

(2011) 04 AP CK 0057

In the Andhra Pradesh High Court

Case No : Contempt Case No. 841 of 2010

B. Krishna Reddy

APPELLANT

Vs

Smt. Pushpa Subrahmanyam and Others

RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 194, 194(1)
Contempt of Courts Act, 1971 — Section 12(1), 12(3), 13
Contempt of Courts Rules, 1980 — Rule 32(1)
Writ Proceedings Rules, 1977 — Rule 21

Citation : (2011) 6 ALT 73

Hon'ble Judges : Ramesh Ranganathan, J;Goda Raghuram, J

Bench : Division Bench

Advocate : M. Ratna Reddy, for the Appellant; A.G. G.P. for Ravi Shankar Jandhyala, Municipal Admn., for the Respondent

Judgement

Ramesh Ranganathan, J.—Rule of law is the foundation of democratic society and the judiciary is its guardian. The court has the duty of protecting the interest of the public in the due administration of justice and, as such, is entrusted with the power to commit for contempt of court, not in order to protect its dignity against insult or injury as the expression "contempt of court" may seem to suggest, but to protect and vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. If orders of the Court are disobeyed with impunity by those who owe an obligation to society to preserve the rule of law, not only would individual litigants suffer, the whole administration of justice would be brought into disrepute. Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, ; Bijay Kumar Mahanty Vs. Jadu @ Ram Chandra Sahoo, . Every one, howsoever high he may be, is bound to implement orders of Court. Those who disregard Court's orders do so at their own peril for no one is above the law. Court on its Own Motion Vs. Sh. N.S. Kanwar, .

2. Disobedience of an order of Court, whether prohibitive or mandatory, whether

made ex-parte or upon hearing both parties, or interim or perpetual, amounts to contempt, if it is calculated or tends to interfere with the administration of justice, or brings it into disrespect or disregard, (*Jagatmudi Chandramouli v. K. Appa Rao* 1967 (1) An.W.R. 129) , for it strikes at the very root of the rule of law on which our system of governance is based. Right or wrong, the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. *Director of Education, Uttaranchal and Others Vs. Ved Prakash Joshi and Others*, ; *Union of India (UOI) and Others Vs. Subedar Devassy PV*, ; *Prithawi Nath Ram Vs. State of Jharkhand and Others*, . Power to punish for contempt is necessary for the maintenance of an effective legal system. It is exercised to prevent perversion of the course of justice. *Kapildeo Prasad Sah and Others Vs. State of Bihar and Others*, . Once a direction is issued by a competent Court, it has to be obeyed and implemented without reservation. The only remedy available to a party, who suffers an order, is to challenge it in accordance with law. The order cannot be rendered ineffective by not complying with the directions on specious pleas as it would seriously affect and impair administration of justice. (*Karnataka Housing Board v. C. Muddaiah* (2007) 7 SCC 689; *Patel Rajnikant Dhulabhai v. Patel Chandrakant Dhulabhai* (2008) 14 SCC 561).

3. "Contempt of Court" is an unfortunate and misleading phrase. It suggests that it exists to protect the dignity of the judges. Nothing could be farther from the truth. The power exists to ensure that justice shall be done. The public at large, no less the individual litigant, have an interest, and a very real interest, in justice being effectively administered. Unless it is so administered the rights, and indeed the liberty, of the individual shall perish. (*Jennison v. Baker* 1972 (1) All.E.R. 997) . The Contempt of Courts Act secures confidence of the people in the administration of justice. If an order passed by a competent court is clear and unambiguous, disobedience or breach of such order would amount to contempt of court. There can be no laxity, as otherwise court orders would be the subject of mockery. *Anil Ratan Sarkar and Others Vs. Hirak Ghosh and Others*, ; *Patel Rajnikant Dhulabhai* (2008) 14 SCC 561).

4. The following conditions must be satisfied before a person can be held to have committed civil contempt: (i) there must be a judgment, decree, direction, order, writ or other process of a court (or an undertaking given to a court); (ii) there must be disobedience to such judgment, decree, direction, order, writ or other process of a court (or breach of undertaking given to a court); and (iii) such disobedience of judgment, decree, direction, order, writ or other process of a court (or breach of undertaking) must be wilful. (*Patel Rajnikant Dhulabhai* (2008) 14 SCC 561) . Civil contempt arises where the power of the Court is invoked and exercised to enforce obedience to orders of the court. *Delhi Development Authority Vs. Skipper Construction and Another*, .

5. In order to determine whether the Respondents have committed contempt or not, let us now note the events which transpired subsequent to the order of this Court dated 25.8.2009. By order in W.P. No. 6354 of 2009 dated 25.08.2009,

violation of which is alleged in this contempt proceedings, this Court had directed the Nalgonda Municipality not to propose or recommend, nor the Government to accord sanction, for renewal of the lease of the cinema theatre, (which belongs to the Nalgonda Municipality), beyond a period of twenty five years without conducting public auction. Having noted that the 5th Respondent, (husband of the managing partner of the 6th Respondent), was the Chairman of the Municipal Council of the Nalgonda Municipality this Court held that the constitutional and public law concerns, as well as the provisions of the 1967 and 1968 Rules, did not enable further renewal of lease in favour of the 6th Respondent nor could Respondents 1 to 4 avoid the transparent and public process of granting lease of the schedule property only by public auction. This Court directed the 4th Respondent to exercise his powers under the provisions of the A.P. Municipalities Act to ensure eviction of the 6th Respondent from the schedule premises. The official Respondents (Respondent 1 to 4) were jointly and severally required to ensure that lease of the schedule property (i.e., the cinema theatre) was granted pursuant to a public auction in the manner enjoined by the Act read with the provisions of the 1967 and 1968 Rules.

