

**Central Administrative Tribunal
Principal Bench, New Delhi**

C.P.No.482/2014 in O.A. No.1222/2013

Order reserved on 31st August 2015

Order pronounced on 30th October 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Sunil Kumar Mehra

..Applicant

(Applicant in person)

Versus

Mr. Rajendra Kumar & others

..Respondents

(Mrs. Harvinder Oberoi, Advocate, Mr. R N Singh, Advocate and
Mr. R K Jain, Advocate for respective respondents)

O R D E R

Mr. A.K. Bhardwaj:

The petitioner, Mr. Sunil Kumar Mehra, filed four Original Applications (O.A. Nos.2939/2012, 1222/2013, 578/2013 and 3765/2012), which were disposed of by this Tribunal in terms of a common Order dated 26.8.2013. The present Contempt Petition has been filed by the petitioner in O.A. No.1222/2013 seeking a direction to initiate contempt proceedings against respondents for willful breach of undertaking in the counter reply/affidavit filed on behalf of respondent No.1 on 5.8.2013.

2. From the Order dated 26.8.2013, it could be seen that the O.A. No.1222/2013 was disposed of in view of the averment made in the counter reply. Paragraph 4.6 of the said reply reads thus:-

“4.6 In response to para 4.6 of the OA it is submitted that the order dated 04.05.2012 is not a promotion order, in fact it is only transfer/posting order. However, it is submitted that proposal of correction in designation of Sh. Shamsheer Singh as Senior Town Planner instead of “Chief Town Planner and modification of order dated 04.05.2012 has been submitted for the approval of Hon,ble Lt. Governor, Delhi.

In view of the stand taken by the respondents in their reply to O.A. No.1222/2013, the applicant did not press the Original Application and the same was dismissed as withdrawn.

3. The petitioner, who was present in person, submitted:

a) The order dated 4.5.2012, which was sought to be quashed by the petitioner in O.A. No.1222/2012, accorded erroneous designation to respondent No.3 (Mr. Shamsheer Singh) as Chief Town Planner at the behest of the respondents.

b) The Tribunal disposed of the Original Application only on the averment made by respondent No.1 before it that the order dated 4.5.2012 was not a promotion order but was only a transfer/posting order.

c) The Lt. Governor, Delhi had approved the correction order dated 4.5.2012 in respect of designation of Mr. Shamsheer Singh (respondent No.3) as Senior Town Planner instead of Chief Town Planner in terms of order dated 19.8.2013.

d) In terms of order dated 13.9.2013, Secretary (UD) & Director of Local Bodies, Govt. of NCT of Delhi, a modification was made in the order dated 4.5.2012 that designation of Mr. Shamsheer Singh be read as Senior Town Planner instead of Chief Town Planner.

e) Even after the modification in the said order dated 4.5.2012, respondent No.3 (Mr. Shamsheer Singh) was misusing the designation of Chief Town Planner, which was done in collusion with the official respondents.

f) Against the said illegal holding of designation by respondent No.3, a complaint was made to the Lt. Governor on 6.6.2016 followed by an e-mail on 12.7.2014. In reply to this, Private Secretary to Lt. Governor, Delhi wrote a communication to the Secretary (UD)/Director (Local Bodies), Govt. of NCT of Delhi highlighting the fact that Mr. Shamsheer Singh has been using the designation of Chief Town Planner and the said post is under his illegal occupation, thereby violating the orders of the then Lt. Governor and the Director (Local Bodies), thus it was desired to look into the matter and a factual report in the matter might be forwarded to the Office.

g) Respondent No.3 (Mr. Shamsheer Singh) is also using his powers as Chief Town Planner illegally in clearing money bills, etc., which power is not vested in him.

