

**Court No. - 50**

**Case :-** CONTEMPT APPLICATION (CIVIL) No. - 2948 of 2020

**Applicant :-** Smt. Gomati Koranga

**Opposite Party :-** Dr. Vijay Kumar Yadav, Chief Medical Officer

**Counsel for Applicant :-** Vivek Mishra

**Hon'ble Vivek Kumar Birla,J.**

Heard learned counsel for the applicant and Sri K. R. Singh, learned Additional Chief Standing Counsel for the State.

The present contempt application has been filed for punishing the Opposite Party for willful disobedience of the judgment and order dated 22.10.2019 passed by this Court in Writ A No. 15083 of 2019.

Pursuant to the order passed by this Court, opposite party Dr. Vijay Kumar Yadav, Chief Medical Officer, Bijnor is present in Court.

Sri K. R. Singh, learned Additional Chief Standing Counsel has filed an affidavit of compliance along with an exemption application and for withdrawing the non-bailable warrant issued against the opposite party. Along with the affidavit, an order dated 19.10.2020 has also been annexed to indicate that the order of the Writ Court has been complied with.

This is the second contempt application which reflects the sorry state of affairs as already observed by me in my order dated 9.9.2020, which is quoted herein as under:

*"Heard learned counsel for the applicant.*

*The present contempt application has been filed for punishing the opposite party for willful disobedience of the judgment and order dated 22.10.2019 passed by this Court in Writ Petition No. 15083 of 2019 and the order dated 16.12.2019 passed in Contempt Application (Civil) No. 8380 of 2019.*

*It is stated by the learned counsel for the applicant that a copy of the order of Writ Court dated 22.10.2019 was served to the opposite party. When nothing was done, the applicant filed the above noted contempt application. The Contempt Court vide order dated 16.12.2019 has granted two months more time for compliance of the order of this Court. It is stated that even after the service of the order of contempt court and after expiry of four months, no decision has yet been taken by the opposite parties.*

*Prima facie, a case for punishing the opposite party for willful disobedience of the orders as noted above is made out.*

*Issue notice to the opposite parties to show cause by appearing in person before the Court as to why charge be not framed for punishing him under Section 12 of Contempt of Courts Act for willful disobedience of the orders as noted above.*

*This Court is noticing everyday that apparently the officers concerned, who were directed to act as per the order of the Court, are not complying with the orders at the first instance and the aggrieved party is forced to file contempt application and even after granting further time to comply with the order of the writ Court passed in contempt application, the orders not being complied with. Apparently the Officers are becoming habitual and not complying with the orders of this Court at the first instance.*

*This is a sorry state of affairs and it is expected that the opposite party shall make every effort and shall also issue necessary orders in this regard to the subordinate authorities to strictly comply with the orders at the first instance itself, otherwise the Court will take serious view of the matter. List on the date mentioned in the notice before the appropriate Bench.*

*The matter shall not be treated as part heard or tied up to this Bench. "*

*Even after issuance of the notice on the second contempt application, no one turned up. Consequently, this Court was constrained to pass the order dated 19.11.2020, which is quoted herein as under:*

*"Heard Mr. Vivek Mishra, learned counsel for applicant.*

*This Court passed an order dated 09.09.2020 in present contempt application which reads as under :*

*"Heard learned counsel for the applicant.*

*The present contempt application has been filed for punishing the opposite party for willful disobedience of the judgment and order dated 22.10.2019 passed by this Court in Writ Petition No. 15083 of 2019 and the order dated 16.12.2019 passed in Contempt Application (Civil) No. 8380 of 2019.*

*It is stated by the learned counsel for the applicant that a copy of the order of Writ Court dated 22.10.2019 was served to the opposite party. When nothing was done, the applicant filed the above noted contempt application. The Contempt Court vide order dated 16.12.2019 has granted two months more time for compliance of the order of this Court. It is stated that even after the service of the order of contempt court and after expiry of four months, no decision has yet been taken by the opposite parties.*

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*This is a sorry state of affairs and it is expected that the opposite party shall make every effort and shall also issue necessary orders in this regard to the subordinate authorities to strictly comply with the orders at the first instance itself, otherwise the Court will take serious view of the matter.*

*List on the date mentioned in the notice before the appropriate Bench.*

*The matter shall not be treated as part heard or tied up to this Bench. "*

*Pursuant to the order dated 09.09.2020, notice was issued to opposite party.*

*Office has submitted a report dated 18.11.2020 that notice issued to opposite party has been served. However, inspite of service of notice upon opposite party, no one has appeared on his behalf nor the opposite party has appeared in person.*

*In view of above, let non bailable warrant be issued against the opposite party for securing his present on 03.12.2020.*

*List this case on 03.12.2020 for orders before appropriate Bench. "*

Office report dated 2.12.2020, based on report of the CJM, Bijnor, reflects that non-bailable warrant could not be served upon opposite party as he had come to Prayagraj to attend this Court. The same were received in the office of Chief Judicial Magistrate on 27.11.2020. GD entry was made on 30.11.2020 and report was submitted on 1.12.20. The affidavit was sworn by the opposite party on 3.12.2020.

