

(1995) 09 KL CK 0015
In the High Court Of Kerala
Case No : C.C.C. No. 117 of 1995

Aloysius, C.P. and Another

APPELLANT

Vs

Sarada Muraleedharan

RESPONDENT

Date of Decision : 15-09-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 225, 5
Contempt of Courts (High Court of Kerala) Rules, 1971 — Rule 10, 11, 12, 14, 15
Contempt of Courts Act, 1971 — Section 12, 15, 19(4), 23
Rules for the Kerala Agricultural Income Tax and Sales Tax Subordinate Service — Rule 2, 31

Citation : (1995) 09 KL CK 0015

Hon'ble Judges : M.M. Pareed Pillay, C.J;P. Shanmugam, J

Bench : Division Bench

Advocate : P. Sukumaran Nair, for the Appellant; Kurian Joseph, A.A.G. and N.S. Menon, Govt. Pleader, for the Respondent

Judgement

P. Shanmugam, J.—Petitioners in O.P. No. 11081/90 have filed the above C.C.C. contending wilful disobedience to the directions issued in the judgment, dated 21st November 1994 and praying to punish the Respondent u/s 12 of the Contempt of Courts Act, 1971.

2. Facts.- The Petitioners were directly recruited in the cadre of Assistant Sales Tax Officers (A.S.T.O.) in the Kerala Agricultural Income Tax and Sales Tax Subordinate Service (hereinafter referred to as the Service) on 30th August 1976 and 12th February 1977 respectively. As per Rule 2(a) of the Kerala Agricultural Income Tax and Sales Tax Subordinate Service Rules (hereinafter referred to as the Rules) which came into force on 11th October 1962 appointment to the Service shall be made by recruitment by transfer and by direct recruitment in the ratio of 3:1.

3. In July, 1981 when Government of Kerala issued G.O. (Rt.) No. 451/81/TD., dated 20th July 1981 directing the Board of Revenue to refix the inter se seniority of transfer promotees and direct recruits giving notional seniority to

three transfer promotees below one direct recruitee, O.P. No. 5967/1981 was filed by the Petitioners with Ors. challenging the said G.O. The Government sought to sustain the said order inter alia stating that there was breakdown of the quota rule. This Court while holding in the judgment dated 29th June 1982 (Annexure I) that the Government did not attempt for direct recruitment for a long number of years and in their places the transfer appointees could not claim the right to hold permanently, further stated that the promotees have to be pushed down in the seniority list and they will have to find their place consistent with the quota rule (vide para 13 of the judgment). The Court directed the Government and the Board of Revenue to fix inter se seniority in the manner directed in the judgment. The appeals, W.A. Nos. 557, 517 and 516 of 1982 filed by the State Government and other two promotees were dismissed by the Division Bench by common judgment dated 1st October 1983 (Annexure II). The Division Bench held that assignment of dates must necessarily be in accordance with the ratio and persons appointed in excess of the respective quota must step down in order that those rightly appointed in accordance with the quota are assigned their rightful place. The Government was directed to prepare a proper seniority list within six months and further directed not to take into account any other inconsistent orders. When the Civil Appeals filed against these orders were pending in the Supreme Court, the Government amended the rules by adding Rule 2(c) postponing the giving effect to the quota Rule 2(b) stating that the rule which originally came into effect from 11th October 1962 shall be deemed to have come into force only on 1st April 1974 (Annexure III). In effect the Government attempted to protect all the promotions made contrary to the quota rule from 1962 to 1974, that too after the specific directions issued by this Court in the O.P. and in the Writ Appeals. The Petitioners filed W.P. No. 15495-96 of 1984 against this amendment before the Supreme Court. The Civil Appeals filed against W.A. Nos. 557/82, etc., were allowed with a direction to dispose of the matter in accordance with the principles laid down in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, hereinafter referred to as *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, . W.P. No. 15495-96 of 1984 filed by the Petitioners was dismissed as withdrawn with liberty to move the High Court.

