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

+ **CONT.APP.(C) 3/2020**

CIVILIAN WELFARE AND DEVELOPMENT

TRUST(REGD.)

...Appellant

Through: **Md. Azam Ansari, Advocate**

versus

NIDHI SRIVASTAVA, IAS & ANR

...Respondents

Through: **Mr. Sanjay Dewan, Advocate**

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Date of Decision: 27th April, 2020

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J: (Oral)

CM No. 10421/2020

Allowed, subject to just exceptions.

CM No. 10423/2020 (additional documents)

Keeping in view the averments in the application, the same is allowed and additional documents are taken on record.

Accordingly, the application stands disposed of.

CONT.APP.(C) 3/2020 & CM APPL. 10422/2020 (for stay), 10424/2020 (for directions)

1. The present appeal has been listed before this Bench by the Registry in view of the urgency expressed therein. The appeal has been heard by way of video conferencing.
2. It is pertinent to mention that present contempt appeal has been filed under Section 19 of the Contempt of Courts Act, 1971 challenging the order dated 15th April, 2020 passed by a learned Single Judge of this Court whereby not only the contempt petition of the appellant being Cont. Cas. (C) 244/2020 was dismissed but a costs of Rs. 10,000/- was also imposed. The relevant portion of the impugned order is reproduced hereinbelow:-

“6. Having heard learned counsel for the parties, I am of the opinion that there is no substance, whatsoever, in the contempt petition. It cannot be said, by any stretch of imagination, that there has been any contemptuous or wilful disobedience, or otherwise, of the order, dated 8th April, 2020, passed by this Court in WP (C) 2954/2020 already extracted hereinabove. Significantly, the said order had been passed before the issuance of the containment order, dated 10th April, 2020, by the GNCTD. A reading of the containment order dated 10th April, 2020, makes it apparent that, in view of spread of the n-COVID-2019 epidemic in the GNCTD area, as well as the fact that, even till the date of issuance of the said order, at least three patients had died from the said disease in Chandni Mahal, it had been consciously decided to strictly delimit the Chandni Mahal area as a containment area.

7. It is not as though the authorities are oblivious to the requirement of essential commodities reaching persons residing, or located, within the containment area. In fact, a reading of the aforesaid order dated 10th April, 2020 discloses that the SDM, Kotwali and the SHO, P.S. Chandni Mahal have specifically been directed to ensure door-to-door supply of

essential commodities in the said area in coordination with market associations or any other appropriate mechanism for uninterrupted supply of ration and essential commodities. Mr. Ansari seeks to submit that his client should also be extended the benefit of afore-extracted para 4 of the containment order dated 10th April, 2020. Apart from the fact that this plea is foreign to the present contempt proceedings, even on merits, it cannot, quite obviously, be countenanced. It is obvious that this plea is completely devoid of substance. Keeping in view the overarching consideration of public interest, the GNCTD has directed the SDM, Kotwali and the SHO, P.S. Chandni Mahal to ensure supply of essential commodities in the Chandni Mahal containment area, in coordination with the market associations or any other appropriate mechanism. The “appropriateness” of the “mechanism” has necessarily to be left to the discretion of the concerned authorities, who are in seisin of the issue. It is not for the petitioner to treat itself as an “appropriate mechanism” for supply of essential commodities. Had the petitioner been serious about its intentions, it was always open to the petitioner to contact the SDM, Kotwali and the SHO, P.S. Chandni Mahal in this regard. It does not appear that any such attempt was made.

8. In any event, in strictly enforcing the order dated 10th April, 2020 in the Chandni Mahal area, it is clear that there has been no disobedience of the order dated 8th April, 2020 passed by this Court in WP(C) 2954/2020. Accordingly, there is no substance, whatsoever, in this contempt petition.

9. Before parting with this order, I deem it appropriate to note that in the present situation of crisis, following the n-COVID-2019 pandemic with which, indeed, the whole world is concerned, the enforcement of isolation measures, by the Government, is aimed at ensuring, as far as possible, limited exposure, of the country and its denizens, to the n-COVID-2019 virus. Judicial notice may be taken of the fact, apparent at ground level, that the Central, as well as the State Governments – including the GNCTD – are straining every

sinew, in achieving this aim and are committed to making no compromises, whatsoever, on that score. We have, as it is, naysayers aplenty, and it is the duty of courts to step in and ensure that the efforts, of the executive administration, to somehow tide over the crisis, are not subjected to roadblocks in the form of abortive and ill-conceived litigative exercises. This court, were it to at all entertain the present contempt petition would, in my view, be acting in eminent opposition to public interest.

