

**HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) 281/2018**

Shri Ashish Kumar Dey, son of late Sunil Chandra Dey, resident of Shib Bari Road,, P.O. + P.S. + Sub Division- Dharmanagar, District- North Tripura, represented by his duly constituted attorney, Sri Narayan Chandra Dey, S/O Sri Chandan Dey resident of village- Vidyasagar Colony, P.O. Jogendranagar, P.S. East Agartala, Sub-Division- Agartala, District- West Tripura

----Petitioner(s)

Versus

1. Food Corporation of India, represented by its Managing Director, having its office at 16/20 Barakhamba Lane, New Delhi-110001
2. The Senior Regional Manager, Food Corporation of India, NEF Region, having its office at Shillong, Meghalaya
3. The District Manager, Food Corporation of India, District Office having its office at Assam-Agartala road, Agartala, West Tripura
4. The State of Tripura, represented by the Secretary, Finance Department, Government of Tripura, having his office at New Secretariat Complex, PO- New Secretariat, P.S. New Capital Complex, Sub-Division- Agartala, District- West Tripura
5. The Commissioner of Taxes, Government of Tripura, having his office at New Secretariat complex, P.O. New Secretariat, PS. New Capital Complex, Sub-Division- Agartala, District- West Tripura

----Respondent(s)

**WP(C) 283/2018**

M/s Sunil Chandra Dey & Partner, A registered partnership firm, having its office at village- Shibbari Road, PO, PS & Sub-Division- Dharmanagar, District- North Tripura, represented by the duly constituted attorney, Sri Narayan Chandra Dey, S/O Sri Chandan Dey, resident of village- Vidyasagar Colony, PO- Jogendranagar, PS- East Agartala, Sub-Division- Agartala, District- West Tripura

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For Petitioner(s) : Mr. Somik Deb, Advocate

For Respondent(s) : Mr. A. Nandi, Advocate

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**HON'BLE THE CHIEF JUSTICE MR. AJAY RASTOGI  
HON'BLE MR. JUSTICE ARINDAM LODH**

**Order**

**10/10/2018**

The third round of litigation leaving no lis left for this court for consideration. In the first round of litigation, it reaches upto the apex court and in the second round of litigation, the writ petitioner prayed for refund in WP(C) 15/2014 which came to be decided vide order dated 18.02.2014 with the following directions:

**“At the request of Mr. Chakraborty, learned Addl. G.A., we give last opportunity of three weeks to refund the entire amount alongwith statutory interest as payable from time to time up to 25.05.2018 i.e. three months after the judgment was passed by the Apex court and thereafter, the State shall pay interest @ 12% per annum. This amount be paid on or before 11.03.2014 failing which the Commissioner of Taxes & Excise shall appear before us on the said date.**

**We may make it clear that if we find that the orders of this Court are not being complied with, we will not hesitate to initiate contempt action against the erring officials”**

In compliance of the order of this court dated 18.02.2014, the matter was posted on 11.03.2014 just for the respondent-corporation to informed regarding the compliance being made. On 11.03.2014 after taking note the stock of facts on record, the writ petition WP(C) 15/2014 was disposed of although copy of the order dt. 11.03.2014 has not been annexed by the parties for consideration.

It appears that the petitioner was not satisfied with the payment made by the respondent-corporation in compliance of the interim order passed on 18.02.2014 in WP(C) 15/2014 thereafter a fresh writ petition WP(C) 1356/2016 and 1357/2016 has filed. It may be relevant to observe that there was no legal or factual issue involved in the writ petition to be examined by the Division Bench of this court and the complaint of the writ petitioner was that the earlier interim order dated 18.02.2014 has not been complied with by the respondents in its true spirit and under reference to the complaint, a fresh proceeding was drawn and examined by this court in the aforesaid two writ petitioners referred to (supra) and in a third round of litigation, this court took note of the factual matrix in reference to the payment made by the respondent-corporation/State government in compliance thereof disposed of the writ petition vide its order dated 13.12.2017 with the following direction:

