

(1997) 09 AHC CK 0191

In the Allahabad High Court

Case No : Criminal Miscellaneous Contempt Petition No. 32 of 1996

Chitranshan Singh

APPELLANT

Vs

Chandra Bhushan Pandey

RESPONDENT

Date of Decision : 12-09-1997

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 3, 4, 5, 6
Civil Procedure Code, 1908 (CPC) — Order 16 Rule 14
Constitution of India, 1950 — Article 129, 215, 235
Contempt of Courts Act, 1971 — Section 14, 15, 15(1), 17(5), 2

Citation : (1998) CriLJ 1270

Hon'ble Judges : N.S. Gupta, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; G.D. Srivastava, D.K.S. Rathore and A.K. Singh, for the Respondent

Final Decision : Disposed Of

Judgement

1. On 12th July, 1996 the Northern India Patrika, Allahabad, a daily Newspaper published the following news :--

The controversy over the transfer of legal advisor to the Governor, Mr. Chandra Bhushan Pandey took a new turn when the member of the higher judicial service levelled allegations against the Allahabad High Court and the Chief Justice of India Mr. A.M. Ahmadi. It may be recalled that a nine member administrative committee of High Court Judges had recently passed a resolution to transfer Mr. Pandey to Gorakhpur.

Mr. Pandey is the Working President of All India Judges Association.

In a signed statement Mr. Pandey alleged that the H.C. Committee recommended his transfer in order to oblige the Chief Justice of India who wanted his men to be posted as Legal Advisor. "The committee sent the name of only Mr. V.K. Dixit, Additional District Judge of Barabanki, whereas on earlier occasion of panel of

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Mr. Pandey alleged that Mr. Ahmad came close to Mr. Dixit as Deputy Director of U.P. Judicial Research Institute, Mr. Dixit paid travel expenses of Mr. Ahmadi's wife on one occasion.

Mr. Pandey further alleged that Mr. Ahmadi in his capacity as President of the Indian chapter of International Jurist Organisation made Mr. Dixit Secretary of the Lucknow chapter of IJO.

Accordingly to Mr. Pandey, Mr. Dixit was attached to the Allahabad High Court as OSD two months before the IJO's Lucknow convention on September 16 and 17, 1995 whereas the services of Mr. Dixit were taken for a Non-government Organisation (NGO) his salary was drawn from the office of the Barabanki District Judge. At that time Mr. Dixit was serving as Additional District Judge, Barabanki.

Mr. Pandey further alleged that due to the efforts of Mr. Ahmadi, Mr. Dixit went to U. K. Tour recently. Later Mr. Ahmadi joined the tour. After Mr. Ahmadi's return the High Court's administrative committee held a special meeting and "transferred me to Gorakhpur as ADJ." The communication should have been sent, to the U. P. Governor because I was his Legal Advisor. Only the Governor was competent to relieve me. He recalled that the former Governor Mr. Moti Lal Vora had recommended "the merger of my service to the Governor's Secretariat.

Mr. Pandey today announced that he was quitting the judicial service for Govt. He acceded to serve a social organisation known as Bharat Parishad.

(Underlining is ours)

2. The publication of the aforementioned news was viewed with seriousness and the following clarification was issued by the Court, which was also published in the Newspaper :-

Allahabad High Court clarifies the transfer of Mr. C. B. Pandey from Raj Bhawan and refutes the insinuations appearing in the press.

Mr. Chandra Bhushan Pandey has continued at Lucknow for nearly 14 years since the year 1982 except that for one year he remained at Kanpur between 24-6-1986 to 13-7-87. Since January 6, 1990 he has continued in the Raj Bhawan in the capacity of either Assistant Legal Advisor or Additional Legal Advisor or Legal Advisor to the Governor and till today the same position continues.

His reversion to the regular line and posting at Varanasi Judgeship as Civil Judge in June, 1993 stood cancelled on the request of the Secretary to the Governor vide his communication dated 3-7-1993. The result being that Mr. Pandey

continued in the Raj Bhawan. The Administrative Committee's subsequent resolution adopted in their meetings held on 16-8-1994, 1-2-1995 and 25-5-1995 deciding to revert him to the regular line also remained ineffective and he continued in the Raj Bhawan.

The Court's notification dated 13-6-1995 reverting him to the regular line and posting him in Gorakhpur Judgeship was also not carried out. In view of the resolution of the Administrative Committee dated 7-8-1995, the Secretary to the Governor was requested to obtain explanation from Mr. C. B. Pandey for non-compliance of the transfer order. This, too, was not complied with; Thereafter the Principal Secretary to the, Governor requested for sending three names for consideration for appointment to the post of Legal Advisor to Governor. The Court sent three names on 18-10-1995, but even that was not honoured and the Special Secretary to Government in the Appointment Department, vide their communication dated 8-11-1995 asked for extension of Mr. C. B. Pandey. The Administrative Committee in its resolution dated 20-3-1996 declined to accept the request and the Government was requested to relieve Mr. C. B. Pandey asking him to join in Gorakhpur Judgeship. Again the Special Secretary to the Government (Appointment) vide their communication dated 8-4-1996 requested for his continuance in Raj Bhawan till 31-5-1996.

The Administrative Committee of the Court, vide its resolution dated 6-5-1996, declined to accept this request and recommended the name of Mr. V. K. Dixit for appointment to the post of Legal Advisor to the Governor. Thereafter, the Registrar through his letter dated 6-7-1996 asked Mr. C. B. Pandey to join at Gorakhpur on the post of Additional District Judge.

Insinuation that the Court took any decision or acted in any such manner at the behest of C.J.I. or any other person is totally unfounded. The decision of the Court had to be taken in the circumstances enumerated above. So far, the Court has not received any letter of Mr. C. B. Pandey seeking voluntary retirement from service.

3. One Chitranjan Singh filed an application u/s 15 of the Contempt of Courts Act (hereinafter referred to as the Act) accompanying with his affidavit stating, inter alia, that a bare reading of the news item aforesaid clearly shows that the contemnor has committed a gross contempt of this Court by deliberately scandalising the Administrative Committee of the Court, making an allegation that the Court has transferred him in order to oblige the Chief Justice of India who also made questionable remarks against him and that he has learnt that the Administrative Committee of the Court has suspended him by order dated 12th July, 1996 but surprisingly no proceedings in contempt have been drawn up

4. The aforesaid application was placed before the then Contempt Bench on 18th July, 1996, which passed the following order :--

Since the contempt petition is based upon a" newspaper report, before issuing notice in accordance with Chapter XXXV-E, Rule 5 of Allahabad High Court Rules,

we consider it proper to have the version of the respondent. Let a notice be issued to the respondent returnable at an early date. The opposite party shall appear in person on the date fixed.

