

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 1464 of 2023

Applicant :- Bhawani Prasad Sahu And Others

Opposite Party :- Sri Ajay Chauhan, Prin. Secy. Pwd, Govt. Of U.P., Civil Secrtt., Lko. And Another

Counsel for Applicant :- Ashutosh Shahi

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Ashutosh Shahi, learned counsel for the petitioners and Sri Anil Pratap, learned Addl. Advocate General, U.P. along with Sri Sunil Bajpai learned Addl. C.S.C. for the State.

2. This Court has passed 27.9.2023 which reads as under :

"1. Heard Sri Ashutosh Shahi, learned counsel for the petitioners and Sri Anil Pratap Singh, learned Additional Advocate General alongwith Sri Sunil Bajpai, learned Additional Chief Standing Counsel.

2. In compliance of the order of this Court dated 23.08.2023, Sri Ajay Chauhan, Principal Secretary, Public Works Department, Govt. of U.P., Civil Secretariat, Lucknow is present in Court in person.

3. Sri Sunil Bajpai has filed an application for grant of time supported with an affidavit of Sri Ajay Chauhan, Principal Secretary, Public Works Department, Govt. of U.P., Civil Secretariat, Lucknow, the same is taken on record.

4. By means of the aforesaid application, one fact has been brought into the notice of this Court that the Special Appeal Defective No. 639 of 2023 is pending consideration in the present case, therein the last date was fixed for 25th of September, 2023 but no order could be passed on that date.

5. Sri Ashutosh Shahi has submitted that the defect, pointed out in the Special Appeal on 28.04.2023, has not been removed/rectified by learned counsel for the appellants till date. He has also submitted that no serious efforts have been taken to get the aforesaid appeal taken up on the last date, as no mention before the appellate court has been done apprising the fact that in the present case, a contempt petition is pending.

6. Sri Anil Pratap Singh, learned Additional Advocate General has stated that he may be given one more opportunity to take appropriate steps to get the aforesaid appeal taken up and he shall try his level best to get interim order/final order in the aforesaid appeal.

7. Be that as it may, this is trite law that mere pendency of the Special Appeal does not protect the concerning authority from the contempt proceedings.

8. List this case on 02.11.2023.

9. On or before 02.11.2023, the learned counsel for the State shall either file the copy of the interim order/final order, if any, being passed by the appellate court or the affidavit of compliance making compliance of the order of Writ Court in its letter and spirit, failing which the officer, who is present today, shall again appear in person on the next date.

[C.M. Application No. IA/1/2023 (Impleadment application)]

1. Heard.

2. On due consideration, the application for impleadment is allowed.

3. Learned counsel for the petitioners is permitted to implead 'Sri Deepak Kumar, Additional Chief Secretary/Principal Secretary, Finance Department, Govt. of U.P., Civil Secretariat, Lucknow, as opposite party no. 3, during the course of the day.

4. After the necessary exercise being carried out in terms of this order, notices be issued to newly impleaded opposite party no. 3. Steps be taken within a week."

3. In compliance of the aforesaid order Sri Bajpai has filed an application for grant of time along with affidavit of Sri Ajay Chauhan, Principal Secretary, Public Works Department, Government of U.P., Lucknow, same is taken on record.

4. As per aforesaid affidavit the order has been passed by the committee of competent officers under the chairmanship of Additional Chief Secretary, Finance, on 20.10.2023, same has been enclosed as Annexure no. 1. Para 3 of the aforesaid order clearly indicates that on account of order being passed by the contempt court the order of the writ court is being complied with subject to the final outcome of the pending special appeal in the present matter. The order of the writ court is being complied with in its letter and spirit subject to the final outcome of the pending special appeal and the order of the special appeal would be binding upon the petitioners / claimants.

5. On that Sri Shahi, learned counsel for the petitioners stated that it is needless to say that if any order is passed by the appellate court in special appeal that order would be having the overriding effect upon the order of the writ court and if the petitioners would be feeling themselves aggrieved from the order of the appellate court they may take appropriate remedy before the appropriate court of law but that order of the special appeal would be binding on the parties until the same is not assailed before the Apex Court.

6. Sri Shahi has also submitted that since the affidavit which has been filed today is not an affidavit of compliance but the title of the aforesaid affidavit is 'application for grant of time', therefore, the concerning opposite parties may be given some time to pass consequential order pursuant to and in furtherance of the aforesaid order dated 20.10.2023.

7. Be that as it may, when the committee of competent officers headed by the Additional Chief Secretary, Finance has passed the order dated 20.10.2023 indicating therein that the order of the writ court is complied with in its letter and spirit subject to the outcome of the special appeal then there is no purpose to keep this contempt petition pending any longer but at the same time it is expected that the petitioners shall be paid the benefit in terms of the order of the writ court as well as in terms of the order dated 20.10.2023 (supra) passed by the aforesaid competent authorities with expedition preferably within a period of one month, to be more precise, on or before 2.12.2023, failing which the liberty is given to the petitioners to file an application for seeking revival of the present contempt petition. If such application is filed and it is found that the order of the writ court has not been complied with in terms of the order dated 20.10.2023 (supra) passed by the competent authorities, any appropriate orders under the Contempt of Court Act may be passed on such application.

8. Accordingly, the contempt petition is **dismissed**.

9. Notices discharged.

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[Rajesh Singh Chauhan, J.]

Order Date :- 2.11.2023

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