



2024 DHC 287



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CONT.CAS(C) 537/2022****JANKI PRASAD**

..... Petitioner

Through: Mr. Anish Roy and Mr. Kapil
Gautam, Mr. Chandrakant Tiwari,
Mr. Girish Agarwal, Advocates.

versus

**SANJEEV KHIRWAR (PRINCIPAL SECRETARY) STATE (NCT
OF DELHI) & ANR.** Respondents

Through: Mr. Karan Bhardwaj, ASC GNCTD,
Mr. Rajat Gaba and Mr. Shubham
Singh, Advocates for R-1.

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Mr. Akhil Mittal, Standing Counsel
with Mr. Vrinnda Goyal, Mr. Vineet
Mishra and Ms. Rashika Chopra,
Advocates for MCD.

Mob. 9212504099

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Date of Decision: 11th January, 2024**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****MINI PUSHKARNA, J: (ORAL)**

1. The present contempt petition had been filed alleging non-compliance of the order dated 22nd March, 2022 passed by Division Bench of this Court in *W.P.(C) 4559/2022*.
2. By way of the aforesaid writ petition, the petitioner had challenged the award of contract arising out of Notice Inviting Tender ("NIT") dated



21st June, 2021 with respect to allotment of swimming pools. The contention of the petitioner was that the contract relating to work of operation and maintenance of 12 swimming pools under the jurisdiction of Municipal Corporation of Delhi (“MCD”), was tendered by way of the said NIT. The contention raised by the petitioner in the writ proceedings was that the 12 swimming pools were allotted by the MCD to 9 firms for their operation and maintenance on license fee of just Rs. 10,000/- to Rs. 15,000/- higher than the Minimum License Fee (“MLF”).

3. The said writ petition filed by the petitioner, was disposed of by the Division Bench of this Court by order dated 22nd March, 2022, in the following manner:

“1. The petitioner has preferred the present writ petition to assail the award of the contract arising out of NIT No. DC/RP Cell/North, DMC/2021/D-210 dated 21.06.2021 issued by respondent No. 2 i.e. North Delhi Municipal Corporation.

2. The petitioner was not a bidder. The petitioner claims to have acquired knowledge with regard to existence of cartel on account of the fact that he is an ex-employee of one of the bidders.

3. In these circumstances, we are not inclined to examine the issues raised by the petitioner in the present petition. However, this petition should be placed by the respondent Corporation before its Vigilance Commissioner, who shall examine the same. Whatever decision is taken, shall be communicated to the petitioner. The same be done within the next four weeks.

4. In case any information, or assistance is required by the Vigilance Commissioner, the petitioner may be called upon for that purpose.

5. The petition stands disposed of in the aforesaid terms.”

4. Perusal of the aforesaid order dated 22nd March, 2022 shows that the only direction passed by the Division Bench of this Court was that the petition filed by the petitioner shall be placed before the Vigilance Department of the respondent- MCD. Thereafter, the decision taken by the department had to be communicated to the petitioner.



5. Today, learned Standing Counsel appearing for respondent-MCD has drawn the attention of this Court to the Compliance Report dated 2nd December, 2022 filed on behalf of the MCD.

6. Upon perusal of the Compliance Report filed on behalf of the MCD, it is seen that the Vigilance Department of the MCD has carried out the requisite inquiry and investigation into the matter. On the basis of the investigation and inquiry, findings thereto have been filed by way of the Compliance Report dated 02nd December, 2022. The Compliance Report filed on behalf of the MCD contains the decision of the MCD with respect to its inquiry upon the representation of the petitioner pursuant to the order dated 22nd March, 2022 passed by the Division Bench of this Court.

7. At this stage, learned counsel for the petitioner contends that the decision of the MCD pursuant to the order dated 22nd March, 2022 passed by the Division Bench, is not compliant with by said order in its true spirit.

8. However, rightness or wrongness of an order passed by an authority in compliance of a judicial order cannot be adjudicated in the contempt proceedings. This Court while hearing a contempt petition deals with the issue of non-compliance of a judicial order. The court cannot comment as to what would be a correct order to be passed by an authority in compliance of a judicial order while dealing with a contempt petition. Thus, Supreme Court in the case of *Prithawi Nath Ram Versus State of Jharkhand and Others*, 2004 7 SCC 261, has held as follows:

“xxx xxx xxx

8. If any party concerned is aggrieved by the order which in its opinion is wrong or against 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 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. In that view of the matter, the order of the High Court is set aside and the matter is remitted for fresh consideration. It shall deal with the application in its proper perspective in accordance with law afresh. We make it clear that we have not expressed any opinion regarding acceptability or otherwise of the application for initiation of contempt proceedings.
xxx xxx xxx ”

(Emphasis Supplied)

9. In view of the aforesaid, no further orders are required to be passed by this Court.
10. In case the petitioner has any grievance with respect to any finding by the respondent-MCD upon their investigation/inquiry into the representation of the petitioner, the petitioner is at liberty to seek his remedies in accordance with law.
11. The contempt notice is discharged and petition is disposed of.

**(MINI PUSHKARNA, J)
JUDGE**

JANUARY 11, 2024
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