

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Cont. Cas. (C) NO. 4/2009**

% **Reserved on : 02.03.2009**
Date of Decision : 09.4.2009

DR. D. K. ATTERY

.... Petitioner

Through Mr. Arvind Kr. Sharma, Advocate

Versus

MR. KANWAL SINGH MEHRA

.... Respondent

Through Mr. Ravi Shankar Prasad, Sr. Adv. with
Ms.Maninder Acharya and Mr.Vikas
Sethi, Advocates.

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

V. K. SHALI, J.

1. This order shall dispose of the contempt petition filed by the petitioner against the respondent nos. 1 to 4 under Sections 11 and 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India against the respondents for having willfully and deliberately violated of the order dated 7th November, 2008 passed in WP(C) No. 7879/2008.

2. That briefly stated the facts, as alleged in the contempt petition, are that the petitioner vide office order dated 6th October, 2008, the petitioner who was working as CMO, AVH Haiderpur, was transferred and posted as Resident Medical Superintendent, Ayurvedic Panchkarma

Hospital, Kalu Sarai in place of Dr. Raj Mann with immediate effect. In this order, it was mentioned that Dr. Raj Mann will continue to work as CMO in the same hospital. Another office order dated 23rd October, 2008 was passed by the respondents wherein it was directed that the status quo shall be maintained in respect of the earlier office order dated 6th October, 2008 by virtue of which the petitioner was transferred as Resident Medical Superintendent, Ayurvedic Panchkarma Hospital. It was stated in the office order that Dr. Raj Mann would continue to work as Resident Medical Superintendent in the same hospital in question.

3. The petitioner feeling aggrieved by virtue of the office order dated 23rd October, 2008 filed a writ petition bearing No. 7879/2008 against the respondents/MCD in which Dr. Raj Mann was also made as a party. In this writ petition an order dated 7th November, 2008 was passed in the presence of counsel for the respondent no.1/MCD. The exact language of the said order is as under:

“ The petitioner was promoted as Resident Medical Superintendent in Ayurvedic Panchkarma Hospital, Kalu Sarai vide office order passed by respondent No. 1 on 06.10.2008. The petitioner in para 1 at page 2 of the writ petition has stated that pursuant to order of his promotion dated 06.10.2008, he has taken over the charge of the post of Resident Medical Superintendent in Ayurvedic Panchkarma Hospital, Kalu Sarai w.e.f. 06.10.2008 and this statement made by him is supported by his affidavit filed along with the writ petition. Respondent No. 1 after promoting the petitioner vide order dated 06.10.2008 has passed the impugned order dated 23.10.2008 directing to maintain status quo in relation to promotion order of the petitioner dated 06.10.2008 and asked respondent No. 2 Dr. Kumari Raj Mann to take over the charge of the post of Resident Medical Superintendent in Ayurvedic Panchkarma Hospital, Kalu Sarai. According to the

petitioner, respondent No. 2 has not taken over the charge of the post of Resident Medical Superintendent in Ayurvedic Panchkarma Hospital, Kalu Sarai till date.

The petitioner has contended in this writ petition that his seniority in the list of CMOs is at serial No. 45 whereas the seniority of respondent No. 2 in the cadre of CMOs is at serial No. 97. The petitioner has annexed the copies of the seniority lists which are at pages 18 and 21 of the paper book to show relative seniority of the petitioner qua respondent No. 2. The grievance of the petitioner in this writ petition is that respondent No. 1 could not have promoted respondent No. 2 who is junior to him and the impugned order according to the petitioner has the effect of reverting him without following due process of law or giving any hearing to him.

The contentions raised by the petitioner in this writ petition requires consideration and will be decided after notice to the other side. Having regard to the facts and circumstances of the case pleaded by the petitioner in the petition and the submissions made by his counsel, the operation of the impugned order dated 23.10.2008 is stayed till next date of hearing.

Issue notice of the writ petition and also of the stay application to the respondents.