5. The contemnor appeared and filed a counter stating, inter alia, that he has neither committed any contempt of Court nor has he scandalised the Administrative Committee of the Court rather upon consideration of the totality of the facts and circumstances it would be evident that what the deponent had said did not amount to any contempt nor it could be treated as vilification of the Administrative Committee; that he was posted as Legal Advisor of the Governor and the move for his transfer was in progress-since 1994; that on February 1, 1995 the Administrative Committee resolved that having regard to the fact that he has remained posted at Lucknow from 1978 till to date except for a posting of about a year at Kanpur in 1986-87 and that he has not held any post on the judicial side for more than six years, now he be transferred to the judicial side at the time of annual general transfer and further that on his transfer he be not posted to any district in western U. P. or nor either Lucknow or Allahabad; that in June, 1995 a formal order of his transfer as Additional District Judge, Gorakhpur was passed; that to the aforesaid transfer order the then Governor Sri Moti Lal Vora was not agreeable and was keen for his continuance as Legal Advisor and this fact was conveyed to the Court vide letter, as contained in Annexure-CA 2; that this request remained unattended by the Court rather it sent a panel of three names including one of Sri V. K. Dixit for his selection as Legal Advisor asking the Governor to relieve him which coincided with the imposition of President Rule in the State; that the Governor returned the panel of names sent by the High Court consisting of three names on the ground that the imposition of President Rule rendered it not only expedient but imperative in the interest of administration of State to retain the deponent as a Legal Advisor in the Governor's Secretariat; that on 2nd April, 1996 he was sent to Trinidad to attend 5th World Hindi Conference and during his absence a communication was sent by the Registrar of the Court to the Governor mentioning the name of Sri V.K. Dixit alone for appointment as Legal Advisor seeking his release; that on 11th April, 1996 22nd April, 1996 the Governor passed an order for merger of the services of the deponent in the Governor's Secretariat which is still pending with the Government; that Sri V.K. Dixit went to England in May, 1996 and returned back on 22nd July, 1996; that the Chief Justice of India Sri Ahmadi and Sri Dixit were together in England in connection with study tour and conference who returned in the first week of July, 1996; that the aforementioned facts are relevant to unfold the atmosphere in which the solitary name of Sri Dixit was sent up wherein Mr. Dixit's prominence was felt and marked due to his closeness to the Chief Justice of India and during his visits to C.J.I, what really makes for a thought is as to what reasons were there to prompt the administrative committee to proceed with so much rapidity in sending the solitary name of Sri Dixit and re-convening its extra-ordinary meeting on 6th July, 1996 the agenda of which was to release him from the Governor's Secretariat and implantation of

Sri Dixit in his post which certainly could not have been proceeded in a normal way but one fails to understand what was there so urgent and imminent that the message was sent by Fax at 4.30 p.m. same day directly to him; that what is striking about these communications is that neither the Fax message nor was the subsequent letter addressed to the Governor sent to him rather directly to the deponent asking him to hand over charge with immediate effect and report compliance by 12th July, 1996; that on 8th July, 1996 a news item appeared in various newspapers that the High Court has rejected the Raj Bhawan plea and thereafter he sent his papers for voluntary retirement as he found that his continuance, in service was not compatible with his self respect and the publication in the newspaper which has been referred to had stored sufficient odium for him; that all these communications were addressed to the Principal Secretary to the Governor but no communication of any kind in that regard was taken nor was received by him; that what is significant is that the Administrative Committee of the Court or for the matter of that the entire court did not resort to any action or step by issuing notice of contempt against the deponent suo motu and the reason for it is not far to seek; that the High Court found the statements of the deponent which may fall within the periphery of the Contempt of Court and treated it to be a controversy between its subordinate and itself which "is reinforced by that fact that the High Court issued clarification to the press; that had the High Court treated the assertions of the deponent as smacking of contempt it is inconceivable that it would have refrained from initiating proceedings for contempt; that the decisions of the Supreme Court provide us the anvil on which one is supposed to test the correctness or otherwise of the indictment embodying the charge of contempt (S. Mulgaonkar, AIR 1978 SC 727); that be that as it may, the controversy in the instant case centres round the transfer of a subordinate such as the deponent from the gubernatorial gallery to the district and does not wear that appearance which is usually to be seen on the canvas of the contempt and any statement or publication has to be viewed in the perspective of the philosophy and ethics .which are the warp and woof of the law of contempt; that assuming without conceding that the statement in the press made by the deponent was verging on the criticism of the action of the Administrative Committee, what one has to gather is as to whether the statement branded as outrageous and contemptuous was designed to lower respect for the judiciary and destroy public confidence or not; that now a matter such as the transfer of the deponent and replacement of another in his place even if they assume the proportions of a controversy, are not such which may destroy public confidence in the judicial administration; that transfers and postings in the administrative policy, may it be judicial or executive, invariably give emergence to the grievance of the individual and the articulation which is confined only to the administrative domain and can never be supposed to assume proportions effecting public at large or shake the confidence of public in judiciary or disfigure the image of judicial organs; that another legal infirmity which cannot be ignored and stopped from entering the judicial verdict is that a part of the allegations upon which the edifice of contempt has been raised cannot

be entertained by the High Court and any action or cognizance can "only be taken by the Supreme Court of India as the various allegations from one integrated whole the strands of which are indissolubly linked with each other and are inseverable; that that being so, the allegations have to be taken in entirety and the necessary consequence flowing this phenomenon is that the petition with these allegations falls down in entirety thereby taking away the jurisdiction of High Court to entertain this petition; that since disciplinary proceedings have already been initiated against the deponent, the contempt petition should not be given any countenance inasmuch as it would amount to double jeopardy, and that a condition precedent for the competence of a petition for criminal contempt is the prior permission of the Advocate General, the absence of which shakes the very foundation on which the edifice of contempt rests.

6. Thereafter the case was placed before our Bench. Sri Guru Dayal Srivastava, learned counsel appearing on behalf of the contemnor had contended as follows :-

(i) The Court vide its order dated 18-7-1996 only wanted to have the version of the respondent first before issuance of notices under Rules 5 and 6 of Chapter XXXV-E of the Rules of the Court but the office has issued a notice straightway under Rules 5 and 6 of Chapter XXXV-E of the Rules of Court. In this context he submitted that it is a settled law (Vide Emperor v. Nazir Ahmad AIR 1936 PC 257 (sic) that if a thing is required to be done in a particular way it must be done in that very way or not at all. He also further contended that if this Court comes to a conclusion that the petitioner has committed a criminal contempt of this Court in that event a further opportunity be given to him to file his further show cause. He placed reliance on High Court of Judicature at Allahabad through its High Court of Judicature at Allahabad through its Registrar Vs. Raj Kishore and others, . (ii) Rule 3(c) of Chapter XXXV-E of the Rules of Court requires that a petition made u/s 15(1)(b) of the Act mandatorily requires accompanied by a consent in writing of the Advocate General where as the petition on which the Court had proceeded to issue notice to the noticee does not accompany such a written consent of the Advocate General and accordingly this proceeding is void ab initio. Reliance was also placed on P.N. Dua Vs. P. Shiv Shanker and Others, and a Division Bench judgment of Bombay High Court in Vishwanath Vs. E.S. Venkatramaih and others, . (iii) There is nothing either in the publication of the news item or in the show cause filed by the noticee so as to constitute any criminal contempt of this Court. Even assuming that the facts stated in the newspaper publication and/or the show cause of the noticee and/or read together there was any committal of contempt it being of the Chief Justice of India which is not separable with the allegations made against the then Administrative Committee of the Court, this Court has no competence to initiate any action either under the provisions of the Contempt of Courts Act or under Article 215 of the Constitution of India. In this regard reliance was placed on a Division Bench decision of Advocate-General, Andhra Pradesh, Hyderabad Vs. V. Ramana Rao, , (iv) The disciplinary proceeding is still sub judice before the

Administrative Committee and accordingly it will be beyond the competence of this Court on the judicial side to issue notice and breach the doctrine of double jeopardy.

7. Vide our order dated 27-5-1997 we had rejected the aforementioned submissions by recording following reasons and had called upon the contemnor to show cause why he should not be held guilty of committal of contempt of Court in regard to utterances made by him extracted as above and be punished suitably fixing 11th July, 1997 :-

(7) We take up the last submission first. There is no question of applicability of doctrine of double jeopardy. The noticee has not produced relevant materials before us to show as to what is the precise charge in the disciplinary proceeding. True it is that one of us (Binod Kumar Roy, J.) is a member of the present Administrative Committee but since he has not taken any part in relation to the matter of the noticee, it is difficult to precisely spell out suo motu as to what is the charge against the noticee in the departmental proceedings. The learned counsel for the noticee has failed to cite any judgment that the proceedings in contempt are not maintainable on account of pendency of disciplinary proceedings.