6. Under Rule 21 of the Writ Proceedings Rules, 1977, unless the Court otherwise directs, the direction or order made by the High Court shall be implemented within two months of receipt of the order. As this Court, in its order in W.P. No. 6345 of 2009 dated 25.08.2009, did not otherwise direct, Respondents 1 to 4 were required to conduct auction of the leasehold rights of the cinema theatre, and the 4th Respondent was required to evict the 6th Respondent, within two months from the date of receipt of a copy of the order. The note file of the Government dated 26.8.2009 shows that the 1st Respondent was aware of the order of this Court directing the Respondents to put the premises to public auction. A copy of the Judgment, in W.P. No. 6354 of 2009 dated 25.8.2009, was dispatched by the High Court Registry on 17.9.2009. The 4th Respondent, along with his letter addressed to the 2nd Respondent on 16.10.2009, enclosed a copy of the said judgment. The 2nd Respondent received the said letter, along with its enclosures, on 21.10.2009.

7. The 1st Respondent, vide memo dated 20.10.2009, directed the 4th Respondent to put the lease of the municipal building, known as New Prem Cinema Talkies, to public auction, and send his compliance report. The 2nd Respondent was requested to ensure that the orders were implemented immediately. Aggrieved by the order in W.P. No. 6354 of 2009 dated 25.8.2009, the 6th Respondent carried the matter in appeal, in SLP (Civil) No. 27670/2009, which was dismissed by the Supreme Court by its order dated 9.11.2009. Again, vide memo dated 12.11.2009, the 1st Respondent requested the 4th Respondent to take action as per Section 194 of the Municipalities Act, evict the lessee and implement the orders of this Court without seeking clarification, and report compliance immediately. The 1st Respondent by memo dated 17.11.2009 instructed the 2nd Respondent to appraise the orders of this Court in W.P. No. 6354 of 2009 dated 25.8.2009 to all Municipal Commissioners in the State, and

go for public auction of all municipal properties after completion of the lease period of 25 years. The 4th Respondent issued eviction notice to the sixth Respondent, u/s 194(1) of the A.P. Municipalities Act, on 21.11.2009.

8. The 6th Respondent filed W.P. No. 23954 of 2009 to declare the action of the State Government, in directing Respondents 2 to 4 to conduct the auction, as illegal. A Learned Single Judge of this Court, while disposing of the Writ Petition by order dated 20.11.2009, directed that (a) Respondents 1 and 2 shall conduct auction of the leasehold rights, for the building in question, without requiring the sixth Respondent to remove the machinery and equipment; (b) in case the 6th Respondent emerged as the highest bidder they shall be entitled to continue as the lessee on fresh terms; (c) If they did not emerge as the highest bidder, they shall be under an obligation to remove the equipment and machinery within a period of six weeks from the date on which the lease in favour of the highest bidder was confirmed; and (d) till this exercise was undertaken, the sixth Respondent shall be entitled to continue as a lessee on existing terms.

9. While the order of the Learned Single Judge may have disabled Respondent No. 4 in complying with our order requiring him to evict the 6th Respondent, Respondents 1 to 4 were required, both in terms of our order and that of the Learned Single Judge, to conduct auction of the leasehold rights of the cinema theatre. The fourth Respondent issued auction notice dated 7.1.2010, incorporating the conditions imposed by the Learned Single Judge in W.P. No. 23954 of 2009, and fixed the date of auction as 03.02.2010. The said auction notice was also published in the newspapers on 12.01.2010.

10. The Petitioner, vide letter dated 25.1.2010, informed the 1st Respondent that the 4th Respondent, in collusion with the Chairman of Nalgonda Municipality, was resorting to delaying tactics; the 4th Respondent was a tool in the hands of Chairman; and he was acting at the dictates of the Chairman to postpone public auction of the said premises discouraging bidders from participating therein. The Petitioner requested that a supervisory authority be appointed over the 4th Respondent, as early as possible, to ensure that the public auction scheduled on 03.02.2010 was held without hindrance. The 1st Respondent, vide memo dated 29.1.2010, requested the 2nd Respondent to furnish his report, on the representation of the Petitioner, by 30.1.2010. The 2nd Respondent did not submit any report and, in the meanwhile, on 2.2.2010 the Minister for Municipal Administration and Urban Development granted stay of the auction, scheduled to be held on 3.2.2010, for a period of three months.

11. The 1st Respondent informed the 4th Respondent, vide memo dated 2.2.2010, that the Government had stayed the auction notice dated 7.1.2010 for a period of three months. The 2nd Respondent, vide proceedings dated 2.2.2010, directed the fourth to stop further process of auction as ordered by the Government; and furnish his compliance report. Pursuant to the order of stay passed by the Government on 2.2.2010 a few bidders, who had furnished bid security pursuant to the auction notification dated 07.01.2010, withdrew their

money. While matters stood thus a Division Bench of this Court, by order in W.A.M.P. No. 322 of 2010 in W.A. No. 132 of 2010 dated 4.3.2010, suspended operation of the judgment of the Learned Single Judge in W.P. No. 23954 of 2009 dated 20.11.2009.

