
(2008) 09 BOM CK 0047

In the Bombay High Court

Case No : Contempt Petition No. 8 of 2001

Antonio Sequeira Coutinho Pereira

APPELLANT

Vs

Prakash Fadte and Others

RESPONDENT

Date of Decision : 19-09-2008

Acts Referred:

Constitution of India, 1950 — Article 215
Contempt of Courts (Bombay High Court) Rules, 1994 — Rule 3, 5, 76
Contempt of Courts Act, 1971 — Section 12, 14, 15, 15(1), 2

Citation : (2009) 1 BomCR 815

Hon'ble Judges : Dharmadhikari S.C., J;Chavan R.C., J

Bench : Division Bench

**Advocate : S.K. Kakodkar and V.R. Tamba and Rama Rivankar, for the Appellant;
V.P. Thali and R. Chodankar, A.G., for the Respondent**

Final Decision : Dismissed

Judgement

Dharmadhikari S.C., J.—This contempt petition is by the original petitioner in Writ Petition No. 393/00. Although, the Order passed by this Court directs that the writ petition and the contempt petition be heard together, both sides agreed that the hearing of the writ petition be deferred and the contempt petition be taken up for disposal. We have proceeded to hear the parties only on the issue of contempt as urged in the contempt petition. By consent, the writ petition is posted for hearing and final disposal after two weeks.

2. In the contempt petition as well, both sides agreed before us that the issue of maintainability raised by respondent No. 2 be decided and an Order be made on the said preliminary objection raised by respondent No. 2. In the event, the Court holds that the contempt petition is maintainable, then the parties would address the Court on the issue of contempt.

3. We have proceeded on the above agreed

4. The contempt petition sets out that the petitioner had filed Writ Petition No.

393/ 00, which was directed against the notification dated 10.11.00 of the Government of Goa published in Official Gazette Series II No. 32 Extraordinary No. 2 of the said date.

5. Prior thereto, on 10.05.00, the Government of Goa by a notification, set up a Commission of inquiry for the purpose of making inquiry into the property of the late Count of Mayem. The Commission of inquiry was to be presided over by a retired Judge of this Court. The time limits were set up for submission of report and we are not concerned with the extensions granted to the said Commission.

6. It is alleged in the contempt petition that this Commission was set up by the Government which was led by one Mr. Sardinha. It was a Government which included rebel Congress M.L.A. and the Bharatiya Janata Party. It was a coalition Government. The Commission was appointed as the matter was of public importance and the allegations were that custodians of evacuee properties connived with some industrialists, bureaucrats, encroachers, politicians, etc. in order to plunder the estate of late Count of Mayem. The petition alleges that several attempts were made to thwart the proceedings before the Commission. The Commission was functioning and about 55 witnesses including the contempt petitioner were examined. Some more witnesses were being summoned and were to attend the proceedings on 13.11.00.

7. Prior thereto, on 24.10.00, second respondent, Manohar Parrikar was sworn in as Chief Minister of Goa and he headed a B.J.P. Government. The first respondent to the contempt petition is a M.L.A. of the B.J.P. elected from Mayem Constituency. It is alleged that in order to end the proceedings before the Commission and ultimately preventing it from inquiring into the allegations that the impugned notification dated 10.11.00 came to be issued. The Commission was wound up and that is how the writ petition had to be filed.

8. We are not concerned with the allegations in the writ petition inasmuch as all that the petitioner alleges in this petition is that since the filing of the petition, he has been subjected to various threats of personal and bodily harm so also dire consequences. The allegation is that the petitioner was not permitted to prosecute the petition in the light of the threats. The threats were given by the supporters of respondent Nos. 1 and 2 and at their instigation. In Para 8 and 9 of this contempt petition, these allegations are made. It is further alleged that since the petitioner did not succumb to the threats, respondent Nos. 1 and 2 issued him a notice for breach of privilege and contempt of the Goa Legislative Assembly for certain statements made by the petitioner in the writ petition. The petitioner has received notice from the Under Secretary, Goa Legislature in that behalf.

9. The petitioner clarifies that at no stage and at no time he made any statement amounting to breach of privilege of the Goa Legislative Assembly. The Notices are nothing but threats to the petitioner by respondent Nos. 1 and 2 and they are exerting pressure so that he withdraws the writ petition and does not

proceed with it.

