

(2012) 02 AHC CK 0125

In the Allahabad High Court

Case No : Contempt Application (Civil) No. - 110 of 2012

Changa Singh

APPELLANT

Vs

B. Muttu Kumar Swami, I.A.S., Collector and Others

RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Citation : (2012) 02 AHC CK 0125

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Judgement

Vikram Nath, J.—Compliance affidavits filed by the opposite parties No. 1 to 3 are taken on record. Learned counsel for the applicant may file replies to the same, within a week.

2. Writ Petition No. 40596 of 2011 was disposed of by the judgment and order dated 2.9.2011. The operative portion of the order contained four directions, the same are quoted hereunder-

(i) The petitioner shall not realize any Tahbazari in excess to the rate prescribed by the Zila Panchayat, Mahoba.

(ii) The petitioner shall establish appropriate boards at the places from where the petitioner has been authorized to realize Tahbazari giving the details of the various rates prescribed for realization of fee from different kind of vehicles so that transporters, vehicle owners may know the amount which they are required to pay.

(iii) In the event, the places which have been specified in the contract are not places from where the vehicles start after loading the minor minerals, it shall be open for the Zila Panchayat to identify such places from where the vehicles start after loading the minor minerals and if required, may execute a supplementary agreement with the petitioner for the purpose of realizing of Tahbazari fee from such specified places.

(iv) Subject to the petitioner's carrying out the realization in accordance with the terms and conditions of the agreement and as per the directions issued above, the respondents shall permit the petitioner to realize the Tahbazari fee as per prescribed rate from specified places.

3. Pursuant to the direction No. (iii), the Zila Panchayat, Mahoba vide letter dated 1.10.2011 informed the applicant identifying 6 new sites where the applicant could make recovery of the Tahbazari from the vehicles which were loading minor minerals within the district of Mahoba. The district administration objected to the sites identified by the Zila Panchayat as according to it the sites which had been identified were on the main road causing obstruction and inconvenience to the free flow of traffic. Further it was not in the spirit of the directions issued by the Division Bench. The applicant was stopped from collecting the Tahbazari which resulted into filing of the present contempt application. Notices were issued on 10.1.2012 whereupon the affidavit of compliance has been filed by the opposite parties today. In the affidavit of the opposite party No. 1 the Collector, Mahoba what has been stated is that as the sites identified by the Zila Panchayat pursuant to the directions of the Division Bench contained in the order dated 2.9.2011 were not in consonance of the directions of the Division Bench and in fact were contrary to the letter and spirit of the directions of the Division Bench, the applicant was not permitted to realize the Tahbazari from the said 6 sites. It is further stated in the affidavit of the Collector that an inquiry report was submitted by the Chief Development Officer, Mahoba, based upon that matter has been referred to the State Government and the Chairman and the Executive Officer of the Nagar Panchayat, Mahoba were also apprised of the incorrect identification of the sites. Despite the same neither the State Government has issued any directions nor the officers of the Zila Panchayat have changed the sites.

4. Learned counsel for the applicant has submitted that out of the 6 sites identified by the Zila Panchayat in its letter dated 1.10.2011, at 3 sites, mentioned at serial nos.1, 2 & 6, there are check posts of the Forest Department and the Minor Minerals Department and therefore, there was nothing wrong in the Zila Panchayat identifying such sites. It is further submitted that even the other 3 sites are close to the places where the vehicles are loaded with minor minerals near stone crushers and the same has been done after due inspection by the officers of the Zila Panchayat. According to the learned counsel for the applicant the Collector and the other officers of the district administration with malafide and for oblique motives are obstructing the recovery of the Tahbazari, to which the applicant is duly entitled under the agreement with the Zila Panchayat. It is further submitted that the Collector has no role to play in the identification of the sites as the directions of the Division Bench was to the Zila Panchayat, Mahoba and the agreement is also with the Zila Panchayat, Mahoba and not with the Collector, Mahoba.

5. Whatever may be the reasons this Court cannot go into the same at this

stage. However, the Court feels that in case the applicant is restrained from realizing the Tahbazari, it would be the Zila Panchayat which would ultimately suffer financial losses as the applicant would start claiming reduction in the auction money as he has not been able to realise the Tahbazari, admittedly, by the district administration. The Collector ought to have considered this aspect of the matter and instead of corresponding with the State Government ought to have called upon a meeting with the officers of Zila Panchayat and the applicant should have found out an amicable solution after identifying or suggesting sites from which Tahbazari could be realised. Outrightly stopping the applicant from realising the Tahbazari would result into heavy losses to the applicant, Zila Panchayat and undue benefit would derive by the vehicle owners transporting such minor minerals. In case the collector was satisfied that the sites have not been correctly identified he could have identified fresh sites and convince the Zila Panchayat to adopt the same and accordingly permitted the applicant to continue with the realisation.

6. Accordingly it is provided that the Collector, district Mahoba will get fresh sites identified which according to him would not cause any obstruction in the free flow of the traffic and inconvenience to the moving traffic and which would also be in the letter and spirit of the judgment of the Division Bench, within a week from today and place the same before this Court on the next date fixed. The identification of the sites may be done after consulting the Superintending of Police, Regional Transport Officer and other officers of the administration who may be involved in the management and control of the traffic taking into consideration other relevant factors also.

7. The Chairman, the Executive Officer and the Upper Mukhya Adhikari, Nagar Panchayat Mahoba shall cooperate with the Collector, Mahoba in the exercise which he has to undertake under the orders of this Court. It goes without saying that the applicant shall also extend all cooperation.

8. Put up this case in the additional cause list on 23.2.2012.

9. A copy of this order be provided to Sri A.C. Mishra, learned Standing Counsel, free of costs, within 24 hours, for necessary compliance.