**“Before we close the writ petitions, we cannot but express our grave concern over the conduct of the FCI, which is a public authority, firstly, in not depositing the tax deducted by them to the account of the State Government, which was meant for them, within the period stipulated by law and, secondly, in not refunding the amounts so deducted but not deposited by them with the State-respondents, to the petitioner promptly and then, when calling upon them to refund it, like a petty trader, coming up with all kinds of excuses for not doing so. Had they deposited the amount so collected with the State-respondents within the statutory period, it should have been their liability to pay the statutory interest if no refund could be made by them in time; in that case, no liability to pay the interest could have been fastened upon them FCI). Having withheld the money belonging to the petitioners inordinately without reasonable cause, they could not now complain that they are not liable to pay the interest and any such liability should be satisfied by the State-respondents, who indisputably never**

received the deducted amount in question from them (FCI). In our opinion, the conduct of the FCI in withholding the amount legitimately due to the petitioners in both the cases is not only reprehensible and smacks of colorable exercise or abuse of power but could also prompt this Court to impose exemplary costs and/or equitable interest upon them. However, we refrain from doing so with the hope and trust that they do not repeat it in future. This callousness, insensitivity and lethargy/arrogance of power in dealing with office-goers shall have to be stopped forthwith if this country is really going to progress. It is high time that officials of the Government, both Central and State, act as facilitators to the office-goers and not their tormentors. We only hope that the reason for not depositing the amount so deducted with the State-respondents within the statutory period in the first place and thence for withholding the same inordinately even after knowing that the same was to be refunded to the petitioners was not for their wrongful gain at the expense of the State and/or the petitioners. The policy of the Central Government, we are afraid, to bring about transparency, liberalization and business-friendly regime in this country has not percolated down to many of its officials. The time has now come for the Central Government authorities to review and closely monitor the functioning of its officials at every level if its policy is to succeed. Citizens should not be compelled to come to the Court for avoidable litigation at huge costs, which is undoubtedly contrary to the National Litigation Policy”.

It reveals from the record that after the judgment of this court dated 13.12.2017, a sum of Rs. 22,48,113/- was paid to the petitioner on 05.01.2018 and that apart the respondent-corporation has tendered their defence in paragraph 5,6 and 13 of the writ petition about the payment made in satisfaction of the order of this court.

Counsel for the petitioner submits that although payment have been made in compliance of the order of this court, but still payment in full as per the details furnished, has not been paid to him so far and that is the reason for which he has come up with the present writ petition which obviously could be the form of execution to be enforced by this court since the petitioner is not satisfied with the payments made in compliance with the order of the court.

A detail has been furnished and the payment has been made by the respondent-corporation/State in compliance with the order of the court and once the issue has been settled, the respondents are indeed under obligation to make payment in compliance with the order in its

true spirit and since that has not been made to him so far, as alleged that is the reason for which he has made the present complaint to this court by filing successive fourth writ petitions calling upon this court to examine and re-apprise the facts and details of payment made and prayed for balance of amount with interest be paid to the petitioner.

We feel it appropriate to consider the prayer made in the 4<sup>th</sup> successive petitions. After the notice came to be served, again affidavit has been filed by the respondent tendering the justification in the form of defence of which reference has been made by us.

The question emerges for our consideration is as to whether the 4<sup>th</sup> round of litigation at the instance of the petitioner can be considered as execution or contempt or a petition under Article 226 of the Constitution of India to entertain the grievance of the litigant in examining the issues involved under consideration.

After we have heard the parties, it is not beyond the pale of execution of the order earlier passed by this court and once the defence had been taken note of and payment has been made in compliance of the order of this court, this court is not supposed to hold a roaming inquiry in examining as to whether the payment has been made as per the calculations desired by the petitioner, and once the corporation-respondent has come forward that the payment has been made in compliance with the order of this court, it would not be open for the court under Article 226 of the Constitution to further probe into the matter and hold the roaming inquiry on a disputed factual matrix of the matter in going into the complicity of the accounts maintained by the parties.

After we have heard the parties, we find no justification to entertain the present writ petition although it may not preclude the petitioner from taking legal recourse available under the law.

The writ petition stands disposed of as the terms indicated supra.

**(ARINDAM LODH),J**

**(AJAY RASTOGI),CJ**

HIGH COURT OF TRIPURA



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