4. In the meanwhile Anr. batch of A.S.T.Os. filed O.P. No. 7280/89, etc., challenging the provisional seniority list dated 3rd February 1989 for the period 1st April 1981 to 31st March 1987 which gave seniority to the temporarily promoted transferees ignoring the claim of regularly promoted direct recruits. The learned Judge in his judgment dated 4th March 1991 (Annexure IV) after holding that promotees can claim only if their appointments were effected following the rules applicable to substantive appointment and persons who had been promoted within the quota alone can retain the rank, directed the Government to determine the actual number of vacancies during the relevant period in terms of the Special Rules for each category viz. promotees and direct

recruits as per the ratio fixed, within three months from the date of the judgment.

5. As permitted, O.P. No. 11081/90 was filed on 6th November 1990 challenging the retrospective amendment by Rule 2(c) as unconstitutional and void. The appeal against O.P. No. 7280/89, etc., and W.P. No. 11081/90 were taken together and the Division Bench by a common judgment dated 21st November 1994 (Annexure V) declared it so with a direction to refix the seniority of the directly recruited A.S.T.Os. appointed after 1st April 1974 in accordance with the principles laid down in the The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, and also the observations contained in the judgment of the learned Single Judge in O.P. Nos. 7280/1989,891/90, etc., dated 4th March 1991 and the Division Bench judgment dated 21st November 1994.

6. In purported implementation of these directions of this Court the Respondent in the C.C.C. issued the proceedings and the order in G1-00843/95/Tx., dated 13th March 1995 deciding certain issues which according to her, remained to be settled and prepared a provisional seniority list on the basis of the principles and guidelines decided by her. This order of the Respondent, according to the Petitioners, is willful disobedience of the judgments of this Court.

7. Contentions.- The main contentions raised by the Petitioners are:

7.1 The clear and specific findings, observations and directions of this Court have been flouted deliberately and provisional seniority list is prepared on different guidelines by the Respondent contrary to those judgments. Hence it is a clear case of contempt.

7.2 The direction to prepare the seniority list was issued to the Government and the Board of Revenue and the list is now prepared only by the Respondent contrary to the specific and conscious direction and the order of the Respondent without the Government's order is deliberate and constitutes contempt.

7.3 The Advocate General of the State should not and cannot defend the contemnor legally and contrary to the rules and spirit of the provisions.

8. The Respondent repelled the contentions of the Petitioners in the counter and argument as follows:

8.1 The entitlement of rank and seniority was not firmly decided by the Division Bench judgment (Annexure V). The Board had followed the principle as set out in para 44(B) of The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, . The transfer promotees who had been continuously working are entitled to claim the entire period of officiation and count it for seniority.

8.2 The Board is the appointing authority and it is their primary responsibility for preparing the list and therefore they have prepared the list and forwarded the copy to the Government.

8.3 The list is only a provisional list prepared and the final list will be issued after receiving the objections.

8.4 If two interpretations are possible, the taking of one view against the other cannot be termed as violation of the direction.

8.5 The Advocate General is entitled to defend the contemnor since notice before filing is required to be furnished to the A.G.

We have heard the learned Senior Counsel Mr. P. Sukumaran Nair for the Petitioners and Mr. N. Sankara Menon, Senior Government Pleader initially and the learned Advocate General later, on behalf of the Respondent. We have heard and gone through the case in detail and carefully considered the rival submissions.

9. Legal Position.- Before we go into the aspect of contempt let us examine the findings, observations and directions issued by this Court for proper appreciation and conclusion. Even though the judgments dealt with the cases of A.S.T.Os. and Sales Tax Officers, we are concerned with the case of A.S.T.Os. only. The findings of the Division Bench in the judgment Annexure V dated 21st November 1994 are as follows:

9.1 There was no breakdown of quota rule.

9.2 There was no necessity for appointment by transfer when Public Service Commission lists were current and available.

9.3 Rule 2(c) of the Rules limiting the operation of quota rule only from 1st April 1974 is declared invalid as violative of Articles 14 and 16 of the Constitution of India.

