

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 2385 of 2023

Applicant :- Pradeshik Chakbandikarta Sangh, Thru. Its Joint Secy. Mr. Ajay Kumar Srivastava

Opposite Party :- Mr. Sudhir Garg, Addl. Chief Secy. / Prin. Secy. Deptt. Of Revenue, Lko. And Another

Counsel for Applicant :- Abhineet Jaiswal, Shreya Jaiswal

Counsel for Opposite Party :- Shreyash Agrawal

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Abhineet Jaiswal, learned counsel for the petitioner and Sri Sandeep Dixit, learned Senior Advocate assisted by Sri Shreyas Jaiswal, learned counsel for the opposite party.

2. This Court has passed order dated 28.11.2023 as under :

"1. Heard Shri Abhineet Jaiswal, learned counsel for petitioner and Shri Nishant Shukla, learned counsel for respondents.

2. Shri Abhineet Jaiswal, learned counsel for petitioner has filed reply/objection against the affidavit of compliance filed by respondent no. 2 and the same is taken on record.

3. Shri Nishant Shukla, learned counsel for respondents has filed second affidavit of compliance, same is taken on record.

4. This Court has passed the order dated 10.10.2023, which reads as under:-

"1. Heard Mr. Abhineet Jaiswal, learned counsel for the applicant-petitioner, as well as Mr. Nishant Shukla, learned Additional Chief Standing Counsel, who has appeared for contemnor - opposite party no. 2 and, filed affidavit of compliance, the same is taken on record.

2. In compliance of order dated 27.09.2023, Mr. G.S. Naveen Kumar, presently serving as Secretary Revenue and Relief Commissioner, Government of U.P., who is also holding additional charge of Consolidation Commissioner, Government of U.P., is present in person.

3. By means of aforesaid affidavit of compliance, Mr. Nishant Shukla has stated that the order of the writ-Court has been complied with. However, Mr. Abhineet Jaiswal, has stated that he has filed an objection against the application for grant of time filed by the opposite party no. 2 on 25.08.2023 wherein he has stated that the order of the writ-Court has not been complied.

4. The aforesaid affidavit had been filed on 21.09.2023 and was put up before the Court on 25.09.2023, however, the same is not traceable on record.

5. Therefore, the office is directed to trace out the aforesaid affidavit and place the same on record.

6. Mr. Nishant Shukla has drawn attention of this Court towards paragraph-6 of the affidavit of compliance wherein it has been indicated that only 127 consolidators/ rectangulators were found suitable for promotion and, further order to that effect has been issued.

7. Referring the aforesaid submission, attention of this Court has been drawn

towards Annexure CA-1 which is minute/order of promotion. The recommendation of committee, which is at running page-142 of the affidavit of compliance, makes it clear that some eligible officers have been promoted in terms of the order of the writ-Court and, for remaining officers/officials, appropriate exercise would be undertaken strictly in accordance with law by affording an opportunity of hearing to those officers/officials.

8. As per Mr. Nishant Shukla relevant order, in compliance of order of the writ-Court, would be issued expeditiously.

9. Since the affidavit, so filed by Mr. Abhineet Jaiswal, is not traceable on record and, from perusal of affidavit of compliance filed today, it appears that some more exercise is to be undertaken for making compliance of the order of the writ-Court in its letter and spirit regarding those employees who have not been promoted, let this matter be listed on 28.11.2023 within top ten cases of the cause-list.

10. On or before 28.11.2023, Mr. Nishant Shukla shall file a fresh affidavit of compliance, apprising this Court as to what decision has been taken regarding other employees in respect of their promotion in terms of the order of the writ-Court.

11. In the meantime, Mr. Abhineet Jaiswal, learned counsel for the applicant-petitioner, may file reply/objection to the affidavit of compliance, which has been filed today.

12. On the next date of listing, the officer, who is present in person today, need not appear again. However, it is made clear that if on the next date of listing it is found that the order of the writ-Court has not been complied in its letter and spirit, order of his personal appearance may again be passed on the next date."

5. Shri Abhineet Jaiswal, learned counsel for petitioner has drawn the attention of this Court towards Annexure No. 2 of the affidavit filed today, which is the order dated 24.11.2023 passed by the Apex Court in Special Leave to Appeal (C) No. of 25541 of 2023. Though the aforesaid leave to appeal has been dismissed by the Apex Court but one fact has been noticed by this Court that by means of aforesaid special leave to appeal, the order dated 10.10.2023 (supra) has been challenged.