12. Even the ex-facie illegal order of the Government dated 2.2.2010, which was to remain in operation for a period of three months, expired by 1.5.2010. On 18.5.2010 the Secretary (Legal) opined that, in view of the judgment in W.P. No. 6354 of 2009 dated 25.8.2009 and the order of the learned Single Judge dated 20.11.2009, the Municipal Administration and Urban Development Department may take further action for vacation of the stay orders issued by the Government on the auction notice issued by the fourth Respondent so that the premises can be put to auction as directed by this Court. Though the stay granted by the Government had expired on 01.05.2010, and the order of the Learned Single Judge was suspended by the Division bench on 04.03.2010, the legal advise tendered by the Law Department was to take action to vacate a non-existent stay order. We are unable to comprehend how the State Government can request itself to vacate the stay granted by it earlier. However, as the advise of the Law department dated 18.05.2010 is not in issue before us, we say no more. On 22.5.2010, a note was put up to the Minister seeking his orders whether the stay orders issued in Government memo dated 2.2.2010 may be vacated, as proposed by the Law Department, to comply with the directions of this Court. The 1st Respondent endorsed thereupon on 22.5.2010 that the stay granted by the Minister had expired on 2.5.2010, and this was submitted for information.

13. Except for letters being exchanged between Respondents 1, 2 and 4, no action was taken thereafter to comply with the order of this Court till the contempt case was admitted, and notice in Form-I issued on 13.08.2010. The 1st Respondent convened a meeting on 31.8.2010, reviewed the matter with the second and fourth Respondents, and directed the 4th Respondent to go ahead with auction of the cinema theatre without issuing fresh auction notice, and finalize the auction process by 9.9.2010. Eventually the auction was conducted on 09.09.2010 merely with four of the original nine bidders.

14. While the directions in this Court's judgment dated 25.08.2009, requiring Respondents 1 to 4 to conduct auction and the 4th Respondent to evict the 6th Respondent from the scheduled premises, ought to have been complied with within two months from the date of receipt of the order, it was more than a year thereafter that the auction was held on 09.09.2010, and it only subsequent thereto that the notice of eviction was given effect to. It is clear, therefore, that the Respondents have disobeyed the order of this Court.

15. Mere disobedience of an order is not enough to hold a person guilty of civil contempt. The element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. (S.S. Roy Vs. State of Orissa and Others, ; Indian Airport Employees Union Vs. Ranjan Chatterjee and another, ; Anil Ratan Sarkar and Others Vs. Hirak Ghosh and Others, . If a party

who is fully in the know of the order of the Court, or is conscious and aware of the consequences and implications of the Court's order, ignores it or acts in violation thereof, it must be held that the disobedience is wilful. It may not be possible to prove the actual intention behind the act or omission. A Court can approach the question only objectively and it may presume the intention from the act done as every man is presumed to intend the probable consequence of his act. (Court on its Own Motion Vs. Sh. N.S. Kanwar,). Wilful would exclude casual, accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order. Whether or not disobedience is willful depends on the facts and circumstances of each case. Even negligence and carelessness can amount to disobedience. Kapildeo Prasad Sah and Others Vs. State of Bihar and Others, .

16. "Wilful means an act or omission which is done voluntarily and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with the purpose of either disobeying or disregarding the law. (Patel Rajnikant Dhulabhai (2008) 14 SCC 561; Ashok Paper Kamgar Union v. Dharam Godha (2003) 11 SCC 1). The element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. Anil Ratan Sarkar and Others Vs. Hirak Ghosh and Others, .

17. In the purposes of judging "civil contempt" intention or mens rea is not relevant. The question is only whether the breach was on account of wilful disobedience i.e, whether it was not casual or accidental and unintentional. (V.C. Govindaswami Mudali v. B. Subba Reddy 1986 (2) A.L.T. 131. To establish a contempt of court, it is sufficient to prove that the conduct was willful and that the contemnor knew of all the facts which made it a breach of the order. It is not necessary to prove that he appreciated that it did breach the order. (St. Helen's Ltd. v. Transport & General Workers' Union (1972) 3 All ER 101; Adam Phones Ltd v. Goldschmidt (1999)4 All ER 486). Where there has been wilful disobedience of an order of the Court, and a measure of contumacy on the part of the Defendants, then "civil contempt", what is called "contempt in procedure" bears a two fold character, implying as between the parties to the proceedings merely a right to exercise and a liability to submit to a form of civil execution, but as between the party in default and the State, a penal or disciplinary jurisdiction to be exercised by the Court in the public interest. (Jennison 1972 (1) All.E.R 997). Effective administration of justice would require some penalty for disobedience to the order of the Court if disobedience is more than casual, accidental or unintentional. (Heatons Transport Ltd. v. Transport and General Workers Union (1972) (3) All ER 101 (House of Lords); Court on its Own Motion Vs. Sh. N.S. Kanwar, .