9.4 Seniority is to be refixed by the Government and the Board following the principles laid down in The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, and also the observations contained in the judgments of the Single Judge and the Division Bench.

10. The observations of the learned Single Judge and directions in O.P. Nos. 7280/89, 891/90, etc., dated 4th March 1991 (Annexure IV) which had been confirmed by the Division Bench are as follows:

10.1 Law governing fixation of seniority of officers drafted from different sources lays down in the light of Rules 2(a), 2(b) and the Supreme Court judgments.

10.2 The principles set out in The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, were set out and held that if the appointment is made by way of stop-gap arrangement without following the rules for regular appointment, rank cannot be assigned as a regular appointee.

10.3 The quota rule had not been broken and therefore, following Bishan Sarup

Gupta Vs. Union of India (UOI) and Others, the Respondent was directed to apply and to push down the excess promotions to later years so that these promotions can be absorbed in the lawful quota for those years.

10.4 On facts it was found that Public Service Commission had a valid list and instead of reporting such vacancies temporary promotions under Rule 31(a)(i) or 9(a)(i) of the General Rules were resorted to. Hence Government was directed to determine the actual number of vacancies during the relevant period and assign rank and date as per the ratio.

11. The factual position regarding the failure to resort to direct recruitment and the irregular appointment by promotion contrary to the Rules was also found in O.P. No. 5967/81, dated 29th June 1982 (Annexure I):

11.1 The learned Judge found that direct recruitment was not attempted and therefore transfer appointments in the vacancies reserved to be filled up by direct recruitment Were irregular and they have to be pushed down to find their places consistent with the quota rule.

11.2 The Government and the Board of Revenue were directed to follow the principle and regularise the irregular appointment by pushing them down for accommodation in vacancies reserved for transfer appointments.

12. The Division Bench in W.A. Nos. 517, 516 and 557/1982 (Annexure II) which confirmed O.P. No. 5967/1981 found the following:

12.1 Assignment of dates must necessarily be in accordance with the ratio adopted under the Rules.

12.2 The Government's power to relax the quota rule was rejected and the Government was directed to prepare the list within six months ignoring inconsistent orders.

13. The last two judgments were referred to only to look into the factual position regarding the nature of recruitment. It is found admitted in the counter before the Division Bench in Annexure V judgment as set out in para 30 that during the period 11th October 1962 to 31st March 1974 there were 368 vacancies of A.S.T.Os. to be filled up, out of which 92 constituted the quota for direct recruits. From 1st April 1974 to 30th August 1976 171 vacancies have occurred as per the provisional list dated 13th March 1995. Out of the above 536 (leaving 3 vacancies for special recruitment) the direct recruitment quota for the period works out to 134. But only 10 persons were recruited for this period. Persons promoted to vacancies from 14th March 1974 onwards have to be pushed down below the direct recruits advised on 30th August 1976. The said facts set out in the petition have not been denied.

14. The stand of the Respondent as per the order, dated 13th March 1995 is that

14.1 Whether there is a breakdown of quota rule is a matter of interpretation.

14.2 That even if the quota rule is operational the accrual of right is forfeited.

14.3 That it is not possible to push down the transferee appointed in excess is in direct violation of the findings of this Court as set out above.

15. Findings.- The learned Single Judge after quoting and considering The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, came to the definite conclusion that transfer appointments were irregular. When vacancies could be filled up by following the Special Rules, resorting to temporary recruitment was illegal. The conclusion in the words of the learned Judge is "In other words, in the instant case the quota rule had not broken down" and therefore the Government was directed to fix the actual number of vacancies in terms of Special Rules for each category and assignment of rank and date must follow the ratio fixed. Similarly the Division Bench in Annexure V judgment found that "the case of breakdown of the quota rule during the relevant years which was faintly suggested before us... does not stand scrutiny for the reason that during all these periods there were rank lists prepared by the Public Service Commission in existence from which appointments could be made and were in fact made... transferees appointed in excess of quota... have to be pushed down to yield place to the direct recruits".

