

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:- 12th February, 2018

COCP No.1228 of 2016(O&M)

M/s Roshan Lal Prem Chand.

.....Petitioner.

Versus

Sh. Raj Kamal Chaudhary & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Vijay K. Jindal, Advocate for the Petitioner.

Mr. M.C. Berry, Additional Advocate General, Punjab
for respondents assisted by Mr. Shivdular Singh Dhillon, IAS,
Director Food, Civil Supplies & Consumer Affairs, Punjab
(respondent no.2) &
Mr. Jaspreet Singh Kahlon, The Controller, Deptt. of Food,
Civil Supplies & Consumer Affairs, Bathinda (respondent no.4).

JASWANT SINGH, J.

*“Our government... teaches the whole people by its example. If
the government becomes the lawbreaker, it breeds contempt for law; it
invites every man to become a law unto himself; it invites anarchy.*

Louis D. Brandeis”

1. The above quote cannot be more appropriate than the one in which, respondents No. 2 and 4 have dealt with the orders passed by this court very casually and have shown an utter disregard to it. Thus, it is appropriate to make this case as a befitting example for the administrators/decision makers, who are responsible for running the state to

not to take the decisions taken by the court so lightly that a litigant is forced to fight numerous rounds of litigation with it for the purpose of getting the order/directions implemented.

2. The present contempt petition arises out of the order dated 30th of October 2015 passed by this court in CWP No. 1780 of 2013 by which the respondents were directed to pay transportation charges and margin money to the petitioner on wheat/Atta being procured and distributed by the petitioner under the *Atta Dal scheme*. The relevant part of the order dated 30th of October 2015 is reproduced as under:

“ *The logic of the respondents is really fantastic and does not appeal to reason. Pulses/Dal and Wheat/Atta are two separate commodities which are being distributed under the Scheme which is known as Atta Dal Scheme and the petitioner has to lift/procure both the commodities separately in which the extent of procurement of Wheat/Atta is much more larger than the Pulses/Dal and are being transported separately, therefore, the respondents cannot adjust the payment of transportation charges and margin money paid to the petitioner on account of procurement of Pulses/Dal with the procurement of Wheat/Atta and hence, the action of the respondents in this regard is totally arbitrary and unreasonable, being violative of Articles 14 and 19(1)(g) of the Constitution of India. The respondents may keep on claiming from the Central Government the amount which is to be paid to the petitioner towards margin money and transportation charges on Wheat/Atta but so far as the petitioner is concerned, he is definitely entitled to transportation charges and margin money on Wheat/Atta separately from the transportation charges and margin money being paid on Pulses/Dal, though under the Atta Dal Scheme.*

In view of the aforesaid discussion, the present

writ petition is hereby allowed and the respondents are directed to pay transportation charges and margin money to the petitioner on Wheat/Atta being procured and distributed by the petitioner under the Atta Dal Scheme, within a period of three months from the date of receipt of certified copy of this order.”

Emphasis supplied

It emanates from the record that by 2nd of March, 2016, respondents were to calculate the handling charges for distribution of wheat under the above-mentioned scheme and after due verification, release the amount due towards the petitioner. However, as is the trend now being followed by the officials of State of Punjab, no order is complied with by the State, within a reasonable period and without a contempt petition being filed for getting the relief already granted by this Court. Consequently, the petitioner was constrained to file a contempt petition before this court on 11th of May 2016, i.e after a gap of more than 6 months for getting the amount due, released from them.

3. Notice was issued to respondents no 2 and 4(responsible for calculation and release of amount) on 23rd of May 2016 and notice was accepted by the Deputy Advocate General, Punjab in the Court itself. Thus, service stood effected upon respondents no 2 and 4. Consequently, the matter was posted for 18th of October 2016. However, on 18th of October 2016 respondents no 2 and 4 did not file their reply/compliance report and took time. Thus, the matter was fixed for 1st of February 2017 by granting them last opportunity with a condition that in case a reply/compliance report is not filed within a period of 4 weeks from 18th of October 2016, the reply/compliance report would be accepted by the registry on deposit of

Rs. 10,000 as costs.

4. Again, as is the case with the State, reply was not filed in time and after due deposit of Rs. 10,000/-, reply was filed by respondents no 2 and 4. The matter came up for hearing on **1st of February 2017** wherein, the following order was passed:

“ Sh. Jaspreet Singh Kahlon, The Controller, Food, Civil Supply and Consumer Affairs, District Bathinda (respondent no.4) is present in Court.

From the pleadings, it is apparent that necessary payments have not been released within the required period of three months from the date of receipt of the certified copy of the order dated 30.10.2015 (Annexure P-1). No plausible justification whatsoever has been forthcoming.

