the delay. The conduct of the Opposite Parties is contemptuous due to the fact that the order has been complied only after the Contempt Petition i.e. CONTC No.3358 of 2023 was filed on 12.05.2023, which is pending for consideration before this Court. The present I.A. in shape of modification of Judgment has been filed only in order to avoid the compliance of the judicial pronouncement and to stall the contempt proceeding. Further, it has been stated that the Opposite Parties have made attempt in this I.A. to deal with the matter on merit in shape of modification which is not permissible in the eye of law.

4. Mr. Rout, learned Additional Standing Counsel for Opposite Parties drew attention of this Court to the averments made in paras-3 & 4 of the I.A. and submitted that the post of Assistant Executive Engineer (Civil) was created w.e.f. 21.03.2013 on the base level on restructuring of Engineering Cadre (Civil) whereas the post of Assistant Executive Engineer (Mechanical) was created w.e.f. 26.02.2014 on base level. In view of this factual distinction

between the two engineering cadres, the Assistant Executive Engineer (Civil) and Assistant Executive Engineer (Mechanical) cannot be equated as counterparts. He further submitted that the said fact could not be brought to the notice of this Court at the time of hearing of the Writ Petition. Hence, the Judgment was passed to the extent that all service and financial benefits to the Petitioner be paid with effect from 21.03.2013, when there was no such post of Assistant Executive Engineer (Mechanical). The Judgment could not be implemented in time as there was some delay in seeking clarification from the Law Department and getting concurrence of the Finance Department for implementation of the direction given by this Court. He further submitted that as per direction of this Court, the Opposite Parties have already extended all the benefits to the Petitioner at par with the benefits extended in favour of the Assistant Executive Engineer (Civil) and the order passed by this Court has been complied with in its true letter and spirit.

5. Mr. Parija, learned Counsel for the Writ Petitioner reiterating the stand taken in the Objection filed in response to the I.A. submitted that the Opposite Parties could have filed an application for review on merit, as has been detailed in para-4 of the I.A. or could have filed an application for

extension of time before expiry of the period as directed by this Court, vide Judgment dated 07.12.2022 for implementation of the said judgment passed in W.P.(C) No.24000 of 2019. He further submitted that only after knowing about filing of Contempt Petition i.e CONTC No.3358 of 2023, not only the Judgment passed by this Court in W.P.(C) No.24000 of 2019 was implemented, but also this I.A. has been filed tactfully to avoid the compliance of the judicial pronouncement and to stall the contempt proceeding on the plea of filing of this application for modification of the Judgment passed in W.P.(C) No.24000 of 2019.

6. Mr. Parija, in order to substantiate the stand taken in the Objection, has relied upon the judgments and order of the apex Court reported in **AIR 1992 (SC) 2201 (H.P. Road Transport Corporation vs. Balwant Singh)**, **AIR 1987 (SC) 943 (State of U.P. vs. Shri Brahm Datt Sharma and another)**, **AIR 2012 SC 1506 (Office of the Chief Post Master General & Ors. Vs. Living Media India Ltd. & another)**, **2022 Live Law (SC) 771 (Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited & others)**, **2021 SCC Online SC 3422 (Supertech Limited vs. Emerald Court Owner Resident Welfare Association and others)**.

7. Mr. Parija, learned Counsel for the Writ Petitioner drew attention of this Court to paragraph-12 of the order in **Supertech Limited** (supra) which is extracted below.