6. To the best of my understanding, by means of order dated 10.10.2023, no direction has been issued against the authority concerned, rather it has been indicated on the basis of submission of learned counsel for respondents that some of the eligible officers have been promoted and the remaining officers/officials, whose promotion order has not been issued, any appropriate order would be passed in their case after affording an opportunity of hearing to those officers. It has also been noted in the aforesaid order that any fresh order would be passed expeditiously, therefore, by means of an order dated 10.10.2023, it was expected that in compliance of the order of writ court any appropriate order may be passed and that order may be enclosed with the fresh affidavit of compliance. However, in earlier order, it has been noted that despite the order of the writ court, no appropriate steps have been taken by the competent authority for substantial time, even after service of contempt notice, the prompt steps have not been taken to make compliance of the order of the writ court in its letter and spirit.

7. When this Court has already observed that if the ineligible persons may not be promoted, the appropriate exercise may be undertaken by affording an opportunity of hearing to those officers/officials, meaning thereby, no direction was issued to the authority concerned to promote the ineligible persons.

8. The bare minimum expectation of the contempt court is to ensure the compliance of the order of writ court in its letter and spirit unless and until that order has been stayed or set aside by the superior court. I think, for the aforesaid bare minimum expectation, no authority should be aggrieved.

9. Even if the order of the writ Court has been complied with in its letter and spirit only such affidavit could be filed apprising the Court that the complete compliance has already been done, for that, the precious time of the Apex Court may not be wasted. If such affidavit is filed indicating therein that the order of the writ court has been complied with in its letter and spirit demonstrating the relevant documents, the contempt petition is dismissed for the reason that no contempt petition can be kept pending any longer if the order of the writ Court has been complied with in its letter and spirit.

10. The Apex Court should not be approached casually or without having any reasonable ground inasmuch as the highest court of the country should be approached only when there is any bona fide grievance of the person, which has not been redressed by the High Court/High Courts. If the authority concerned is the Senior Officer of the State Government i.e. opposite party no. 2- Mr. Naveen Chandra, Consolidation Commissioner, Uttar Pradesh, Lucknow, he should remain more cautious before approaching the Apex Court ensuring that the precious time of the Apex Court is not wasted, and should also verify carefully that his bona fide grievance is still un-redressed before the High Court. Further, to approach the Apex Court some reasonable expenses are to be incurred, therefore, so as to save the public exchequer, the Officer of the State Government should remain so cautious. He/she may not think so casually that this is not his/her hard-earned money but is of State Government and no one can ask him/her for those expenses. Rather, the proper approach of the officer must be that if said legal recourse, which is so warranted in the interest of justice, is not adopted the State agency shall suffer irreparable loss and injury. The aspect of misuse of public exchequer should be taken so seriously by the superior officers and if it is found that the Apex Court has been approached casually without having any plausible reason, the explanation should be called from the officer concerned.

11. It appears that in the present case there was no plausible reason or explanation approaching the Apex Court, therefore, the authority himself i.e., opposite party no. 2 has sought to withdraw the SLP. Accordingly, the SLP was dismissed on his request.

12. I have gone through one Government Order dated 31.05.2017 bearing No. 31/2017/U.O-23/Saat- Nyay- 1-2017-70G/2017 (Nyay Anu-2), issued by the Principal Secretary, and Legal Remembrancer, Department of Law, Government of U.P., Lucknow addressing to all Principal Secretaries/Secretaries, Government of U.P. in respect of filing of cases before the courts including Apex Court. By means of aforesaid Government Orders guidelines have been circulated with the direction that those guidelines should be followed strictly. Some relevant extract of the aforesaid Government Order is being reproduced here-in-below:-

""2. ...