8. Now we come to submission Nos. (ii) and (iii). The rule and section relied upon by Mr. Srivastava are of no help to the noticee. A motion has been made before the Court to initiate action suo motu. The Court wanted to be sure about the correctness of the report as published in the newspaper. For initiating proceeding suo motu no consent is required in writing of the Advocate General by the Court. The decisions relied upon are of no consequence in view of the patent fact that the statements made by the noticee in the show cause filed by him prima facie shows committal of criminal contempt of this Court.

Before the Andhra Pradesh High Court the contemnor raised an objection to the jurisdiction of the Andhra Pradesh High Court to go into the question whether or not the following utterances by him constituted contempt of Court :-

The Supreme Court, which recorded his compromise memo on 23rd April, 1962 created legal history unprecedented in the legal history of the world, for how can the validity of an enactment be determined by a compromise. The issue then before the Supreme Court was a single and straight one (i.e.) whether the Hyderabad Endowment Regulation Act was valid or not and if it was valid whether H.E.H. the Nizam's Charitable Trust comes under its applicability. Instead of giving a clear cut verdict on this vital matter, the Supreme Court after thirteen adjournments naturally managed by the Attorney General representing the Trustees and the State's Advocate General representing the Chief Secretary and the Director of Endowment, recorded the compromise which in effect admits the applicability of only particular clauses of the Hyderabad Endowment Regulation Act, which on the very face of it is discriminatory and hence not valid.

It is surprising that the same Supreme Court which this allowed itself to be a

party to this, held the Hyderabad Endowment Regulation Act valid in the Director of Endowments v. Seetarambagh Temple, only a few months afterwards.

The High Court disposed of this objection observing as follows:- "We think this argument is well founded. We, should, therefore, refrain from dealing with the said passage in these proceedings and eschew it altogether from our minds in considering the merits of this contempt case. In other words, we propose to devote our attention only to the other passages which are alleged to constitute contempt of the High Court, the subordinate Courts and the election Tribunal. What the Respondent has said regarding the Supreme Court can thus be kept completely out of our minds in the present proceedings.

The submission made before us that the allegations made against the then Hon''ble Chief Justice of India and the Chief Justice of this Court raid the Hon''ble Members constituting the Administrative Committee are inseparable prima facie does not appear to be convincing to us. Under our constitutional scheme the Hon''ble Chief Justice of India has no role to play in regard to the administrative functions of the Court yet the noticee has chosen to make a hasty insinuation on the Administrative Committee. When we wanted to know from the noticee whether the facts alleged against the Hon''ble Chief Justice of India are within his personal knowledge he replied to us that they were told by Mr. Dixit himself. On a further query from us as to whether he had noted the said fact anywhere he answered in the negative.

(9) We now revert back to submission No. (i). The Court through Article 235 of the Constitution of India exercises administrative control over the subordinate Judiciary. Under the Rules of the Court itself the Administrative Committee is vested with the jurisdiction, inter alia, of transfer and posting of the personnel belonging to the subordinate Judiciary. The Administrative Committee is also vested with jurisdiction to consider the conduct of its Judicial Officers. The noticee, though on deputation to the Raj Bhawan, undoubtedly, is a subordinate Judicial Officer Under the supervision and control of the Court.

The noticee has not ceased to be a Judicial Officer and thereby rendered himself touch me not vis-a-vis Article 235 of the Constitution. His request to retire him voluntarily has not been acceded to by this Court on the administrative side and this fact is known to him. If we allow such a Judicial Officer to ridicule the very administration of justice on its administrative side conferred upon the Administrative Committee under Article 235 of the Constitution that will allowing the very values of the Court on which it is founded to be shaken by such a judicial officer by his utterances. His charge against the functioning of the administrative committee is clear and ambiguous for which he has not even shown any apology either in the counter affidavit which he has filed or during the course of submission before us. It is a settled law by now that despite pendency of disciplinary proceedings the delinquent can be suitably dealt under other provisions of the Statutes. To allow it will mean that this Court is having double standard - one for such contemnors belonging to other class vis-a-vis those who

are Judicial Officers of this State. We, accordingly, have no hesitation in overruling the objection raised by Mr. Srivastava about the competence of this Court in suitably taking up a cause for preventing of any scandalising attack on this Institution, which is the central pillar of our Parliamentary democracy.

A bare perusal of Section 15 of the Act and the Rules show no doubt at all about the competence of the Court to initiate action either under the codified contempt law or under the constitutional scheme to take action suo motu. We, thus, have no hesitation in overruling the objection raised by Mr. Srivastava about the competence of this Court to initiate suo motu action against the noticee and overruling those objections.

(10) On a bare perusal of the proposed news item coupled with the clarification issued by the Court on its administrative side read with the show cause of the noticee leaves no manner of doubt that he is prima facie guilty of having committed criminal contempt of Court.

(11) However, having regard to the dictum laid down in *Emperor v. Nazir Ahmad supra*, relied upon by Mr. Srivastava, coupled with the fact that there has been a mistake of the office in issuing notice under Rules 5 and 6 of Chapter XXXV-E in violation to the directions of the Court made on the very first day i.e. 18-7-1996, we call upon the noticee/charge him to show cause why he should not be held guilty of committal of criminal contempt of Court in regard to the utterances made by him referred to as above, and be punished suitably and for that purpose since the noticee/nor the contemnor is before us, we, as requested by Mr. Srivastava fix 10.00 a.m. of Friday dated 11-7-1997 for his appearance as well as submission of further show cause, if any, and adducing materials in support thereof.

We also put on record that initially we wanted to fix 4-7-1997 but Mr. Srivastava expressed that he will be busy in connection with his personal matters and thus the date may be postponed to any other date.

The office is directed to hand-over a Xerox copy of this order on the noticee (now contemnor) who is present in court in course of the day.

9. However, no show cause was filed till 22-8-1997 when the case was listed before us rather a prayer for adjournment was made. On that date we had passed the following order :-

There is a prayer for adjournment on the ground of illness of the two learned counsel, namely, Sarva Sri G.D. Srivastava and D.K.S. Rathore. There is also a prayer for adjournment on the ground that the father of another lawyer Sri A.K. Singh is no more. The contemnor is present in person. Vide our detailed order dated 27-5-1997 we had called upon him to show cause why he should not be held guilty of committal of criminal contempt of Court in regard to the utterances made by him, referred to in our order earlier, and be punished suitably and on his request through Sri Srivastava, his learned counsel, had fixed 10.00 a.m. of

Friday dated 11-7-1997 for his appearance as well as submission of further show cause, if any, and adduce material in support thereof. No show cause was filed by him on 11-7-1997 nor has the contemnor cared to produce any further material. More than five weeks have expired since then as well. We take it that he has nothing further to show cause. However, since there is a prayer for adjournment on the ground of illness of two of his learned counsel and on the ground of bereavement due to death of the father of the third learned counsel, we adjourn this case to Friday dated 29-8-1997. The contemnor shall remain present on that date.

10. On 29th August, 1997 the contemnor filed his reply along with an application seeking condonation of delay in his filing. The delay was sought to be condoned on the ground that even though the reply was prepared it could be finalised only in the last week on account of illness of his counsel Sri Guru Dayal Srivastava. Since there was no material before us to doubt the correctness of the statement aforesaid we entertained the show cause of the contemnor.

