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

+ **CONT.CAS(C) 345/2023**

SUMAN DAGAR

..... Petitioner

Through: Mr. Anand Awasthi, Mr. Sanket Gupta, Advocates
Mob: 8285536218
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versus

MR.VIJAY DEV AND ORS.

..... Respondents

Through: Mr. Amit Sharma, Advocate with Mr. Dipesh and Ms. Aparna Singh, Advocates for R-1, 2.
Mob: 9818087744
Email: office@sharmachambes.com
Mr. Rajesh Kumar, SC, Ms. Mansi Aggarwal, Advs. for R-3
Mob: 9910357773
Mr. Jasbir Singh Malik and Ms. Chandni Sharma, Advocate for R-4.
Mob: 9312283201
Email: jasbirsinghmalik@gmail.com
Ms. Hetu Arora Sethi, ASC, GNCTD with Mr. Arjun Basra, Advs.

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Date of Decision: 7th May, 2024

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present petition has been filed alleging willful disobedience of the order dated 29th November, 2022 in *W.P.(C) No. 16326/2022*.
2. By way of the aforesaid order, the Court issued directions to the respondents to look into the representation of the petitioner and dispose of



the same in accordance with law.

3. The present petition came to be filed on behalf of the petitioner, on the ground that no action has been taken by the respondents pursuant to the order dated 29th November, 2022.

4. Per contra, learned counsel appearing for the respondent-Municipal Corporation of Delhi (“MCD”) has drawn the attention of this Court to the Status Report filed on behalf of MCD. It is submitted that pursuant to the directions passed as aforesaid, action was taken against the concerned official and a Show Cause Notice dated 25th November, 2022 was issued against him, which resulted in issuance of a warning letter dated 20th March, 2023 against him.

5. Thus, he submits that the order dated 29th November, 2022 passed by this Court stands complied with.

6. Responding to the aforesaid submission, in rejoinder, learned counsel appearing for the petitioner submits that the action has not been taken by the respondents properly.

7. I have heard the learned counsels for the parties and have perused the record.

8. At the outset, it is noted that by order dated 29th November, 2022, this Court had taken note of the grievance raised by the petitioner, that husband of one of the candidates, who was an employee of MCD, was campaigning for his wife, who was a candidate in the MCD elections of the year 2022. This Court also noted the contention that the concerned person, who was an employee of MCD, was bound by the Guidelines for the conduct of Government Servants dated 6th November, 1984 issued by the Election Commission of India, and could not have taken part in the campaigning



process.

9. Thus, by order dated 29th November, 2022, directions were passed in the following manner:

“xxx xxx xxx

1. The assertion made in the present petition is that the petitioner is one of the contesting candidates in the upcoming election of MCD from Ward No.26, Isapur, Najafgarh, New Delhi. She is aggrieved by the manner in which respondent no. 4 is campaigning for respondent no.5; another candidate who is contesting from the same ward.

2. According to the petitioner, the respondent no. 4, though the husband of respondent no.5, is also an employee of MCD and is bound by the Guidelines for the conduct of Government Servants dated 06.11.1984 issued by the Election Commission of India.

3. The learned counsel for the petitioner submits that by openly campaigning for respondent no.5, the respondent no. 4 has violated the said guidelines as well as other relevant election rules. He further submits that a representation has already been made by the petitioner to the respondent no. 1 and 2 on 19.11.2022, a copy of which has been annexed with the writ petition as annexure P-7, on which no action has been taken.

4. The learned counsels appearing on behalf of respondent no. 1, 2 and 3 submit that the representation so made by the petitioner shall be looked into and same shall be disposed of in accordance with law, within a reasonable period of time.

5. In view of the above statement of the learned counsels for the respondent nos.1, 2 and 3, the petitioner does not press for any further relief.

6. The present petition stands disposed of in the above terms.”

10. Pursuant to the aforesaid, the MCD issued a Show Cause Notice dated 25th November, 2022 to the said official, i.e., Shri Gopal Dagar, Junior Engineer (“JE”)/Civil (Contract), asking him to show cause as to how he campaigned in the election of his wife, Ms. Seema Dagar, in MCD election of 2022.

11. Pursuant to the said Show Cause Notice, reply was submitted by the said official and after considering the reply of the said official and granting



him an opportunity of hearing, a warning letter dated 20th March, 2023 was issued to the said official.