Learned Counsel for the respondents has tried to give a justification that an LPA along with application for condonation of delay of 298 days stands filed against the order dated 30.10.2015 (P-1). The same is stated to be listed for hearing on 18.04.2017.

After examining the aforesaid plea, it is evident that Sh. Shivdular Singh Dhillon, IAS and Sh. Jaspreet Singh Kahlon (respondent nos.2 & 4 respectively), the competent authority for releasing such amounts, have deliberately disobeyed the directions passed by this Court, accordingly, both of them stand convicted.

Let both respondent nos.2 & 4 be present in Court for the purpose of sentencing on the next date of hearing.

Adjourned to 06.02.2017.

”

Emphasis supplied

Thus, not finding the reasons given in the reply filed by the State to be plausible, respondents No. 2 and 4 were convicted by this court

vide its order dated 1st of February 2017 and ordered to be present in court for purpose of sentencing. Admittedly, no appeal has been filed against the said order dated 1st of February 2017 and therefore, this order has attained finality. It is relevant to mention here that the amount due has been Calculated and released to the petitioners on 7th of February 2017 and an affidavit to this regard has been filed by respondent No. 4 on 9th of February 2017. However, a counter affidavit has been filed by petitioner dated 12.03.2017 whereby it has been alleged that the amount has not been paid as per rate determined by State itself.

5. It is further relevant to mention here that on 20.02.2017, both respondents no 2 and 4 were present in court and were asked to file their additional affidavits detailing the steps taken from the moment order dated 30.10.2015 was received till payments were made in order to show their bonafides. In compliance of the order dated 20th of February 2017, respondents no. 2 and 4 have filed their additional affidavits dated 20th of April 2017, detailing therein the steps taken from the moment the order dated 30th of October 2015 was received till the payments were made to the petitioner i.e on 7th of February 2017. It is apposite to point out that on 11th of May 2017, respondent No. 2 namely Sh. Shivdular Singh Dhillon, Director, Department of Food, Civil Supplies and Consumer Affairs Punjab has filed an additional affidavit dated 11.05.2017 whereby he has extended unconditional apology for the inaction on his part.

6. Ld. counsel for the state has argued that a total sum of Rs.1,18,270.75/- was due towards the petitioners and after deducting TDS as per the provisions of Income Tax Act, Rs.1,12,356/- have been deposited

through NEFT on 7th of February 2017 in the savings bank account of the petitioner. Thus, it was stated that the order dated 30th of October 2015 stands complied with and that in view of the unconditional apology tendered by both the respondents namely Shivdular Singh Dhillon, Director, Department of Food, Civil Supplies and Consumer Affairs Punjab (respondent no 2) and Jaspreet Singh Kahlon, District Controller, Department of Food, Civil Supplies and Consumer Affairs, Bathinda (respondent no 4), a lenient view be taken and rule be discharged.

On the other hand, Ld. counsel for the petitioner has disputed the calculations made by the respondents and has stated that in fact the amount due is much more than what has been given to the petitioners and therefore, there is total non-compliance of judgment dated 30th of October 2015. It has been argued that as per its own case, the State determined the margin money as Rs. 25 per quintal for distribution of wheat under the “*Atta Dal Scheme*”. However, the respondents have released the amount at the rate of Rs. 17.18 per quintal. Thus, there is a gross violation of the orders passed by this court.

7. I have duly scrutinised the record of the present case, the arguments raised by both the sides and am of the opinion that in the present case, not only that the respondents are guilty of contempt, but also are liable to be punished.

A perusal of the affidavit dated 20th of April 2017 (which is at page 70 of the paper book), would show that the dates and ensuing events which have been mentioned therein, explaining the delay, are not at all justified. The main reason given by the respondents No. 2 and 4 for not complying with the order is that an LPA No. 2098 of 2016 was filed before

the Hon'ble Division Bench of this court, nonetheless with a considerable delay of 298 days. However, this cannot be stated to be a plausible explanation for not releasing the benefits granted by this court vide its order dated 30th of October 2015 for **3 reasons** i.e **(i) not filing the appeal within this stipulated time of 30 days, as is provided for filing an appeal; (ii) appeal was filed on 18.10.2016, i.e. after issuance of notice of motion by this court in the instant contempt petition; (iii) no stay was granted by the Hon'ble Division Bench while entertaining the appeal.**

Nonetheless, it has come on record that the said LPA also stands dismissed on the ground of limitation alone, vide order dated 18th of April 2017. Meaning thereby, the judgment dated 30th of October 2015 has attained finality. These facts and arguments are being noticed only to be rejected as these lame excuses cannot be taken as ground for not complying with the order passed by the Ld. Single bench of this court and releasing the amounts due by 2nd March, 2016.