16. In the light of the findings of this Court the order of the Respondent is in clear violation of all the observations in the earlier judgments of this Court as set out above. All the points raised by the Respondent in her order have been clearly and categorically answered with suitable directions. In these circumstances to say that it is still open to the Board to interpret the eligibility is a deliberate attempt to disobey the judgments. As a matter of fact in Clause (J) of para 44 of The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, the Supreme Court ordered as follows:

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position.

It is precisely what the Respondent is trying to do. All these decisions pertaining to the very service of A.S.T.O.s have been considered and directions given to both the Government and the Board as to what to be done for re-fixation of seniority list. Now the Respondent is trying to find possible error to unsettle the settled position and reopen the whole issue as if it is left open and stating that no such matters have been settled. It is not possible to say that the Respondent was not aware of all the judgments. They were all referred to in her order but had chosen to distinguish them so as to frame her own guidelines for seniority.

17. The Petitioners" inter se seniority with the transferees was the subject-matter of O.P. No. 5967/1981 and by judgment dated 29th June, 1982 itself the Court found fault with the Government for not resorting to direct recruitment. In that decision also the Government was directed to regularise the Petitioners

within the quota by pushing down consistent with the quota rule and the findings of the said judgment were affirmed in the Writ Appeals and also by the Division Bench in O.P. No. 11081/90 (Annexure V). The finding at para 16 is "There was no necessity then to resort to appointment by transfer, when admittedly the Public Service Commission lists were current and were available for being drawn on, for appointment by direct recruitment". Contrary to this specific finding the Respondent says that no P.S.C. list was available between the periods 1968 and 1976. The Respondent further says that promotees have already occupied the posts and therefore their officiating service is to be counted for seniority and they cannot be pushed down on the ground that they are in excess of the quota. This reasoning is in direct defiance of the specific finding and directions of this Court as well as contrary to the Supreme Court ruling.

18. The stand of the Respondent in her order that the entitlement of seniority is to be decided solely on the basis of the principles of D.R.E.O.A.'s judgment is itself a misreading of the direction in the Division Bench judgment dated 21st November, 1994 (Annexure V) para 49. The direction that the observations contained in the judgments of the Single judge and D.B. must be followed had been given a go-by, since in both these judgments this Court found that there was no breakdown of quota rule and the Government has failed to follow the quota rule inspite of P.S.C. list. In these circumstances the Respondent should have followed the quota rule strictly. This is what had been concluded after quoting the principles laid down by the Supreme Court in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, by the learned Single Judge and the Division Bench. Therefore, it is a clear case where the Respondent intentionally misread and misinterpreted the directions of this Court and there by disobeyed the judgments in all respect.

19. Yet Anr. unusual stand taken by the Respondent is that this is only a provisional list. Such a stand was also taken earlier in reference to the provisional list by assigning seniority to the promotees on the basis of officiating and temporary service. The Respondent has also taken the same stand here even though the same was rejected by the learned Judge in O.P. Nos. 7280/89, etc. The Respondent having taken a particular stand by unsettling and reopening all the settled judgments and principles, the only answer could be that this plea of finalisation is only a ruse to get over the illegal order of the Respondent passed in contempt of this Court's judgments.

20. The order of the Respondent that "even in the event of quota rules remaining operational for the period the accrual of right to the vacancies prior to 1974 is forfeited" would clearly show that the Respondent is over-reaching the findings and conclusions of this Court. The principle "B" of the *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, would not apply since this is a case of appointment from different sources. Further Rule 2(c) which postponed the quota rule from 1st April 1974 had been declared unconstitutional and void and the Government and the Board

of Revenue were directed to refix the seniority based on Rule 2(a) as if there was no breakdown within the quota. All these findings and conclusions made over the years are given a go-by and the Respondent sought to make out her own guidelines for fixation of seniority. The first of such guidelines is that the quota rule is to be worked out from 1st April, 1974. Thus the Respondent has deliberately ignored the observations and directions of this Court and had chosen to follow her own findings disregarding the Court orders by giving effect to Rule 2(c) which had been quashed.