12. The said warning letter dated 20th March, 2023 issued to the said official reads as under:

“xxx xxx xxx

WARNING LETTER

Whereas in the Delhi High court matter titled "Suman Dagar versus State of NCT of Delhi and Ors. {WP (C)16326/2022}, the petitioner aggrieved by the manner in which you/respondent no. 4, being an employee of. MCD was campaigning for your wife/respondent no.5; during MCD Elections 2022, who was contesting from the same ward submitted before the Hon'ble Court that the respondent no. 4 has violated the Guidelines for the conduct of Government Servants dated 06.11.1984 issued by the Election Commission of India as well as other relevant election rules.

And whereas, it was submitted by the learned counsels appearing on behalf of the MCD/ Respondents on 29.11.2022 before the Hon'ble Court that the representation made by the petitioner shall be looked into and shall be disposed of accordance with law, within a reasonable period of time.

And whereas Show Cause Notice bearing No. EE (M-IV)-NGZ/MCDi2022-23/D-1150 Dated 25.11.2022. was served upon you to Show Cause within 2 days of the notice, as why disciplinary action should not be initiated against you for such act i.e. for campaigning in MCD election thus violating the guidelines as well as other relevant election rules.

And whereas, in response to the Show Cause Notice issued, it was submitted by you that I am not Government employee as I am working on contractual basis in the concerned Department, furthermore, I am not permanent Employee of the MCD. Further, in your defence you have cited two cases namely (1) "Union Public Service Commission Versus Girish Jayanti Lal Vaghela/026 2006(2) SCC 482" stated that Hon'ble Supreme Court had held that the term "Government Servant" Did not include persons employed on contract basis & (2)"State of Haryana Versus Charanjit Singh & Ors." JT 2005(12)475 stated that Hon'ble Supreme Court had ruled out 'That the contractual employees do not enjoy all the benefits of a permanent government servant hence, they are also not bound by all the conditions.

And whereas, the aforesaid submissions made by you in the defence were examined by the department and observed that the reference of Court cases made by you were not relevant with the present context &



matter. Further, as per terms of contract/engagement letter you were/are liable for action under the provisions of Act/Rules/Codes etc., if any discrepancies/irregularities noticed. Moreover, your work and conduct must be satisfactory for getting further extension of contractual employment in MCD as JE(C). Therefore, submissions made by you were found to be devoid of any merit in this regard.

And whereas, the matter was placed before the Competent Authority D.C.(NGZ) for kind information and further necessary action as deemed fit in the light of Hon'ble High Court order .dated 29.11.2022.

And whereas, the competent authority vide his order dated 16.03.2023 has made the following orders as reproduced below:-

“ Warning to be issued to concerned JE and in future such conduct will not be tolerated”.

Now, therefore in view of above, you are hereby warned to be more cautious and in future such conduct will not be tolerated. It is further expected from you that you shall not indulge in such activity of any political party or any organization which take parts in politics or otherwise, which may attract the disciplinary action for unbecoming of an employee of the MCD as per the service rule/contract agreement/ conduct rules of duty.

xxx xxx xxx”

13. Perusal of the aforesaid shows that the complaint of the petitioner, has been duly acted upon by the respondents.

14. In case the petitioner has any grievance with respect to the quantum of punishment having been imposed upon the said official, it is not for this Court to comment on the same.

15. Since compliance of the directions passed by this Court has been done, this Court will not enter into the question of validity, substantiality or soundness of the action taken by the respondents.

16. Thus, the Supreme Court in the case of ***Union of India and Ors. Versus Subedar Devassy PV, (2006) 1 SCC 613***, has held as follows:

“xxx xxx xxx

2. While dealing with an application for contempt, the court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be



permissible for a court to examine the correctness of the earlier decision which had not been assailed and to take a view different from what was taken in the earlier decision. A similar view was taken in *K.G. Derasari v. Union of India* [(2001) 10 SCC 496 : 2002 SCC (L&S) 756].

xxx xxx xxx

6. If any party concerned is aggrieved by the order which in its opinion is wrong or against the rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt, the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test the correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible.

xxx xxx xxx”

(Emphasis Supplied)

17. Accordingly, no further orders are required to be passed in the present petition.
18. The present petition is, accordingly, disposed of.

MINI PUSHKARNA, J

MAY 7, 2024

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