10. I had queried, of Mr. Ansari, learned counsel appearing for the petitioner, as to whether his client was seriously pursuing this contempt petition. He responded in the affirmative.

11. In view of the above, this contempt petition is dismissed, with costs which are, for the present, being fixed, on a token basis, at Rs.10,000/-. Costs are required to be deposited by the petitioner, by way of a crossed cheque favouring “PM Cares”, within a period of 2 weeks after the lifting of lockdown by the Government.”

3. Md. Azam Ansari, learned counsel for the appellant submits that the learned Single Judge had failed to appreciate that the respondents had given an undertaking dated 8th April, 2020 to the writ court that the requisite curfew passes had already been issued to the Trustees and volunteers of the appellant-Trust and as those passes were valid for entire Delhi till 14th April, 2020, they would be extended, if required. The order dated 8th April, 2020 is reproduced hereinbelow:-

“1. The petitioner claims to be a registered charitable trust and has filed the present petition seeking appropriate passes for movement during the lockdown period for supplying various essential items like ration, food, medicines, etc. to the persons in need.

2. The petition indicates that the trustees of the petitioner trust had sought passes for four trustees and nine volunteers. Their request also included passes for three vehicles.

3. Mr. Dewan, learned counsel appearing for the respondents states, on instructions, that the requisite passes have already been issued to the trustees and volunteers as mentioned by the petitioner. He states that these passes are for the entire Delhi and are valid till 14.04.2020. He further states that they would be extended, if required.

4. The learned counsel for the petitioner has been unable to join the proceedings. However, in view of the statement made by Mr. Dewan, this Court considers it apposite to dispose of this petition by directing that the respondents be bound down to the same.

5. No further orders are required to be passed in this petition. The same is disposed of.”

4. According to him, the undertaking given to the writ court on 8th April, 2020 nowhere stated that the curfew passes would not apply to a containment area, as even on that date there were certain areas in Delhi where containment order was in force.

5. In any event, he states that if any modification was required to the order dated 8th April, 2020, the respondents should have approached the writ court and the learned Single Judge should not have varied/modified the aforesaid undertaking given to the writ court. In support of his submission, he relies upon judgment of the Apex Court in ***K.G. Derasari and Anr. Vs. Union of India (UOI) and Ors., (2001) 10 SCC 496.***

6. Learned counsel for the appellant also states that respondents had erroneously stated before learned Single Judge that there were one hundred

and two Covid-19 positive cases in Chandani Mahal area. He states that in fact there were less than fifteen cases in the said area. He further states that learned Single Judge had failed to appreciate that the curfew passes valid till 14th April, 2020 stood automatically extended till 3rd May, 2020 in pursuance to an order issued by the Chief Secretary, Govt. of NCT of Delhi.

7. He lastly states that the learned Single Judge could not have termed the contempt petition as frivolous and imposed costs.

8. Per contra, Mr. Sanjay Dewan, learned counsel for the respondent-State states that the appellant-Trust was registered only on 13th March, 2020 and has no experience in relief work. He points out that there have been one hundred and sixty Covid-19 positive cases including nine police officials in the Chandani Mahal area and twelve out of fifty-four deaths in Delhi till date have taken place in the said area. He states that if the appellant was permitted to carry out its activities in the containment area, it could have led to further loss of precious human lives.

9. Having heard learned counsel for the parties, this Court is of the view that the present appeal is not maintainable as an appeal under Section 19 of the Act lies against an order punishing a person for contempt only. Since in the present case the contempt petition has been dismissed, no statutory appeal lies.

10. *Dehors* the aforesaid finding, this Court is of the view that no judgment/ undertaking is to be read like an enactment/statute [See ***Rekha Mukherjee Vs. Ashish Kumar Das and Another*, (2004) 1 SCC 483 ; *Escorts Ltd. Vs. Commissioner of Central Excise, Delhi*, (2004) 8 SCC 335; *State of Orissa and Others Vs. Md. Illiyas*, (2006) 1 SCC 275 ; and**

State of Karnataka and Others Vs. C. Lalitha, (2006) 2 SCC 747]. A judgment/undertaking has to be understood in the light of the facts of the case.

11. Undoubtedly, in the present case an undertaking to renew the curfew passes had been given. However, the said undertaking/order was overridden by a supervening event, namely, that Chandani Mahal area (where petitioner/appellant's offices were located) was declared as a containment area vide order dated 10th April, 2020. Admittedly, there is no challenge till date to the order dated 10th April, 2020 declaring the Chandani Mahal area as a containment area. The order dated 10th April, 2020 reads as under:-

*“GOVERNMENT OF NCT OF DELHI
OFFICE OF THE DISTRICT MAGISTRATE
(CENTRAL DISTRICT)
14, DARYA GANJ, DELHI -110002*

No.F.DM/C/DDMA/Covid-19/2020/7601 Dated: 10/04/2020

Whereas World Health Organization (WHO) has declared the outbreak of Novel Corona Virus (COVID-19) as a Pandemic on 11.3.2020.

