

Court No. - 5

Case :- CONTEMPT APPLICATION (CIVIL) No. - 5942 of 2014

Applicant :- Abdul Kayyum

Opposite Party :- Sri Neeraj Gutpa Prin. Secy. Home Lko. And 3 Others

Counsel for Applicant :- Tahir Husain

Counsel for Opposite Party :- S.C., Mata Prasad

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the applicant.

2. The applicant has alleged violation of interim order of Writ Court dated 27.05.2013 & order dated 13.09.2013 passed in Writ-C No.26941 of 2013. The relevant extract of the order dated 27.05.2013 is reproduced herein below:-

"11. Taking into consideration of the aforesaid facts and circumstances, we direct that the respondents will ensure that in village Kakoda, P.S. Kadar Chowk, Tehsil Sadar, District Budaun both temples and mosque will be allowed to use microphone/loud speaker within permissible limit of decibels i.e. at low noise levels within the prescribed decibels limit. Wherever exact decibel limit can not be measured by the administration, the noise should not be heard beyond 50 meters from the place where it is originating. The temple or mosque management will not be allowed to use amplifiers and any extension - speakers outside the premises

12. We also direct that during night time i.e. between 10.00 PM to 6.00 AM, as notified in schedule to Noise Pollution [Regulation and Control] Rules 2000, no microphone/loudspeaker will be permitted to be used and played, whether it is temple, mosque, church, gurudwara or any religious or public other place. This restriction will not be applicable to the prayers and 'namaz' during day time i.e. 6.00 AM to 8.00 PM.

13. We also find it appropriate to issue directions, in pursuance of the directions of Supreme Court as accepted by the State Government in its policy decision dated 12.10.2010, that no building for the religious purpose will be permitted to be constructed on public roads, streets, pavement, public parks and other public places.

14. Learned standing counsel is directed to place on record a positive policy decision taken by the State Government, with regard to use of microphones/loud speakers in tune with the decisions referred to as above, and Noise Pollution [Regulation and Control] Rules 2000, made under Environment (Protection) Rules 1986.

15. The policy with regard to use of microphones/loud speakers, to be framed by the State Government will also be made to cover the use of microphones, for all other purposes including meetings, marriage procession, religious festivities, elections etc. The State Government, in

the policy to be framed, will also consider banning of the use of loud speaker/microphone during examination period i.e. between March to May every year."

3. The relevant extract of the order dated 13.09.2013 is reproduced herein below:-

"The Supreme Court has already passed the order not to raise construction in the name of temple, Church, Mosque or Gurudwara etc on public streets, public parks or other public places etc., which is binding under Article 142 of the Constitution. Though it is not necessary to reiterate the said directions, the district administration/public authorities will take immediate steps to remove unauthorized constructions for religious purpose wherever they have been raised on public places and to stop further constructions on public places.

A copy of the order will be sent to the Chief Standing Counsel for communicating the order to the Principal Secretary (Home), for compliance of the order."

4. The applicant alleges that despite the stay order passed by Writ Court in Writ-C No.26941 of 2013, opposite parties have not acted upon it and confined the use of loudspeakers within the permissible limit of decibels i.e. at low noise levels within the prescribed decibels limit and wherever exact decibel limit can not be measured by the administration, the noise should not be heard beyond 50 meters from the place where it is originating.

5. There is no pleading in the contempt application as to which mosque or temple has used microphones beyond the permissible limit of decibels. The applicant has not alleged any date, time and place of mosque and temple where microphones have been used beyond permissible limit of decibels.

6. The proceeding of contempt is quasi criminal proceeding. Unless and until there is specific pleading alleging the date, time and place of violation of the order of this Court, no case for contempt is made out.

7. As the contempt is alleged for an act of individual which is in violation of the order passed by this Court and the proceeding being quasi criminal in nature, the opposite parties should be aware of the specific charge raised against them so as to enable them to rebut the charges levelled against them.

8. Learned counsel for the applicant could not point out from the contempt application that any specific averment has been made alleging the date, time and place when the order of Writ Court has been violated and the microphones have been used beyond the permissible limit of decibels.

9. In the contempt proceeding, if a specific charge is not made out from the pleading against the opposite party clearly stating the charge, no case for contempt is made out for the reason, as it is settled in law that no man should be unheard. Thus, until and unless the charge is specific, no opposite party would be in a position to rebut the charge.

10. Considering the aforesaid fact, this Court finds that this is a fit case where a cost of Rs.25,000/- should be imposed upon the applicant which shall be deposited in the High School Legal Services Committee within a period of one month.

11. In the event of default of submitting the aforesaid cost of Rs.25,000/-, the same shall be recovered as arrears of land revenue from the applicant.

12. In such view of the fact, this Court does not find any merit in the contempt application and accordingly, it is ***dismissed***.

13. After the judgement was delivered, counsel for the applicant has tendered apology, therefore, the cost of Rs.25,000/- which has been imposed is withdrawn.

Order Date :- 21.4.2022

Sattyarth