

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP (C) No.905/2022

CM No.2253/2022

CM No.5345/2022

Mohammad ShafiNaikoo (Senior Citizen)

...Petitioner(s)

Through: Mr. Shabir A. Bhat, Advocate vice Mr. M. Ashraf Wani, Adv.

Vs.

District Magistrate Anantnag and other

...Respondent(s)

Through: Mr. Abdul Rashid Malik, Sr. AAG for R1 and R2
Mr. ShujaUlHaq, Advocate for R3 to R7

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.

ORDER

06.02.2023

01. This Court vide order dated 31st December, 2022, granted respondents 1 and 2 last and final opportunity of four weeks for filing reply and in default, it was made clear that the District Magistrate, Anantnag, shall remain present before the court and the matter was directed to be listed on 4th February, 2023.

02. On 4th February, 2023 firstly in the pre-lunch session when the matter was taken up neither the District Magistrate, Anantnag, was present before the court nor the reply was filed and the matter was kept on board and was again taken up in the post-lunch session when Mr. A. R. Malik, Sr. AAG, appeared and submitted before the court that due to the law and order problem, the District Magistrate could not appear before the Court and assured the court that the District Magistrate will remain present before the court along with the relevant record on the next date of hearing. The learned Sr. AAG also submitted that he has

prepared the reply and the same will be filed by or before the next date of hearing positively and the Registry was, accordingly, directed to entertain the reply likely to be filed by respondents 1 and 2. However, on the assurance of the Senior Additional Advocate General the matter was adjourned and directed to be listed on 06.02.2023 for personal appearance of the District Magistrate, Anantnag. It is apt to note that reply stands filed on behalf of respondents 1 and 2 on 04.02.2023.

03. Today when the matter was taken up, Mr. A. R. Malik, Sr.AAG, appeared along with Mr. Mohammad Ashraf, Additional Deputy Commissioner, Anantnag, in such a manner making the court to believe that as if the District Magistrate, Anantnag, is making his presence before the Court in terms of the aforesaid order. The said fact came to the notice of the court only after the hearing in the matter was over and a slip was passed on to the concerned stenographer disclosing the particulars of the person present in the court as Mohammad Ashraf (JKAS), Addl. DC Anantnag. The said slip is also made part of the record. The Senior AAG or even the officer present did not even thought it proper to disclose before the court, during the course of hearing, that instead of the District Magistrate, Anantnag, the Additional Deputy Commissioner is present before the court, rather they behaved in such a way as if the District Magistrate in terms of the directions (supra) of this court is present before the court. Both of them were under legal obligation to have apprised the Court that the District Magistrate could not appear for whatever reasons and in his place, the Additional Deputy Commissioner, Anantnag, is making his presence before the Court.

04. The aforesaid act on the part of the Additional Deputy Commissioner is serious and grave in nature and amounts not only to

misconduct but also tantamount to contempt of the court and perjury as he has deliberately and intentionally mislead the court.

05. An advocate also plays an important role in the justice delivery system but the aforesaid act on the part of the Senior Additional Advocate General is unbecoming. A duty was cast on the learned Sr.AAG, to have apprised the court that the District Magistrate could not appear before the court for whatever reasons and instead the Additional Deputy Commissioner is appearing or else, the concerned lawyer should have filed an application seeking his exemption from personal appearance.

06. Even, the District Magistrate, Anantnag, despite the order of the court has evaded his appearance before the court and no plausible reason has either been pleaded or brought to the notice of the Court for his non-appearance and, as such, the conduct of the officer of such rank is unbecoming and contemptuous in nature.

07. In view of the above, before proceeding further in the matter, the District Magistrate and the Additional Deputy Commissioner, Anantnag (Mr. Mohammad Ashraf), are directed to remain present before the court on 13th February, 2023, to explain their position and to show cause as to why action as warranted under law be not taken against them.

08. Mr. A. R. Malik, learned Sr. AAG, is also directed to file his personal affidavit before the next date of hearing, explaining as to why he has not brought to the notice of the Court that instead of District Magistrate, Anantnag, the Additional Deputy Commissioner, Anantnag, is appearing.

09. At this stage, learned counsel appearing for respondents 3 to 7 submits that CM No.2253/2022 filed by him be treated as reply to the writ petition. His statement is taken on record and CM No.2253/2022 is treated as reply to the writ petition.

10. Since the reply stands filed on behalf of the respondents, list the matter for consideration on 13th February, 2023.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR
06.02.2023
"Shameem H."