Ms. Maninder Acharya accepts notice on behalf of respondent No. 1. Notice be sent to respondent No. 2 on filing of PF and registered A.D. Cover returnable on next date.

Counter affidavit to the petition and reply to the stay application be filed by respondent No. 1 within four weeks. Rejoinder, if any, within two week thereafter.

Dated: 07.11.2008

Sd/-
S.N. AGGARWAL

4. It was further alleged in the petition that the respondent/MCD feeling aggrieved by the aforesaid order preferred an LPA bearing No. 799/2008 which was also dismissed. Thereafter, the respondent/MCD also choose to file an SLP against the order of the Division Bench dated Cont. Cas. (C) No. 4/2009

19th February, 2009. In this SLP, the Hon'ble Supreme Court has observed that since the order under challenge was in the nature of an interim order they were loath to interfere in the same, however, the respondent was given liberty to bring on record all subsequent developments, if any.

5. It has been contended by the learned counsel for the petitioner that despite the order dated 7th November, 2008 passed by this Court and upheld right upto the Hon'ble Supreme Court. The respondents have not handed over the charge of the post of Resident Medical Superintendent to the petitioner. It is this alleged non handing over of the charge of the post of Medical Superintendent by the respondents to the petitioner, he is feeling aggrieved because of which he was constrained to send a number of letters and representations to the respondents to give effect to the office order dated 6th October, 2008. It was alleged in view of stay on the order dated 23rd October, 2008 the earlier order dated 6th October, 2008 comes into operation. The necessary consequence of this would be that the petitioner not only has to work as Resident Medical Superintendent of the hospital in question but also the fact that the charge of the said post is to be handed over to the petitioner. Since this was not done despite the fact that sufficient time have elapsed the petitioner was constrained to file the present petition against Mr. Kanwal Singh Mehra, Commissioner (MCD), Mr. Naresh Kumar, Addl. Commissioner (Health), Dr. Madhu Jain, Director (Hospital Administration), MCD, Town Hall and Mrs. Alka Sharma, Addl. Deputy Commissioner (Health), Municipal Corporation of Delhi for

initiation of contempt proceedings against them under Sections 11 and 12 of the Contempt's of Court Act, 1971 and punish them in accordance with law.

6. An advance copy of the contempt petition was given to the learned counsel for the respondents, Ms. Maninder Acharya representing the MCD who filed a reply on behalf of the respondents. In the reply, it was contended by the learned counsel that the respondents did not intend to violate any order of the Court much less the same was willful and deliberate. On the merits of the application, it was stated that the order dated 7th November, 2008 passed by the learned Single Judge directing the status quo with regard to the office orders dated 23rd October, 2008 has been fully complied with by passing an order dated 16th February, 2009 whereby the Dr. Raj Mann has been reverted back to the post of CMO in the same hospital and she does not continue to be as Resident Medical Superintendent. It was stated that the passing of a fresh order dated 16th February, 2009 shows bona fides that the respondents and its officials who are arrayed respondents herein in the contempt petition that they can never ever dream to violate the orders of the Court.

7. I have heard the learned counsel for the parties and perused the record carefully. The main contention on the basis of which the learned counsel for the petitioner is urging that contempt has been committed by the respondents is the fact that once the office order dated 23rd October, 2008 is stayed by the Court, the earlier office order dated 6th October, 2008 comes into operation and in pursuance to the said

operation although the petitioner has taken up the charge of the post of Resident Medical Superintendent of the hospital in question yet the respondents have not handed over the charge of the said post to the petitioner. As a consequence of which it is contended that this constitutes the willful and deliberate violation of the orders dated 7th November, 2008. The crux of the contention of the learned counsel for the petitioner is that once the order of status quo with regard to the office order dated 23rd October, 2008 is passed on 7th November, 2008 this ipso facto assumes that the earlier the order of transfer of the petitioner dated 6th October, 2008 comes into operation and the petitioner has not only to function as a Resident Medical Superintendent of the hospital in question but also he has to be given the charge therein of the said post so that he can effectively implement the orders. It was contended that this is all the more necessary on account of the fact that the order dated 7th November, 2008 which was passed by the learned Single Judge was not only affirmed by the Division Bench but also by the Hon'ble Supreme Court.

