

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Judgment: 19.04.2012.*

+ CM(M) 434/2012 & CM Nos. 6843-44/2012

RAJEEV MITTAL Petitioner
Through Dr. Shyamha Pappu, Sr.
Advocate with Mr. Anil Goel,
Adv.

versus

SANJAY GOEL Respondent
Through Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Ashutosh
Gupta, Adv.

AND

+ CM(M) 437/2012, CAV No. 395/2012 & CM Nos. 6878-79/2012

NEVILLE A MEHTA Petitioner
Through Dr. Shyamha Pappu, Sr.
Advocate with Mr. Anil Goel,
Adv.

versus

SANJAY GOEL Respondent
Through Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Ashutosh
Gupta, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 The petitioner is aggrieved by the orders dated 11.04.2012 &
13.04.2012; contention of the petitioner before this Court is the in
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pending proceedings which were proceeding for contempt, the directions as contained in the aforementioned orders could not have been passed by the trial Court as the power to initiate contempt under the provisions of Sections 10 & 11 of the Contempt of Court Act, 1971 (hereinafter referred to as the said Act) is an inherent power vested with the High Court alone and the subordinate Court could not have issued the said directions; the said directions amounting to an illegality being beyond the jurisdiction of the concerned Court are accordingly liable to be set aside.

2 Arguments have been refuted.

3 Record shows that Sanjay Goel had filed suit No. 21/2012 seeking an injunction against the defendants Lions Club International District and others from conducting the election as scheduled for 25 & 26.02.2012; further to provide the list of delegates having voting rights in the said election.

4 On 07.03.2012 on the statement recorded of the respective parties, the plaintiff had withdrawn the suit. The statement of the defendant i.e. T.S. Arora, District Governor, Lions Club International was to the effect that the fresh election for the second Vice=District Governor will be

held as per constitution of District and International; further prior to holding of election, list of eligible and registered delegates will be supplied to the plaintiff within ten days. In view of this aforementioned statement made by the defendant which was accepted by the plaintiff, the suit was withdrawn on 07.03.2012.

5 The matter did not rest there. The plaintiff was aggrieved; his contention was that this commitment had not been honoured; a contempt petition was filed; this was dated 28.03.2012; certain directions were given on 30.03.2012. It was finally disposed of on 03.04.2012 wherein it was noted that the parties are agreeable that the election process announced may be allowed to be conducted and through e-mail fresh list of delegates is required which may be registered and prepared up to 07.04.2012 and will be supplied to all the contesting members. This contempt petition was disposed of with the aforementioned directions on 03.04.2012.

6 The matter again did not rest. A second contempt petition was sought to be filed by the plaintiff which is dated 10.04.2012. The petitioner has drawn attention of this Court to the notice which has been issued on this petition; contention being that this is a notice to show

cause which could not have been issued by the subordinate Court as the power to initiate contempt proceedings vested only with the High Court; further contention being reiterated that all the directions contained and passed subsequent thereto on 11.04.2012 and 13.04.2012 were beyond the jurisdiction of the Court who could not have passed the aforementioned directions and attention has been drawn to the said directions. Counsel for the petitioner has placed reliance upon AIR 1979 SC 1528 Babu Ram Gupta Vs. Sudhir Bhasin and another; first submission being that there was no undertaking given by the Court and no contempt is made out. The second limb of the argument is that in view of the judgment of a Bench of this Court reported in 2010 (4) JCC 2574 Syed Nusrat Ali Vs. State, the power to initiate contempt proceedings vested only with the High Court and the High Court can alone take cognizance of contempt having been committed in respect of the subordinate Court; the subordinate Court can only make a reference to the High Court; it cannot itself assume jurisdiction under the said Act and issue a show cause notice as to why the contempt proceedings should not be initiated.

7 There is no doubt to this later proposition which has been urged by the learned counsel for the petitioner. The subordinate Court can only

make a reference to the High Court and cannot initiate contempt proceedings itself.

8 Learned counsel for the respondent has placed reliance upon a judgment of a Bench of this Court reported in 43 (1991) DLT 567 Amrik Singh Lyallpuri Vs. Ravi Dutt Sharma and Others to support this submission that a mere issuance of a notice is not an initiation of contempt proceedings and the limited scope of a limited inquiry is available with the subordinate Courts and these directions passed on 11.04.2012 and 13.04.2012 were within the scope of this inquiry; it is not as if the subordinate Court has initiated the contempt proceedings. This judgment of Amrik Singh Lyallpuri (supra) supports the submission of the respondent to the extent that if the subordinate Court is moved by an aggrieved party, the subordinate court may hold an inquiry for the purpose of making a reference to the High Court and in these circumstances, it cannot be said that the subordinate court had initiated proceedings for contempt.

9 However, the question which has to be answered is whether the directions contained in the impugned order dated 11.04.2012 & 13.04.2012 were in furtherance of the inquiry being made by the
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subordinate court as to whether a case of contempt for the purpose of reference is made out to the High Court or not. This Court is of the view that these directions do not fall within this encompass. Subordinate court issued directions on 11.04.2012 which were to the effect that defendant No. 3 shall also be present in Court for which an e-mail will be sent to him for the purpose of communication; direction for stay of the election held on 08.04.2012 was also made; the plaintiff had also been directed to file his nomination to show as to whether he has filed the nomination so that if any perjury is made, suitable steps can be taken by the plaintiff. Directions in the order dated 13.04.2012 are also to the effect that a Local Commissioner had been appointed namely Advocate Girish Malhotra to conduct elections as per the undertaking given by the respondent in the previous contempt proceedings but had not been adhered to; the fee of the Local Commissioner had also been fixed giving authority to the Local Commissioner to take all steps including the forwarding of orders to all the clubs in district 321-1A as well as the international organization of the lions clubs for compliance.

10 All these aforementioned directions were outside the scope of the limited inquiry which the subordinate court was permitted to make for

the purposes of holding whether a case for reference to the High Court for initiation of contempt is made out or not. This is clear from the import of the said directions. The petitioner has correctly pointed out that in this background, the impugned judgment suffers from an illegality as the Court has usurped the powers and invested itself with the jurisdiction which it did not have. At this juncture, learned counsel for the respondent submits that he may be granted permission to take recourse to other legal remedies which are available to him. Needless to state that if the law permits him, he is permitted to take recourse to such remedies.

11 Impugned orders thus being an illegality are set aside. Petitions are allowed.

12 Petitions are disposed of in the above terms.

INDERMEET KAUR, J

APRIL 19, 2012

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