10. In paragraph No. 11, 12, 13 and 14 of the petition, this is what is alleged:

11. The petitioner submits that the said conduct of the respondents 1 and 2 amounts to gross interference in due course of judicial proceedings. The petitioner further submits that the said threat and conduct of the respondents 1 and 2 tends to interfere with and to obstruct the administration of justice and due process of law. Even otherwise and said conduct of the respondents 1 and 2 amounts to gross contempt of this Hon''ble Court. The said action impinges and interferes with the petitioner's right to approach this Hon''ble Court for redress of his grievances and amounts to using extra constitutional pressure on the litigant who has exercised his legal right to move this Hon''ble Court to seek justice. It is obvious that the respondents 1 and 2 apprehend that in case the Silva Commission of Inquiry is revived and the impugned notification is set aside then the action of the custodians with connivance of some industrialists, encroachers, bureaucrats and politicians in their nefarious activities would be exposed.

12. It is therefore submitted that this Hon''ble Court should inquire into the matter and if found guilty, take action against the respondents 1 and 2 under the Contempt of Court's Act, 1971 and/or under Article 215 of the Constitution of India and/or such other general law of contempt as this Hon''ble Court thinks fit and proper.

13. The petitioner has submitted a copy of this petition to the Advocate General to give his consent in writing u/s 15 of the Contempt of Court's Act, 1971 and have pointed out the urgency of the matter but has not so far received his consent.

14. The petitioner further submit that in view of the gross nature of the contempt, this Hon''ble High Court should suo moto inquire into the allegations made in this petition either u/s 15 of the Contempt of the Court's Act, 1971 or exercise the power under Article 215 of the Constitution of India to uphold the dignity of the judiciary and the right of persons to approach this Hon''ble Court for seeking justice and not be pressurized and threatened.

11. It is in these circumstances that the petitioner prays that respondent Nos. 1 and 2 be prosecuted under Contempt of Court's Act, 1971 for their acts alleged in the contempt petition and which amount to interfering with and obstructing the administration of justice and due process of law.

12. It is undisputed before us that this is a petition alleging Criminal Contempt. In para 13 of the petition which is reproduced above, the petitioner states that a copy of the Contempt Petition was submitted to the then Advocate General to give his consent in writing but the consent was not received till the date of institution of the Contempt Petition.

13. This contempt petition was instituted on 2.4.01 by the petitioner who has

verified and affirmed on oath the allegations therein.

14. On 4.4.01, this contempt petition was placed before a Division Bench of this Court and it passed the following order:

P.C.

We have heard the learned Senior Counsel for the petitioner and it is transpired during the course of his address to us that the petitioner has already applied to the learned Advocate General for permission as required under Rule 5(c), Part II of the Contempt of Courts (Bombay High Court) Rules, 1994 which have been framed to regulate proceedings for contempt under Article 215 of the Constitution of India as well as the Contempt of Courts Act, 1971. Such an application has been received by the Advocate General's Officer on or about 2.4.01 and it is still pending for his considerations obviously. It would be, therefore, desirable that the petition is adjourned till 23rd April, 2001, awaiting orders to be passed by the learned Advocate General. Stand Over to 23.4.01.

15. On 30.4.01, on which date this contempt petition was adjourned, the following Order was passed:

P.C.

Heard Shri Dara Zaiwala, learned Senior Advocate for the petitioner and Shri V.P. Thali, learned Advocate for the respondent No. 2.

During the pendency of Writ Petition No. 393/ 2000, the respondent Nos. 1 and 2 have approached the Secretary of the Goa Legislative Assembly vide their letters dated 16th February, 2001 and 28th February, 2001 respectively giving a notice of breach of privilege and contempt of the House under Rule 76 of the Rules or procedure and conduct of Business of the Goa Legislative Assembly against the petitioner.

We are satisfied that the case of contempt, prima fade, has been made out against the respondent Nos. 1 and 2 within the meaning of Section 2(c) of the Contempt of Courts Act, 1971 and Article 215 of the Constitution and to take cognizance under Sections 12 and 15 of the said Act.

Hence Rule. To be heard with Writ Petition No. 393/00.

16. Our attention, thereafter, have been invited to an order dated 22.7.08, passed by a Division Bench of this Court pointing out to the order reproduced above and directing respondents to file reply to the contempt petition in the light of the order passed by this Court admitting the contempt petition. The reply/ affidavit was to be filed within three weeks and it is common ground that the time came to be extended after which, only respondent No. 2 has filed a reply/ affidavit.

17. The reply/affidavit of respondent No. 2 is setting out the preliminary objection. The preliminary objection essentially highlighted before us is that the

contempt petition ought to have been filed with the consent of the Advocate General in writing. The contempt petition alleging a criminal contempt having not been filed with consent in writing of the Advocate General could not have been entertained and registered by this Court. It is contended that consent of the Advocate General is mandatory for taking cognizance of a criminal contempt. Section 15 of The Contempt of Courts Act, 1971, so also The contempt of Courts (Bombay High Court) Rules, 1994, are referred to and it is urged that the contempt petition be dismissed on this ground alone.