8. At the outset, it is not in dispute that the contempt would be made out against a party if not only it disobeys the orders of the Court but such disobedience ought to be willful, deliberate and contumacious. The Courts have been repeatedly holding is that the contempt power must be exercised very sparingly and it is only, in cases, where majesty of the law is sought to be lowered on account of the action or in-action of the alleged contemnor that the Court must invoke this power of initiation of contempt proceedings. It is pertinent in this regard to refer

to observations passed by the Hon'ble Supreme Court in the case titled

Jhareswar Prasad Paul & Anr. Vs. Tarak Nath Ganguly & Ors. (2002)

5 SCC 352 wherein it has been observed as under:

“The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law, since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of court is a special power vested under the Constitution in the Courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct.”

9. Similarly, there are authorities galore to the effect that in case there is an ambiguity in the order or where the order is capable of two different interpretations that certainly it could not be said to be contempt is made out against a party in case it chooses to observe a particular line which may be in-consistent with the ambiguous order and though the same may not be to the liking of the petitioner. Reliance in this regard is placed on the same in the case titled **Tilak Ram (since deceased) Vs. Z.U. Siddiqui & Ors.** 107(2003) DLT 565 wherein it has been laid down that determination of Court whether two or more understandings or interpretations reasonably are possible it will be wholly inappropriate on the part of the Court to press into use the power contained under Contempt's of Court Act, 1971. In such a case, the petitioner ought to be granted liberty to pursue any

appropriate legal proceedings to lay at rest the controversy in the fuller adjudication.

10. Now coming back to the facts of the present case, on 7th November, 2008 the petitioner by virtue of an independent writ petition bearing No. 7879/2008 challenged the validity of the office order dated 23rd October, 2008 by which the respondent/MCD had directed the maintenance of the status quo with regard to the service of the petitioner but had also permitted Dr. Raj Mann to work as Resident Medical Superintendent. The Court had stayed the said order dated 23rd October, 2008, but it did not mean that the earlier order dated 6th October, 2008 was directed to be implemented. Moreover, it was the case of the petitioner that he had already taken the charge of the post of Medical Superintendent in pursuance to office order dated 6th October, 2008, then there was no occasion for the Court to comment on the order dated 6th October, 2008. It was in this background that the learned counsel for the petitioner had made a specific submission before the Court which is recorded in the order dated 7th November, 2008 wherein it has been stated that pursuant to the offer of the promotion of the petitioner dated 6th October, 2008, he had taken over the charge of the post of Resident Medical Superintendent. It was in this context that the learned Single Judge had observed as under:

“Having regard to the facts and circumstances of the case pleaded by the petitioner in the petition and the submissions made by his counsel, the operation of the impugned order dated 23.10.2008 is stayed till next date of hearing.”

11. In the office order dated 23rd October, 2008 although there is a stay against the operation of the said order but this direction of the Court could not be deemed to have revived ipso facto order dated 6th October, 2008 the order by virtue of which the petitioner was transferred to the post of Resident Medical Superintendent of Ayurvedic Panchkarma Hospital, Kalu Sarai in place of Dr. Raj Mann. This is an ambiguity in the order dated 7th November, 2008 in as much as there is no specific direction in the said order that on account of the stay of order dated 23rd October, 2008, the order dated 6th October, 2008 gets automatically revived. This ambiguity is further compounded by the averment made by the petitioner in the writ petition in which the order dated 7th November, 2008 was passed, as the learned counsel for the petitioner had made a specific submission before the Court that “pursuant to the order of his promotion dated 6th October, 2008 the petitioner had taken over the charge of post of Resident Medical Superintendent” meaning thereby when the order dated 7th November, 2008 was passed the petitioner had not only taken the charge of the post of Resident Medical Superintendent but he was functioning as such Resident Medical Superintendent. If that be so that the petitioner was functioning as a Resident Medical Superintendent and he had taken the charge of the said post then there was absolutely occasion for the respondents to have passed a fresh office order dated 23rd October, 2008 directing the status quo in respect of the order dated 6th October, 2008 because the said order had in the light of the submissions had already been implemented.

