

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

+ **CONT.CAS(C) 590/2015**

GOVERNMENT OF NCT OF DELHI

..... Petitioner

Through: Mr. Rahul Mehra, Sr. Standing
Counsel (Civil) with Mr.Gautam Narayan,
ASC

Versus

MUKESH KUMAR MEENA & ANR

..... Respondents

Through: Mr. Sanjay Jain, ASG with
Mr.Kirtiman Singh, CGSC, Mr.Waize Ali
Noor, Mr.Vidur Mohan, Mr.Prateek
Dhanda, Mr.Pranav Agrawal, Ms.Rajul Jain,
Advocates for R1 & R2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

11.04.2017

1. This petition has been filed under Section 11 and 12 of the Contempt of Courts Act, 1971 with a prayer to punish the Respondents herein.
2. The allegation is that the Respondents had violated the order passed by this Court dated 26.09.2015 in W.P.(C) No.5888/2015.
3. The said writ petition was filed by the Petitioner herein/Government of NCT of Delhi challenging the Notifications dated 21.05.2015 and 23.07.2014 issued by the Government of India, Ministry of Home Affairs. The grievance in W.P.(C) No.5888/2015 was that by virtue of the impugned notifications, the legislative and executive powers conferred on the

Government of NCT of Delhi under Article 239AA of the Constitution in respect of matters relating to "services" have been withdrawn and are sought to be exercised by the Central Government, apart from curtailing the powers of the Anti Corruption Branch of Government of NCT of Delhi to take cognizance of offences against the officers, employees and functionaries of the Central Government.

4. Pending the writ petition, CM No.11083/2015 was filed by the writ petitioner seeking a direction to restrain Mr.M.K. Meena, Joint Commissioner of Police, New Delhi Range/Respondent No.1 herein from entering the office of ACB of Government of NCT of Delhi and interfering in any manner with the functioning of ACB alleging that the Respondent No.1 had no authority to do so. It was also alleged that the Respondent No.1 was misusing his powers and therefore it is necessary to restrain him from entering the office of ACB of GNCTD.

5. When the said application came up for consideration, the learned Single Judge passed the following order on 29.06.2015:

“xxx xxx
xxx xxx

Notice.

Mr. Akshay Makhija, CGSC accepts notice on behalf of the respondent.

Mr. Sanjay Jain, learned ASG appearing for the respondent submits that order dated 09.06.2015 issued by Deputy Secretary (Home) was issued without approval of the competent authority i.e. Lieutenant Governor/Administrator and the said order was cancelled

by the Lieutenant Governor, Delhi vide U.O. No. A-3046-52 dated 09.06.2015.

Learned counsel for the respondent seeks time for filing reply to the application. Let the same be filed within two weeks with an advance copy to counsel for the petitioner. Rejoinder, if any, be filed within one week thereafter.

Renotify on 11.08.2015.

In the meanwhile, it is expected that Joint Commissioner of Police, Anti Corruption Branch will work in accordance with law.”

(emphasis supplied)

6. The present contempt case came to be filed on 25.07.2015 alleging that despite the order of the learned Single Judge dated 29.06.2015, the Respondent No.1 continued to function contrary to law and he along with Respondent No.2 herein/the Inspector, SHO, ACB had ensured that a complaint filed by one Manu Dhawan disclosing the commission of a cognizable offence was not even received by ACB.

7. The contempt case was initially listed before the learned Single Judge. However, as the writ petition (W.P.(C) No.5888/2015) out of which the contempt case arose, having been taken up by the Division Bench for consideration along with a batch of matters, this contempt case was also tagged on to the said writ petition and thus was listed before the Division Bench along with the batch of connected writ petitions. After hearing both the parties, by an elaborate order dated 04.08.2016, W.P.(C) No.5888/2015 was dismissed holding that the matters connected with 'Services' fall outside the purview of the Legislative Assembly of NCT of Delhi. It was further held that the direction in the impugned Notifications issued by the

Government of India, Ministry of Home Affairs that the Lt. Governor of the NCT of Delhi shall in respect of matters connected with 'Services' exercise the powers and discharge the functions of the Central Government to the extent delegated to him from time to time by the President are neither illegal nor unconstitutional.