4. In reply filed on behalf of North DMC, a clear stand has been taken that on retirement of Mr. V.K. Bugga, the then Chief Town Planner on 30.4.2011, the matter was placed before the Screening Committee for promotion but since the two Senior Town Planners were not found eligible, it was directed to be fill up on deputation basis. However, the competent authority, i.e., the Commissioner opined that as the work of Chief Town Planner is of technical nature, a qualified person should be appointed to the post but in the interregnum the senior most officer in the Department

should be given charge to exercise administrative control. Thus Mr. Shamsher Singh (respondent No.3), who was the senior most in the Town Planning Department, was directed to exercise the administrative control and discharge day to day function in terms of the order dated 5.5.2011. It is made clear in the order that Mr. Shamsher Singh has neither been promoted nor assigned the current duty charge of the post. On trifurcation of MCD into three distinct Corporations, Mr. Shamsher Singh was shown as Chief Town Planner, South DMC though he was basically a Senior Town Planner. The Director, Local Bodies vide order dated 13.9.2013 modified its earlier dated 4.5.2012 whereby it was clarified that the designation of Mr. Shamsher Singh be read as Senior Town Planner instead of Chief Town Planner, thus it is submitted that since no order designating Mr. Shamsher Singh as Chief Town Planner has ever been issued by North DMC, it may be discharged.

5. In reply filed on behalf of respondent No.1, it has been submitted that the matter pertains to the Director of Local Bodies, thus respondent No.1 is not in a position to give proper reply in the contempt petition. Even the representations preferred by the petitioner against respondent No.3 (Mr. Shamsher Singh) were also sent to the competent authority, i.e., the Lt. Governor, Delhi and it was the Lt. Governor, Delhi, who approved the correction in the order.

6. During the course of arguments, the applicant, who was present in person, submitted that despite the order dated 13.9.2013 passed by the Director, Local Bodies, the respondent No.3 kept on claiming himself as Chief Town Planner. To buttress the plea, he made reference to Note dated

15.12.2014 wherein respondent No.3 was marked as Chief Town Planner.

The Note reads thus:-

Sub: Regarding Grievance No. PGC/2012/MCD/1007-Sh. Sukh Sagar V/s MCD dated 7.1.14 (Order under Para 2 (B) of PGC Resolution No.F.4/14/94-AR dt.25.9.97).

The above matter was considered in LOSC vide Item No.74/14 dated 27/11/2014 and the following decision was taken:

“The case was discussed in view of PGC Order dated 27/10/2014 in which Commissioner, North DMC and Chief Town Planner has been directed to reconsider the request of complainant. It was observed that the option before the North DMC is to follow order no.505 in which Ground floor lessee of Type A Tenements was allowed to construct in the front court yard up to Ground floor roof only and the Ground floor lessee and First floor lessee of type A Tenements was allowed to construct upto first floor roof in the rear court yard with a condition that with proposed construction foundation is suitably designed for two storey.

It was felt that the standard plan in respect of order no.505 is to be prepared by Architecture Deptt. and forwarded to L&DO for their acceptance. The representative of Architecture Deptt. stated that they require clear – cut guide lines from L&DO in respect of plot size, extent of ground coverage, rates to be recovered for availing extra FAR for implementation of order no.505.

After discussion it was decided that the Architecture Deptt. shall work on preparation of Standard Plan and seek comments from L&DO in respect of area allowed, size of plots, extent of ground coverage, rates to be recovered, etc.

The Hon’ble PGC may be informed accordingly.”

Hence, the reference may be sent to Architecture Deptt. for their necessary action, please.”

7. In the affidavit filed by respondent No.3, he submitted that he was given the designation of Chief Town Planner as per letter dated 22.1.2014.

Paragraph (C) of his affidavit reads thus:-

“C. That the present contempt petition has been filed against the answering respondent for the willful violation of the admission made by the respondent no.1. It is respectfully submitted that the contempt can not be alleged against any other person except the one who had

made admission before the Hon'ble Tribunal. Hence the present contempt petition is not maintainable against the answering respondent."

8. In the wake, we summoned Mr. Sunil Bhardwaj, Assistant Commissioner (Establishment), South DMC, who had issued the aforementioned order. The Order dated 5.5.2015 reads thus:-

"On 22.4.2015 we passed the following orders:-

In reply to OA-1222/2013 filed on behalf of respondent no.1, i.e. Deputy Director, Local Bodies it had been specifically stated that the proposal for correction in designation of Sh. Shamsher Singh as Senior Town Planner instead of Chief Town Planner and modification of order dated 04.05.2012 had been submitted for the approval of Hon'ble Lt. Governor, Delhi. Para 4.6 of the reply reads thus:

"However, it is submitted that proposal of correction in designation of Sh. Shamsher Singh as Senior Town Planner instead of Chief Town Planner and modification of order dated 04.05.2012 has been submitted for the approval of Hon'ble Lt. Governor, Delhi."