“12. The hallmark of a judicial pronouncement is its stability and finality. Judicial verdicts are not like sand dunes which are subject to the vagaries of wind and weather. A disturbing trend has emerged in this court of repeated applications, styled as Miscellaneous Applications, being filed after a final judgment has been pronounced. Such a practice has no legal foundation and must be firmly discouraged. It reduces litigation to a gambit. Miscellaneous Applications are becoming a preferred course to those with resources to pursue strategies to avoid compliance with judicial decisions. A judicial pronouncement cannot be subject to modification once the judgment has been pronounced, by filing a miscellaneous application. Filing of a miscellaneous application seeking modification /clarification of a judgment is not envisaged in law. Further, it is a settled legal principle that one cannot do indirectly what one cannot do directly [“Quando aliquid prohibetur ex directo, prohibetur et per obliquum”]”

8. In **Ghanashayam Mishra** (supra), the apex Court observed as follows:

“4. Having heard learned senior counsel for the parties and having perused the relevant materials placed on record, we are of the considered view that the present applications are nothing else but an attempt to seek review of the judgment and order

passed by this Court on 13th April 2021 under the garb of miscellaneous application.

5. We find that there is a growing tendency of indirectly seeking review of the orders of this Court by filing applications either seeking modification or clarification of the orders passed by this Court.

6. In our view, such applications are a total abuse of process of law. The valuable time of Court is spent in deciding such applications which time would otherwise be utilized for attending litigations of the litigants who are waiting in the corridors of justice for decades together.”

9. So far as condonation of delay is concerned, in **Chief Post Master General** (supra) vide paragraph-3, the apex Court held as follows:

“13. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department

for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

10. Admitted, as directed by this Court, the Judgment dated 07.12.2022 passed in W.P.(C) No.24000 of 2019 has been implemented excepting condition imposed vide concluding paragraph No.26 of the said Judgment, vide which it was ordered that if the financial benefits in terms of the direction given by the said Judgment is not extended in favour of the Petitioner within the stipulated time frame, the same shall carry 8% interest from the date of the order till the date actual payment is made by the Opposite Parties. The said Opposite Parties neither sought for review of the said Judgment on the plea as detailed in paragraph-4 of the present I.A. nor filed any application for extension of time before expiry of the period of three months as directed, vide Judgment dated 07.12.2022 passed in W.P.(C) No.24000 of 2019. Admittedly, this I.A. has been filed only after initiation of contempt proceeding i.e. CONTC No.3358 of 2023 by the Petitioner for non-implementation of the Judgment dated 07.12.2022, in which a Show Cause Affidavit has been filed by the Opposite Party/Contemnor. Pendency of the present

I.A. was brought to the notice of this Court only when the Contempt Petition was moved by the Writ Petitioner. On being ordered to take up this I.A. before taking up CONTC No.3358 of 2023, this I.A. has been listed today for consideration of the prayer of the State-Opposite Parties for waiving out the interest imposed on the Opposite Parties in terms of the said Judgment dated 07.12.2022. Admittedly, there is no mention as to why the said Opposite Parties did not file any application for review of the said Judgment nor any reason has been assigned in the I.A. seeking for extension of time for implementation of the said Judgment before expiry of the period as directed vide the said Judgment dated 07.12.2022. Simply a plea has been taken vide para-3 of the said I.A., as has been extracted above, as to delay caused in seeking approval from the various departments for implementation of the said Judgment. Such plea of the Opposite Parties is unacceptable in view of the Judgment of the apex Court in **Chief Post Master General** (supra) as has been quoted above. Further, this Court is of the view that the State-Opposite Parties have attempted to seek review of the Judgment dated 07.12.2022 passed by this Court under the garb of the present I.A. so also to annul the contempt proceeding initiated by the present Petitioner i.e. CONTC

No.3358 of 2023, as admittedly the present I.A. has been filed on 27th July, 2023, whereas the CONTC No.3358 of 2023 was initiated by the Petitioner on 12.05.2023. This Court is of the further view that filing of present I.A. seeking modification of a Judgment is not envisaged in law and is liable to be dismissed.

11. In view of the settled position of law so also the facts as detailed above, the I.A. stands dismissed being devoid of any merit.

Prasant



Signature Not Verified

Digitally Signed
Signed by: PRASANT KUMAR PRADHAN
Designation: Secretary
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 02-Sep-2023 15:18:31