11. In Paragraph 3 of his show cause he has stated as follows :-

(A) That, as required by Section 15(1)(b) consent of the Advocate General should have been obtained which is wanting in the instant case. The present contempt proceedings have their origin in the petition of Chitranjan Singh and they have been set in. motion upon the institution of this petition, hence the petition cannot be traced to any different origin other than this petition, and the necessary corollary that flows from this phenomenon is that the petition cannot be treated as emanating from the suo motu action of the court and the present proceedings come within the ambit of Section 15(1) of the Act. The Court has proceeded to issue notice on the petition of the petitioner and in the order dated 13-7-1996 itself it has been stated that the contempt petition is based upon newspaper, the issuance of notice has to be treated as one born of this petition and not as one originating from suo motu motion. That being so, it was obligatory for the petitioner as required by Rule 4 of Chapter XXXV-E of the Court to state the reasons why the consent of the Advocate General could not be obtained and why the Court has been approached to act suo motu. Since the petition has neither been moved by, the Advocate General nor the consent in writing of the Advocate General has been obtained, absence for reasons as to why the petition was moved without such consent and why the court has been approached to act suo motu in the petition take away the validity from the petition and any action based upon a petition with a taint of invalidity would be likewise wanting in validity. As to the imperativeness of the Rules of the court and strict abidance with it, the petitioner takes the opportunity to refer to the decision of the Supreme Court reported in High Court of Judicature at Allahabad through its Registrar Vs. Raj Kishore and others, . This decision also lays down that even when the High Court acts under Article 215, it has to follow the procedure as laid down by the Rules of the Court. There is yet another requirement to be honoured as laid down in P.N. Dua Vs. P. Shiv Shanker and

Others, and it is that "frequent use of this suo motu power on the information furnished by an incompetent petition may render these procedural, safeguards provided in subsection (2) otiose. In such cases the High Court may be well advised to avail of the advice and assistance of Advocate General before initiating proceedings.

(B) Another ground for unmaintainability of petition is that the contempt involves and embraces within its arena not only the High Court but the Chief Justice of India also. The allegations and its subject matter may be examined in this connection. What has been published in the news paper is that "Shri Pandey alleged that the High Court Committee recommended his transfer in order to oblige the Chief Justice of India who wanted his chum to be posted as legal advisor. Other contents of the publication are that "due to the efforts of Mr. Ahmadi, Mr. Dixit went to UK tour recently. Later Mr. Ahmadi joined the tour. After Mr. Ahmadi's return the High Court's administrative committee held a special meeting and transferred me to Gorakhpur as ADJ." It is much too obvious and apparent that statement made by Shri Pandey embraces within its arena not only the High Court A.C. but the C.J. I. also. The statement is that the H.C.A.C. in order to oblige the C.J.I, had taken the decision to transfer Shri C.B. Pandey. The origin of the episode is the C.J.I. and the Administrative Committee is only a link in the chain. That being so the vilification touches upon both, that is to say, the obliger and the obligee. Mr. Ahmadi was the C.J.I. and if there is any scandalisation at all then the contempt proceedings should have been taken by Shri Ahmadi who obviously could take it in his capacity as C.J.I. One who has been obliged is as much as the subject matter of the scandalisation as the other from whom the obligation flows. The recipient of the obligation and the author of the obligation thus constitute one integral whole and are indissolubly linked with each. The part of the allegation relating to High Court A.C. is a part of a single scheme and cannot stand without the other part relating to Mr. Ahmadi. Why the High Court took the decision to transfer has been attributed to the reason which was to oblige Mr. Ahmadi. The transfer of C.B. Pandey has its origin in the solicitude of Mr. Ahmadi for Mr. Dixit, the manifestation, of which is to be found in the administrative action of the High Court. The starting place is Mr. Ahmadi and the destination is the High Court action. That being so, the C.J.I. and the administrative committee cannot be severed from each other. Then the question that emerges is that as to whether the High Court can take action for contempt of Shri Ahmadi. The answer to this would depend upon as to whether the Contempt of Courts Act or the Constitution provides any remedy in the matter. In this connection Section 15 of the Act may be analysed. This section provides that in the case of a criminal contempt the Supreme Court or the High Court may take action on its own motion. This provision categorises the respective domain of the two courts. In cases of criminal contempt, it is the scandalisation which is the *source et origo* of the action and what may be an outrage resulting in the scandalisation will always depend and be conditioned by one's own sensitivity and sensibility. What may appear to be something offensive to one may seem venial

to the other and an expression of a mere grievance. The element of subjectivity is always there and as such what may seem an affront to one may be otherwise to the other and that is why each of the two, i.e. the Supreme Court and the High Court have been kept separate from each in Section 15 and also in the Constitution. In the Constitution each under respective articles, i.e. Article 129 and Article 215 have been described as a Court of record and have been empowered to punish for contempt of Court. It is the sensitivity and the opinion of the individual that seems to be the reason for this distinctive categorisation. In many cases what the High Court may treat an utterance as contempt may not be viewed likewise by the Supreme Court. Hence the High Court cannot take up the duty of vindicating the outraged majesty of the Supreme Court when the arms of the latter are pursuant enough to do itself. In the case of the Supreme Court the situation is slightly different. It is the highest court and its constituents are in the position of pater families of the entire judiciary, hence if they it comes to their notice that a particular instance of scandalisation is in the vicinity of contempt, they can set the machinery of law into motion for contempt irrespective of whether the High Court has taken any action for contempt or not. Both of them are courts of record. The phrase "Court of Record" is always in relation to judicial proceeding of that particular court with the exception that a superior court being the Supreme Custodian of justice may vindicate the prestige and majesty of courts inferior to it.

(C) On this aspect, no one would do better than to quote the Supreme Court in the case of D.C. Saxena as Chief Justice of India. Whether the contemptuous imputation with reference to administrative act of the High Court which amount to contempt will depend upon whether the imputations do or do not affect the administration of Justice. The ultimate tests in each case would be whether the impugned publication is a mere defamatory attack on the judge or whether it is calculated to interfere with the due course of justice or the proper administration of law, by his court. It is only in the latter case that it will amount to contempt. The position, therefore, is that a defamatory attack on a judge may be a libel so far as the Judge is concerned and it would be open to him to proceed against the libeler in a proper action. If however the publication of the disparaging statement is calculated to interfere with the due course of justice or proper administration of law by such court it can be punished as contempt. One is a wrong done to the Judge personally, while the other is a wrong done to the public. The criticism of a judge can form the basis for contempt only if it is made against the judge in his judicial capacity in the exercise of his judicial functions (See *State Vs. Tribhuvan Nath Verma, P.N. Dua Vs. P. Shiv Shanker and Others*, .

The Court must harmonise, the constitutional values of free criticism and the need for free and curial process and its presiding functionary. To criticise a judge fairly and truthfully is no contempt of court where freedom of expression subserves public interest in reasonable measure, public justice cannot gag it. (See *P.N. Dua Vs. P. Shiv Shanker and Others*, . It is not the language alone but the surrounding circumstances and facts under which the utterance is made or

published is to be seen. The Supreme Court in the case of Dr. D.C. Saxena, Contemnor Vs. Hon"ble the Chief Justice of India, Dr. D.C. Saxena, Contemnor Vs. Hon"ble the Chief Justice of India, has conveyed in its dissertation its view that the punishment for contempt is not for the purpose of protecting or vindicating either the dignity of -die court as whole or an individual Judge of the Court from attack on his personal reputation but it is intended to protect the public who are subject to the jurisdiction of the court and to prevent undue interference with the administration of justice. Action for contempt is not for the protection of a Judge as private individual but because they are the channels by which administered to the people without fear or favour. In para 40 of this decision the Supreme Court has further endeavoured to unfold the spirit behind punishment for contempt and the observation is that scandalising the court would mean hostile criticism of Judges as Judges or judiciary. Any personal attack upon a Judge in connection with the office he holds is dealt with under the law of libel or slander.

