

July 14th, 2005

IN THE HIGH COURT OF JUDICATURE RAJASTHAN BENCH AT JAIPUR

Order

in

D. B. Civil Writ Petition. 4777/2005

with

D. B. Civil Misc. Stay Application No. 4122/2005

Amit Kumar Jain...Petitioner

Versus

1. The State of Rajasthan through: The Chief Secretary, Government Secretariate, Jaipur (Raj.)
2. The Secretary, Department of Women & Child Welfare Government Secretariate, Jaipur (Raj.)
3. The Director, Department of Women & Child Welfare Government of Rajasthan, 2, Jal Path Gandhi Nagar, Jaipur (Raj.)
4. JVS Food Pvt. Ltd. Company (Incorporated Under the Indian Companies Act 1956) having its registered office at Ratnavali, New Colony, Jaipur. (Through its power of attorney holder Satish Kumawat son of Shri K.L. Kumawat aged 32 year Resident of 5, Kisan Colony, Near Malpura Gate, Sanganer, Jaipur, posted as Deputy General Manager...Respondents

DATE OF ORDER – 14.07.2005

PRESENT

HON'BLE MR. JUSTICE S.K. KESHOTE

HON'BLE JUSTICE AJAY RASTOGI

SHRI RAKESH KUMAR FOR PETITIONER

SHRI B.P. AGARWAL ADVOCATE GENERAL WITH

SHRI R.P. AGARWAL AND

SHRI J.K. AGARWAL ADDL.GOVERNMENT ADVOCATE, FOR THE RESPONDENT.

NOS.1TO3

SHRI ASHOK GAUR FOR RESPONDENT NO.4 JVS FOODS PRIVATE LIMITED
COMPANY

BY THE COURT (Per Hon'ble Mr. Justice S.K. Keshote),

The learned counsel for the respondent no.4 has raised a preliminary objection re the maintainability of the writ petition. In his submission the petitioner is praying for a direction to the respondent to comply with the direction of the Hon'ble Supreme court and thus the remedy lies before Hon'ble the Supreme Court and not before this Court.

Shri Rakash Meena the learned counsel for the petitioner, submit that it is the duty of the state Government to comply with the direction of the Hon'ble Supreme Court and in case the same are not complied with the petitioner has a locus stand to approach to this Court under Article 226 of the constitution of India. The learned counsel for the petitioner also made submission on the merit of the matter.

We have given our anxious and thoughtful consideration to the rival contention made by the learned counsel for the parties.

During the course of argument the learned counsel for the petitioner dose not dispute that in sum and substance the grievance of the petitioner in the writ petition is that the State Government, in violation of the direction of the Hon'ble Supreme Court issued under its order, dated 7.10.2004, in Writ Petition (Civil) No. 196/2001, Peoples's Union for Civil Liberties versus Union of India & Others, has invited tenders for supply of nutritious items for the children and pregnant women of weaker sections of the society during the year 2003. The learned counsel for the petitioner also does not dispute that the matter is sub-judice before Hon'ble the Supreme Court.

In Union of India versus Jaiswal Coal Company Limited & Others (1999) 5 SCC 733, their Lordships of the Hon'ble Supreme Court held that the judicial discipline required the High Court not to entertain any such petition when the proceedings were pending in the Hon'ble Supreme Court in respect of subject matter of the case. The parties should have been asked to approach the Hon'ble Supreme Court, if so advised.

The matter is sub-judice before Hon'ble the Supreme Court. During the pendency of the matter in case the directions given to the Union of India and the States by Hon'ble the Supreme Court are violated, in our opinion the appropriate and only remedy left to the person, who approached to the Court, is to go before Hon'ble the Supreme Court. That apart we are of the opinion that where the State violates any direction given by Hon'ble the Supreme Court, it may amount to contempt of the court's order and if a party to the litigation has any grievance the remedy lies before Hon'ble the Supreme Court. The matter in which the petitioner has filed the present writ petition, is subjudice before Hon'ble the Supreme Court and the writ petition in this court is difficult to appreciate and we are of the opinion that such writ petition is wholly misconceived and misplaced. It clearly exhibits an example how attempts are being made by the litigants to misuse the public interest litigation jurisdiction of the High Court.

As a result of the aforesaid discussion the writ petition fails and the same is dismissed. Consequent upon the dismissal of the writ petition, the stay application, filed therewith, does not survive and the same is also dismissed.

Sd/ -
(Ajay Rastogi), J.

Sd/ -
(S.K. Keshote), J.