8. It was also held by this Court in the order dated 04.08.2016 that the directions contained in the impugned Notifications that the ACB Police Station shall not take any cognizance of offences against officers, employees and functionaries of the Central Government is in accordance with the constitutional scheme and warrants no interference.

9. In the light of the said order dismissing W.P.(C) No.5888/2015, we are of the view that the present contempt case filed alleging violation of the order dated 29.06.2015 in CM No.11083/2015 wherein it was observed by the learned Single Judge "in the meanwhile it is expected that Joint Commissioner of Police, Anti Corruption Branch will work in accordance with law" needs no consideration.

10. Though Shri Rahul Mehra, the learned Senior Standing Counsel appearing for GNCTD vehemently contended that till the dismissal of the W.P.(C) No.5888/2015 by order dated 04.08.2016, the Respondents were bound to honour the order passed by this Court dated 29.06.2015 and therefore the mere fact that on a subsequent date the writ petition was dismissed is of no relevance. Thus, it is contended that the contempt case needs consideration on merits and it is necessary to record a finding as to whether the conduct of the Respondents amounted to deliberate violation of

the order of this court dated 29.06.2015 making them punishable under the provisions of the Contempt of Courts Act, 1971.

11. We do not agree with the contention of the learned Senior Standing Counsel.

12. While dismissing W.P.(C) No.5888/2015 by order dated 04.08.2016, it was categorically held as under:

"Conclusion:

(i) to (iv) xxx xxx

(v) The matters connected with 'Services' fall outside the purview of the Legislative Assembly of NCT of Delhi. Therefore, the direction in the impugned Notification S.O.1368(E) dated 21.05.2015 that the Lt. Governor of the NCT of Delhi shall in respect of matters connected with 'Services' exercise the powers and discharge the functions of the Central Government to the extent delegated to him from time to time by the President is neither illegal nor unconstitutional.

(vi) The direction in the impugned Notification S.O.1896(E) dated 23.07.2014 as reiterated in the Notification S.O.1368(E) dated 21.05.2015 that the Anti-Corruption Branch Police Station shall not take any cognizance of offences against officers, employees and functionaries of the Central Government is in accordance with the constitutional scheme and warrants no interference since the power is traceable to Entry 2 (Police) of List II of the Seventh Schedule to the Constitution in respect of which the Legislative Assembly of NCTD has no power to make laws."

13. It was also made clear by this Court that:

"(iii) The contention of the Government of NCT of Delhi that the Lt. Governor of NCT of Delhi is bound to act

only on the aid and advice of the Council of Ministers in relation to the matters in respect of which the power to make laws has been conferred on the Legislative Assembly of NCT of Delhi under clause (3)(a) of Article 239AA of the Constitution is without substance and cannot be accepted.

(iv) It is mandatory under the constitutional scheme to communicate the decision of the Council of Ministers to the Lt. Governor even in relation to the matters in respect of which power to make laws has been conferred on the Legislative Assembly of NCT of Delhi under clause (3)(a) of Article 239AA of the Constitution and an order thereon can be issued only where the Lt. Governor does not take a different view and no reference to the Central Government is required in terms of the proviso to clause (4) of Article 239AA of the Constitution read with Chapter V of the Transaction of Business of the Government of NCT of Delhi Rules, 1993."

14. In the light of the findings recorded in the above order, we are of the view that it is not necessary for this Court to go into the correctness of the allegations in the contempt case and to return a finding as to whether the conduct of the Respondents would amount to willful disobedience of the order of this Court.

15. Accordingly, the contempt case is dismissed.

CHIEF JUSTICE

JAYANT NATH, J.

APRIL 11, 2017

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