

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Contempt Case No.1628 of 2021

ORDER:

This Contempt Case is filed by the petitioner against respondents 1 to 3 in W.P.No.28307/2017 on the ground that they have not complied with the order dated 21.01.2020 in the said writ petition. This Court passed the order as follows:

“4. In that view, this writ petition is disposed of directing the respondents 1 to 3 to consider the reports dated 10.10.2018 and 11.12.2018 submitted by the Joint Inspection Committees and pass an appropriate order strictly in accordance with the Rules within eight (8) weeks from the date of receipt of a copy of this order and communicate the same to petitioner.”

2. The petitioner belongs to S.C. community and he is a businessmen. The Union Government to encourage the businessmen extended loan components to carry out various business houses. So far as the SC/ST businessmen are concerned, Union Government taken up special drive in extending helping hand for setting up infrastructure facilities and also granting subsidy facilities. The petitioner initially started production of granite cutting unit / polishing unit by obtaining loan and also by availing subsidy during the year 2008. By successful management the petitioner was able to repay the entire loan to the lending authority in the year 2009. While so, to expand his business he availed loan of Rs.25.00 lakhs repayable in instalments by giving security of site of 144.51 square yards situated in Guntur through its letter dated 04.05.2013. The 1st respondent after proper verification satisfied with the financial status of the petitioner issued letter dated 19.05.2015 to 3rd respondent recommending for sanction of subsidy of Rs.9,69,200/- to the petitioner firm. Despite the proposal sent by 1st

respondent for sanction of subsidy and in spite of the representations dated 16.02.2017 and 21.02.2017 made by the petitioner, the subsidy amount was not sanctioned to petitioner. Hence, the petitioner having waited for four years filed present writ petition wherein this Court directed the respondents 1 to 3 in the writ petition to consider the reports dated 10.10.2018 and 11.12.2018 of the Joint Inspection Committees and pass an appropriate order within eight weeks from the date of receipt of a copy of this order.

(a) Subsequent to the said order, the Director of Industries (DOI), Vijayawada, called for a meeting on 03.03.2020 to which the petitioner attended and submitted all the relevant documents. Even thereafter also subsidy was not sanctioned and no order was passed. As per the petitioner's information, the DOI addressed a letter dated 09.03.2021 to 2nd respondent stating that there were no defects in the claim of the petitioner and every claim has to be decided within 120 days as per the rules and recommended for sanction of the subsidy. However, the respondents / contemnors have not taken up any positive action.

Hence, the contempt.

3. The 1st respondent / 1st contemnor filed the counter opposing the Contempt Case and contended thus:

(a) On receiving the order of the Court, the Deputy Secretary to Government, Industries & Commerce Department and Director of Industries, A.P., Vijayawada has issued directions on 11.02.2020 to take further immediate necessary action. The GM, DIC submitted a file with remarks to the District Collector on 20.02.2020 and placed before the DIPC

meeting held on 29.02.2020 and the then District Collector & Chairman, DIPC instructed to run separate file in the matter. After that the DOI convened a meeting on 03.03.2020 with the GM, DIC and Sri V.Bala Vazra Babu on behalf of the petitioner. During the said meeting, the DOI directed the GM, DIC to address a letter to GP for Industries & Commerce to seek extension of time for compliance with the orders of the Court since a detailed examination was required. Accordingly, the Government Pleader filed extension petition for another three months time from 01.04.2020. After recovering from COVID pandemic situation, the DOI requested the District Collector to place the issue before the DIPC on 09.03.2021 and to convey the decision of DIPC expeditiously. Then the GM, DIC has submitted separate file on 19.04.2021 to the District Collector with evident remarks and recommended that M/s. Jayalakshmi Rocks (Expansion) is not eligible for sanction of incentives and requested to place before the DIPC for necessary action. After careful examination on the most important aspect and as per the report submitted by two MDCs, the Collector & Chairman, DIEPC, Guntur opined that the DOI may take a view on the above facts and take an appropriate decision and the same was submitted to the DOI on 05.06.2021. In that context, the DOI has once again requested the District Collector, Guntur on 24.06.2021 to implement the orders of the Hon'ble High Court by placing the issue before the DIEPC. Accordingly, the proposal was placed before the DIEPC meeting held on 25.06.2021 and after detailed discussion the DIEPC constituted a Committee on 30.07.2021 with the following members:

- 1) JD, DIC, Guntur
- 2) ZM, APIIC

- 3) Dy. Chief Inspector of Factories
- 4) EE, AP Pollution Control Board
- 5) Joint Commissioner, Commercial Taxes
- 6) BM, APSFC
- 7) Concerned Area Officer of DIC, Guntur

to verify the Joint Inspection Committee reports dated 10.10.2018 and 11.12.2018 and to submit a detailed report strictly in accordance with the rules within a week for taking further necessary action.

(b) The Joint Inspection Committee members visited the Unit on 04.08.2021 and submitted the report basing on the inspection reports dated 10.10.2018 and 11.12.2018 stating that the petitioner unit is not eligible for sanction of incentives. The said Joint Inspection Committee report was submitted to the DIEPC members for approval and the District Collector & Chairman - DIEPC, Guntur agreed with the opinion of the Joint Inspection Committee on 21.08.2021. Accordingly, the GM, DIC (I/c), Guntur has informed to the petitioner on 27.08.2021 that the claim was rejected. Thus, the respondents have scrupulously complied with the order of this Court.

4. Heard the learned counsel for petitioner Sri K.V.Vijaya Kumar, and Sri K.Naveen Kumar, learned counsel for the respondents.

5. While severely fulminating the action of respondents / contemnors, learned counsel for petitioner Sri K.V.Vijaya Kumar argued that by its order this Court directed the respondents 1 to 3 to consider the reports dated 10.10.2018 and 11.12.2018 of the Joint Inspection Committees only and pass an order. However, contrary to it the respondents have constituted another

Joint Inspection Committee and the said Committee considered the previous two reports of the Joint Inspection Committees and took a different view. Learned counsel reiterated that the respondents were directed only to consider the two earlier reports dated 10.10.2018 and 11.12.2018 of the Joint Inspection Committees and they were not instructed to appoint another Joint Inspection Committee to inspect Factory again. If the new Joint Inspection Committee was appointed only to consider the previous reports, he would vehemently argue, how and why they again inspected the Factory and took new objections which were not taken by the previous Inspection Committees and now, basing on such new objections, the subsidy was rejected which is untenable. He thus prayed to allow the Contempt Case.

6. Per contra, Sri K.Naveen Kumar, learned counsel for the respondents / contemnors would argue that the petitioner has misread the purport of this Court's order. In expatiation, he would submit that this Court in its order directed the respondents 1 to 3 to consider the reports dated 10.10.2018 and 11.12.2018 submitted by the Joint Inspection Committees and pass an appropriate order strictly in accordance with the rules within eight weeks from the date of receipt of a copy of this order and this Court never directed the respondents 1 to 3 to confine its consideration only to the two Joint Inspection Committee reports dated 10.10.2018 and 11.12.2018. If this Court restricted the consideration of the respondents 1 to 3 to two Joint Inspection Committee reports alone, then the petitioner may harp and carp that the respondents have committed the Contempt of the Court order by appointing another Committee. He would further argue that even otherwise, appointing an appropriate Committee to study and appreciate the two Joint

Inspection Committee reports dated 10.10.2018 and 11.12.2018 cannot be regarded as violation of the Court's order. He would seek to explain that when this Court directed the respondents 1 to 3 to consider the earlier two reports of the Joint Inspection Committees, it is implicit in the said direction that the respondents 1 to 3 can adopt a suitable method to consider the two reports of the Joint Inspection Committees. From the order it can be inferred that such a discretion is vested with the respondents 1 to 3. The DIEPC committee which is competent to sanction or reject subsidy, after due deliberations, constituted the Committee with seven members to verify two earlier Joint Inspection Committee reports and to submit a detailed report to enable the DIEPC to take decision. Thereafter, the members of the newly constituted Joint Inspection Committee visited the Unit on 04.08.2021 to comprehend the facts mentioned in the earlier two inspection reports and submitted a report stating that the petitioner is not entitled to subsidy. After taking into consideration the earlier two reports and also the present report, the DIEPC has rejected the petitioner's claim for subsidy. He would thus submit that the respondents have scrupulously followed the direction of this Court and they have not committed any willful disobedience to the direction of this Court. He thus prayed to dismiss the Contempt Case.

