
(2002) 09 DEL CK 0065
In the Delhi High Court
Case No : CCP 335 of 2001

Bal Bharti Public School

APPELLANT

Vs

Shri Ajay Kumar Mehra

RESPONDENT

Date of Decision : 25-09-2002

Acts Referred:

Citation : (2002) 09 DEL CK 0065

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : A.K. Chabra, for the Appellant; R.C. Chawla and Rajesh Manchanda, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioner has filed this contempt petition claiming that the respondent has deliberately and willfully issued a recovery notice, despite stay of the operation of the order dated 5.3.2002, petitioner contends that respondent reserved orders in haste on 7.2.2001, without a proper opportunity to petitioner. Respondent passed the impugned order dated 5.3.2001, which in fact was dispatched only on 21.3.2001.

2. Learned counsel Mr. Ashok Chabra submits that there has been willful disobedience of the orders passed by this court. A perusal of the order sheet after the closure of the hearing on 7.2.2001 shows the under mentioned endorsement by the P.A. of respondent:-

"Final order sent to establishment and speed post/registered post."

This endorsement is dated 5.3.2001. He submits that the order was in fact dispatched on 21.3.2001. Case of the petitioner is that the respondents antedated the order dated 5.3.2001, after the petitioner had filed a writ petition. Advances copy had been served on the respondents and the notice and stay order dated 14.3.2001 had been passed. Mr. Chabra submits that it is also significant that no representative of the respondent appeared, even though the

advance copy had been served prior to 12.3.2001. with a view to supplement the submission that it was a design to antedate the order and to over reach the stay order passed on 14.3.2001 that tow of the letters dated 14.2.2001 and 5.3.2001 submitted by the petitioner seeking to lead evidence are missing from the respondent's file, as is apparent from the inspection carried out.

3. Learned counsel submits that a further circumstances which lends support to the petitioner's case is that the respondent issued a recovery certificate despite the order dated 14.3.2001, directing that no final order be passed. Vide orders dated 28.3.2001, order dated 5.3.2001, passed by the respondent was stayed. Respondents in reply has taken a position that the recovery certificate, mentioned that there was a court stay. Counsel has shown in court the copy of the recovery certificate received by the petitioner, which does not carry any endorsement of a court stay. Mr. Chabra submits that an idle plea has been taken by the respondents to somehow explain their disobedience of the orders of the Court. To sum up, counsel for the petitioner states that there are inherent contradiction in the conduct of the respondents visa viz the natural course of events, which should have followed. Some of the positions are not easily reconcilable Counsel for the petitioner firstly submits that endorsement by PA of respondent that the order had been sent by speed post was not understandable, when it was actually dispatched on 21.3.2001. Secondly the petitioner's letters dated 14.2.2001 and 5.3.2001 were missing from file. Thirdly, the non-appearance of the respondents despite advance copies being served with a view to somehow pass the antedated order. Lastly the issuance of the recovery certificate. The Explanation of having mentioned that there was a court stay on the Recovery Certificate sent to the Revenue Officer, without mentioning the same on the copy of the recovery certificate sent to the petitioner.

4. Respondents vide order dated 13.9.2002, were required to file an affidavit to explain and clarify the following:-

(a) Endorsement dated 5.3.2001 to the effect that final order sent to the establishment by speed post/registered post is signed by PA of the officer.

(b) Copy of the recovery certificate issue and received by the petitioner not carrying any endorsement with regard to their being a court stay, while the original recovery certificate issued purported to carry such an endorsement.

(C) the corrections carried out on the page of the dispatch register relating to the entries made from Serial No. 2897.

5. An additional affidavit of Mr. Ajay Mehra has been filed in court. In the said affidavit the deponent has explained the procedure adopted after passing of an order by the Assessing Officer. It is stated that the PA in making the endorsement, actually meant that the order has been sent to the dispatch section with a request to send the order to the establishment by speed post and registered post. It was not meant to state that PA had dispatched the order. Respondents also explained that order along with several others of the batch was

sent to the dispatch section on 12.3.2001. Due to administrative delays, it could be dispatched only on 21.3.2001. On of the grounds stated is that there was a paucity of funds. After money had been sanctioned and credit obtained, franking machine could be operated only on 19.3.2001. The said order along with other orders, were sent on 21.3.2001 by dispatch. Similarly, respondent has explained the corrections, which resulted form an error on the part of the concerned clerk. Deponent has also explained that there was no intention to effect any recovery on the basis of the recovery certificate and the recovery certificate sent to the Revenue Officer clearly carried the endorsement of there being a court stay. Mr. R.C. Chawla states that even the nothings in the file mentioned the stay and no action was taken for effecting the recovery. Explanation of the deponent that it did not think it necessary to make similar endorsement on the copy sent to petitioner is neither proper nor understandable. It is incumbent upon the Department, if an endorsement is made on an original of a certificate to ensure that the same is also made on the copy. Respondent shall be careful in this regard in future.

Considering the Explanation and clarifications offered by the respondents, petitioner's allegation that the order dated 5.3.2001 was antedated does not appear to have substance. Respondents have satisfactorily explained the movement and the delay entailed in the dispatch of the order. Similarly, the non mentioning of the stay order on the recovery certificate sent to the petitioner was a mistake, for which corrective action needs to be taken by the respondents in future. I am of the view that the conduct of the respondents cannot be said to be either one of willful or contumacious disregard of the orders of the court, which would warrant initiating proceedings for contempt. Accordingly no case is made out for proceedings for contempt against the respondent. In any case Mr. Chabra in view of the disposal of the writ petition does not even wish to press the competent petition any further.