

Centre For Development Communication Jaipur and Another Vs. Dr. Pawan Sharma and Others

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Court : Madhya Pradesh

Decided On : Apr-03-2014

Judge : S.K. Gangele & B.D. Rathi

Appeal No. : Contempt Petition No. 573 of 2009

Appellant : Centre For Development Communication Jaipur and Another

Respondent : Dr. Pawan Sharma and Others

Judgement :

B.D. Rathi, J:

1. This contempt petition has been preferred by the petitioner for non-compliance of the orders passed by this Court dated 28-8-2009 and 9-9-2009 in Writ Petition No. 3847/2009 and also for non-compliance of the order dated 15-9-2009 in Writ Petition No. 4284/2009.

2. Feeling grievance of public at large, one writ petition bearing No. 8380/2003 was filed in the nature of pro bono publico as the Municipal Corporation, Gwalior was in dire need of an agency which can look after and supervise the work of lifting of garbage in the city. Facing with strict directions issued by this Court in the said writ petition, Municipal Corporation, Gwalior has decided to float the tender in order to assign the work of lifting of solid waste material within the Gwalior

municipal limit. In the aforesaid process, the tender was awarded to the petitioners on 29-5-2007 and thereafter petitioners were directed to start the contracted work w.e.f. 17-7-2007.

3. After entering into contract, petitioners started the work but within a short span some disputes have occurred between the petitioners and councillors (Parshad) of Municipal Corporation Gwalior, hence report was called by council (Parishad) from the Commissioner which was submitted on 29-6-2009. Showing disagreement to the said report, the council has passed the resolution directing the Commissioner, Municipal Corporation, Gwalior to cancel the contract of petitioners and thereafter by making pivotal to the resolution, Commissioner, Municipal Corporation, Gwalior has cancelled the contract of petitioners.

4. Assailing the order of cancellation of contract, petitioners have preferred writ petition bearing No. 3847/2009 in which subjective order was passed by this Court on 28-9-2009 to the effect that till new arrangement for lifting the garbage Contempt Petition No. 573 of 2009 decided on 3-4-2014. (Gwalior) is made by the Corporation, petitioners shall continue to lift the garbage of the city. The aforesaid order has been communicated by the petitioners in the office of Municipal Corporation, Gwalior and thereafter despite repeated request of petitioners, the respondents have not permitted the petitioners to discharge the contracted work. On 31-8-2009 petitioners wrote a letter to the respondents for handing over of 15 vehicles of petitioners which were engaged in lifting of garbage. Thereafter, the writ petition preferred by the petitioners was finally disposed of by this Court on 9-9-2009 in the following manner:

"We, therefore, dispose of this writ petition with a direction to the petitioner to approach the Commissioner, Municipal Corporation, Gwalior under clause 53 of the contract. The Commissioner shall decide the dispute without being influenced by the resolution passed by the councillors wherein the Councillors have disagreed with the report submitted by the Commissioner and directed him to cancel the contract. The Commissioner shall apply his mind independently and resolve the dispute in accordance with law. So far as interim relief is concerned, considering the various orders passed by this Court in the public interest litigation

IV. P. No. 8280/2003 and the compliance report filed by the Corporation stating that the work of the petitioner is satisfactory to the extent of 91% and the fact that the Commissioner himself has recommended the case of the present petitioner in his report, it will not be in the interest of justice to discontinue the present arrangement of collecting and transportation of solid waste. Hence, considering involvement of public element, we direct that till the dispute is resolved by the Commissioner, present arrangement for transportation and collection of solid waste shall continue. "

5. Learned counsel for the petitioners submitted that this order was passed on 9-9-2009 which was immediately communicated by the petitioners to the respondents but on 12-9-2009 the respondents have encashed the Bank Guarantee and FDR of the petitioner furnished for security of vehicles. Challenging the aforesaid action of respondents, petitioner has preferred writ petition bearing No. 4284/2009 before this Court in which on 15-9-2009 this Court has passed the following interim order:

"In the meanwhile, it is directed that the Corporation shall hand over the possession of the vehicles for carrying solid waste to the petitioners. " After passing the aforesaid interim order by this Court petitioners have served the same upon the respondents but the vehicles were not handed over to the petitioners, hence feeling no option this contempt petition has been preferred by the petitioners.