7. The point for consideration is whether the respondents are guilty of the contempt?

8. **Point:** W.P.No.28307/2017 is filed by the petitioner seeking a writ of mandamus declaring the action of 3rd respondent in not releasing the subsidy amount of Rs.9,69,200/- to the petitioner pursuant to the recommendations made in Lr.No.5632/C/2013 dated 25.06.2015 by 1st respondent as illegal

and for a consequential direction. It is in that context, this Court heard the petitioner. During the course of hearing, the petitioner submitted that already two Joint Inspection Committees have submitted their reports on 10.10.2018 and 11.12.2018 before the District Investment Promotion Committee (DIPC) and the respondents 1 to 3 have to consider reports of the Joint Inspection Committees and take a decision. The petitioner requested the Court to issue a direction to consider those reports and pass an order. Learned Government Pleader also reported no objection for the said course. Having regard to the aforesaid submission, this Court passed an order directing the respondents 1 to 3 to consider the reports dated 10.10.2018 and 11.12.2018 as submitted by the Joint Inspection Committees and pass an appropriate order strictly in accordance with the Rules within eight weeks from the date of receipt of a copy of the order and communicate to the petitioner.

(a) Now the grievance of the petitioner is that the respondents 1 to 3 committed gross violation of the direction issued by this Court, inasmuch as, instead of considering two reports dated 10.10.2018 and 11.12.2018 submitted by the Joint Inspection Committees and releasing the subsidy amount of Rs.9,69,200/-, the DIEPC appointed a fresh Committee to consider the earlier two reports and the said Committee inspected the Factory afresh and prepared a report and submitted to the DIEPC and basing on the said report rejected the subsidy. The petitioner would thus contend that the entire process is in sheer disobedience to the directions of this Court and hence, the respondents are liable for contempt.

9. Per contra, the contention of the respondents is that in order to appreciate the facts in the earlier two reports only, a new Committee was constituted by the DIEPC which studied the earlier two reports and also personally inspected the Factory premises of the petitioner and submitted its report. Basing on it, the DIEPC came to the conclusion that the petitioner is not entitled to subsidy and thus rejected his claim. It is submitted that the acts of the respondents are well within the direction of this Court.

10. I bestowed my anxious consideration to the above respective submissions and I find force in the submission of the respondents. It must be noted that in the order dated 21.01.2020 of this Court, there is no positive direction to the respondents 1 to 3 to follow or implement the two Joint Inspection Committee reports dated 10.10.2018 and 11.12.2018 and release the subsidy. What direction given to the respondents 1 to 3 was only to “consider” two reports and pass an appropriate order strictly in accordance with Rules within eight weeks. Therefore, as rightly argued by the respondents, the word “consider” does not give a connotation that the two reports must be followed irrespective of their legality and validity and grant subsidy to the petitioner. It should also be noted, before this Court the correctness and validity of the two reports was neither argued nor considered and resolved. On the other hand, it was only submitted that two Joint Inspection Committees have already submitted their reports on 10.10.2018 and 11.12.2018 before the DIPC. In that view, this Court has directed the respondents to consider those reports and pass an appropriate order strictly in accordance with the Rules.

(a) In the above context, the word “consider” assumes importance.

The dictionary meaning of the word “consider” is to view attentively to, to fix the mind on, to think on with care, to ponder etc. The meaning of the usage of the word “consider” in writ petitions has come up for discussion before the Hon’ble the Apex Court in **Employees State Insurance Corporation v. All India I.T.D.C. Employees Union**¹, wherein it was held as under:

“8. We may, in this context, examine the significance and meaning of a direction given by the Court to "consider" a case. When a court directs an authority to 'consider', it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law (emphasis supplied). There is a reason for a large number of writ petitions filed in High Courts being disposed of with a direction to "consider" the claim/case/representation of the petitioner(s) in the writ petitions.

