

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P.No.D-5105/2016

Date	Order with signature of Judge
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PRESENT:

Mr. Justice Muhammad Ali Mazhar.

Mr. Justice Arshad Hussain Khan.

M/s. Engro Fertilizers Limited vs. Abdul Jamal Nasir & others

14.10.2016.

M/s Muhammad Humayun and Ghulam Murtaza Saryo, Advocates
for the petitioner.

Mr. Rafiullah, Advocate for respondents

Mr. Shaikh Liaquat Hussain, Standing Counsel.

MUHAMMAD ALI MAZHAR, J., The brief facts of the case are that vide order dated 02.11.2015, learned Bench NIRC at Karachi admitted the case No.4A(385)/2015-K—24(399)/2015-K and issued notices to the respondents to file counter affidavits / comments. As an interim measures, the learned Bench, NIRC, restrained the respondent not to give effect to the transfer orders in respect of the petitioners till the next date, if the same is not yet implemented. Since the interim orders were not complied with, according to the petitioners, they filed an application for ante-dating the case and for suspension of the transfer orders. The case was ante-dated and vide order dated 09.11.2015, the respondents were directed not to create any hindrances in normal duties of the petitioners at Dharki till the next date. The respondent No.1 filed Case No.7(123)/2015 for initiating contempt proceedings. The Member, NIRC, issued show cause notices to the officials of the Engro Fertilizers Limited and they were also directed to appear in person and to explain the position. The Management challenged this order before the Full Bench, NIRC, vide Appeal No.12(2)/2016.

However, the Appeal was dismissed on 25.08.2016, primarily on the ground that the order is neither award nor decision, sentence or order determining and certifying a CBU. In the same order, the appellant (petitioner) was advised to appear before the Learned Single Bench to contest the contempt application. Against the order of Full Bench, NIRC, the instant petition has been filed.

2. Learned counsel for the petitioner argued that initial order dated 02.11.2015 was conditional. It is clearly manifesting from the language of the order that the respondents were restrained not to give effect to the transfer order till the next date if the same is not yet implemented. Learned Counsel further argued that before passing this order, the transfer orders had already been implemented, therefore, there was no reason or justification to issue show cause notices or ordering the personal appearance of the alleged contemnors.

3. On the contrary, Mr. Rafiullah, learned counsel for respondent No.1, argued that when the application for ante-dating the case was moved, the transfer order was attached with the application, which was issued after the restraining order passed by the NIRC, therefore, the contention raised by the learned counsel for the petitioner is incorrect.

4. The record reflects that some orders were passed by the Member, NIRC, which were allegedly violated by the petitioners and the contempt proceedings are already pending before it where, of course, ample opportunity to defend the contempt proceedings would be provided to the alleged contemnors. However, before us, the petitioners are mainly aggrieved by an order of personal appearance at the very initial stage and even before providing opportunity of preliminary hearing to the counsel for the alleged contemnors.

5. After arguing at some length, both the learned counsel agreed for disposal of this petition in the following terms:-

- i) According to learned counsel for the petitioner, the next date before the Bench, NIRC, is 17.10.2016 and the reply has already been filed by the alleged contemnors. The learned counsel for the petitioner and the learned counsel for the alleged contemnors both will appear before the NIRC bench at Sukkur and primarily arguments will be addressed by both the learned counsel on the contempt application.
- ii) After hearing the arguments, if the Bench NIRC reaches to the conclusion that, prima facie, the case of contempt is made out then he will proceed in accordance with law, till such time the order for taking cognizance in the contempt proceedings is passed, the personal appearance of the Management Officials would be exempted. However, if the Learned Single Bench reaches to the conclusion that personal appearance is required, he will pass fresh orders as and when deem fit and necessary. Meanwhile, the operation of theailable warrant is also suspended. The interim orders are vacated and pending applications are also disposed of. Copy of this order may be transmitted to the Learned Bench, NIRC, at Sukkur.

Judge

Judge