In the case of Vishwanath v. E.S. Venkatramaih utterances by the former Chief Justice of India were held not to be amounting to contempt 1990 Cri LJ 2179.

(D) That, the deponent further takes the opportunity of submitting that any protest or resistance to transfer or any other act of a like nature would not be interference with judicial process of the Court. The dark corners of the law of contempt have been illuminated by the decision of the Supreme Court in the case of Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another, , wherein the boundaries of administrative action and judicial process have been drawn for the purposes of evaluating the concept of contempt. The judgment of Justice Krishna Iyer gives an anvil for testing the indictments of contempt, which being the declaration of law imposes an obligation to employ this anvil in controversies such as the present. One has to widen the horizon and perspective in viewing the impugned publications and utterances in the instant matter. What Justice Iyer asserts and reminds is that "the judicial instrument is no exception. The cite vintage rulings of English courts and to bow to decision of British Indian days as absolutes is to ignore the law of all laws that the rule of law must keep pace with the rule of life". The quintessence of his declaration is that the accent on the functional personality which is pivotal to securing justice is that "purely administrative acts like recruitments, transfers and postings, routine disciplinary action against subordinate staff, executive acts in running the administration and ministerial business ancillary to office keeping these are common to all departments in the public sectors and merely because they relate to the judicial wing of government cannot enjoy a higher, immunity from criticism. The quintessence of the contempt power is the protection of public and not Judicial personnel." This concept would be in accord with the soul and spirit of the republican form of government. To treat the judicial wing differently from the other wings of the government would be fostering discrimination on the strength of assumptions which are the strands of a monarchical fabric and our reverence for them would mean desecration of the ideals of the republic. If

resistance to transfers in the other wings of the government are not punishable as contempt, why a similar resistance or protests by a member of the judicial wing should be viewed as questionable. Adherence to Philistine concepts would be detrimental to the growth of law and would bring a climate of frustration of aspirations to vindicate the truth which the dread of contempt has incarcerated. Jurisprudence and every part born of it must always turn their faces to the immutable sermon which is that "we should be eternally vigilant against attempts to check the expression of opinion that, we loathe and believe to be fraught with death unless they so eminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.

(E) That, the totality of the circumstances is another fact which has to enter the judicial verdict in situations such as the present: The Court has to consider the nature of the imputations, the occasion of making the imputation and whether the contemnor foresees the possibility of his act and whether he was reckless as to either the result or had foresight. The background of the entire episode is that of transfer and the manner and the mode of its execution by departing from the practice adhered to in the past.

(F) That, for the rest of the averments which the petitioner proposes to offer in addition to what has been delineated, he relies upon the averments in his counter affidavit and submits that it may be treated as a part of the present affidavit embodying the assertions in reply.

(G) That, the statements of which Shri C.B. Pandey is the author and which have culminated in the indictments for contempt stand in the need of corroboration from oral and documentary evidence. What intensifies the necessity of advent of evidence is the observation in the notice itself which is as follows :-

Then we wanted to know from the noticee that whether the facts alleged against the Hon'ble the Chief Justice of India are within his personal knowledge. He replied to us that they were told by Mr. Dixit himself. On a further query from us as to whether he has noted the said fact anywhere, he answered in the negative." The aforesaid observation loudly speaks for the necessity of examining witnesses such as Shri V.K. Dixit, Addl. D.J. Barabanki, Shri A.M. Ahmadi, Ex. Chief Justice of India, Legal Remembrancer, U.P. Government, Director, Judicial Training and Research Institute and Addl. Registrar, Lucknow Bench of the Hon'ble High Court.

(H) That before parting with his submissions in reply, the deponent cannot refrain from emphasising that he made request for voluntary retirement as he felt that his continuance in service would only bring unhappiness to him and that instead of appreciation which he richly deserved he would be greeted with malignity and anyone with condour and merit would have acted in the like manner. If the Hon'ble Court can take the trouble of scanning his service roll, his achievements both as a Judge and as an spokesman of the judicial service would

be found to be outstanding. The judicial wing of the republic has been the recipient of his selfless devotion and it can never be denied that it is by his endeavours that the judicial fraternity has attained not only recognition but edification also which might be the despair of the other wings of the Government. The tribute which the members of the service paid to him was to choose him as the President of their association, and this station which he adorned, enjoyed an unbroken continuity.

12. In his affidavit portion the contemnor stated that sub-paragraphs F and H of Paragraph 3 of his show cause are true to his personal knowledge, contents of paragraph Nos. (sic) are based on perusal of records and contents of sub-paragraphs A and E and G of paragraph 3 are based on legal advice, which he believes to be true.

13. He also filed an application to grant some time to him for adducing evidence in support of his defence on the ground that he had made such statements based on facts which require to be substantiated by adducing evidences in support of his defence.

14. Shri Guru Dayal Srivastava, learned counsel for the petitioner contended as follows :-

(i) As the Advocate General of the State has not consented which was mandatory, the instant proceeding is void-ab-initio. Apart from the decisions cited earlier the High Court of Judicature at Allahabad through its Registrar Vs. Raj Kishore and others, also supports him. (ii) No contempt was made out by the contemnor as his criticism was in relation to routine affairs of the Administrative Committee and not in furtherance of interference in due process of law and justice or of any judicial proceedings. The judgment of Krishna Iyer, J. of the Supreme Court in Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another, supports his proposition, (iii) The charge framed against the contemnor is vague and not specific. Rule 5 of the Contempt Rules has not been followed, (iv) The criticisms, if ultimately held to be amount to contempt, in that event it would be the Supreme Court which alone was competent to initiate proceedings inasmuch as the criticisms made against the then Chief Justice of India vis-a-vis this Court are not separable. If this plea is overruled then (a) Sri A.M. Ahmadi, the then Chief Justice of India, (b) Sri V.K. Dixit, the Addl. District Judge, Barabanki, (c) The Legal Remembrancer, U.P. Government, (d) The Director, Judicial Training and Research Institute, Lucknow and (e) The Addl. Registrar, Lucknow Bench of the Court be summoned as witnesses for their deposition to contradict the statements of the contemnor. (v) In view of the fact that the service records of the petitioner against him which was beyond competence of the Court as he was no longer within the administrative superintendence and control of the Court, no action is required to be taken.

15. We proceed to consider the aforesaid submissions one by one after noting

that the clarifications issued by the Court, extracted in Paragraph 2 supra has not been dubbed to be incorrect.

16. The first submission was also made earlier before us as Submission No. (ii) extracted in Paragraph 6 supra and rejected by us vide our order dated 27-5-1997 extracted in Paragraph 7 supra. Our order dated 27-5-1997 not having been challenged by the contemnor before the Apex Court we are of the view that the said order operates as *res judicata*. This apart we find that there is nothing in the judgment of the Apex Court in High Court of Judicature at Allahabad v. Raj Kishore Yadav 1997 All LJ 795 supra which militates against our view taken earlier. The moot questions which fell for consideration by the Apex Court were (i) what procedure is required to be followed in regard to committal of civil contempt? (ii) whether the hearing of the civil contempt case by a Bench of the High Court other than the one which had passed the order, non-compliance of which was in issue, would at all affect the institution of the High Court as the superior court of record in hearing the matter by a regular contempt Bench? and (iii) whether there was any conflict between the working of Rule 4A and Article 215 of the Constitution of India?

Section 14 of the Contempt of Courts Act prescribes procedure where contempt is in the face of the High Court or the Supreme Court. Relevant part of Section 15 of the Contempt of Courts Act reads thus :-

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....