9. Where an order or action of the State or an authority is found to be illegal, or in contravention of prescribed procedure, or in breach of the rules of natural justice, or arbitrary/unreasonable/irrational, or prompted by mala fides or extraneous consideration, or the result of abuse of power, such action is open to judicial review. When the High Court finds that the order or action requires interference and exercises the power of judicial review, thereby resulting in the action/order of the State or authority being quashed, the High Court will not proceed to substitute its own decision in the matter, as that will amount to exercising appellate power, but require the authority to 'consider' and decide the matter again. The power of judicial review under [Article 226](#) concentrates and lays emphasis on the decision making process, rather than the decision itself.

10. The High Courts also direct authorities to 'consider', in a different category of cases. Where an authority vested with the power to decide a matter, fails to do so in spite of a request, the person aggrieved approaches the High Court, which in exercise of power of judicial review, directs the authority to 'consider' and decide the matter. In such cases, while exercising the power of judicial review, the High Court directs 'consideration' without examining the facts or the legal question(s) involved and without recording any findings on the issues. The High Court may also direct the authority to 'consider' afresh, where the authority had decided a matter without considering the relevant facts and circumstances, or by taking extraneous or irrelevant matters into consideration. In such cases also, High Court may not examine the validity or tenability of the claim on merits, but require the authority to do so.

11. Where the High Court finds the decision-making process erroneous and records its findings as to the manner in which the decision should be made, and then directs the authority to 'consider' the matter, the authority will have to consider and decide the matter in the light of findings or observations of the Court. But where the High Court without recording any findings, or without expressing any view, merely directs the authority to 'consider' the matter, the authority will have to consider the matter in

¹ MANU/SC/8071/2006 = (2006) 4 SCC 257

accordance with law, with reference to the facts and circumstances of the case, its power not being circumscribed by any observations or findings of the Court.

12. We may also note that sometimes the High Courts dispose of matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the Court, to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh.

13. There are also several instances where unscrupulous petitioners with the connivance of 'pliable' authorities have misused the direction 'to consider' issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation. When the Court disposes of the petition with a direction to 'consider', the authority grants the relief, taking shelter under the order of the Court directing it to 'consider'. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider', may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of Court's direction to 'consider' the claim or on account of collusion/connivance between the person making the representation and the authority deciding it.

14. Therefore, while disposing of writ petitions with a direction to 'consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The aforesaid aspects were highlighted recently in *A.P.S.R.T.C. & Ors. v. G. Srinivas Reddy and Ors.* MANU/SC/8058/2006 : (2006) IILLJ 425 SC.”

11. Thus, it is clear that sometimes the Court while deciding the major issues involved in the given case remit the matter to the authorities for consideration and for passing appropriate orders. Sometimes the Court may simply refer the matter for consideration of the authorities. The present case is of the second type. Running the risk of pleonasm, it must be said this Court has not tested the validity of the two Joint Inspection Committee reports dated 10.10.2018 and 11.12.2018. Therefore, it only gave a direction to the respondents 1 to 3 to consider those reports and pass an appropriate

order strictly in accordance with Rules. As rightly submitted by the learned counsel for respondents, the method and manner of consideration of the reports is left to the discretion of the respondents 1 to 3. They may themselves consider it directly or they may appoint a Committee to study the two reports and counter-check with the factual scenario and submit a report to take final decision by DIEPC. The said exercise is strictly within the domain of the respondents 1 to 3. What is directed is only to consider the two reports and pass an appropriate order in accordance with Rules. Since there is no specific direction that their decision must be only in a particular manner, the respondents 1 to 3 have a right to take a decision of their choice either in granting or refusing the subsidy. Of course the ultimate decision must project that they have made a due consideration of the two reports strictly in accordance with law. In the course of examining the two reports, the Committee appointed by the DIEPC may also visit the Factory of 1st respondent but that is only a part of the decision making process with which the Court is not concerned. The respondents / contemnors have considered the reports and took decision which amounts to the compliance of this Court's direction. Needless to emphasize if the petitioner is aggrieved by the decision, he is at liberty to challenge the same in a separate proceedings, if he is so advised.

12. With the above observations, this Contempt Case is dismissed.

As a sequel, interlocutory applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

13.06.2022
MVA