In the wake of the aforementioned stand, the OA was disposed of. Nevertheless, subsequently Sh. Shamsher Singh issued office order dated 01.04.2014 styling himself as Chief Town Planner, SDMC & NDMC. Thus, the applicant filed the present CP. In his reply to the CP, Mr. Shamsher Singh stated that he could describe his designation as per letter dated 22.01.2014 and he is discharging the duties of Chief Town Planner in North and South Delhi Municipal Corporation, on Incharge basis. To justify his point, he relied upon communication no. AC/CED/2014/2670 dated 22.01.2014 authored by Sh. Sunil Bhardwaj, Assistant Commissioner/Estt. In the aforementioned backdrop, we had passed order dated 13.01.2015 which reads thus:

"In view of the stand taken by the Deputy Director (Local Bodies) in his reply to OA No.1222/2013 that the proposal for correction in designation of Shri Shamsher Singh as Senior Town Planner instead of Chief Town Planner and modification of order dated 04.05.2012 had been submitted for approval of the Lt. Governor of Delhi, the petitioner had withdrawn the OA.

2. Para 4.6 of the reply filed on behalf of respondent no.1 and the order passed by the Tribunal in that OA reads thus:

"4.6However, it is submitted that proposal of correction in designation of ShriShamsher Singh as Senior Town Planner instead of Chief Town Planner and modification of

order dated 04.05.2012 has been submitted for approval of the Lt. Governor of Delhi.”

3. The complain of the petitioner in the present Contempt Petition is that despite the stand taken on behalf of the Director (Local Bodies), the respondent no.3 in the OA ShriShamsher Singh is still discharging the function as Chief Town Planner. To buttress his plea, he referred to certain official notings, including one dated 17.12.2014 signed by Shri Shamsher Singh as Chief Town Planner. Learned counsel for respondent no.3 (Shri Shamsher Singh), has produced an order dated 22.01.2014 whereby Shri Sunil Bhardwaj, Assistant Commissioner/Estt. ordered that the designation of Shri Shamsher Singh shall be “Chief Town Planner (I/C)”.The order dated 22.1.2014 reads thus:

“No.AC/CED/2014/2670 Dated:22.01.2014

Reference letter No.F.PS/Secy/UD/ 2012/Pt.II/6083-91 dated 13.09.2013 issued by the Director of Local Bodies regarding designation of the post of Chief Town Planner.

2. The competent authority has directed that in compliance of the aforesaid letter dated 13.9.2013, the designation of Shri Shamsher Singh shall be “Chief Town Planner (I/C).”

In view of the aforementioned, we are convinced that Shri Sunil Bhardwaj has acted contrary to the

Issue Dasti.”

In implementation of the said order the respondent no.1 filed parawise reply dated 09.04.2015 stating therein that the designation of Sh. Shamsher Singh as Senior Town Planner was modified in terms of order dated 13.09.2013 and the order dated 22.01.2014 is not in accordance with the order dated 13.09.2013. para 2, 4 & 5 of the reply reads thus:

“2. That the above order was partially modified to the extant that the designation of sh. Shamsher Singh may be read as Senior Town Planner instead of Chief Town Planner vide order dated 13.09.2013 (Annexure R-II).

The main extracts of the office order dated 13-09-2013 may please be read as under:-

“No. F.PS/Secy./UD/2012/Pt.II/6083-91 dated 13-09-2013

ORDER

“In partial modification of this Office Order No. Secy./UD/201/Pt.I/642 dated 04-05/2012, the designation of Sh. Shamsher Singh at Sl. No.30 be read as Senior Town Planner instead

of Chief Town Planner. Sh. Shamsheer Singh shall also continue to exercise the administrative control and discharge the day to day routine function of Town Planning Department of South DMC with addition charge of North DMC and East DMC in his own post and grade till further order.

The issues with the approval of Competent Authority.”

(sd/-)
(R.K.SRIVASTAVA)
SECRETARY (UD) &
DIRECTOR OF LOCAL BODIES

4. That order dated 22-01-2014 of the Corporation is not in accordance with the order dated 13-09-2013 of Secretary (UD)/Director of Local Bodies.