Today opposite party is present in Court. The source of information that the matter is date fixed for today is nowhere disclosed in the affidavit, in case the opposite party has not received any earlier order of this Court.

Prima facie, such non-bailable warrant could not have been returned in such a casual manner by the office of the opposite party. It further reflects that the opposite party not only ignored the order of this Court but also avoided the service of non-bailable warrants which are to be executed by the law enforcement agency by following proper procedure of law.

Along with affidavit of compliance, a copy of the show cause notice dated 24.11.2020 issued by the opposite party to one Mohd. Ahmad, stenographer has also been annexed as annexure

13 to the affidavit to indicate that he has been issued a show cause notice to submit his explanation within three days and he has also been removed from the place of posting.

No doubt, the order of the Writ Court has been complied with, as such taking a lenient view of the matter, no further orders in so far as violation of the order of the Writ Court is concerned are being passed. However, this Court is experiencing on a number of occasions that the order of this Court are not being complied with at first instance. In several matters, the higher authorities or the Courts are approached with a considerable delay to save skin.

A perusal of the record and the explanation submitted, as well as opposite party present here, who though states that he was not made aware of the order of this Court, clearly indicates that the service of the order of the Writ Court cannot be disputed. It is also not in dispute that the first contempt application no. 8380 of 2019 was disposed of vide order dated 16.12.2019 giving one more opportunity to the opposite party to comply with the order of the Writ Court. The said order is quoted herein as under:

*"The grievance of the applicant is that the opposite party-contemnor has intentionally and deliberately flouted the order of the Writ Court dated 22.10.2019, passed in Writ Petition No. 15083 of 2019, copy of which order has been annexed to the affidavit accompanying the contempt application.*

*Learned counsel for the applicant contends that the aforesaid order of the Writ Court was duly served upon the opposite party by registered post vide application dated 30.10.2019 copy whereof is annexed as Annexure - 18 to the affidavit accompanying the contempt application. It is contended that in spite of service of the order of the writ Court, same has not been complied with, therefore, the opposite party has deliberately flouted the order of the Writ Court.*

*The opposite party is bound by the order of this court and in case he does not comply with the directions of the writ court within a period of two months of receipt of this order, without any reasonable cause, the court would have no option but to proceed against him under the Contempt of Courts Act.*

*The applicant shall supply a duly stamped registered envelope addressed to the opposite party and another self-addressed stamped envelope to the office within two weeks from today. The office shall send a copy of this order along with the self-addressed envelope of the applicant with a copy of contempt application to the opposite party within three weeks from today and keep a record thereof.*

*The opposite party shall comply with the directions of the writ court and intimate him of the order through the self-addressed envelope within a week thereafter.*

*In case, opposite party does not comply with the aforesaid directions, it would be open to the applicant to approach this court again.*

*With the aforesaid observations, this application is finally disposed of at this stage."*

In spite of the order passed in the first contempt application which was served through office of this Court as reflected from paragraph 16 of the affidavit there had been callous negligence either on part of the office or on part of the opposite party himself. However, at this stage, this Court is concerned with the administration of justice and compliance of the orders of this Court by the authorities concerned, who have been issued directions by this Court.

In such view of the matter, this contempt application is kept pending for further report to be submitted by the opposite party on his affidavit as to what action has been taken against the person responsible for not communicating the order to him.

It is further provided that Sri K. R. Singh, learned Additional Chief Standing Counsel shall send a copy of this Court to the Chief Secretary, State of U.P. so that he may issue necessary directions to all the Head of the offices that care must be taken by the offices/officials concerned to immediately communicate the authority concerned about the order of this Court so as to avoid initiation of the contempt proceedings for non-compliance of the orders of this Court.

In the facts and circumstances of the case, taking a lenient view in the matter, non-bailable warrant issued against opposite party stands withdrawn and his personal appearance is exempted for future dates unless ordered otherwise by this Court.

This contempt application is kept alive only for the aforesaid purpose.

The applicant is at liberty to avail the remedy as may be available to him in accordance with law, in case he is disputing the merits of the order passed by the opposite party in compliance of the order of the Writ Court.

List in the additional cause list on 8.2.2021.

**Order Date :- 3.12.2020**

Kuldeep