12. Further, when the contempt petition is filed by the petitioner the main grievance of the petitioner is that the respondents are not handing over the charge of the post of Resident Medical Superintendent to the petitioner. This averment is made by the petitioner in paragraph 8 of the petition which reads as under:

“It is pertinent to mention herein that the said Act of the respondents is willful and deliberate as the same will be clear from the fact that the 06.10.2008 though the petitioner being posted as Resident Medical Superintendent and having joined Resident Medical Superintendent ayurvedic Panchkarma Hospital, Kalu Sarai has not been giving charge for the reasons best known to the respondents despite the petitioner having filed a representation to the respondents to implement the order dated 06.10.2008.”

13. The aforesaid facts pleaded by the petitioner in the present contempt petition are totally at variance with the submissions made by the learned counsel for the petitioner when the order dated 7th November, 2008 was passed by this Court. In the first instance, the petitioner is saying that the charge has not been handed over of the post of Resident Medical Superintendent although he has joined so, while as during the course of making of his submission on 7th November, 2008 he says that not only he has joined as Resident Medical Superintendent but also taken the charge thereof.

14. Clearly, there is an ambiguity in the stand of the petitioner himself much less to say about the order dated 7th November, 2008 inasmuch as although the operation of the office order dated 23rd October, 2008 has been stayed but it does not specifically say that the office order dated 6th October, 2008 continues to be in existence. As a matter of fact, there is no occasion for the learned Court to have pass

any order with regard to the office order dated 6th October, 2008 because the petitioner himself had apparently made a statement that he has already joined as Resident Medical Superintendent and taken the charge thereof which he is now trying to riggle of out and then take the charge on the strength of the present contempt.

15. The purpose of contempt proceedings is not to amplify or explain or to fill up the ambiguity which will be there in the order or which the petitioner is alleging violation. Conversely, in case, an order is capable of two interpretations then the benefit of the same cannot be given to the petitioner so as to fill up that lacuna and punish the respondents for contempt as the contempt proceedings are punitive, they have to be given very strict interpretation.

16. For the reasons mentioned above, I am of the considered opinion that prima facie there may be disobedience of the order dated 7th November, 2008 passed by the Court on the part of the respondents, but this cannot be construed to be a willful and contumacious disobedience so as to enable the petitioner to compel or persuade the Court to punish for contempt because the petitioner himself has made contrary averments in the first instance that he had taken the charge of post of Medical Superintended. There is absolutely no impediment on the part of the petitioner that if he has not taken the charge of the post of Resident Medical Superintendent or if he wants to give an interpretation that the staying of the operation of the office order of 23rd October, 2008 the ipso facto brings the earlier office order dated 6th October, 2008 into operation he may obtain necessary clarification from

the Court where the matter is pending but certainly it does not tantamount to indicating a contempt proceedings against the respondent.

17. It is also urged by the learned counsel for the petitioner although the four respondents were arrayed as alleged in the contempt petition but the affidavit was filed by one of the respondents. I have perused this fact. This is only a response to the show cause notice where the affidavit has been filed on behalf of the respondent no. 1. It has been stated that this is a reply on behalf of all the respondents. In any case, this is only a technical objection, first of all, the Court must be satisfied that prima facie case for contempt is made out.

18. For the reasons mentioned above, I discharge the contempt notice and dismiss the petition for initiating the contempt proceedings under sections 11 and 12 of the Contempt's of Court Act, 1971 against the respondents. However, the petitioner shall be free to obtain such clarification as he may deem fit with regard to the order dated 7th November, 2008. No order as to costs.

APRIL 9th, 2009
KP

V.K. SHALI, J.