21. We are at pains to understand as to how the judgments of this Court are purposely misunderstood. There is no scope for misunderstanding or to give a different interpretation to the concluded issues. It is difficult to believe that the Respondent, an I.A.S. officer could make such mistake in understanding the clear observations and directions of this Court and the Supreme Court. Therefore, we are not impressed by the explanation that the list is provisional and in view of two interpretations being available the Respondent has chosen one way of interpretation.

22. In all these judgments the direction was given to both the Government and the Board of Revenue to pass orders. As argued by the learned senior counsel for the Petitioners the said direction was not without significance. The contention was that the Board is overwhelmingly composed of transferees/promotees and are ill-disposed against the direct recruits and are always adopting delaying tactics to defeat the just rights due to the direct recruits. This eternal rivalry on the facts and circumstances probalised the specific direction to the Government to refix the seniority. The present order of the Respondent without the Government's participation is yet Anr. clear violation of this Court's judgment. The answer that the Board is the competent authority and that they have forwarded the lists to the Government is nothing but an admission and erroneous justification of violation of specific order which did not give any room for doubt.

23. There are impleading petitions which we reject as not relevant for considering the C.C.C.

24. Another important aspect of the matter is that pending this C.C.C. this Court directed the Respondent and the Government not to give effect to the provisional list dated 13th March 1995 till the C.C.C. is finally decided. The said order was understood by everybody including the impleading Respondents. However, in spite of this specific direction the list was given effect to by passing G.O.(Rt.) 254/95/TD, dated 13th June 1995 by promoting certain Sales Tax Officers as Assistant Commissioners. This has prejudiced the Petitioners and the same is done in violation of the Court directions in the C.C.C.

25. Yet Anr. aspect worthy of taking note of the attitude of the Respondent and which is relevant in considering the C.C.C. is that when the matter was fully heard on 20th July 1995 the learned Government Pleader Mr. N. Sankara Menon after arguments in reply, sought time to pass fresh orders keeping in view of this

Court's judgments and the Supreme Court judgment in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, . We passed an order on 25th July 1995 adjourning the matter to 21st August 1995 giving the Respondent liberty to pass fresh orders. When the matter was taken up on 29th August 1995 the Respondent moved C.M.P. No. 23449/95 u/s 19(4) of the Contempt of Courts Act to suspend this order to enable them to file an appeal before the Supreme Court. This being not an order u/s 19(4) of the Contempt of Courts Act, we have declined their request. In any event the said order is different from the main C.C.C.

26. The Respondent has referred to *Narender Chadha and Others Vs. Union of India and Others*, giving certain benefits to continuous officiation. This decision was referred to in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, and the Constitution Bench in para 44 of the judgment laid down the principles to be followed in such cases. In reiteration of these principles the Supreme Court in *V. Sreenivasa Reddy and others Vs. Govt. of Andhara Pradesh and others*, held that it is well settled law that if appointment/promotion must be in accordance with the Rules, direct recruit takes his seniority from the date on which he starts discharging the duty of the post borne on the cadre while a temporary appointee appointed dehors the rules or on ad hoc basis or to a fortuitous vacancy gets seniority from the date of regular appointment. Appointment in accordance with rules is a condition precedent to count seniority. Temporary or ad hoc or fortuitous appointments etc. is not an appointment in accordance with the rules and the temporary service cannot be counted towards the seniority. In the said case the Supreme Court further held that the temporary appointees were liable to be placed below the direct recruits. The Supreme Court in *Krishna Ram and others Vs. State of Rajasthan*, held that the Seniority of promotees is to be reckoned from the date of their inclusion in select-list or from the date of their continuous officiation in the cadre post whichever is later on approval of their appointment by Central Government. The period of their continuous officiation prior to such date would be treated as fortuitous and not countable. In *Keshav Chandra Joshi and others etc. Vs. Union of India and others*, the Supreme Court held that ad hoc or fortuitous appointments on a temporary or stop-gap basis cannot be taken into account for the purpose of seniority, even if the appointee was subsequently qualified to hold the post on a regular basis. To give benefit of such service would be contrary to equality enshrined in Article 14 read with Article 16(1) of the Constitution as unequals would be treated as equals. When promotion is outside the quota, the seniority would be reckoned from the date of the vacancy within the quota, rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory one must be strictly implemented and it is impermissible for the

authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work out hardship but it is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory rules and would offend Articles 14 and 16(1).

27. The Respondent instead of following the directions contained in the judgments of this Court in reference to the The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, as indicated by the judgments, has gone independently in this regard.

28. We are pained to note that the Respondent has not shown any remorse for her stand but rather persisted in justifying the illegal interpretation. Therefore, we have no hesitation in holding that the Respondent had acted deliberately to disobey the orders of this Court. This Court's orders are meant to be obeyed and not to be circumvented or trifled with as the Respondent attempted to. We must erase the impression that by delaying the matter the effect of High Court's orders could be get over either by the filing of successive O.Ps. on the very same provisional seniority list or by sheer efflux of time. The Respondent's action apart from constituting contempt would only pave the way for such course. The Respondent having shown scant respect to the specific direction did not even think it necessary to offer an apology. The conduct of the Respondent is not only in defiance of the judgment but also tends to interfere with the due course of justice by the curious method adopted by her. It would be travesty of justice if the Court were to allow such gross violation of its judgments. Thus,

(a) the Respondent has fixed her own guidelines for provisional seniority list when the direction was to refix the seniority.

(b) The direction to follow the observations of this Court was ignored by the Respondent and in effect made all these judicial pronouncements meaningless by simply stating that she has to follow solely the The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, .

(c) The findings and observations rendered and the principles indicated by this Court based on the The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, had been deliberately flouted and disregarded.

(d) The Government did not bother to pass the order nor the Respondent await Government's clearance in spite of the specific directions in this regard and specific reason as to why the Government also should pass the order.

(e) The principles inter alia to be adopted in this case as concluded by the Division Bench viz. that the quota rule was not broken down and Rule 2(c) as invalid were set at naught by the Respondent.

29. In reference to the objection taken by the learned senior counsel for the

Petitioners for the appearance of the learned Government Pleader as well as the Addl. Advocate General for defending the contemnor, he took us through the various rules framed under the Contempt of Courts Act, 1971. The High Court of Kerala had made the rules viz. the Contempt of Courts (High Court of Kerala) Rules under the Contempt of Courts Act, 1971 in exercise of the power conferred under Articles 5 and 225 of the Constitution of India read with Section 23 of the Contempt of Courts Act, 1971. Rule 5 deals with the contents of the contempt petition. As per Rule 5(a) the alleged contemnor should be described by name. Rule 6 deals with taking cognizance of the contempt by a Division Bench of this Court, Rule 9 deals with preliminary hearing and notice. As per Sub-clause (ii)(a) of Rule 9 if the Court is satisfied that a prima facie case has been made out, may direct issue of notice to the Respondent and the said notice shall be in Form No. 1. The said form requires the Respondent to appear before this Court in person on a particular day or by Advocate duly instructed on the particular day and shall continue to attend the Court on all days subject to orders passed by the Court from time to time and show cause why action as is deemed fit should not be taken against the Respondent. Rule 10 deals with the service of notice, Rule 11 deals with the provisions for compelling attendance of the Respondent, Rule 12 deals with the appearance of the Respondent which compels the Respondent to appear in person, unless exempted by an order of the Court. Rule 14 contemplates hearing of the case and trial. Sub-clause (a) of Rule 14 enables the Court to pass appropriate orders in case the Respondent tenders an unconditional apology. Sub-clause (b) of Rule 14 states that if the Respondent does not admit that he has committed contempt, the Court may proceed to frame charges or drop the proceedings and discharge the Respondent. Sub-clause (e) of Rule 14 states that if the Respondent pleads not guilty, the case may be taken up for trial. Rule 15 which is relevant is as follows:

The Advocate General, or any other Advocate as may be designated by the Court shall appear and conduct the proceedings but against the Respondent.

