

Jagadish Dey Vs. State

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Court : Orissa

Decided On : Feb-23-2000

Reported in : 2000(I)OLR306

Judge : Chief Justice and ;R.K. Patra, J.

Acts : [Constitution of India](#) - Articles 226 and 227

Appeal No. : Original Crl. Misc. Case No. 9 of 1999

Appellant : Jagadish Dey

Respondent : State

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : Manoj Kr. Mohanty and ;B.P. Routray, Adv.

Judgement :

ORDER

1. Heard the learned counsel for the petitioners and learned counsel appearing for the State.

2. It appears that in OJC No. 12623 of 1997 on 11.9.1997 a Division Bench of this Court presided over by the then Chief Justice directed the Inspector of Schools, Balasore (opp. party No. 3) to consider the case of the petitioners within two months as to whether they are entitled for payment of salary, and in case he

comes to conclusion that they are so entitled, the same shall be paid to them within two months from the date decision is taken by him.

As no steps at all were taken by the aforesaid opposite party No. 3, the petitioners and no option than to file the present contempt application on 7.1.1 999 after waiting for one year and two months.

3. On 15.2.1999 a Bench of this Court issued notice to the opposite parties calling upon them to show-cause in the matter. The Inspector of Schools, who is opp. party N. 3 filed cause on 3.8.1999 stating therein that immediately after receipt of the order of this Court he moved the Director, Secondary Education by office letter No. 2262 dated 2.3.1998 for allotment of funds to the tune of Rs. 3,05,720/- immediately for payment of arrears salary to the petitioners. As there was no response from the Director, the Inspector of Schools by letter No. 6046 dated 3.5.1999 requested him for allotment of funds amounting to Rs. 4,08,058/- (inclusive of 1% audit cost) for payment of salary to the petitioners. The Inspector of Schools indicated his inability to make payment, as the funds were not allotted from the Directorate.

4. Learned counsel for the State stated that he has received instruction from the Deputy Director, Secondary Education, Orissa who is present in Court that now funds have been allotted for making payment to the petitioners. When we put question to the learned counsel as to why payment has not been made, he stated that the State has no funds for making payment. Neither any statement has been made by learned counsel for the State nor any affidavit has been filed on behalf of the State that payment has already been made to the writ petitioners. On the other hand, learned counsel for the petitioners stated that no payment has been made till today.

Since the day, one of us (the Chief Justice) joined this Court on 18.11.1999, we find that the cases where orders of this Court have not been complied with are placed before Bench and adjourned at the instance of State. We fail to understand why the State counsel is not in a position to obtain instruction from the concerned officer whether he has complied with the order and if not what is the reason for its non-compliance. When time is fixed in the matter for compliance by the Court, it

should be punctually complied with within the time schedule and it should not be taken by the State or its instrumentalities and their officers that such orders fixing time schedule have been passed by way of empty formality. As a result of non-compliance of orders, citizens are made to run from pillar to post in moving the concerned authority and finally filing contempt applications resulting thereby in increase of unnecessary contempt applications before this Court and unnecessary wastage of Court's time.

We have been noticing that in more than 90 per cent of the cases orders of this Court are not complied with and the writ petitioners are compelled to move applications for contempt which is most unfortunate. Reasons for non-compliance are also not furnished before us. We do not understand the real reason for non-compliance of Court's orders. But we presume the same may be because of scarcity of funds or inaction of the concerned officers which may in some cases constitute justifiable reason but on most of the occasions it may be for extraneous reasons not permissible under law.

5. While hearing the writ applications, we find that instructions are never received by the State Counsel on first occasion. In many cases, out of disgust, petitioner makes prayer before this Court seeking permission of the Court to file representation before the concerned authority and to give direction for disposal of the same within a time schedule. In case such orders are passed, the same is not effective adjudication of questions raised and the person so aggrieved has to come again to this Court either by filing contempt application complaining that the representation has not been disposed of and if disposed of challenging the order disposing of representation. This in our view, can be avoided by the State and its instrumentalities and their officers by filing returns in the writ applications within the time schedule, as a result of which the Court's time would not be wasted and consequentially public time would be saved.

6. In the circumstances, we do not find any other remedy except to direct the Chief Secretary to give certain directions in this case. It may not be out of place to mention that this is not a solitary case, but this contempt application is an example of the type indicated above.

For the foregoing reasons, we give the following directions to the Chief Secretary, Government of Orissa :

(a) He shall see that copy of this order is communicated to each and every officer of the State Government and its instrumentalities and Departmental Heads shall maintain a register in which he will take signature of the officer in token of having received the order, so that if there is any infraction of the order, he may not take the plea that he did not know about the order.

(b) The letter sent by the State Counsel, who is an officer of the Court requiring the concerned officers to send instructions and para-wise comments along with competent person to file counter affidavit should be treated to be a direction of this Court. In case, the said letter is not complied with within the time schedule, that may be a ground for taking action against the concerned officer for punishing him for violation of the order of this Court under Article 215 of the [Constitution of India](#).

(c) All pending contempt applications relating to any matter and the cases in respect of which even if no contempt application has been filed and time fixed for compliance of this Court's order has already expired, the same shall be complied within a period of two months from today.

(d) In all cases where letters have been sent by the State Counsel to different authorities and have not been attended to, counter affidavit must be filed in those cases within a period of two months from today.

Put up this case on Wednesday next (1.3.2000) as the learned counsel for the State made a statement at the Bar that by that date as per instruction of the Deputy Director, Secondary Education, the order passed by this Court in this case shall be fully complied with.

Let a copy of this order be sent to the Chief Secretary, Government of Orissa through special messenger at the cost of Court and the same shall be placed before him immediately. Another copy of this order may also be made over to the learned counsel appearing on behalf of the State for the use of the learned Advocate General so that he may also do needful in the matter.