18. The reply on merits is without prejudice to the preliminary objections and it is urged that the preliminary objections shall not be deemed to have been waived only because the reply on merits is filed in the Court.

19. We have heard Shri Kakodkar, learned Senior Counsel appearing for the petitioner and Mr. Thali, learned Counsel appearing for respondent No. 2 on the preliminary objections.

20. Mr. Kakodkar contended before us that the issue of maintainability of the Contempt petition now cannot be raised. He invited our attention to the order dated 30.4.01, which has been reproduced above. It is urged by Shri Kakodkar that respondent No. 2 had appeared when this Court issued Rule on the contempt petition. There does not appear to be any argument on the point of maintainability. There is no objection raised to the Court taking cognizance of the contempt petition even without the consent of the Advocate General. Now, the issue of consent being mandatory and a prerequisite to the contempt petition being instituted and taken cognizance of, cannot be raised. The said objection is deemed to have been waived. He submits that the issue of maintainability, therefore, stands concluded.

21. In any event and in the alternative, Mr. Kakodkar submits that when the Court has found, *prima facie*, case of contempt and admitted the contempt petition, then, it is clear that the Court has taken cognizance of the matter on its own. Once the Court has taken action on its own, then, the issue of consent of the Advocate General pales into insignificance and is wholly irrelevant. This is, therefore, a *Suo Moto* contempt petition. Inviting our attention to the averments in the contempt petition, Mr. Kakodkar submits that in the petition itself, the petitioner has prayed that this Court should take notice of the contempt *Suo Moto* and initiate proceedings under the Contempt of Courts Act, 1971. The Order passed on 30.4.01 is in consonance therewith and, therefore, the issue of maintainability does not arise.

22. Mr. Kakodkar submits that when this Court passed the above orders, the Judgment of the Hon"ble Supreme Court in the case of Bal Thackrey Vs. Harish Pimpalkhute and Others, , for short, Bal Thackrey, was not pronounced and delivered. However, the judgment of the two Judge Bench of the Hon"ble Supreme Court in the case of P.N. Dua Vs. P. Shiv Shanker and Others, was in the field. Replying upon the observations therein, so also in the earlier decisions,

that the Division Bench has passed the above reproduced order. There is no difference in the legal position even after the Judgment in Bal Thackrey's case. It is urged by Shri Kakodkar that the manner in which cognizance is taken, is a technical and procedural matter. There is no question of the proceedings being held to be not maintainable merely because there is non-compliance with the procedure laid down in that behalf. All that Bal Thackrey's case would emphasize is that when the proceedings are initiated Suo Moto there must be set Rules or procedure and as far as possible, there should be strict adherence therewith. The Delhi High Court's Contempt Rules and procedural aspects are quoted with approval in Bal Thackrey's case. That means the Chief Justice should initiate a Suo Moto contempt action after the matter is brought to his notice. Merely because such Rules are not in force in Bombay High Court, it does not mean that the contempt petition cannot be construed as a Suo Moto petition or that it is not maintainable. The contempt petition was admitted by a Division Bench presided over by the Senior Administrative Judge and, therefore, there is a complete compliance with the Rules then prevailing. The contempt petition is thus a Suo Moto contempt petition and the ruling in Bal Thackrey's case would not in any manner be applicable. For all these reasons, he urges that the contempt petition be held to be maintainable. Moreso, when the Advocate General had also appeared, when the above reproduced orders were passed and he did not seek an adjournment nor sought time to consider the matter. His presence being very much noted in the order, the requirement of this consent no longer subsists and hence even otherwise the contempt petition is maintainable. Shri Kakodkar has placed reliance upon a decision of learned Single Judge of this Court so also the Supreme Court decision in Bal Thackrey's case.

23. On the other hand, Shri Thali, appearing for respondent No. 2, would urge that the issue of maintainability of the contempt petition in the light of the admitted and undisputed legal position, so also the facts emerging from the record, cannot be said to be concluded in any manner. He submits that the objection raised goes to the root of the matter. That apart, he submits that merely because respondent No. 2 was present when the order was passed by this Court admitting the contempt petition, it does not mean that he has raised a preliminary objection or that the same is duly considered and answered against him. He submits that there is nothing in the order which would indicate that this Court has gone into the issue of maintainability. He submits that when the Division Bench passed the order, it had before it the pronouncement of the Division Bench of this Court at Nagpur in Bal Thackrey's case so also the Supreme Court decision in P.N. Duda's case, the legal position has been clarified thereafter. In such circumstances, the respondent No. 2 is not precluded from raising the preliminary objection which, in any event, he had no opportunity to raise earlier. It is raised by him on affidavit and, therefore, this Court can very well go into the same and answer it.

