

Case :- CONTEMPT APPLICATION (CIVIL) No. - 437 of 2020

Applicant :- Badal Singh

Opposite Party :- Sri Anil, D.M. Meerut And Another

Counsel for Applicant :- Vibhu Rai, Abhinav Gaur, Anoop Trivedi (Senior Adv.)

Hon'ble Mahesh Chandra Tripathi, J.

1. Heard Shri Anoop Trivedi, learned Senior Advocate assisted by Shri Vibhu Rai, Advocate appearing for the applicant.

2. The present contempt petition alleges disobedience of the directions issued by Division Bench of this Court dated 1.5.2014 passed in Public Interest Litigation No.20773 of 2014 (Sumit Singh vs. State of UP and 4 others) as well as the order dated 3.12.2014 in Public Interest Litigation (PIL) No.44262 of 2014 (Ajay Kumar Mishra and another vs. U.P. Pollution Control Board through Regional Officer). The operative portion of the orders dated 1.5.2014 and 3.12.2014 read as under:-

"1) Order dated 1.5.2014 passed in Public Interest Litigation No.20773 of 2014

We, therefore, direct that the Pollution Control Board shall take all due and necessary steps to ensure that the work of the Regional Officers is closely monitored so as to ensure that the statutory duties and obligations which are cast upon them are duly performed. Now, when the Board has issued notices on 12 April 2014 to the brick kiln owners who have been operating their brick kilns without permission or consent of the Board, we direct that the Board shall make all endeavour to take the matter to its logical conclusion. The District Administration shall also co-operate with the Board to ensure compliance of law.

As it has come to the notice of the Court that some brick kilns have been conducting their business even without grant of No Objection Certificates or consent of the Board, it has become necessary to issue the following directions :-

i) We direct that the Board shall make a detailed survey of all the brick kilns operating in the districts of Meerut and Baghpat and ensure that any brick kiln found to be operating without the consent or permission of the Board and in breach of the 2012 Rules, is dealt with in accordance with law;

ii) We also find no reason or justification as to why the instructions/directions given above should not be applied across the State. We, therefore, direct that a survey should be carried out by the Board in respect of all the districts of the State. The survey shall be completed within a period of two months from the receipt of a certified copy of this order;

iii) Where the Board finds that the operation of any brick kiln is being carried out without the No Objection Certificate of the Board or in breach of the 2012 Rules, immediate steps shall be taken in accordance with law with due notice to the brick kiln owners. These enquiries shall be taken to their logical conclusion and shall be completed no later than within a period of three months thereafter;

iv) In order to maintain transparency in the working of the Board and its Regional Offices, details of the notices issued and the action taken should be periodically uploaded on the website of the State Pollution Control Board;

v) The Board shall also upload the names of all the brick kilns which have submitted applications for granting the No Objection Certificates as also the names of brick kilns which have been granted such certificates so as to facilitate a verification of whether any brick kiln in the State is being operated without the grant of the requisite permission or a No Objection Certificate of the Board. Likewise, the refusal to grant a No Objection Certificate should also be periodically uploaded on the website of the Board. The exercise of uploading the No Objection Certificates which have already been granted shall be completed within a period of two months;

vi) The due exercise of statutory powers by the Pollution Control Board also requires the co-operation of the District Administration and the law enforcement machinery. The District Administration and the law enforcement machinery of the districts shall, therefore, take all necessary steps to ensure due compliance with the lawful instructions and directives issued by the Board.

The writ petition is, accordingly, disposed of. There shall be no order as to costs."

2) Order dated 3.12.2014 passed in Public Interest Litigation No.44262 of 2014

The petitioners have filed a supplementary affidavit in these proceedings in which they have placed on the record at Annexure-3, the order of the Supreme Court dated 19 August 2014 dismissing a Special Leave Petition⁷ arising out of the judgment of this Court dated 1 May 2014.

The petitioners have, in the course of these proceedings, relied upon the consents which have been issued by the State Pollution Control Board in certain cases and their grievance is that, while granting its consent or, as the case may be, no objection, the State Pollution Control Board has merely required compliance with the OM dated 24 June 2013 without making it a condition precedent to the commencement of operations. It is in this background, that the reliefs, as narrated above, have been sought in these proceedings.

On 3 November 2014, the Chief Law Officer of the State Pollution Control Board has issued a circular to all the Circle Officers of the Board advertng to the OM dated 24 June 2013 of MoEF. The circular states that while granting the consent for the operation of a brick kiln, it must be verified as to whether the project proponent has obtained the environment impact clearance. Hence, it has been stated that the OM dated 24 June

2013 must be complied with and consent for the operation of a brick kiln should be granted only after it is duly verified that the project proponent has obtained the environment impact clearance for excavation of soil since, without the excavation of soil the operation of a brick kiln would not be possible. Since the MoEF has issued an OM on 24 June 2013 clarifying the matter and particularly the ambit of the SEIAA Notification of 2006 in its application to the activities of excavation/borrowing of brick earth or ordinary earth in connection with the operation of brick kilns, as noted earlier, it is necessary for the State Pollution Control Board to strictly abide and enforce the directions which have been issued under the OM dated 24 June 2013. Since a circular has been issued by the State Pollution Control Board to all its regional offices on 3 November 2013, no further directions are necessary, save and except to order and direct strict and scrupulous compliance by the District Administrations.

The petition is, accordingly, disposed of. There shall be no order as to costs."

3. Shri Anoop Trivedi, learned Senior Advocate submits that the Central Government has already issued various notifications that require mandatory conditions to be complied with before a brick kiln is allowed to operate but all such directions are being openly violated. He has placed reliance on the communication of the Central Pollution Control Board dated 24.10.2017 wherein it has been mentioned that nearly 70% brick kiln in the district are being operated in teeth of the directions issued by this Court and they are openly flouting the directions contained in the notification issued by the competent authorities. Once the aforesaid order dated 1.5.2014 passed in PIL No.20773 of 2014 had not been complied with, then the petitioners in the said PIL had earlier filed a Contempt Application (Civil) No.4985 of 2017 (Sumit Singh & others vs. Sri Bhagwani Singh Kangarot and 2 others) wherein while issuing notice to the opposite parties the Court had proceeded to pass a detailed order on 20.11.2014.

4. Shri Anoop Trivedi makes a statement at the bar that so far as the District Baghpat is concerned, the Circular dated 24.6.2013 has been complied with but in District Meerut the direction is not being complied with and as on date, about 100 brick kilns in District Meerut are operating without complying with condition no.5 of the notification dated 24.6.2013 without constructing 6 feet tin sheet fencing all around the mining project. The applicant preferred a representation to the opposite parties requesting therein not to approve mining plans of the brick kilns without ensuring the fencing with 6 feet tin sheet all around the mining project as per condition no.5 of the notification dated 24.6.2013 but no action whatsoever has been taken by the opposite parties. The brick kilns are continuing to operate on the basis of mining plans issued by the opposite parties without ensuring the mandatory condition no.5 of notification dated

24.6.2013 regarding construction of 6 feet high fencing of tin sheet around the mining project of brick kiln. The opposite parties are under an obligation to ensure strict compliance of the directions issued by this Court but the opposite parties are acting in gross derogation of the directions issued by Hon'ble Supreme Court as well as this Court. The opposite parties have committed civil contempt liable for punishment under Section 12 of the Contempt of Courts Act, 1971.

5. Prima facie a case of contempt has been made out.

6. Accordingly, issue notices to opposite parties returnable within four weeks to show cause as to why action in contempt be not initiated against them.

7. The noticed opposite parties need not appear in person at this stage.

Order Date :- 23.1.2020

RKP