* एक साधारण वादी की भांति मुकदमों को किसी भी कीमत पर जीतने के उद्देश्य से पैरवी न करें।

* केवल मुकदमा करने के लिए मुकदमा न करें।

* यह सुनिश्चित करें कि झूठी दलीलें न दी जायें तथा सुसंगत तकनीकी बिन्दुओं को हतोत्साहित किया जाय।

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* मा० न्यायालयों में सरकारी मुकदमों को इस उद्देश्य के साथ कम करना है ताकि न्यायालय का कीमती समय अन्य महत्वपूर्ण लम्बित मामलों के निपटारे में लगाया जा सके, जिससे कि विचाराधीनता के औसत समय को 15 वर्ष से घटाकर 03 वर्ष किये जाने के राज्य विधिक मिशन लक्ष्य को प्राप्त किया जा सके।

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अपील दाखिल करना:-

* एक पक्षीय और अन्तरिम आदेशों के विरुद्ध अपील नहीं दाखिल की जायेगी। पहले यह प्रयास अवश्य

होना चाहिए कि आदेश को रद्द कराया जाय। आदेश रद्द न होने की दशा में और आदेश के प्रतिकूल प्रभाव पड़ने की दशा में अपील दाखिल किया जाना चाहिए।

* सबसे पहले उच्च न्यायालय के भीतर ही अपील दाखिल की जानी चाहिए। उच्चतम न्यायालय में, असाधारण स्थितियों के सिवाय सीधे अपील नहीं किया जाना चाहिए।

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उच्चतम न्यायालय में अपील दाखिल नहीं की जायेंगी जब तक कि:-

* मामले में कानून का बिन्दु सम्मिलित न हो,

* यदि यह तथ्य का प्रश्न है, और तथ्य का निष्कर्ष इतना अनुचित है कि उस निष्कर्ष पर कोई साफ - साफ सुथरा न्यायिक मत नहीं पहुंच सकता है,

* जहाँ सार्वजनिक वित्त प्रतिकूल रूप से प्रभावित होता हो,

* जहाँ सार्वजनिक न्याय के साथ सारवान व्यवधान हो,

* जहाँ संविधान के अधीन होने वाला कानून का कोई प्रश्न हो,

* जहाँ उच्च न्यायालय ने अपने क्षेत्राधिकार का अतिक्रमण किया हो,

* जहाँ उच्च न्यायालय ने किसी सांविधिक प्रावधान को अधिकारातीत रूप में अभिखण्डित किया हो,

* जहाँ उच्च न्यायालय की व्याख्या साफतौर पर त्रुटिपूर्ण हो।

* प्रत्येक मामले में, कोई अपील दायर करने की आवश्यकता का एक समुचित प्रमाणन होगा। ऐसे प्रमाणन में समर्थन में संक्षिप्त किन्तु तर्कपूर्ण कारण दिये जायेंगे। इसी के साथ, वे कारण भी अभिलिखित किये जायेंगे कि अपील दायर करना ठीक या उपयुक्त क्यों नहीं समझा गया।

13. In the present case, it is clear that the aforesaid guidelines have not been adhered to, rather the same have been flouted and prima facie, it appears that the precious time of this Court as well as the Apex Court has been wasted.

14. Undoubtedly, to approach the Apex Court or the High Court is a fundamental right of every citizen if he/she is aggrieved from any action or inaction of any authority or is aggrieved from any order being passed in any judicial or quasi judicial proceedings and no one can restrain them to avail such remedy. At the same time, it is also trite that the process of law cannot be misused by filing frivolous, misconceived or vexatious petition only just to waste the precious time of the Court and to waste the money for such litigation. If such money belongs to the State Exchequer, then it should be expensed with due care & precaution, failing which, the responsibility should be fixed on erring authority.

15. I am unable to comprehend as to why the order dated 10.10.2023 has been challenged before the Apex Court inasmuch as if the ground/reason challenging the order was appropriate, reasonable and bona fide, the authority should have not requested before the Apex Court seeking liberty to withdraw the SLP.

16. Therefore, prima facie, it is clear that challenging the order dated 10.10.2023 before the Apex Court is nothing but misuse of the process of the Court and wasting the precious time of the Apex Court, besides, is in utter disregard of the specific guidelines of the Government Order dated 31.05.2017 (supra). Therefore, a specific explanation is needed from the opposite party no. 2, who was the petitioner before the Apex Court as to why he has challenged the order dated 10.10.2023 before the Apex Court instead of filing affidavit of compliance before this Court stating therein that the order of writ court has been complied with in its letter and spirit, inasmuch as had such fresh affidavit of compliance been filed, the contempt petition would have been dismissed.

17. List this case on 13.12.2023. On that date, the opposite party no. 2 - Mr.

Naveen Chandra, Consolidation Commissioner, Uttar Pradesh, Lucknow, 7th Floor, Indira Bhawan, Ashok Marg, Lucknow-226001 shall appear in person and he shall file his explanation on the aforesaid observation.