5. That the Commissioner, South DMC and Commissioner, North DMC vide this office letters dated 13-01-2015 and its reminder dated 30-01-2015 and 17-02-2015 were requested to provide their comments in the matter but no reply has been received till now despite repeated reminders.”

It is quite surprising that when in terms of the communication dated 13.09.2013 reproduced in the reply of the respondents it was specified that the designation of Sh. Shamsheer Singh may be read as Senior Town Planner instead of Chief Town Planner. Giving reference of the same communication Sh. Sunil Bhardwaj, Assistant Commissioner/Estt. had issued communication dated 22.01.2014 making it clear that the designation of Sh. Shamsheer Singh should be Chief Town Planner (I/C).

We are, prima facie, convinced that Sh. Sunil Bhardwaj, Assistant Commissioner has not only tried to disregard the stand taken in the affidavit filed by Govt. of NCT of Delhi before this Tribunal but also tried to dilute the order dated 13.09.2013.

In the circumstances, notice is directed to be issued to Sh. Sunil Bhardwaj, Assistant Commissioner/Estt., South DMC with direction to remain present in person in Court to explain his conduct in issuing the communication dated 22.01.2014. He should carry with himself the relevant record, he wishes to rely upon in his defence. List on 05.05.2015. “

Despite our said order Mr.Sunil Bhardwaj, Assistant Commissioner South DMC is not present. Learned counsel representing the respondents in the Contempt Petition submitted that Mr. Sunil Bhardwaj is not represented by them.

Issue fresh notice to Mr. Sunil Bhardwaj, Asstt. Commissioner to be served by Spl.Messenger through Commissioner South DMC New

Delhi returnable on 28.5.2015. Mr. Sunil Bhardwaj would remain present in person on the next date of hearing. In case, Mr. Sunil Bhardwaj is found posted out, the Commissioner, South DMC would file an affidavit regarding his present place of posting.”

9. In the affidavit filed by him, Mr. Sunil Bhardwaj explained that it was the Additional Commissioner –II, South DMC, who had proposed the designation of the applicant as Chief Town Planner (I/C) and he only communicated the decision taken by the Commissioner to Mr. Shamsher Singh (respondent No.3). In paragraph 15 of the affidavit, he explained that in terms of order dated 13.9.2013, the designation of respondent No.3 had been corrected and Mr. Shamsher Singh (respondent No.3) was apprised of the decision. Paragraphs 12 to 16 of the affidavit, filed by Mr. Sunil Bhardwaj, read thus:-

“12. That the Additional Commissioner-II, SDMC on 17.01.2014 vide page 8/n of the file bearing Diary No.650 of 2013 proposed the designation of Shri Shamsher Singh as “CTP (I/C)” and submitted the file for approval of the same to Commissioner/ SDMC.

13. That the Commissioner/SDMC on 17.01.2014 took the decision to designate Shri Shamsher Singh as “CTP (I/C)”. The same is contained at page 8/n of the File bearing Diary No.650 of 2013.

14. That I merely communicated the decision taken by the Commissioner to Shri Shamsher Singh under letter No. AC/CED/2014/2670 dated 22.01.2014 as I was duty bound to do so. The letter dated 22.01.2014 is placed at page 32/c of the File bearing Diary No.650 of 2013.

15. That I had at no stage proposed to designate Shri Shamsher Singh in contravention of the order dated 13.09.2013 of DLB whereby the designation of Shri Shamsher Singh was corrected. The position becomes abundantly clear from my notings dated 25.11.2013 at page 5/n of File bearing Diary No.650 of 2013 of SDMC and subsequently notings at pages 6-8/N therein wherein the higher authorities in the Corporation had taken the decision to designate Shri Shamsher Singh as CTP (I/C).

16. That with the anomalous situation existing where there was an order to rectify the designation of Shri Shamsher Singh and he who was duly served with such direction of DLB continuing to use the

designation as used by him prior to the correction by DLB and even representing using uncorrected designation, the matter having been brought to the notice of the higher authorities and the higher authorities having taken a decision as is evident from notings at page 5-8/n of the file, the Deponent herein was duty bound to communicate the decision of the higher authorities to Shri Shamsher Singh which he did.”