18. The first Respondent has filed as many as four counter affidavits. The defence taken by her, for issuing the memo dated 2.2.2010, is that it was represented to the Government that, in view of heavy machinery & equipment

and the issue of settlement of about 50 workers whose livelihood dependent on the theatre, stay be granted for a period of three months; accordingly the Government had granted three months stay of the auction to enable the leaseholder, and the workers employed under him, to make alternative arrangements; and it was not the intention of the Government to stop the auction totally, but only for a short period. She further states that on 28.4.2010 the note file was run in the Municipal Administration and Urban Development Department regarding the steps to be taken as the stay granted was to expire on 2.5.2010; the matter was referred to the Law Department on 30.4.2010 for suitable advice; on 18.05.2010 the Law Department tendered its advice; pursuant thereto the file was circulated to the Minister; and, as the file was not sent back, a separate file was built up on 28.6.2010. It is clear from the records that the missing file was returned by the Minister's office nearly four months thereafter on 13.9.2010, only after auction was held on 9.9.2010. Except referring to the letters exchanged between him and the fourth Respondent the 2nd Respondent, in both his counter affidavits, takes a similar stand as that of the 1st Respondent.

19. As the counter affidavits filed by the 1st Respondent do not refer to the person, at whose behest stay of the auction was granted by the Government on 02.02.2010, we directed the relevant Government records to be placed for our perusal. The record shows that the leaseholder did not submit the representation seeking stay of the auction. Curiously it was the Minister for Information and Technology, Communications, Youth Services and Sports, vide letter dated 30.1.2010, who on his own accord, (his letter makes no reference to any representation having been received by him), requested the Minister for Municipal Administration & Urban Development that it was imperative that the auction fixed on 3.2.2010 be stayed for a period of three months in order to safeguard the interests of the institution, and facilitate them to make alternative relief measures. The Minister for Municipal Administration was requested to consider this as a special case, and to grant stay orders for a period of three months on humanitarian grounds. The Minister for Municipal Administration and Urban Development, vide D.O. letter No. 214M(MA&UD)/2009-R dated 31.1.2010, informed the 1st Respondent that, in view of the representation of the Minister for Information Technology, stay was being granted for three months against the auction notice of the 4th Respondent dated 7.1.2010 in order to facilitate the leaseholder to make alternative arrangements.

20. Respondents 1, 2 and 4 were present in court on 25.3.2010 when we heard the contempt case and reserved judgment thereupon. The 1st Respondent was permitted to address us directly. What she said in open Court gave us the impression that she was on leave when the Minister granted stay on 02.02.2010, and it was the Minister, and not she, who had disobeyed the order of this Court. As the counter affidavits filed by her make no mention of her absence, or that she did not issue the memo dated 2.2.2010, we enquired whether she was willing to file an affidavit in this regard. The 1st Respondent, however, stated that

she took full and complete responsibility for non-compliance with the orders of this Court. We do not, therefore, propose to examine any further the questionable and singular role of the Hon'ble Ministers in obstructing/interfering with the due course of justice, and in thwarting compliance with the orders of this Court. Suffice to note that neither is it the 1st Respondent's case, nor do the records produced before us show, that she had informed/advised the Minister that the order of stay passed by him was not only in violation of the orders of this Court, but also interfered with the administration of justice, and thereby amounted to contempt of Court.

21. That the executive has no power to sit in judgment over orders of Court, or to grant stay of the auction which this Court had directed the Respondents to conduct, cannot be, and has not been, disputed by any of the Respondents - contemnors. The order of the Government dated 2.2.2010, unilaterally staying the auction which was directed to be held by this Court, is not only in violation of the order of this Court but also interferes with the administration of justice. By issuing proceedings dated 02.02.2010, informing the 4th Respondent that the Government had granted stay of the auction, the 1st Respondent, and in directing the 4th Respondent not to proceed with the auction the 2nd Respondent, in effect, have directed the 4th Respondent to disobey the order of this Court dated 25.08.2009 whereby they were required to conduct public auction for grant of leasehold rights of the cinema theatre. The proceedings of Respondents 1 and 2, both dated 02.02.2010, interfere with, and obstruct, the course of justice. Any interference with the course of justice, or any obstruction caused in the path of those seeking justice, is an affront to the majesty of law and the conduct of interference/obstruction is punishable as Contempt of Court. Law of contempt is one way in which the due process of law is prevented from being perverted, hindered or thwarted. If the act complained of causes hindrance in the discharge of due course of justice, or tends to obstruct the course of justice or interferes with the due course of justice, the conduct complained of constitutes contempt of court. *Ram Autar Shukla Vs. Arvind Shukla*, . Whenever an act adversely affects administration of justice, or tends to impede its course, or shakes public confidence in a judicial institution, the power of contempt can be exercised to uphold the dignity of the court of law and protect its proper functioning. *Income Tax Appellate Tribunal through President Vs. V.K. Agarwal and Another*, . The process of due course of administration of justice must remain unimpaired. Public interest demands that there should be no interference with the judicial process, and the effect of the judicial decision should not be pre-empted or circumvented. (*Reliance Petrochemicals Ltd. Vs. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd. and Others*,) . This contempt case was filed on 18.6.2010, and a copy of the affidavit filed in support of the Contempt Case was served both on the Standing Counsel for Nalgonda Municipality and the Government Pleader for Municipal Administration. No action was taken by Respondents 1, 2 and 4, to comply with the order of this Court, till the contempt case was admitted and notice in Form-I issued on 13.08.2010. The Government

note file dated 21.08.2010 records that the Government Pleader for Municipal Administration and Urban Development had informed the 1st Respondent that the Contempt Case was admitted on 13.8.2010. It is evident therefrom that at least on 21.8.2010, if not earlier, the 1st Respondent was aware that the contempt case had been admitted by this Court. It is only thereafter that the 1st Respondent convened the review meeting on 31.8.2010, and directed the 4th Respondent to go ahead with auction of the cinema theatre without issuing fresh auction notice, and finalize the auction process by 9.9.2010.