24. Mr. Thali pointed out that the contempt petition, read as a whole, is a petition by the writ petitioner. It is by a private party. It is not a matter where a private

party has brought to the notice of this Court the issue raised in the contempt petition and thereafter the Court noticing the said issue, proceeded to take action. In other words, there is nothing in the petition and the order passed which would indicate that this is a *Suo Moto* contempt petition. He submits that the petition is filed and is being prosecuted by a private party who has already approached this Court in writ jurisdiction. It is his personal and private cause. He has purportedly been threatened by supporters of respondent Nos. 1 and 2 and that is how he has approached this Court alleging criminal contempt. Admittedly, there is no consent of the Advocate General obtained by him. There is no question of waiver thereof once it is mandatory prerequisite in law. He submits that this is not a *Suo Moto* contempt petition. Merely alleging and stating in the petition that the Court can take, alternatively *Suo Moto* action, is not enough. The record must indicate that the Court has acted *Suo Moto* and not on a petition by a party. The record must indicate that before the contempt petition was filed, some information or material is there which indicates that the Court took cognizance and decided to initiate *Suo Moto* action. Neither is there anything in the record which would indicate that the contempt petition is a *Suo Moto* proceeding nor is there anything in the orders of this Court indicating the same. Even the notices issued to parties are on this contempt petition filed by a private party. In these circumstances, the law laid down in *Bal Thackrey's* case would squarely apply. For these reasons, the petition be dismissed as not maintainable.

25. For properly appreciating these contentions, it would be advantageous to refer to The Contempt of Courts Act, 1971. Since it is not in dispute that this is a petition alleging criminal contempt, we need not refer to the provisions and definitions in that behalf. Section 15 is the relevant provision and it is reading thus:

15. Cognizance of criminal contempt in other cases.-1) In the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by:

(a) the Advocate-General, or

(b) any other person, with the consent in writing to the Advocate-General, (or)

(c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.

(2) In the case of any criminal contempt of a subordinate Court, the High Court may take action on a reference made to it by the subordinate Court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation. In this section, the expression:

"Advocate-General" means:

- (a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;
- (b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;
- (c) in relation to the Court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

26. A bare perusal of the same would indicate that in the case of criminal contempt, other than the one referred to in Section 14, the Supreme Court or the High Court may take action on its own or on a motion made by (a) the Advocate-General or (b) any other person with the consent in writing of the Advocate-General or in relation to the High Court or Union Territory of Delhi, the requirement is stipulated in Sub-clause (c). Thus, High Court may take action on its own motion or on a motion made by the Advocate-General himself or any other person with his consent in writing. The later part of this provision is not material for the purposes of deciding the preliminary objection. In the case of *P.N. Duda v. P. Shiv Shanker and Ors.* (supra)! the Supreme Court refused to initiate contempt petition both u/s 15(1)(a) and (b) of the Act read with the Supreme Court Contempt of Court Rules. It set out reasons for not doing so. While setting out reasons, the Supreme Court also held that no case was made out on merits. The conclusions in that behalf of the two Judges constituting the Bench would show that both agreed that the contempt petition should be dismissed.

27. Sabyasachi Mukharji, J, as His Lordship then was, had gone through the entire speech delivered by P. Shiv Shanker who was then the Law Minister of India and in para 7 observed that the petitioner Duda brought the newspaper version of the speech to the notice of the Bench and made allegations against P. Shiv Shanker. That Shri Duda did by addressing a letter. Therefore, the application for initiation of contempt was made and P.N. Duda, P. Shiv Shanker and the Attorney General and the Solicitor General were made parties together with the Editor of the newspaper. The application was moved before the Court and notice was directed to be issued to the above parties. The notice was confined to the question as to whether action should be initiated on the petition of Shri Duda and an Advocate was appointed as *Amicus Curiae* by the Court. Thereafter, P. Shiv Shanker filed his response and raised the issue of maintainability of the contempt petition by urging that the same was filed without the consent of the Attorney General and Solicitor General and, therefore, it was liable to be dismissed. From a reading of Para 8 of the judgment rendered by His Lordship Mukharji, J., it is clear that he dealt upon the contents of the speech and whether that makes out a case of criminal contempt and has not

considered the issue of maintainability. The other learned Judge of the Bench S. Ranganathan, J., as His Lordship then was, went ahead and rendered his opinion on the issue of maintainability. Our attention was invited to paragraph 54 and 55 of this judgment so also Para 61 and the conclusions of His Lordship Ranganathan, J. From a perusal of these paragraphs together with the Judgment of Justice Mukharji and more particularly paragraphs 38 and 39, it is apparent that the Hon"ble Supreme Court laid down certain procedural requirements and issued directions before *Suo Moto* action is taken by the Court in matter of criminal contempt.

