

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CONTEMPT PETITION (C) NO.317 OF 2007

IN

CIVIL APPEAL NO.2080 OF 2007

M.K.D. MINERAL & EXPORT(P) LTD.

Appellant(s)

Versus

B.C. DAGARA

Respondent(s)

ORDER

We have heard learned senior counsel for the parties at length.

This contempt petition is directed against the order passed by this Court on 16th April, 2007 whereby the Respondent-Contemnor has not shown any deference of complying the aforesaid order. Therefore, the petitioner herein has approached this Court by filing the present contempt petition. The order against which the contempt petition is directed reads as under :-

“We modify the order passed by this Court dated 12.2.2007 and the order passed by the High Court dated

22.12.2006 is restored subject to the condition that in case the respondent does not lift the 30,000 MTs of iron ore per month then it will be open for the appellant to sell it in the open market. He will supply 30,000 MTs of iron ore per month on the same terms and conditions as per the agreement and payment shall be made by demand drafts. This order shall be subject to the final order to be passed by this Court. We request the Arbitrator to dispose of the arbitral proceedings as expeditiously as possible, preferably within four months from today.”

But unfortunately, the respondent herein, despite the aforesaid order did not comply this order till today. In a reply to contempt petition by the respondent, the respondent took two stands; one, that the petitioner was not having a trading licence and second, that the petitioner declined to accept the iron ore as it said to be less than the required iron content. It was only 35% FE. Therefore, he has not committed any contempt of this Court and he has faithfully abide by this Court's order. In a detailed affidavit filed by the respondent, he tried to justify that he had at all the time tried to obtain a transit permit but he could not secure the same on account

of petitioner not having a trading licence. The petitioner in his rejoinder affidavit submitted that throughout he had the trading licence except for a limited period i.e. from December 7, 2007 to March, 2008 but for the rest of the period he always had the trading licence.

Dr. Rajeev Dhavan, learned senior counsel appearing on behalf of the respondent at a great length tried to persuade that the respondent was in all bonafide tried to comply with the order of this Court but for the reason beyond his control he could not do so and in that connection, he took two aforesaid pleas. Dr. A.M. Singhvi, learned senior counsel appearing on behalf of the petitioner submitted that after this order was passed on 16th April, 2007 the respondent-contemnor tried to avoid this order by moving one after the other applications for modification but he did not succeed before this Court getting the order modified. He also invited our attention to the order passed on 24th September, 2007 where this Court expressed a great displeasure on the part of the respondent to make a futile attempt to seek modification order. This Court in its order dated 24th September, 2007 observed as under :-

“This Court had earlier passed an Order dated 16.4.2007 after hearing counsels for parties. Thereafter

I.A. No.1 was dismissed by the Court on 16.5.2007 after hearing counsel. We cannot appreciate this practice of filing I.A. after I.A. on the same matter after an order was passed after hearing counsels for both parties. It will be a review, or a review of a review, which should not be encouraged. I.A. No.2 is hence dismissed.”

Dr. Singhvi then pointed out that he had at all the time trading licence and the plea raised by the petitioner that he had no trading licence is false and without any basis and he also pointed out that Respondent Contemnor moved applications before the mining authorities for permission of supply of iron ore to others with requisite percentage of 65% iron content. Whenever the supply to petitioner came, he tried to throw a stack of iron ore of 35% FE.

We have bestowed our best of the consideration to lengthy arguments by both the learned counsels, but we are constrained to say that the way the present respondent has behaved is highly undesirable manner and in contemptuous manner. He has shown great impunity to defy the order of this Court. The respondent was directed to supply 30,000 MTs. of iron ore on the payment by bank draft but he for one reason or the other tried to avoid this Court's order

for a period of one year by making one application or the other and tried to scuttle this Court's order. When he failed to get this Court's order modified he took up another stand that the petitioner had no trading licence. Ultimately, when the matter came in for final disposal thereto also the respondent did not realise and still he persisted in it and contested the matter to the best of his ability. This deliberate defiance of the respondent cannot be appreciated. The Court passed the order after hearing both the parties at length and thereafter he repeatedly tried to get the order modified by filing interim applications which were rejected. Then too also the message was not understood by the respondent. This conduct of the respondent does not warrant any sympathy. This Court is very slow to take harsh action but at the same time dignity of this Court does not permit that order of this Court is defied with impunity. If strong action is not taken against such contemnor then people will lose faith and lay down bad precedent. We hold him guilty of contempt of this Court's Order and punish him to undergo three months imprisonment with a fine of Rs.5,00,000/- (Rupees five lacs only). He is given two weeks time to surrender before the Superintendent of Police, Rairangpur,

District Baripada, Orissa. In case he does not surrender within two weeks, the Superintendent of Police shall get him arrested and send him to jail for serving out the sentence. He shall deposit the fine of Rs.5,00,000/- in the Registry of this Court within two weeks failing which he will have to further undergo imprisonment for a period of one month.

We further direct that the Mining Engineer shall not permit him to operate in the mines till he complies with the orders passed by this Court.

The Contempt Petition is accordingly, disposed of.

.....J.
(A.K.MATHUR)

.....J.
(DALVEER BHANDARI)

New Delhi,
July 16, 2008