X X X X

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

(Emphasis ours)

In S.K. Sarkar, Member, Board of Revenue, U.P., Lucknow Vs. Vinay Chandra Misra, the Apex Court held as follows :-

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 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, the High Court, has, in such a situation, discretion to refuse to entertain a petition, or to take cognizance on its own motion on the basis of the information supplied to it in that petition...

X X X X

Section 15 of the Act prescribes procedure for taking cognizance and it does not affect the High Courts's suo motu power to take cognizance and that in sub-section (1) there is one of three alternative modes for taking cognizance.

(Underlining ours)

To another question, which cropped up for consideration by the Supreme Court in this case..."if the High Court is directly moved by a petition by a private person feeling aggrieved not being the Advocate General, what courses are open, answering this question, the Court said "the High Court has, in such a situation, discretion to refuse to entertain a petition or to take cognizance on its own motion on the basis of information supplied to it in that petition."

(Emphasis supplied)

In P.N. Dua Vs. P. Shiv Shanker and Others, when Sri Duda, who was an Advocate practising in the Supreme Court after having failed to obtain consent in writing of the Advocate General and/or the Solicitor General of India for initiating proceedings in contempt against Sri P. Shiv Shankar, the then Law Minister, who had made a speech, which according to Sri Duda had rendered Sri P. Shiv Shanker guilty of contempt, the Apex Court refused to exercise its suo motu power after explaining away the remarks made in the speech. Even then Ranganathan, J. observed to the effect that if a private person desires that an action for contempt should be taken, one of the following three courses is open to him :- (i) He may place the information in his possession and request the Court to take action (ii) He may place the information before the Attorney General and request him to take action or (iii) He may place the information before the Attorney General and request him to permit him to move the Court.

In D.N. Taneja Vs. Bhajan Lal, the Apex Court explained that a criminal contempt proceeding is only between the Court and the contemnor, and a third party, who moves the machinery of the Court for contempt, only brings to the Court certain facts constituting contempt of Court, and after furnishing such information he may still assist the Court.

We thus, do not find substance in the first submission.

17. Now we take up submission No. (ii).

Under Article 235 of the Constitution the control of the subordinate judiciary is vested in the High Court. After the appointment of Judicial Officers the power to post/transfer, maintain discipline and keep control over them vests in the High Court. In regard to the transaction of the administrative business our Full Bench adopted a resolution vesting its power to post/ transfer, maintain discipline and keep control over the Judicial Officers in the Administrative Committee of the Court and its legal position stands explained, by the Apex Court through various pronouncements including the latest one in High Court of Judicature at High

Court of Judicature at Bombay through its Registrar Vs. Shirish Kumar Rangrao Patil and another, . In this case also it was emphasised that the conduct of every Judicial Officer has to be above approach and that he is not to administer the office for advancing his personal ambition. It was also observed that the Judicial Officers have to present continuous aspect of dignity and conduct. Having perused Baradakant Misra, strongly relied upon by Sri Srivastava, we are of the view that far from supporting the contemnor it is against him. The judgment of the Apex Court was rendered by a Bench of five Hon'ble Judges. The Court speaking through Palekar, - J., with whom two others Krishna Iyer and Bhagwati, J. J., had also concurred, observed thus :-

On aware perusal of sub-sections (i), (ii) and (iii) of Section 20 of the Act v are of the view that by utterances made by the contemnor extracted as above has not only scandalised and lowered the authority of the Court but had tried to interfere with as well as obstruct its administration of justice.

It was also held that Article 235 of the Constitution vests in the High Court, the control over District Court and Courts subordinate thereto. Control under Article 235 of the Constitution is control over the conduct and discipline of the Judges of the Courts subordinate to the High Court and therefore when the High Court functions in that capacity it only does so in furtherance of the administration of justice. It was further held that administration of justice is exclusively associated with the Courts of justice which have to perform multifarious functions for due administration of justice and any lapse from the strict standards of rectitude in performing these functions is bound to affect administration of justice which is a term of wider import than mere adjudication of causes from the seat of justice and that mere function of adjudication between parties is not the whole of administration for any Court.

In Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat and others, the Apex Court observed that definition of criminal contempt is wide enough to include any act of a person which would tend to interfere with the administration of justice or which would lower the authority of the Court.

In Rachapudi Subba Rao Vs. Advocate General, Andhra Pradesh, the Apex Court held that the scandalisation of the Court in its administrative capacity will also be covered by sub-clauses (i) and (iii) of Section 2(c) of the Act.

In Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh, it was held by the Apex Court that if publication of disparaging statement is calculated to interfere with due process of justice or proper administration of law by such Court, it can be punished summarily as contempt and that what is material is the nature and extent of the publication and whether or not it was likely to have an injurious effect on the minds of the public or of the judiciary itself and thereby lead to interference with the administration of justice.

Paragraph 27, Volume 9, 4th Edition of Halsbury's laws of England also states thus :- Any act done or writing published which is calculated to bring a Court or a

Judge into contempt, or to lower its authority, or to interfere with the due course of justice or the lawful process of the Court, is a contempt of Court.

Lord Diplock, speaking for the Judicial Committee in *Chokolingo v. Attorney General of Trinidad and Tobago* (1981) 1 All ER 244, summarised the position thus:- "Scandalising the Court is a convenient way of describing a publication which, although it does not relate to any specific case either past or pending or any specific Judge, is a scurrilous attack on the judiciary as a whole, which is calculated to undermine the authority of the Courts and public confidence in the administration of justice."

In *E.M. Sankaran Namboodripad Vs. T. Narayanan Nambiar*, the Supreme Court pointed out to the effect that one of the Chief forms of contempt is "breach of duty by officers connected with the Court and scandalising the Judges or the Courts."

(Emphasis supplied)

In *Shri C.K. Daphtary and Others Vs. Shri O.P. Gupta and Others*, , the Apex Court held that "in a country like ours, it has the inevitable effect of undermining the confidence of the public in the judiciary and if confidence in the judiciary goes, the due administration of justice suffers.

The records of the Administrative Committee discloses following facts:- It had recommended the name of the contemner along with two others on 3-11-89 for appointment as Asst. Legal Advisor to the Governor. After expiry of 3 years a routine order for his transfer to the regular line was passed. Through a D. O. letter dated 3rd July, 1993 the Secretary to the Governor made a request regarding staying his transfer. In its meeting dated 21-8-93 it recalled the transfer order. Again a request was made through letter of the Principal Secretary to the Governor for extension. On 16-8-94 it resolved recalling the deputation of the contemnor at the time of Annual General transfer of 1995 and recommended for appointment of Sri Pradeep Kumar Dubey in his place. In its meeting dated 1-2-95 it was further resolved that having regard to the fact that the contemnor has remained posted at Lucknow from 1978 till to date except for a posting of about a year at Kanpur in 1986-87 and that he has not held any post on the judicial side for more than 6 years now he be transferred to the judicial side at the time of Annual General transfer. The contemnor made a representation to the Hon"ble Chief Justice through a letter which was considered as Item No. 37 of the Agenda on 25-5-95 and it was resolved that the resolution of the Administrative Committee dated 1-2-95 be given effect to. The contemnor was then appointed as VI Addl. District and Sessions Judge, Gorakhpur vide notification dated June 13, 1995. Again a request was made regarding consent of the Court for extension of his term vide D. O. Letter dated 3-7 1995. Under Agenda No. 34 of Meeting dated 7-8-95 it considered and resolved to call for an explanation from the contemnor for not reporting to duty at Gorakhpur and declined the request for extension.

The contemnor had also come with an allegation that Mr. Dixit, B.J.S. was appointed as an Officer on Special Duty with the Lucknow Bench of the Court and tried to be appointed in Raj Bhawan at the instance of the then Hon''ble the Chief Justice of India.

