

118 COCP 1673-2024 Jasbir Singh & ors vs Shri A K Singh & ors
119 COCP 1674-2024 Rajesh Kumar vs Shri A K Singh and others

Present: Mr. Ravinder Malik (Ravi), Advocate
for the petitioner

-.-

Notice of motion.

On the asking of Court, Mr. Pawan Kumar Longia, Deputy Advocate General, Haryana accepts notice on behalf of the respondents.

Counsel for the respondents while referring to the order dated 10.04.2023, passed by the Division Bench in LPA 367-2023, contends that the Division Bench, at the time of issuance of notice of motion in the appeal against order of the writ Court was also pleased to order that “in the meantime, the contempt Court shall not proceed with the matter.”

Counsel for the petitioner has submitted that the above said LPA No. 367 of 2023 is not arising out of the case of the petitioner and there is no stay order passed in LPA 369-2023; which arises from the writ petition, filed by the petitioners.

Had this order of stay of contempt proceedings in an appeal against the writ Court order been a stray incident in a single case, this Court, as a matter of judicial comity, would have even followed that order, however, the parties in different cases have been repeatedly producing such or similar orders passed by different Division Benches, resulting into increasing unnecessary pendency of contempt petitions. So it has become imperative for this Court to dilate upon the issue.

So far as the present case is concerned, since there is no specific stay granted by the Division Bench in Letter Patents Appeal, arising out of the writ petition filed by the petitioner, therefore, the stay granted in another case in LPA No. 367-2023, cannot have any effect on the case of

the petitioner. Moreover, even in LPA 367-2023, no aspect of the contempt proceedings or any order passed by the contempt Court was under challenge in LPA, as such. Furthermore, it is so clear from the provisions contained in the Constitution of India, and the Supreme Court has also so clarified in case of *Civil appeal Nos. 7400-7401 of 2018, titled as 'Roma Sonkar vs Madhaya Pradesh Public Service Commission and another'* that in the intra-court appeal in the High Court, the Single Bench is not a Court subordinate to the Division Bench, and hence, the Division Bench cannot even remand to the Single Bench even the same case in which appeal is heard by the Division Bench. The limited power, which the Division Bench has is to correct the mistake, if any, committed by the Single Bench and to pass its own judgment to decide the *lis*, as such. Therefore, there is no question of the Division Bench having authority to pass sundry orders in the matters or the aspects; which are not even under challenge before the Division Bench, by arrogating to itself the roving and omnipresent authority and jurisdictions. Moreover, the contempt Court does not draw its jurisdiction and powers to consider and decide a contempt petition; from any authorization or concession conferred upon it by any Division Bench. The contempt Court, *per se*, has that authority and powers as per the Contempt of Courts Act, and more widely, under the provisions of the Constitution of India itself. While hearing an appeal from an order of the Single Bench, in an appropriate case, the Division Bench has the power to stay the operation of the judgment of the Single Bench, as an ad interim measure, however, the Division Bench hardly has any jurisdiction to pass an order, while hearing such a LPA against order of a writ Court, that the

contempt Court shall not proceed with the matter. Hence, such an order, if passed, has to be treated as non-est. Since in absence of stay against operation of order of writ Court, if the same is not coupled with then the non-compliance would continue, therefore, the contempt Court has to proceed further, as per the law.

List on 20.08.2024 for further consideration .

However, it is clarified that the Court will not accept any justification for non-compliance, even if the same is based on some perceived true facts. It is also clarified that even if some appeal is pending anywhere, that shall also not be taken as a justification for non-compliance, unless operation of the order qua which contempt is alleged, is stayed specifically by the Appellate Court.

It is further ordered that if the order is not complied with, the concerned respondent shall remain personally present before this Court on the next date of hearing, to receive further orders in the contempt proceedings.

A photocopy of this order be placed on the file of other connected case.

(Rajbir Sehrawat)
Judge

May 14, 2024
mohan bimbra