6. By filing reply to the present contempt petition, respondents submitted that earlier alleging non-compliance of present orders, petitioners have preferred contempt petition bearing No. 469/2009 (Annexure R/1) before this Court which was disposed of on 26-10-2009 in the following manner:

"In view of the aforesaid since the contemnors have undertaken to comply with the order passed by this Court this petition stands disposed of. " Hence, the present contempt petition alleging non-compliance of same orders is not maintainable being bereft of merits.

7. This Court after giving anxious consideration to the rival contentions put forth by learned counsel for the parties, entire record has been perused.

8. On 24-3-2014, Shri Sanjeev Jain, Advocate was appointed as Court Commissioner and he was directed to inspect the vehicles and submit his report before this Court within a week. Thereafter, Shri Jain has prepared a detailed report in the presence of parties on 29-3-2014. From perusal of aforesaid Commissioner report, it is clear that the vehicles were not found in order meaning thereby every vehicle was requiring maintenance mechanical wise and structural wise and vehicles were not in a position to ply.

9. Learned counsel for the petitioners submitted that even after order of this Court vehicles were not handed over, further it has been submitted that handing over of vehicles means vehicles should have been sent to Jaipur office of petitioners by the respondents. It was neither the responsibility nor duty of the petitioners to take away the vehicles from the premises of respondents at Gwalior, therefore, for the contemptuous act of respondents they should be punished.

10. On the contrary, learned counsel for the respondents submitted that it was the responsibility of petitioners to remove the vehicles from the premises of respondents but the petitioners have not taken away the vehicles even after several notices issued by the respondents. Further it has been submitted that the notices for the same were issued on 23-10-2009, 29-01-2009, 4-2-2010, 11-2-2010, 17-2-2010, 25-2-2010, 4-3-2010, 27-3-2010, 31-5-2010 and 13-5-2010 but vehicles were not taken away by the petitioners, therefore, they are responsible and for that respondents cannot be punished.

11. Petitioners were permitted to continue with the contracted work by interim order dated 28-9-2009 only in the light of order passed in PIL bearing Writ Petition No. 8380/2003 while it was only suggestion. Apart that, terms and conditions of the contract were not examined by this Court at the time of passing the interim order, therefore, respondents cannot be directed to permit the petitioners to continue with the contracted work meaning thereby this direction is actually amounting to suggestion, therefore, for that respondents cannot be held responsible.

12. On perusal of order dated 15-9-2009 passed in Writ Petition No. 4284/2009 it is clear that it was nowhere directed by this Court that vehicles should be handed

over to Jaipur Office of petitioners by the respondents. The words "shall hand over" means respondents were directed to permit the petitioners to take away their vehicles from the premises of respondents and even after repeated notices mentioned above, vehicles were not taken away by the petitioners, therefore, it cannot be held that the order dated 15-9-2009 has not been complied with by the respondents.

13. So far as non-compliance of interim order dated 28-9-2009 and final order dated 9-9-2009 passed in Writ Petition No. 3847/2009 is concerned, in our considered view it cannot be held that the orders were not complied with because it was directed that "hence, considering involvement of public element, we direct that till the dispute is resolved by the Commissioner, present arrangement for transportation and collection of solid waste shall continue". This order was passed in the light of order passed in PEL bearing Writ Petition No. 8380/2003 in which it was directed that the work of lifting of solid waste material within the Gwalior municipal limit be assigned to an agency having expertise in that field in order to keep the city neat and clean. Later on, on floating of tender, the aforesaid work was assigned to the petitioners, they started the work but due to some disputes between the councillors of Municipal Corporation, Gwalior and petitioners, the contract was terminated, meaning thereby it was not directed by this Court that contract be awarded to the petitioners and it is not the case of petitioners that in disobedience of such directions, they are not permitted to continue with the contracted work by the respondents. More so, petitioners can get relief in the arbitration proceedings initiated by the respondents or from any other appropriate forum as desired in which they may claim compensation for the damages, if any caused to them.

14. Apart that in absence of specific direction in relation to keeping particular number of vehicles in the premises of respondents and also in absence of evidence in relation to condition of vehicles at the time of keeping of them in the premises of respondents, they cannot be held guilty for any breach of order passed by this Court.

15. In view of the aforesaid cumulative reasons, factual matrix of the case stated above and the rival contentions put forth by learned counsel for the parties, we are of the considered view that the orders passed by this Court have been duly complied with by the respondents, hence the petition is dismissed being bereft of merits. Rule-nisi stands discharged.

Petition dismissed.

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