28. This, despite the matter was treated also as a *Suo Moto* petition. In *Bal Thackrey's* case a two Judge Bench of the Hon"ble Supreme Court was of the view that the directions in *P. N. Duda's* case were rather wide and covered a whole range of maintainability of petitions at the instance of individual Judges and rather vested the power solely in the Chief Justice, expressed its disagreement with the directions in *P.N. Duda's* case and that is how the Judgment in *Bal Thackrey's* case was rendered finally by a three Judge Bench. The three Judge Bench had before it not only the view expressed in *P.N. Duda's* case but also in another decision of a two Judge Bench reported in *J.R. Parashar, Advocate and Others Vs. Prasant Bhushan, Advocate and Others*, . It had also before it the view taken in *S.K. Sarkar, Member, Board of Revenue, U.P., Lucknow Vs. Vinay Chandra Misra*, . The Supreme Court speaking through Y.K. Sabharwal, J., as His Lordship then was, in *Bal Thackrey's* case held thus:

1. Action for contempt is divisible into two categories, namely that initiated *suo motu* by the Court and that instituted otherwise than on the court's own motion. The mode of initiation in each case would necessarily be different. While in the case of *suo motu* proceedings, it is the Court itself which must initiate by issuing a notice, in other cases initiation can only be by a party filing an application. *Pallav Sheth Vs. Custodian and Others*, .

3. The Delhi High Court in the case of (*Anil Kumar Gupta v. K. Suba Rao*) issued the following directions: ILR p. 7 A.C.)

The office is to take note that in future if any information is lodged even in the form of a petition inviting this Court to take action under the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in Section 15 of the said Act, it should not be styled as a petition and should not be placed for admission on the judicial side. Such a petition should be placed before the Chief Justice for orders in chambers and the Chief Justice may decide either by himself or in consultation with the other Judges of the Court whether to take any cognizance of the information.

5. Challenging the conviction of the appellant for offence u/s 15 of the Contempt of Courts Act, 1971 (for short "the Act") it was, *inter alia*, contended that the directions in *P. N. Duda* case were not followed by the High Court inasmuch as the informative papers styled as contempt petitions were not placed before the

Chief Justice of the High Court for suo motu action and, therefore, the exercise was uncalled for and beyond legal sanctity. This aspect assumed significant importance because admittedly the contempt petitions were filed in the High Court without the consent of the Advocate General and, therefore, no competent except when the Court finds that the contempt action was taken by the Court on its own motion. The two-Judge Bench hearing the appeals expressed the view that the aforesaid directions approved by this Court in P.N. Duda case are of far-reaching consequences. The Bench observed that the power u/s 15 of the Act to punish contemnors for contempt rests with the Court and in Duda case they seem to have been denuded to rest with the Chief justice on the administrative side. Expressing doubts about the correctness of the observations made in Duda case and observing that the same require reconsideration, these appeals were directed to be referred for decision by a larger Bench. Under this background, these matters have been placed before us.

6. For determination of the main issue in these appeals including the aforesaid aspect arising out of Duda case it is necessary to briefly note the object of the power of the Court to punish a person for contempt.

7. Every High Court besides powers under the Act has also the power to punish for contempt as provided in Article 215 of the Constitution. Repealing the Contempt of Courts Act, 1952, the Act was enacted, inter alia, providing definition of civil and criminal contempt and also providing for filtering of criminal contempt petitions. The Act lays down "contempt of Court" to mean Civil contempt or criminal contempt. We are concerned with criminal contempt. "Criminal contempt" is defined in Section 2(c) of the Act. It, inter alia, means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which scandalizes or tends to scandalize, or lowers or tends to lower the authority of any Court. The procedure for initiating a proceeding of contempt when it is committed in the face of the Supreme Court or the High Courts has been prescribed in Section 14 of the Act. .. In the case of criminal contempt, other than a contempt referred to in Section 14, the manner of taking cognizance has been provided for in Section 15 of the Act. This section, inter alia, provides that action for contempt may be taken on court's own motion or on a motion made by:

(a) the Advocate General, or

(b) any other person, with the consent in writing of the Advocate General.