At the very outset we may state that the Government has authorised the Court to attach 10 Judicial Officers belonging to Higher Judicial Services for the purposes of finding out pending writ petitions/cases or cases/appeals for their classification in which common legal question is involved or such cases in which the same Act/ Ordinance/Government Orders/Executive Orders have been challenged as also classification of writs/cases of same nature at the time of their institution. In regard to bearing of the expenditure the Government clarified that it will be in the manner which was being done from before and that the bills of those attached officers in regard to their salary, allowance and travelling allowance etc. will be encashed from the Treasury Officer, Allahabad. These Judicial Officers are being called Officer on Special Duty (O.S.D.) and are being deputed by the Hon''ble the Chief Justice of the Court.

International Jurists Organisation, Asia was holding its conference on "Crime and Justice", on 16th and 17th September, 1995 and invitations were extended by this Organisation to all the Hon''ble Judges of the Supreme Court and Hon''ble the Chief Justice and besides the Hon''ble Judges of this Court and several other legal luminaries, many of them had consented even to deliver lectures. Sri Dixit, Addl. District Judge, Barabanki, was one of the General Secretaries of the preparatory committee of this conference. Mr. Justice S. H. A. Raza of the Court on August 1, 1995 wrote a letter to the then Hon''ble the Chief Justice of the Court requesting to post Sri Dixit as an Officer on Special Duty with the Lucknow Bench till the holding of the conference. The then Hon''ble the Chief Justice acceded to the request of Mr. Justice Raza and Sri Dixit was attached with the Lucknow Bench of the Court as an Officer on Special D v, who discharged his functions in terms of the Government order namely for grouping together types of the cases indicated therein. These facts, ascertained from the records on the administrative side of the Court by us, clearly falsifies the allegation of the contemnor that Sri Dixit was attached as Officer on Special Duty, two months before the Lucknow convention of the I.J.O.s and that his services were taken for a non-government organisation, though it is true that he had in addition worked for that organisation also. His further allegations that the then Hon''ble C.J.I, in his capacity of President of Indian Chapter of International Jurists Organisation had made Sri Dixit as Secretary of the Lucknow Chapter of the I.J.C.; that Sri Dixit had paid travel expenses of the wife of the then Hon''ble the Chief Justice of India on one occasion; that the Committee had sent the name of only Mr. Dixit, whereas on earlier occasion a panel of five names used to be sent for the purposes of deputation as Legal Advisor to the Governor; that the Administrative Committee had sent the name of Sri Dixit in order to oblige the Hon''ble Chief Justice of India, who wanted his man to be posted as Legal Advisor; that the Committee held a special meeting and transferred him to Gorakhpur have not

been claimed to be within his personal knowledge. On a query made by us he had come up with a claim that some of the aforementioned facts he learnt from Sri Dixit himself, which is hardly to be believed.

We further find from the records on the administrative side of the Court that vide order dated 3-8-95 the then Hon"ble Chief Justice constituted a Committee consisting of Hon"ble Mr. Justice V. N. Khare (now of the Supreme Court) and Hon"ble Mr. Justice Palok Basu for the purpose of selecting Judicial Officers for being recommended to the Government for various deputation posts which submitted a report which reads thus :-

(See table on next page)

The said report was placed before the Administrative Committee of the Court on 16-10-95. It was resolved that the recommendation of the Committee regarding the appoint-

Department	Post	Name of the Officer	Remarks	Sl. No.
R. Addl. Director	1. Sri D. P. Varshney, A.D.J. Karvi (Banda)	2. I. J. T. R. Joint Director	1. Sri O. N. Khandelwal, A.D.J., Varanasi	3. N.M.P. Tribunal Agra
Presiding Officer	1. Sri B. S. Rajpoot, A.D.J., Gonda	4. V. D. A. Varanasi Legal Adviser	Fresh options be invited	5. National Highway General Manager
1. Sri D.K. Gupta, Civil Authority, Delhi	Judge (SD) Etawah	6. N.M.P. Tribunal Presiding Officer	1. Sri Nyaz Ahmed-I, Joint Lucknow Secretary & Jt. I.R., Lucknow	7. U.P. Jal Nigam Legal Adviser
1. Sri Chandra Prakash, Lucknow	A.D.J. (Spl. Judge), Ghazipur	8. U.P.S.E.B. Lucknow Addl. Law Officer	1. Sri U. K. Tripathi, A.D.J., Unnao	9. Office of Lok Ayukta, Secretary (Administration)
A.D.J., Lucknow	10. Office of Lok Ayukta, Secretary (Complaints)	1. Ras Behari Lai, A.D.J., Lucknow	Bijnor	11. Directorate of Revenue
Addl. Director	1. Sri Krishna Kumar-III, & Spl. Intelligence, Lko (Law) Judge, Family Court, Allahabad	12. Office of Chief Engineer, Law Officer	1. Sri M.Azhar Khan, Irrigation A.D.J., Gonda	Lucknow
13. U.P. State Sugar Corp. Legal Adviser	1. Sri Markandey Prasad Lucknow Pandey, A.D.J., Gorakhpur	14. D.D.A. Delhi Deputy Chief Legal	1. Sri. Niranjan Singh, Adviser C. J. M. Sonbhadra	15. U.P. Rajaiya Nirman Law Officer
Nigam, Lko	16. Secretariat, Lucknow Addl. I.R./Jt.	1. Sri. Daya Ram, A.D.J. I.R. (3 posts)	Kanpur Dehat	I.R./Dy.
2. Sri Ram Hit Prasad, Civil Judge (SD) Bahraich	3. Sri V.K. Singh, J.S.C.C. Gorakhpur	17. Raj Bhawan, Lucknow Legal Adviser to	1. Sri Ganesh Shanker Pandey, Government (Panel A.D. J., Allahabad of 3 Officers)	2. Sri Ashok Kumar-I, of (one) Spl. Judge, Allahabad
3. Sri V. K. Dixit, A. D. J., Barabanki	18. Family Court, Lucknow Addl. Principal	1. Sri Pradeep Kumar, Judge A.C.J.M., Sultanpur	19. Legal Cell, Labour Co- Legal Adviser	1. Sri R.C. Shukla-II, Addl. Commissioner, Kanpur
Sessions Judge, Fatehpur	20. U.P.S.I.P.C., Kanpur Addl. Legal	1. Km. Vijay Laxmi, Adviser A. C. J. M., Moradabad.	21. Customs, Excise Deputy Registrar	1. Sri S. C. Kulshrestha, Judicial Magistrate,

ments to various posts on deputation be accepted except the appointment of Sri D. P. Varshney, Addl. District Judge, Karvi District Banda as Addl. Director of Institute of Judicial Training and Research, Lucknow for which fresh option be called for.

On a naked perusal of the aforementioned report it is crystal clear that for various posts only one name was recommended by the Administrative Committee and that for the purposes of appointment as Legal Advisor to the Governor, Raj Bhawan, Lucknow three names viz. Sri Ganesh Shanker Pandey, Addl. District Judge, Allahabad, Sri Ashok Kumar-I, Special Judge, Allahabad and Sri V. K. Dixit, Addl. District Judge, Barabanki were recommended. Apart from the fact that the name of Sri Dixit was 3rd, the conference was over by September 17, 1995.

The Government, however, instead of appointing one of the three persons named as above as Legal Advisor to the Governor of U. P. went on making repeated requests for continuance of the contemnor till May, 1996. One of the requests made through the letter dated 8-4-96 of the Special Secretary (Appointment), Government of U. P. regarding further continuance of the contemnor as Legal Advisor to the Governor of U. P. till May 31, 1996 was directed by Hon"ble the Chief Justice before the Administrative Committee whose meeting was scheduled for 6-5-96. The Administrative Committee in its meeting held on 6-5-96 considered the aforementioned letter under Item No. 13 of the Agenda and resolved as follows :-

Resolved that the request in that behalf cannot be accepted.