22. Both before and after the stay, granted by the Government on 02.02.2010, expired on 01.05.2010 Respondents 1 and 2, who are the Principal Secretary to the Government and the Commissioner and Director of Municipal Administration, have only been addressing letters beseeching the fourth Respondent to comply with the orders of Court. (letter of the 1st Respondent dated 12.11.2009, and the 2nd Respondent dated 15.07.2010). The counter affidavits filed by Respondents 1 and 2 are silent as to why they chose not to take disciplinary action against the fourth Respondent earlier for his procrastination in complying with the orders of Court. Failure on the part of Respondents 1 and 2 to comply with the orders of this Court, when seen in the light of the direction given by them to the fourth Respondent on 02.02.2010, (in effect directing him not to comply with the orders of this Court), cannot be said to be casual, accidental or unintentional. It is established beyond doubt that violation of the order of this Court dated 25.08.2009 by Respondents 1 and 2 is willful and deliberate.

23. In his counter affidavit, the fourth Respondent states that the 1st Respondent had informed him that the Government had stayed the auction notice issued by him for a period of three months; the 2nd Respondent had also addressed letter dated 02.02.2010 informing him about the stay granted by the Government for a period of three months, he was directed not to conduct auction and was asked to submit his compliance report; as he was an officer subordinate to the 1st and 2nd Respondents, he had no other go except to follow the directions of the Government; he had, therefore, stopped auction of leasehold rights of the theater scheduled to be held on 03.02.2010; a notification to that effect was published in the newspapers on 02.02.2010; since the stay granted was to expire on 03.05.2010 he had sought clarifications from the 2nd Respondent on 29.06.2010; the 2nd Respondent had informed him, vide letter dated 30.06.2010, to take necessary action as per the directions of this Court; however, due to non-receipt of clarification, he had addressed another letter dated 08.07.2010; and subsequently the 2nd Respondent, vide letter dated 15.7.2010, had furnished clarifications to the queries raised by him; in compliance with the orders of this Court, he had issued a notice of eviction on 13.8.2010 which was served on the 6th Respondent on 18.8.2010; and he had conducted the auction on 9.9.2010.

24. It is evident from the letter of the 2nd Respondent dated 15.07.2010 that the fourth Respondent was unnecessarily seeking clarifications from time to time,

and was not implementing the orders of the Court. This necessitated the 2nd Respondent directing the 4th Respondent not to approach his office in future for further clarification on pain of disciplinary action. The said letter of the 2nd Respondent also makes it clear that the 4th Respondent was dragging on the matter by entering into protracted correspondence, thereby avoiding complying with the orders of this Court. Any difficulty which the 4th Respondent may have had, in complying with the order of this Court, could only have been addressed to this Court by way of an application seeking clarification or for extension of time to comply with the order. Failure to comply with orders of Court, on the excuse that the contemnor had to consult his superiors before complying with such orders, is of no avail when he is asked to show cause why he should not be convicted for contempt (Taluri Sessaiah and Another Vs. M. Narayan Rao and Another, ; Court on its Own Motion Vs. Sh. N.S. Kanwar, . This letter of the 2nd Respondent dated 15.7.2010 fortifies the apprehension expressed by the Petitioner, in his letter dated 25.1.2010, that the 4th Respondent was in collusion with, and was acting at the dictates of, the Chairman, Nalgonda Municipality. The fact that the notice of eviction issued by the fourth Respondent, allegedly on 13.8.2010, was served on the lessee, (who is in the same town), only on 18.8.2010 also lends credence to the submission of the Learned Counsel for the Petitioner that the 4th Respondent had ante-dated the eviction notice to give an impression that action had been initiated by him even before the contempt case was admitted on 13.8.2010. It does seem as if the fourth Respondent had acted only after the contempt case was admitted, and notice in Form I was issued, obviously to avoid being punished for contempt. From the letter of the 4th Respondent dated 9.9.2010, addressed to the 2nd Respondent, it is clear that, among the four who participated in the auction held on 9.9.2010, Sri P. Satyanarayana (the brother of the Chairman of Nalgonda Municipality), had offered the highest bid of Rs. 33,000/- per month. Respondents 5 and 6 were thus successful in their Endeavour in avoiding vacating the premises for more than a year after this Court had passed orders on 25.8.2009. Failure of the 4th Respondent to either conduct auction or to evict the 6th Respondent for more than a year, after this Court passed orders on 25.08.2009, is not for reasons of genuine inability to comply with the terms of the order of this Court.