And whereas, as per the DM Act, 2005 under SubSection (2)(a) of Section 25 District Magistrate of the District shall be Chairperson of District Disaster Management Authority.

And whereas, as per Section 33 of the DM Act, 2005 “The District Authority may by order require any officer or any Department at the district level or any local authority to take such measures for the prevention or mitigation of disaster, or to effectively respond to it, as may be necessary, and such officer or department shall be bound to carry out such order.”

And whereas the undersigned being the Chairman DDMA has

been empowered u/s 34 of Disaster Management Act 2005 to perform such functions as it deems necessary for Disaster Management in the District and further has been empowered u/s 65 of the Disaster Management 2005.

And whereas, it is imperative to strictly observe the Lockdown and Isolation measures to contain the further spread of COVID-19 in the NCT of Delhi.

And whereas, at least three patients have died of corona in this Chandni Mahal area in past three days.

And whereas, out of 102 people staying in 13 different religious locations in Chandni Mahal area, 52 have been positive.

And whereas, the interaction between the people tested positive and residents of Chandni Mahal area can't be ruled out.

And whereas, under Section 2, 3 and 4 of the Epidemic Disease Act, 1897, the Lt. Governor of Delhi has been pleased to issue the Delhi Epidemic Diseases, COVID19 Regulations, 2020 where the undersigned has been empowered under clause 16(i) to designate and seal any Geographical area as Containment Area for the isolation of the cases.

Now therefore, I, Nidhi Srivastava, IAS, District Magistrate, Central Delhi, in exercise of power conferred under Disaster Management Act 2005 read with Epidemic Act 1897 and Regulations made there under by invoking the containment plan for Chandni Mahal hereby issue the following directions for immediate compliance:

1. DC CSPZ, North DMC to immediately sanitize the entire area of Chandni Mahal under containment plan to prevent further spread of COVID-19 in the surrounding/adjoining area.

2. DCP Central District to immediately cordon off the entire Chandni Mahal area under containment plan to prevent the movement of persons out of the vicinity and prevent the spread of COVID-19, besides to initiate action against violators under various provisions of IPC, Disaster Management Act, 2005 read with Epidemic Disease Act, 1897. The DCP Central is also directed to ensure social distancing while distribution of food and ration in the area.

3. CDMO, District Central, to ensure collection of sample and conduct of tests thereof and ensure home quarantine of the contacts of the deceased persons tested corona positive in Chandni Mahal.

4. SDM, Kotwali and SHO Chandni Mahal are further directed not to allow the residents of aforesaid area to move out of their houses and to ensure door to door supply of essential commodities in aforesaid cordon off area, in coordination with Market Associations or by any other appropriate mechanism for uninterrupted supply of essential commodities.”

(emphasis supplied)

12. The aforesaid order specifically directs cordoning off the containment area to prevent the movement of persons to stop the spread of COVID-19. It also restrains the residents of the containment area from moving out of their houses. Consequently, in view of the subsequent order dated 10th April, 2020, this Court is of the view that the curfew passes, if any, issued to the residents of the containment area stood eclipsed.

13. It is also settled law that it is always open to a court to take into account subsequent events.

14. This Court is further of the view that the learned Single Judge by way of the impugned order has not modified the order dated 8th April, 2020

passed by the writ court. As held hereinabove, the said order dated 8th April, 2020 had been overtaken by the subsequent events and had become incapable of performance due to a supervening impossibility.

15. In any event, a person can be held guilty of civil contempt only if the disobedience of a judgment/order and/or undertaking is wilful. In the present case, this Court is of the view that there is no wilful disobedience of the undertaking/order dated 8th April, 2020.

16. This Court is of the view that cost had been imposed by the learned Single Judge as the basis for filing the contempt petition was an unreasonable stand taken by the appellant and it not only constituted an obstruction in the carrying out of the relief work by the government officials but it was also against public interest inasmuch as if officials of the appellant were permitted to move in or around or from the containment area, they would have spread the highly contagious disease Covid-19 to other individuals and areas.

17. Accordingly, the present appeal and applications are dismissed both on the grounds of maintainability and merits.

18. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

MANMOHAN, J

SANJEEV NARULA, J

APRIL 27, 2020

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