The argument of the learned Counsel for the Petitioners is that it is the duty of the Advocate General or any other Advocate as designated by the Court to appear and conduct the proceedings against the Respondent who had pleaded not guilty and against whom charges had been framed.

30. In the context of these provisions it would be improper for the Addl. Advocate General who is duty bound to conduct the proceedings against the Respondent, to appear and defend the Respondent in the same proceedings.

31. The learned Government Pleader while initially defending the objection raised by the learned Counsel for the Petitioners submitted that Rule 15 only states that the Advocate General or any other Advocate who may be designated by the Court shall appear and conduct the proceedings and it did not include the Government Advocate. Therefore, it will not be improper for the Government Pleader to appear and defend the Respondent. In subsequent dates the learned Addl. Advocate General appeared for the Respondent and while defending his

stand of appearing on behalf of the, Respondent, he referred to Rule 5A. Rule 5A states that while dealing with a contempt petition, copy of such petition shall be furnished to the Advocate General and the registry shall accept the petition only on proof of service of such a copy. Referring to this provision the learned Addl. Advocate General says that he is entitled to defend the Respondent.

32. On a combined reading of these provisions we are unable to accept the stand of the Addl. Advocate General. The Advocate General is holding a constitutional position and befitting to this position and stand Rule 15 contemplates the Advocate General to appear and conduct the proceedings against the Respondent. The Advocate General is interested as much as this Court to maintain the dignity of this Court and the majesty of law. Probably in order to see that the orders of this Court are obeyed even at the initial stage itself, Rule 5A contemplates a copy of the petition being furnished to the Advocate General. That does not mean that the Advocate General will have to defend the Respondent. The Addl. Advocate General cannot take a contrary stand in support of the Respondent who would be charged for disobedience of the orders of this Court.

33. Section 15 of the Contempt of Courts Act, 1971 contemplates taking cognizance or criminal contempt only on its own motion or on a motion made by the Advocate General. It is for the Advocate General to look into the contempt petition before launching the criminal contempt against the Respondent. In these circumstances it will not be proper for the Addl. Advocate General to appear and defend the Respondent. It will be against the letter and spirit of the rules framed under the Contempt of Courts Act and the Contempt of Courts Act itself.

34. The Supreme Court in a recent judgment in T.M.A. Pai Foundation v. State of Karnataka (1995) 4 S.C.C. 1 held that the officers must be presumed to know that under the constitutional scheme obtaining in this country, orders of the Supreme Court-for that matter any Court have to be obeyed implicitly and it should not be trifled with. The Supreme Court having found that the Respondents have acted deliberately to subvert the orders of the Apex Court, found it equally necessary to erase an impression which appears to be gaining ground that the "mantra" of unconditional apology is a complete answer to violations and infractions of the orders of this Court. In this case the Respondent has not only shown scant regard and respect to the orders of this Court but has chosen to justify her stand without even expressing regret for her conduct.

35. Taking into account all the facts and circumstances of the case we hold the Respondent guilty of contempt of Court. However, we do not propose to inflict any punishment on her, especially in view of our directions given below. We record our strong disapproval of her conduct in the matter. She is also directed to strictly implement the directions of this Court as indicated in paras 8, 12, 13 and 14 of the judgment in O.P. Nos. 7280/89 etc., dated 4th March 1991 (Annexure IV) and paras 2, 16, 30 and 49 of the judgment in O.P. Nos. 11081/90 etc., dated 21st November 1994 (Annexure V) and observations made in this C.C.C., ignoring the proceedings in G1-00843/95/Tx, dated 13th March 1995, within one

month from the date of receipt of a copy of this judgment.

The C.C.C. is disposed of as stated above. No order as to costs.