10. Once the Director, Local Bodies has taken a stand before this Tribunal that the designation of Mr. Shamsher Singh (respondent No.3) was to be rectified with the approval of the Lt. Governor and in the wake of such undertaking in terms of the communication dated 13.9.2013 his designation was rectified, the Commissioner, South DMC ought not to have proposed the designation of Mr. Shamsher Singh (respondent No.3) as Chief Town Planner contrary to the stand taken before the Tribunal. Nevertheless, after filing of the present Contempt Petition, respondent No.1 as well as respondent No.2 maintained that the designation of Mr. Shamsher Singh (respondent No.3) till his promotion to the post of Chief Town Planner on 27.7.2015 should have been shown as Senior Town Planner, but respondent No.3 was not apologetic and his counsel maintained that he has not flouted any direction issued by the Tribunal. Once the Director, Local Bodies has taken a stand before this Tribunal and in acceptance of the same the Tribunal had allowed the O.A.No.1222/2013 to be withdrawn, it was imperative for all concerned to act with due regard to the Order. When the order concerned Mr. Shamsher Singh (respondent No.3) and acting upon a stand the Director, Local Bodies had withdrawn the designation of Chief Town Planner from respondent No.3, he ought to have not described himself as Chief Town Planner. We could still appreciate if respondent No.3 could have regretted his such conduct, but it did not happen and it was maintained on his behalf that in the absence of there

being any violation of specific direction issued to him by this Tribunal, there is no contempt by him. Once a stand was taken before this Tribunal on behalf of Director, Local Bodies that the proposal to withdraw the designation of Chief Town Planner used by the applicant had been sent to the Lt. Governor and in view of such stand the O.A. No.1222/2013 was withdrawn and subsequently a specific Order withdrawing the designation from respondent No.3 had been issued, he should not have used such designation.

11. As elaborated in The Law of Contempt (Third Edition) by the Law Research Institute Venus, if administration of justice has to be effective, respect for its administration has to be fostered and maintained and it is out of rules framed by Courts in this behalf that the law of contempt has grown. From rudimentary rules devised for the limited purpose of securing obedience to the orders of courts, there evolved in the course of time elaborate and far reaching doctrines and extraordinary procedures. Each new precedent was not declaratory but creative of the law. Each new type of attack on the administration of justice received a corresponding elaboration or extension of the contempt law. As Craies has said, 'the ingenuity of the Judges and of those who are concerned to defeat or defy justice has rendered contempt almost protean in its character'. It is indeed difficult and almost impossible to frame a comprehensive and complete definition of contempt of court. \the law of contempt covers the whole field of litigation itself. The real end of a judicial proceeding, civil or criminal, is to ascertain the true facts and dispense justice. Anything that tends to curtail or impair the freedom of the limbs of the judicial proceeding must of necessity result in hampering the due administration of law and in interfering with the

course of justice. As ruled by the Hon'ble Gauhati High Court in **Ahmed Ali v. The Superintendent, District Jail, Tejpur**, 1987 Cri LJ 1845 at page 1849, "It is essential to safeguard the dignity of the court and protect it from any attack from any one which would undermine this dignity and lower the court's prestige in the eyes of the common man. So what would offend this dignity and lower the court's prestige is a matter for the court to determine. A fortiori (sic) what is contumacious is for the court to decide. Its discretion cannot be confined within the four walls of a definition. This does not mean that the court shall not be guided by the definitions given in the Act but the categories of contempt may not be closed by the definitions".

12. In view of the aforementioned, for his conduct of using the designation of Chief Town Planner between 13.9.2013 when the order was passed by the Director, Local Bodies modifying the designation of respondent No.3 as Senior Town Planner and 27.7.2015 when he was again given *ad hoc* promotion as Chief Town Planner and for being not apologetic for such conduct, we direct Mr. Shamsheer Singh, respondent No.3 to remain present in the Court before us in person to show cause as to why the contempt proceedings should not be drawn against him.

13. List the Contempt Petition on 20.11.2015.

(K. N. Shrivastava)
Member (A)

(A.K. Bhardwaj)
Member (J)

/sunil/