Further perusal of affidavit dated 20th of April 2017 at page 72 of the paper book would reveal that as far back as on 18th of December 2015, OSD (litigation) had advised the State to comply with the order dated 30.10.2015 and make the payments as directed by the High Court within the stipulated period. However, the subsequent events as mentioned in the affidavit dated 20.04.2017 would show that respondent No. 2 and 4 as well as the other officials were taking their own sweet time and working at leisure in taking a decision as to whether file an appeal or comply with the order passed by the court. It seems that the casual manner in which the decision-making process was done is due to the leniency shown by this court towards the officials at the time of entertaining contempt petitions,

whereby, despite willful default on part of the erring officials, they are let off without any action. Even, at the time of hearing on 11th May, 2017, except for lame apologies from respondents no 2 and 4, there is no justifiable explanation coming forth which could deter this court from not taking a harsh view against them.

8. The apology tendered by the respondent No. 2 or by respondent No. 4, at this stage, when they already stand convicted, would only show that it is a calculated move on their part to avoid punishment from this court, especially after conviction and thus could only be termed as an act of lacking sincerity and respect to the court. At the time of issuance of notice of motion, as well as at the time of granting an opportunity to the respondents No. 2 and 4 to file reply/compliance report, sufficient hints were given to them to take a decision and not sit over on the judgment rendered by this Court. Instead of complying with the order or filing an appeal within time, respondents No. 2 and 4 were sitting over the file and doing nothing at all.

This is not the first case whereby the litigant has been forced to spend money, time and energy to seek relief which is due towards him, by taking the assistance from the court by filing a contempt petition. A Second round of litigation is now becoming more of a norm than a rarity. The State, being the biggest litigant should take measures to avoid unnecessary litigation. The legislature, in its wisdom has always granted a statutory remedy of appeal against the orders passed by Ld. Single Bench so that no party should feel dissatisfied and remedy-less. The State, in case was not satisfied by the decision given by the Ld. Single Bench, could have approached the Hon'ble Division Bench within a period of 30 days, as

prescribed by law. However, due to the callous attitude and prolonged decision-making (whose reasoning, in any case does not appeal to the common-sense of this court), resulted in a situation whereby, a mess has been created by them. On one hand, the courts are being accused of using their powers excessively and on the other hand, the officials like respondent No. 2 and 4, leave no stone unturned for provoking the court from using its powers granted by the Constitution of India/legislature, in order to meet the ends of justice. Power of courts to punish for contempt is to secure public respect and confidence in judicial process. Thus, it is necessary, in cases like in hand, for the Courts to step in and ensure that justice is done.

Therefore, no leniency can be shown to the respondents No. 2 and 4 who are solely responsible for the delay that has taken place in release of the benefits as well as in taking a decision of either, (i) to file an appeal within time (Delay of 298 Days) or; (ii) to release the benefits within stipulated time, by complying with the order passed by the Ld. single bench. Hence, there is no doubt in the mind of the court that respondents No. 2 and 4 are liable to be punished and the apology tendered by them, at such a belated stage especially, after conviction is meaningless and lacks sincerity.

9. As far as the contention of petitioner that the amount calculated by the respondents is against their own order dated 19.01.2016, I do not find force in the same. As is evident from the facts of the case, petitioner was entitled for claiming margin money at the rate of Rs. 25 per quintal after December 2013 as the National Food Security Act, 2013 came into force in December, 2013, whereas the claim of petitioner was from August 2007 to November, 2013. Thus, order dated 19.01.2016 (**Annexure P-2**),

passed by respondent no. 2, whereby margin money has **NOT** been fixed at the claimed rate of Rs. 25 per quintal is not at all helpful to the plea of petitioner regarding non compliance of the letter and spirit of the Order.

Accordingly, keeping in view the facts and circumstances of the case in hand, and the claimed long unblemished service record of both the officers and being first time offenders, this Court deems it appropriate to order Sh. Shivdular Singh Dhillon-respondent no.2 and Sh. Jaspreet Singh Kahlon-respondent no.4 to undergo a symbolic sentence of “till the rising of the Court”. The Court is further inclined to impose harsh fine upon the respondents no 2 and 4, on account of grave willful disobedience on their part, but is constrained due to the limitations of provisions of Section 12(2) of the Contempt of Courts Act, 1971. Consequently, respondents no 2 and 4 are also punished with fine of Rs.2,000/- (rupee two thousand Only) each, which shall be deposited within a period of two weeks of passing of this Order.

Allowed in the above terms.

(JASWANT SINGH)
JUDGE

February 12th, 2018

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>