25. The 1st Respondent, in having issued the said memo dated 02.02.2010, and the 2nd Respondent in directing the 4th Respondent, by his letter dated 02.02.2010, not to conduct auction have willfully and deliberately violated the order of this Court, requiring all three of them (i.e, Respondents 1,2, and 4) to ensure lease of the scheduled property by public auction, for more than a year. Further the 4th Respondent, in entering into protracted correspondence with the 2nd Respondent instead of seeking clarification from this Court, has avoided complying with the order of this Court, requiring him to evict the 6th Respondent from the Municipal property and conduct auction for over a year. It must, necessarily, be held that disobedience by Respondents 1, 2 and 4, of the orders of this Court, is willful.

26. Respondent 1, 2 and 4 would state in unison that they have the highest regard and respect for Court orders; they never intended to disobey the orders of Court; and the delay in implementation was neither willful nor deliberate but was only because of circumstances. All of them have tendered their unconditional apology.

27. Learned Advocate General, appearing on behalf of Respondents 1 and 2, would submit that, since the order of this Court requiring the Respondents to conduct auction of the property has been complied with, on the auction being held on 09.09.2010, the delay in complying with the order would, at best, amount to technical contempt and, as the Respondents have tendered their unconditional apology, this Court ought not to punish them for Contempt of Court. While drawing attention of this Court to the Circular of the 1st Respondent dated 17.11.2009, Learned Advocate General would submit that the very fact that the 1st Respondent had instructed all Municipal Commissioners in the State of A.P. to resort to public auction, as directed by this Court, was proof of her genuine respect for orders of Court. He would request that a sympathetic view be taken more so as Respondents 1 and 2 have done their utmost to ensure that the order of this Court was complied with in all promptitude. He would rely on *Debabrata Bandopadhyay and Others Vs. The State of West Bengal and Another*, ; *Suresh Chandra Poddar Vs. Dhani Ram and Others*, ; *Syed Maqdoom Mohiuddin Vs. Saudagar Anwar and Another*, and *K. Madalaimuthu and Another Vs. State of Tamilnadu and Others*,

28. Sri Ravishankar Jandhyala, Learned Counsel for the 4th Respondent, would submit that, but for the order of the Government dated 02.02.2010, the auction as directed by this Court would have been held on 03.02.2010; the 4th Respondent was an officer subordinate to Respondents 1 and 2, and was bound to follow the orders of the Government, and not hold auction as the Government had granted stay; the 4th Respondent had sought clarifications from Respondents 1 and 2 as to the manner in which the auction should be held again, as some of the bidders had withdrawn their deposits; failure on the part of Respondents 1 and 2 to furnish clarification within time had resulted in the delay in complying with the order of this Court; the direction of this Court to evict the 6th Respondent had also been complied with after the auction was held on 09.09.2010; and, since there is no violation of the order of this Court as on date, this Court should take a lenient view, and not punish the 4th Respondent for Contempt of Court, more so as he has tendered his unconditional apology.

29. In contempt proceedings the court is both the accuser and the judge of the accusation. It should act with circumspection making allowances for errors of judgment and difficulties. It is only when a clear case of contumacious conduct, not explainable otherwise, arises that the contemner must be punished. Punishment under the Law of Contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is not to be encouraged. (*Debabrata Bandopadhyay and Others Vs.*

The State of West Bengal and Another, . The power of contempt is not intended to be exercised as a matter of course. Courts should not feel unduly touchy when they are told that their orders have not been implemented forthwith. If the court is told that the direction or the order of the court has been complied with subsequently, albeit after receipt of notice of contempt, Courts are expected to show judicial grace and magnanimity in dealing with the action for contempt. (Suresh Chandra Poddar Vs. Dhani Ram and Others, and Syed Maqdoom Mohiuddin Vs. Saudagar Anwar and Another, . In K. Madalaimuthu and Another Vs. State of Tamilnadu and Others, , the Supreme Court observed:

...We have perused the apology tendered by the Respondents in their affidavit. The apology appears to be genuine. Since the Respondents have purged the contempt and taking a lenient view of the matter and considering their age and future prospects, we dispose of the contempt petition by accepting their unconditional apology made in Court and in the affidavits. The contempt petition is disposed of accordingly. The contempt notice is discharged....

30. It is no doubt true that the Respondents-contemnors have expressed apology, and the 1st Respondent issued circular dated 17.11.2009 directing all Municipal Commissioners in the State to conduct public auction on expiry of 25 years lease of municipal property. Likewise the 4th Respondent issued the notice of eviction on 21.11.2009, and the auction notice on 07.01.2010. While the Respondents may not have acted with promptitude in complying with the order of this Court dated 25.08.2009 within two months, what shocks us, however, is not the delay in compliance till 7.1.2010 but the flagrant interference with the due course of justice thereafter. Respondent No. 1 is held guilty of contempt for having issued memo dated 02.02.2010, and the 2nd Respondent in addressing the letter dated 02.02.2010 to the 4th Respondent, directing him not to proceed with the auction. Both Respondents 1 and 2 have, in effect, directed the 4th Respondent to disobey the order of this Court. A mere statement made by a contemnor before the court that he apologies is hardly enough to amount to purging himself of contempt. The court must be satisfied, of the genuineness of the apology. If the court is so satisfied, and on its basis accepts the apology as genuine, it has to make an order holding that the contemnor has purged himself of contempt. (Pravin C. Shah Vs. K.A. Mohd. Ali and Another, . An apology is not intended to operate as a universal panacea. (M.Y. Shareef and Another Vs. The Hon"ble Judges of The High Court of Nagpur and Others, ; Pravin C. Shah Vs. K.A. Mohd. Ali and Another, ; T.N. Godavarman Thirumulpad through the Amicus Curiae Vs. Ashok Khot and Another, . It is not a weapon of defence forged to purge the guilty of the offence but is intended to be evidence of real contrition, the consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrongdoer"s power . (Delhi Development Authority Vs. Skipper Construction and Another, . Only then is it of any avail in a court of justice. Unless that is done, not only is the tendered apology robbed of all grace but it also ceases to be a full and frank admission of a wrong done, which it is intended to be. (In Re: Hiren Bose, ; Patel Rajnikant Dhulabhai