Further resolved that it is unfortunate that repeated requests for the continuance of Sri Pandey in the post are being made by the Government, especially when posting order has already been issued to Sri Pandey vide notification No. C-889/DR(S)/95 dated 13-6-95. Sri Pandey be relieved forthwith to enable him to join his place of posting in compliance with the order dated 13-6-1995. The name of Sri Dixit is recommended for appointment as Legal Advisor of Governor of Uttar Pradesh.

From the aforementioned facts it is clear that the Administrative Committee took up a decision to recommend the sole name of Sri Dixit after the Government persistently showed its interest in continuation of the contemnor as Legal Advisor of the Governor. The Administrative Committee through its meeting dated 20-6-96 considered yet another D. O. Letter in regard to the extension of the contemnor and resolved in its meeting dated 20-6-96 under Agenda No. 4 that no further extension can be granted and the Government is requested to relieve him forthwith.

However, the contemnor issued notes to the Press dated 8-7-96 and 11-7-96

which were published in the Allahabad Newspapers on 12-7-96 and considered by the Administrative Committee of the Court in the Meeting held on July 12, 1996 at 4.00 p.m. along with twenty other agendas and it resolved as follows :-

Considering the written notes issued on 8-7-1996 and 11-7-1996 to the Press by Sri Chandra Bhushan Pandey, a member of the Higher Judicial Service, it is resolved that Sri Chandra Bhushan Pandey is suspended with immediate effect in contemplation of disciplinary proceedings. During the period of suspension his Head Quarters will be at Gorakhpur and he will report to the District Judge, Gorakhpur.

Later on disciplinary proceedings were initiated against the petitioner.

In his criticisms the contemnor has also come up with a specific allegation that the Administrative Committee of the Court held a special meeting, though from the records on the administrative side of the Court extracted as above, it is clear that no special meeting was convened by the Hon"ble the Chief Justice. Thus, it is apparent that the contemnor had attempted to ridicule and scandalise the functioning of the then Hon"ble Chief Justice, the present Hon"ble Chief Justice and the other Hon"ble Judges of the Court then constituting the Administrative Committee and also the then Hon"ble the Chief Justice of India and has rendered himself guilty of gross contempt of the Court. The submission made by Mr. Srivastava that the allegations being inseparable if at all the Supreme Court alone was competent to take cognizance and not this Court, is somewhat a misconceived one. The gravamen of the allegations, which are scandalous, are by and large against the Court and for that reason we had earlier overruled this part of the submission and we reiterate it.

This besides, the Apex Court in D.K. Basu Vs. State of West Bengal, after laying down (in paragraph 36) 11 requirements to be followed up in all cases of arrest or detention throughout the country till legal provisions are made in that behalf as preventive measures, held and directed as follows in paragraph 37 :-

Failure to comply with the requirements herein above" mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of Court and the proceedings for contempt of Court may be instituted in any High Court of the country. having territorial jurisdiction over the matter.

(Underlining ours)

The aforesaid observation/direction clearly connotes in itself the competence of the High Courts to initiate proceedings in contempt for violation of the 11 requirements laid down by the Apex Court. If the argument of the contemnor that this Court cannot take cognizance of the acts defying the directions aforesaid constituting contempt of the Supreme Court is accepted then it will be going against the aforesaid direction, which is binding on us.

Several judgments relied upon by Mr. Srivastava including Raj Kishore Yadav

supra do not give a handle to the contemnor to make wild, baseless and scandalous allegations against this Court. On the contrary the cases specifically referred to above by us are dead against him.

18. Now we proceed to consider. Submission No. (iii). We had already extracted the allegation made by the contemnor in his press note as also in his counter. His allegation that the charge framed against him is vague and not specific has no legs to stand.

Rule 5 of the Rules of our Court reads thus :-

Such allegation contained in the petition as appear to the Court to make out a prima facie case of Contempt of Court against the person concerned, shall be reduced into charge or charges by the Court against such person, and notice shall be issued only with respect to those charges :

Provided that the Court shall not issue notice if more than a year has elapsed from the alleged act of Contempt of Court.

The order dated 27-5-97 which was served on the contemnor amounting notice to the contemnor is neither vague nor has violated the aforementioned Rule. We, accordingly overrule Submission No. (iii) made by Sri Srivastava.

19. Now we proceed to consider the request of the contemnor to summon (i) the then Hon"ble the Chief Justice of India; (ii) Sri Dixit; (iii) the Legal Remembrancer of the Government; (iv) the Director of J.T.R.I. and (v) the Addl. Registrar of the Lucknow Bench of the Court to contradict the statements of the contemnor. Apparently this means that the aforementioned persons are required to be examined as a Court witness.

Under sub-section (5) of Section 17 of the Contempt of Courts Act any person charged with the contempt u/s 15 may file an affidavit in support of his defence, and the Court may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary, and pass such order as the justice of the case requires. The defence of the petitioner is not supported by filing such affidavits stating the alleged facts as true to his knowledge. The contemnor, as already noticed, has come up with an allegation that he had come to know those facts from Sri Dixit himself which we have already refused to believe. A special case has to be made out even under Order XVI, Rule 14, C.P.C., for summoning witnesses as Court witnesses. (See R. M. Seshadri v. G.V. Pal AIR 1969 SC 6922; Khaji Khanavar Khadir Khan Hussain Khan and Others Vs. Siddavanballi Nijalingappa and Another, . No such special case has been made out by the contemnor in Summon the aforementioned persons for contradicting his allegations. To us it appears that this prayer was made in order to embarrass the Court as. we'll as the aforementioned persons. We do not see any justification for entertaining such a prayer and reject it.

20. Now we proceed to consider the last submission made by Sri Srivastava.

It was emphasised that in *Barada Kant Misra supra* the service record of the contemnor Barada Kant was very good till initiation of the disciplinary proceedings against him and, thus, a lenient view was taken. The judgment, however, shows that after holding him as guilty a fine of Rs. 1,000/- and in default three months imprisonment was inflicted on him.

The other part of the submission that the initiation of the disciplinary proceedings was beyond the competence of the Court as he was no longer within the administrative superintendence and control of the Court, was considered earlier by us and rejected. We, thus, do not see any force in this part of the submission and reject it.

Though not pressed during the oral submission we find reference in the written submission of the contemnor that if an order of other employees of the Government can visit with only disciplinary proceedings and not contempt, is also devoid of any substance. The instant case is not of a simpliciter refusal to obey the order of transfer. The contemnor, who claims himself to be Working President of All India Judges Association, must thank himself for scandalising the Court by handing over his written notes to the Press for its publication in the Newspapers. I 21. For the reasons, aforesaid we hold the contemnor guilty of gross contempt of the Court.

22. We have already noted after conclusion of the hearing in our order dated 29-3-97 that no apology was tendered by the contemnor.

We are of the view that the contemnor is not entitled to a lenient view inasmuch as taking of lenient view in his case will give wrong signals to all concerned including those contemnors who are not Judicial Officers of the State.

For the reasons aforementioned, we convict, the contemnor and sentence him to pay a fine of Rs. 1,000/-, which has to be deposited in the Registry of the Court by 12-11-97, in failure thereof to undergo simple imprisonment for 3 months. We direct the Registrar of the Court, in failure to deposit the fine, to take steps for his arrest to serve the sentence awarded under the Rules of the Court.

23. The Rule is made absolute accordingly. Order accordingly.