

Court No. - 10

Case :- CONTEMPT APPLICATION (CIVIL) No. - 7549 of 2019

Applicant :- Nishkarsh Panwar

Opposite Party :- Smt. Shakuntala Gautam, D.M.

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

Hon'ble Mahesh Chandra Tripathi, J.

Heard Shri Anoop Trivedi, learned Senior Counsel assisted by Shri Abhinav Gaur, learned counsel for the applicant.

The applicant is before this Court against the wilful defiance of the order dated 3.12.2014 passed in Public Interest Litigation No.44262 of 2014 (Ajay Kumar Mishra & Anr. v. U.P. Pollution Control Board) and the order dated 1.5.2014 passed in Public Interest Litigation No.20773 of 2014 (Sumit Singh v. State of U.P. & Ors.). For ready reference the operative portion of the orders dated 3.12.2014 and 1.5.2014 are quoted as under:-

"03.12.2019

.....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 adverting 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."

"01.05.2014

.....In our view, for the purpose of these proceedings, even if the Court was to come to the conclusion that there is some doubt about the bonafides of the petitioner, that should not, in a matter as the present, result in rejection of the petition once facts which have a bearing on the public interest have been brought to the notice of the Court through an affidavit of the Pollution Control Board. Where a petition is filed for extraneous or oblique motives, the Court in the exercise of its judicial discretion may decline to interfere. However, this is undoubtedly a matter of judicial discretion because in a particular case, material may be brought to the attention of the Court independently by a statutory authority which may require judicial intervention. However, the Court has to be careful and circumspect because, where the locus of the petitioner or his motivation are in doubt, it may be necessary to structure the relief sought so as to ensure that the petition is not used as an instrument for suppressing a business rival. This note of circumspection has to be kept in mind in the present case.

The Pollution Control Board has now stated before the Court that in Baghpat district, No Objection Certificates were granted to nine brick kilns whereas in the case of five brick kilns, the proposals for the grant of No Objection Certificates were rejected. The notices which have been issued by the Pollution Control Board on 12 April 2014 (Annexure-3 to the counter affidavit) would indicate that despite the refusal of the No Objection Certificates, the brick kilns are being conducted. In our view, there is absolutely no reason or justification for the Board in failing to discharge its statutory obligation. It is only when this petition came up before the Court on 10 April 2014 that the Pollution Control Board seems to have been galvanized into action. Obviously, if the Board was active in the enforcement of law and in the discharge of its statutory obligation, it would not have waited for the intervention of the Court before taking such action. Hence, we must express our serious concern about the manifest failure on the part of the Board in not taking remedial measures. The Regional Officers of the Pollution Control Board must be held accountable for failure to carry out the statutory obligations which they have to perform.

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."

Learned counsel for the applicant states that the applicant has been making efforts for preservation of ecology and environment. He is quite concerned with the damage being caused to the arable lands by the mushrooming of brick kilns and insensitive attitude of the authorities concerned towards the compliance of mandatory provisions for preserving environment and ecology by the brick kilns. It is alleged that brick kilns are continuously flouting with impunity the directions issued by the Ministry of Environment and Forest as well as various orders passed by this Court.

Learned counsel for the applicant states that the PIL No.20773 of 2014 (Sumit Singh v. State of U.P. & Ors.) had been filed with a grievance in regard to the establishment and operation of brick kilns in violation of the provisions of the Uttar Pradesh Brick Kilns (site Criteria for Establishment) Rules, 2012 in the districts of Baghpat and Meerut and the said PIL had been disposed of with observations quoted as above. Learned counsel for the applicant in support of his submissions has placed reliance mainly on direction nos.(i) and (vi) of the order dated 1.5.2014. He further apprised to the Court that the said judgment had been assailed before Hon'ble the Apex Court but the said petition had been dismissed by Hon'ble the Apex Court.

Learned counsel for the applicant in support of his submissions has also placed reliance on the circular issued by the U.P. Pollution Control Board dated 30.01.2019, wherein reliance has been placed on the observations made in the order dated 13.9.2018 passed by NGT, New Delhi in O.A. No.186/2016, 200/2016, 580/2016, 102/2017, 404/2016, 405/2016 and 520/2016, which reads as under:-

".....(ii) Form-IM be made more comprehensive for areas of 0 to 5 ha by dispensing with the requirement for Public Consultation to be evaluated by

SEAC for recommendation of grant EC by SEIAA instead of DEAC/DEIAA.....”

Learned counsel for the applicant has also placed reliance on the joint meeting minutes of SEIAA and SEAC held on 5.2.2019, which is appended as Annexure No.13 to the contempt application.

In this backdrop, it is submitted that cause of action arose when the applicant has obtained necessary information under the Right to Information Act on 19.3.2019, which is appended as Annexure No.14 to the contempt application, wherein it has been informed that in last several years SEIAA has not accorded Environment Clearance Certificate to any of the brick kilns in District Baghpat. As such it is submitted that inspite of clearcut direction issued by this Court, NGT as well as SEIAA and SEAC, the brick kilns are being run without license and, which is causing havoc in the area.

It is also submitted that in response to the mandate of the NGT, the Ministry of Environment, Forest and Climate Change had issued an office memorandum dated 12.12.2018 directing all the authorities to comply with the said directions and to submit compliance report, which was duly served upon all the Chief Secretaries of all the State including the State of Uttar Pradesh. In compliance of the said direction the U.P. Pollution Control Board had issued a direction vide letter dated 30.01.2019 (Annexure 12 to the contempt application) by which all the Regional Officers of the Board have been directed to insist for the Environment Clearance Certificate issued by SEIAA instead of DEIAA in the matter of establishment of Brick Kiln. In compliance of the office memorandum dated 12.12.2018 a Joint Meeting of State Environment Impact Assessment Authority and State Environment Appraisal Committee had been convened on 5.2.2019 and it was decided that all mining projects of minor minerals having area upto 5 hect. will have to be apprised by UPSEIAA for environment clearance. It is contended that B-2 projects of minor minerals having area upto 5 hect. be appraised by SEAC and SEIAA. It has categorically been provided that

the Environment Clearance Certificate has to be provided by SEIAA and not DEIAA.

So far as present matter is concerned, it appears that at no point of time any environmental clearance has been issued by the opposite party as per law and the same has not been given by SEIAA and as such the speaking orders passed by this Court in aforesaid public interest litigations and the orders passed by the U.P. Pollution Control Board has not been complied with.

The argument so advanced by learned counsel for the applicant has force and prima facie contempt is made out against the opposite party.

Issue notice to the opposite party, returnable in four weeks, to show cause as to why the contempt proceeding be not initiated against him.

Order Date :- 16.11.2019
SP/