11. The nature and power of the Court in contempt jurisdiction is a relevant factor for determining the correctness of observations made in Duda case. Dealing with the requirement to follow the procedure prescribed by law while exercising powers under Article 215 of the Constitution to punish for contempt, it was held by this Court in Dr. L.P. Misra Vs. State of U.P., , that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution

but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law. The exercise of jurisdiction under Article 215 of the Constitution is also governed by laws and the rules subject to the limitation that if such laws/rules stultify or abrogate the constitutional powers then such laws/rules would not be valid. In L.P. Misra's case it was observed that the procedure prescribed by the Rules has to be followed even in exercise of jurisdiction under Article 215 of the Constitution. To the same effect, are the observations in Pallav Sheth case.

12. For determination of the issues involved, it would also be useful to note the observation made in the case of S.K. Sarkar, Member, Board of Revenue, U.P. v. Vinay Chandra Misra, to the following effect: S.C.C. 443, para 19.

...Section 15 does not specify the basis or the source of information on which the High Court can act on its own motion. If the High Court acts on information derived from its own sources, such as from a perusal of the records of a subordinate Court or on reading a report in a newspaper or hearing a public speech, without there being any reference from the subordinate Court or the Advocate General, it can be said to have taken cognizance on its own motion. But if the High Court is directly moved by a petition by a private person feeling aggrieved, not being the Advocate-General, can the High Court refuse to entertain the same on the ground that it has been made without the consent in writing of the Advocate General ? It appears to us that the High Court has, in such a situation, a discretion to refuse to entertain the petition or to take cognizance on its own motion on the basis of the information supplied to it in that petition.

14. The direction issued and procedure laid down in Duda case is applicable only to cases that are initiated suo motu by the Court when some information is placed before it for suo motu action for contempt of Court.

15. A useful reference can also be made to some observations made in J.R. Parashar v. Prasant Bhushan. In that case noticing Rule 3 of the Rules to Regulate Proceedings for the Contempt of the Supreme Court, 1975 which like Section 15 of the Act provides that the Court may take action in cases of criminal contempt either (a) suo motu; or (b) on a petition made by the Attorney General or Solicitor General; or (c) on a petition made by any person and in the case of a criminal contempt with consent in writing of the Attorney General or the Solicitor General as also Rule 5 which provides that only petitions under Rule 3(b) and (c) shall be posted before the Court for preliminary hearing and for orders as to issue of notice, it was observed that the matter could have been listed before the Court by the Registry as a petition for admission only if the Attorney General or Solicitor General had granted the consent. In that case, it was noticed that the Attorney General had specifically declined to deal with the matter and no request had been made to the Solicitor General to give his consent. The inference, therefore, is that the registry should not have posted the said petition before the Court for preliminary hearing. Dealing with taking of suo motu cognizance in Para

28, it was observed as under : (S.C.C. p. 745)

28. Of course, this Court could have taken suo motu cognizance had the petitioners prayed for it. They had not. Even if they had, it is doubtful whether the Court would have acted on the statements of the petitioners had the petitioners been candid enough to have disclosed that the police have refused to take cognizance of their complaint. In any event, the power to act suo motu in matters which otherwise require the Attorney General to initiate proceedings or at least give his consent must be exercised rarely. Courts normally reserve this exercise to cases where it either derives information from its own sources such as from a perusal of the records, or on reading a report in a newspaper or hearing a public speech or a document which would speak for itself. Otherwise Sub-section (1) of Section 15 might be rendered otiose.

29. Thereafter in Para 16, the Hon''ble Supreme Court held that the whole object of prescribing procedure for taking cognizance in Section 15 is to save the valuable time of the Court from being wasted by frivolous contempt petitions. That is how the Supreme Court refers to the observations in Parashar''s case and Sarkar''s case in Para 16. In Para 17 of this decision, the Supreme Court refers to the role of the Chief Justice of a High Court and holds that the directions in P.N. Duda''s case must be appreciated in the light of this role.

30. Finally, in Paras 18 and 20, this is what the Supreme Court holds:

18. The directions in Duda case when seen and appreciated in the light of what we have noticed hereinbefore in respect of contempt action and the powers of the Chief Justice, it would be clear that the same prescribe the procedure to be followed by the High Courts to ensure smooth working and streamlining of such contempt actions which are intended to be taken up by the Court suo motu on its own motion. These directions have no effect of curtailing or denuding the power of the High Court. It is also to be borne in mind that the frequent use of suo motu power on the basis of information furnished in a contempt petition otherwise incompetent u/s 15 of the Act may render the procedural safeguards of the Advocate General''s consent nugatory. We are of the view that the directions given in Duda case are legal and valid.