(2008) 14 SCC 561) . The apology tendered by the contemnor, to be accepted by the Court, should be a product of remorse. (M.C. Mehta Vs. Union of India (UOI) and Others, . Public interest demands that when a person has interfered with the judicial process, the judicial decision should not be pre-empted or circumvented merely by a conditional or an unconditional apology. While it is open to the Court, in an appropriate case, to accept an unconditional apology based on the factual position, dropping the proceeding of contumacious acts deliberately done, after accepting the apology offered, would be a premium for the flagrant abuse of the judicial process. (Ram Autar Shukla²¹).

31. In L.D. Jaikwal Vs. State of U.P., , the Supreme Court observed:

...We are sorry to say we cannot subscribe to the "slap-say sorry-and forget" school of thought in administration of contempt jurisprudence. Saying "sorry" does not make the person taking the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to "say" sorry-it is another to "feel" sorry....

(emphasis supplied)

32. The apology tendered by the Respondents is neither a product of remorse nor is there any evidence of real contrition on their part. It is but a lofty expression used only to avoid being committed for contempt. Accepting such an apology, in the facts of the present case, would result in the contemnors going Scot free after committing gross contempt of Court.

33. The next question which arises for consideration is the nature and extent of penalty to be imposed on the Respondents-contemnors on their being found guilty of contempt. There is an element of public policy in punishing civil contempt, since the administration of justice would be undermined if the order of a Court of law can be disregarded with impunity. (Patel Rajnikant Dhulabhai (2008) 14 SCC 561; Attorney General v. Times Newspaper Ltd. 1974 ACC 273) . The power to punish for contempt is intended to maintain an effective legal system, and is exercised to prevent perversion of the course of justice. (Kapildeo Prasad Sah and Others Vs. State of Bihar and Others, ; Patel Rajnikant Dhulabhai (2008) 14 SCC 561) . There are certain well recognized principles which govern the exercise of power and jurisdiction to punish for contempt. The power to commit for contempt will not be used for the vindication of a Judge as a person but only with a view to protect the interests of the public for whose benefit, and for the protection of whose rights and liberties, the courts exist and function. Another factor which a High Court will take into consideration, in exercising its contempt jurisdiction, is to ascertain whether the Contempt is merely technical, slight or trifling in character. If it is so the Court will be satisfied with an expression of genuine regret and will not proceed to inflict punishment on the contemnor. (Advocate-General, Andhra Pradesh, Hyderabad Vs. V. Ramana Rao,). It is not only the power but the duty of the court to uphold and

maintain the dignity of courts and majesty of law which may call for the extreme step of punishing the person for contempt of court. For proper administration of justice, and to ensure due compliance with the orders passed by it, the Court would not hesitate in wielding the potent weapon of contempt. (Patel Rajnikant Dhulabhai (2008) 14 SCC 561). The summary jurisdiction, exercised by Superior Courts, in punishing contempt of their authority, exists in order to prevent interference with the course of justice; to maintain the authority of law as is administered in the Court; and thereby protect the public interest in ensuring the purity of administration of justice (Hira Lal Dixit v. State of U.P. AIR 1954 SC 743).

34. While awarding sentence on a contemnor, the Court does so to uphold the majesty of the law and to ensure that the unflinching faith of people in Courts remains intact. If the guilty are let off, and their sentence remitted on grounds of mercy, people would lose faith in the administration of justice. The Court is duty-bound to award proper punishment to uphold the rule of law, however high the person may be. (J. Vasudevan Vs. T.R. Dhananjaya, . There cannot be any laxity, as otherwise law courts would render their orders to utter mockery. Tolerance of law courts there is, but not without limits and only upto a point and not beyond. (Anil Ratan Sarkar and Others Vs. Hirak Ghosh and Others,). The law should not be seen to sit by limply, while those who defy it go free and those who seek its protection lose hope. (Jennison case 1972 (1) All.E.R 997) .