18. In the meantime, Shri Abhineet Jaiswal, learned counsel for petitioner shall file his reply/objection to the second affidavit of compliance.

19. It is made clear that any appropriate order may be passed on the next date after perusing the explanation so filed by the authority concerned.

20. Let a copy of this order be placed before the Chief Secretary, Government of U.P., Lucknow, Principal Secretary/Legal Remembrancer, Department of Law, Government of U.P., Lucknow and opposite party no. 1, namely, Shri Sudhir Garg, Additional Chief Secretary/Principal Secretary, Department of Revenue, Government of U.P., Civil Secretariat, Lucknow for perusal and necessary action, if so required, as per their wisdom, by the Senior Registrar of this Court within three working days."

3. Sri Abhineet Jaiswal has filed objection against the second affidavit of compliance and Sri G.S. Naveen Kumar, Consolidation Commissioner, U.P., Lucknow has filed affidavit of compliance, both the affidavits are taken on record.

4. The opposite party no. 2, Sri G.S. Naveen Kumar, is present in person.

5. Specific attention has been drawn towards para 74 of the affidavit of compliance of Sri G.S. Naveen Kumar, wherein it has been indicated that the order of the writ court has been complied with. For the convenience para 74 is being reproduced herein below :

"74. That it is further submitted that out of 305 posts, 141 candidates were recommended for promotion, further 119 posts have been kept reserved on the recommendation of the Committee and in view of pending information and direction sought from the Government, and remaining 45 posts have been kept reserved as their recommendation has been kept in sealed cover."

6. By means of para 76 the officer has tendered unconditional apology which reads as under :

"76. That the deponent is a responsible and law abiding government officer and has well profound respect for the Hon'ble Court and is always ready to obey the orders of this Hon'ble Court. In case, the Hon'ble Court feels that any contempt is made out from any act or omission of the deponent the deponent tenders unconditional and unqualified apology before this Hon'ble Court.

7. Further, attention has been drawn towards para 73, which reads as under :

"73. That furthermore it is submitted that the decision to move to the apex Court was a collective decision after seeking legal opinion and due approvals from higher authorities including the law department."

8. In para 73 of the affidavit it has been indicated that for approaching the Apex Court it was the collective decision after seeking legal opinion and due approval from the higher authorities including the Law Department but no material to that effect has been shown to the Court.

9. Having considered the arguments of learned counsel for the parties and having regard to the contents of aforesaid affidavit, prima-facie it appears that the order of the writ court has been complied with in its letter and spirit, therefore, this contempt petition stands **dismissed**, notices, if any, are discharged.

10. However, no proper explanation could be given by the authority concerned pursuant to the order dated 10.10.2023 inasmuch as in the entire aforesaid affidavit no specific reason / explanation has been given as to why the authority concerned has approached the Apex Court challenging the order dated 10.10.2023 whereas he was not actually aggrieved from that order and the public exchequer which is a hard-earned money of the tax payers has been wasted but considering the unconditional apology, so tendered by by the officer, who is present in person and also considering the submission of learned Senior Advocate, I hereby drop further contempt proceedings against the aforesaid officer with caution that he shall remain careful in future being a senior officer of the State Government.

11. Notably, the writ petition was filed by the Association, therefore, if any member / members of the Association is / are having his / her separate grievance, he / they may approach the competent authority / competent court of law for redressal of his / their grievance but no separate grievance of the members of the Association may be redressed by the contempt court.

12. However, considering the averments, so made in para 73 (supra), I would like to peruse those collective decisions pursuant thereto the Special Leave Petition has been filed before the Apex Court in derogation of the Government Order dated 31.5.2017 (supra) issued by the Principal Secretary / Legal Remembrancer, Department of Law, Government of U.P., therefore, the present Legal Remembrancer is directed to provide the relevant documents pursuant thereto the permission was given to approach the Apex Court challenging the order dated 10.10.2023.

13. On the next date any responsible officer from the office of L.R. shall produce those records in sealed cover and those records shall be perused by the Court. However, since the contempt petition has been dismissed so the officer shall not

present in person.

14. List on 21.12.2023 for the perusal of the records only.

15. Let the copy of this order be supplied to the Principal Secretary / Legal Remembrancer, Government of U.P., Lucknow by the Registry within two days for its compliance.

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[Rajesh Singh Chauhan, J.]

Order Date :- 13.12.2023

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