20. It is well settled that the requirement of obtaining consent in writing of the Advocate General for making motion by any person is mandatory. A motion u/s 15 not in conformity with the requirements of that section is not maintainable. State of Kerala Vs. M.S. Mani and Others, .

31. A later three Judge Bench decision of the Hon''ble Supreme Court in its decision reported in Harbans Kaur and Another Vs. State of Haryana, follows the decision in Bal Thackrey v. Harish Pimpalkhute {supra}, and it is pertinent to note that in this decision, the Supreme Court sets aside a final order on the contempt petition convicting the appellants before it for criminal contempt and sentencing them to one month Simple Imprisonment and fine only on the ground that initiation of contempt was at the instance of a private party and there being

no prior consent of the Advocate General, the initiation itself was bad in law. Once the initiation was bad in law, the proceedings themselves did not have legal efficacy and that is how the conviction and sentence was held to be unsustainable and set aside.

32. We are of the view that there is no substance in Shri Kakodkar's contentions that the preliminary objections cannot be decided merely because this contempt petition has been admitted and is placed for hearing and final disposal or that the issue of consent of the Advocate General is of no consequence any more. If that is a mandatory prerequisite, as is stipulated by Section 15(1)(b) and conviction and sentences are also vitiated for non-compliance therewith, we are of the view that the same can be raised even at this stage. It goes to the very root of the matter. There is no question of any party waiving it as that is the mandate in law and must be decided by the Court after hearing both sides. Therefore, we are of the view that the order dated 30.4.01 passed on this contempt petition issuing Rule after recording, prima facie, satisfaction does not prevent us from deciding and ruling upon the preliminary objection.

33. There is one more reason why we are taking this view. Mr. Kakodkar has urged vehemently that an alternate prayer was made in the petition to take *Suo Moto* action and, therefore, the order of this Court admitting the contempt petition must be seen as this Court taking *Suo Moto* cognizance of the alleged contempt. He, therefore, urges that law laid down in *Bal Thackrey's* case would not apply to this fact situation.

34. We are unable to agree with him for more than one reason. A perusal of the contempt petition and the paragraphs relied upon by Shri Kakodkar would show that this is a contempt petition by a private party. This is not a *Suo Moto* action. The title or array of parties alone may not be decisive but what is decisive in this case is whether the Court has taken *Suo Moto* action. The contempt petition is moved in this Court by the writ petitioner in Writ Petition No. 393/00 who has affirmed the allegations on oath. He has instituted it as a contempt petition after urging that there is no consent of the Advocate General or rather it cannot be obtained for want of time. It is this contempt petition which is placed before this Court after the same was numbered and registered at the instance of the petitioner. It is this contempt petition which is admitted and upon which notice is issued. We have ourselves perused the original notice issued to both respondents. The notice issued by this Court reads thus:

No. J/Contempt pet. 8 2001 in W.P. No. 393-2000/1995/2001 Dated : 16th May, 2001 HIGH COURT OF BOMBAY AT GOA PANAJI CONTEMPT PETITION No. 8 OF 2001 IN WRIT PETITION No. 393 OF 2000 Shri Antonio Sequeira Coutinho Pereira ... Petitioner. v. Shri Prakash Fadte and Ors. ... Respondents.

To.

1. Shri Prakash Fadte, Minister of Forests & Town & Country Planning, Government of Goa, Secretariat, Panaji, Goa.

2. Shri Manohar Parrikar, Chief Minister of Goa, Secretariat, Panaji.

3. State of Goa, through its Chief Secretary, Secretariat, Panaji, Goa, through Shri V. P. Thali, Advocate, Panaji, Goa.

WHEREAS the above named petitioner has presented contempt petition through his Advocate Shri R.V. Kamat praying for taking action under Contempt of Courts Act against you;

AND WHEREAS the same having been registered in this Court as Contempt Petition No. 8/2001 in Writ Petition No. 393/2000 and this Court having on the 30th April 2001 passed the following order:

P.C:

Heard Shri Dara Zaiwala, learned Senior Advocate for the petitioner and Shri V.P. Thali learned Advocate for the respondent No. 2.

During the pendency of Writ Petition No. 393/ 2000, the respondent Nos. 1 and 2 have approached the Secretary of the Goa Legislative Assembly vide their letters dated 16th February, 2001 and 28th February, 2001 respectively giving a notice of breach of privilege and contempt of the House under Rule 76 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly against the petitioner.

We are satisfied that the case of contempt prima facie, has been made out against the respondent Nos. 1 and 2 within the meaning of Section 2(c) of the Contempt of Courts Act, 1971 and Article 215 of the Constitution and to take cognizance under Sections 12 and 15 of the said Act.