35. u/s 12(1) of the Contempt of Courts Act, save as otherwise expressly provided in the Act or any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees or with both. u/s 12(3), notwithstanding anything contained in Section 12, where a person is found guilty of civil contempt the Court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in civil prison for such period not exceeding six months as it may think fit. Section 13(a) postulates no punishment for contemptuous conduct in certain cases and, unless the Court is satisfied that the contempt is of such a nature that the act complained of substantially interferes with the due course of justice, the question of imposing punishment would not arise. It is evident from Section 12(3) read with 13(a) of the Contempt of Courts Act, 1971 that the Legislature intended that a sentence of fine should be imposed in normal circumstances, (Smt. Pushpaben and Another Vs. Narandas V. Badiani and Another, , and a sentence of imprisonment should be restricted to cases where the contumacious act is of such magnitude that a mere sentence of fine would not suffice. The jurisdiction in contempt is seldom exercised by Courts except when they find that, in addition to failure to comply with their orders, obstruction has been caused to their primary function of administering justice as authorities charged with that function. (Dulal Chandra Bhar and Others Vs. Sukumar Banerjee and Others,). It is not enough that there should be some technical contempt of court. It must

be shown that the act of contempt had substantially interfered with the due course of justice which has been equated with "due administration of justice". Substantial interference with the course of justice is the requirement for imposition of punishment. The Contempt of Courts Act places an obligation on to the Court to assess the situation itself as regards the factum of any interference with the due course of justice or of obstructing the administration of justice. (Murray and Co. Vs. Ashok Kr. Newatia and Another,). Anyone who deflects the course of judicial proceedings, or sullies the pure stream of the judicial process, must be held to have interfered with the due course of justice, and to have obstructed administration of justice. Such persons must be punished not only for the wrong done, but also to deter others from indulging in similar acts, which shake the faith of people in the system of administration of justice. (Chandra Shashi Vs. Anil Kumar Verma, ; Dhananjay Sharma Vs. State of Haryana and Others, .

36. The 1st respondent, in issuing the proceedings dated 2.2.2010 informing the fourth respondent that the auction notice dated 7.1.2010, (which was issued to comply with the order of this Court), was stayed and the second respondent in directing the 4th respondent, vide proceedings dated 2.2.2010, to stop further process of auction, have interfered with the due course of justice. Likewise the 4th respondent, despite the order of the Single Judge having been suspended by the Division Bench on 4.3.2009, did not take immediate action to evict the 6th respondent from the scheduled premises. But for the ex-facie illegal order of the Government nothing prevented the fourth respondent after 4.3.2010 from evicting the 6th respondent, and in taking possession of the cinema theatre. It is only five and half months thereafter that the fourth respondent served the notice, u/s 194(1)(b) of the A.P. Municipalities Act, on 18.08.2010 requiring the sixth respondent to vacate the premises within thirty days. The fourth respondent, by entering into needless correspondence with the second respondent, has successfully dragged on the matter for nearly a year from when the order was passed on 25.08.2009 till the contempt case was admitted by this Court on 13.8.2010. His failure to act with promptitude, and resorting to dilatory tactics, has hindered the due course of justice.

37. While Courts are not hypersensitive, and ordinarily impose a sentence of fine as punishment for contempt, the respondents in the present case have interfered with the administration of justice, and have made a mockery of the order of this Court. The respondents, by their contumacious acts, have willfully disobeyed the order of the Court. Such open defiance of the order of the Court is contempt of such a nature as to have substantially interfered with the due course of justice for which imposition of a sentence of fine alone would not meet the ends of justice. Such flagrant violation of the orders of the Court must be dealt with sternly. In our considered opinion, on the facts and in the circumstances of this case, imposition of fine in lieu of imprisonment will not meet the ends of justice. (Patel Rajnikant Dhulabhai (2008) 14 SCC 561). Where public interest demands the Court will not shrink from exercising its power to impose punishment even by

way of imprisonment, in cases where a mere fine may not be adequate, to let people know that they cannot, with impunity, hinder or obstruct or attempt to hinder or obstruct the due course of administration of justice. (Hira Lal Dixit AIR 1954 SC 743). In Dibakar Satpathy Vs. Hon''ble The Chief Justice and Judges of The High Court of Orissa., , the Supreme Court held that a direction to ignore the decision of the High Court, even though it was binding on them, was a flagrant interference with the administration of justice by Courts and a clear contempt of court.

38. Respondents 1, 2 and 4 are sentenced under Sections 12(3) read with 13(a) of the Contempt of Courts Act. Respondents 1 and 2 shall be detained in civil prison for a period of fifteen days, and shall pay a fine of Rs. 2,000/- each. The fourth respondent shall be detained in civil prison for one month, and shall pay a fine of Rs.2000/-. As required under Rule 32(1) of the Contempt of Court Rules, 1980 respondents 1, 2 and 4 shall be entitled to subsistence allowance, in accordance with their status, during the period of their detention in civil prison. The subsistence allowance for respondents 1 and 2 is fixed at Rs.750/- per day, and for the fourth respondent at Rs.500/- per day. The State Government shall bear the cost of the subsistence allowance payable to respondent 1, 2 and 4.

39. The contempt case is, accordingly, disposed of.

40. The learned Advocate General for respondents 1 and 2 and Sri Ravi Shankar Jandhyala, the learned counsel for the 4th respondent request that the sentence be kept in abeyance/suspended to enable these respondents sentenced by the order in the contempt case to pursue appellate remedies. In view of the oral request, the order in the contempt case sentencing respondents 1, 2 and 4 is suspended for a period of one month. The original Government records have been furnished for the perusal of this Court by the office of the learned Advocate General. The Registrar (Judicial) shall return these records to the office of the learned Advocate General after obtaining due acknowledgement for the same.