Hence Rule. To be heard with Writ Petition No. 393 of 2000.

Take therefore notice that the aforesaid Contempt Pet. No. 8/2001 has been fixed for hearing alongwith Writ Petition No. 393/2000 on 6th August, 2001 at 10.30 a.m. On which date you shall appear in person before this Court and shall continue to remain present during hearing on all subsequent dates to which this Court may seem convenience to fix the matter till the proceeding is finally disposed of by the order of the Court, and to show cause as to why the action under Contempt of Courts Act should not be taken against you.

In case of your failure to appear as directed above and to show cause, this Court shall proceed to pass such orders as may deem fit and proper.

WITNESS SHRI B.P. SINGH, Chief Justice at Bombay aforesaid this 16th day of May, 2001.

By order of the Court Sd/ (A.J. Fernandes) Assistant Registrar High Court of Bombay Panaji Bench (Goa)

35. A perusal of the same would indicate that this Court nowhere states that it has acted on its own or that the action initiated is suo moto. It also does not

state that its order dated 30.4.01 be read as such. Therefore, this is a case which squarely falls within the requirements stipulated in Bal Thackrey's case and followed in Bijayini Dash's case. In Bijayini Dash's case, the Supreme Court relied on three facts namely, the contempt petition did not state that sanction of the Advocate General was obtained by the petitioners, the show cause notice issued by the High Court though contained an alternate clause as to invoking of Sua Moto contempt jurisdiction by the High Court, the same has been struck off alleging that a criminal contempt was taken at the instance of a private party, and nowhere in the judgment of the High Court it indicated that it was exercising Sua Moto jurisdiction.

36. In our case, admittedly, there is no consent. Admittedly, this is a criminal contempt petition. Admittedly, the show cause notice does not indicate that Court is acting Sua Moto. Further, the order dated 30.4.01 also does not state so. Pertinently, the order states that the original writ petition and Contempt Petition be heard together. This is enough indication of this Court proceeding at the instance of a private party.

37. It is undisputed before us that the law laid down in Bal Thackrey's case was only with regard to initiation of proceedings for Contempt Sua Moto. That Sua Moto proceedings are initiated after information is placed before the Court for initiation of Sua Moto action. That is how such information derived must be dealt with and the procedural requirements in that regard prevailing in Delhi High Court were upheld in P.N. Duda's case so also Bal Thackrey's case after appropriate clarifications were issued. P.N. Duda's case has not been deferred with or distinguished or overruled in any manner in Bal Thackrey's case. The Supreme Court has in Para 21 and 22 of the Judgment in Bal Thackrey's case does not merely hold that there should be a prayer or alternate relief with regard to taking Sua Moto action in the petition and when such a prayer is made, the petition can be treated as a Sua Moto petition even if instituted by a private party.

38. Mr. Kakodkar is not right in urging that merely because there is an alternate prayer in the Contempt Petition, the Court has treated it as a Sua Moto petition. Perusal of paragraphs 21, 22 and 23 of the decision in Bal Thackrey's case would reveal that Supreme Court has gone into all aspects. Not just prayer but perusal of the record including the notices issued to the contemnors have been referred to. It is made clear that due regard must be given to them while considering the objection as to whether the proceedings are Sua Moto or instituted by a private party. Bal Thackrey's case would reveal that he was convicted by this Court of criminal contempt. That conviction and sentence was set aside finally by the Supreme Court only on the ground that the petition, on which the said Judgment was delivered, was instituted by Harish Pimpalkhute, a private party, without obtaining the consent of the Advocate General. The Supreme Court in clearest terms holds that the contempt petition was not maintainable. Para 24 of this decision, which is relied upon by Shri Kakodkar, should not be seen in isolation. There is no question of any waiver.

39. In such circumstances, we are of the view that this is a petition by a private party. It is admittedly filed alleging criminal contempt but without obtaining the consent of the Advocate General. That Section 15(1)(b) of the Act is squarely applicable to the present proceedings is not disputed. Once this view is taken, then, it is not necessary to construe the ambit and scope of the Rules of 1994 under The Contempt of Courts Act, 1971. In any event, what they project is carrying out the mandate of Section 15, what they project is that the notice must clearly indicate the charge and that the notice issued should demonstrate as to whether the Court has acted Suo Moto or at the instance of a private party, Any larger issue need not be gone into. Once we are of the view that when this Court admitted the contempt petition, the authoritative pronouncement of the Supreme Court was not in the field and the preliminary objection is still valid and so also made good by the respondent No. 2 before us, we have no alternative but to hold that the contempt petition is not maintainable. It is accordingly dismissed as not maintainable. Petition dismissed.