

(2004) 02 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Criminal Original Contempt Petition No. 15 of 2003

Court on its own Motion

APPELLANT

Vs

Ajay Bansal and Others

RESPONDENT

Date of Decision : 11-02-2004

Acts Referred:

Contempt of Courts Act, 1971 — Section 2

Citation : (2004) CriLJ 2601 : (2004) 1 ILR (P&H) 580

Hon'ble Judges : Binod Kumar Roy, C.J;N.K. Sud, J

Bench : Division Bench

Advocate : Surya Kant, General, Randhir Singh, Dy. A.G. for Amicus Curiae, R.S. Bains, R.S. Cheema, K.S. Nalwa, M.L. Sarin and Sweena Pannu, for the Appellant;

Judgement

N.K. Sud, J.—These contempt proceedings emanate from the news items published in the Times of India (Chandigarh Edition) dated 8-5-2003 and in Hari Bhoomi dated 9-5-2003 and also a legal notice addressed to His Excellency the President of India, the Hon'ble Chief Justice of India and Shri Adarsh Kumar Goel, a Judge of our High Court, by Shri Ajay Bansal, Advocate (Contemner No. 1).

2. Following news item had been published in the newspaper Times of India (Chandigarh Edition) dated 8-5-2003 :--

"Govt. ignored IB report on High Court Judge

By Akshaya Mukul

Times News Network

New Delhi : The arrest of former Delhi High Court Judge Shameet Mukherjee for his alleged involvement in the DDA scan has led Law Minister Arun Jaitley to speed up legislation to ensure transparency in appointments and check cases of improper behaviour by Judges.

However, documents available with the Times of India on the appointment of High Court Judges in 2001 suggest that the Union Law Minister has itself been willing to overlook questions raised by the Intelligence Bureau about the integrity of candidates. The case in point was the May, 2001 appointment of Punjab and Haryana High Court Judge Adarsh Kumar Goel.

High Court Judges are appointed in the following way: The State Government sends a list of names through the governor to the Chief Justices of the Supreme Court and the concerned High Court. This list is then sent to the Law Ministry, which obtains an IB report on the nominees. Thereafter, it prepares a matrix with three criteria professional competence, integrity and political links.

In the case of Goel, the Law Ministry matrix contains no entry under the "Professional Competence" column, while the "Reputation/Integrity" column bluntly says : "Corrupt person." The key to his subsequent appointment appears to be the listing in the political affiliation column, which notes that Goel was General Secretary of the All-India Adhiwakta Parishad, the lawyers' wing of the RSS. Curiously, among the five short listed advocates whose integrity the IB had questioned, he was the only one cleared by the Ministry.

But before his appointment, there was a big hurdle : Goel's name, along with four others, went for the approval of K. R. Narayanan, who was President at the time.

While Narayanan approved the appointment of M. K. Mittal as an additional Judge of the Punjab and Haryana High Court, he made observations about three others, including Goel and returned the file to the Law Ministry. However, the Minister, Arun Jaitley, defended the recommendation. In a confidential note dated May 19, 2001, Jaitley dismissed the IB finding on Goel's integrity as a "slur." He said that the High Court and the Supreme Court collegium had both reconsidered him.

He quoted the Chief Justice and members of Punjab and Haryana High Court collegium as having reiterated that Goel has an "impeccable reputation of being an upright and honest advocate." On May 21, 2001, PM Vajpayee put his signatures and the file went again to Narayanan.

The President note : "Nonetheless, I feel that a more desirable course of action would have been to follow the same procedure as was done in a similarly placed case of the Calcutta High Court where the advice of the Chief Justice, which is integral to the selection process, was sought again and duly received. I would also appreciate if my instant observations are shared with the Chief Justice of India along with my earlier observation dated May 3, 2001 on this matter."

3. A somewhat similar news item was published in the newspaper Hari Bhoomi dated 9-5-2003, as under :--

"Jab High Court Judge Ki Niyukti Par Rashtrapati Ne Naraajgi Jatai."

Nai Dilli -- Dilli High Court Judge Shamit Mukherjee Ki giraftari aur D.D.A.

Ghotala men unki bhagidari ke baad Kendriya Kanun Mantri Arun Jaitley is koshish mein lag gai hain ke judges ki niyukti me paardarshita ho aur is ke liye vedheyak layaa jaai. Is Beech kuch also pramaan saamney aaye hain ki judges ki niyukti ke sandharbh men intelligence bureau dwara jo report bheji gai use andekha kar key niyukti kee gai. Ye prakaran Punjab-Haryana High Court ke Judge ke pad par May, 2001 mein Adarsh Kumar Goel ki niyukti haq hai. Is pad par niyukti ki prakriya yah hai ki rajya sarkar dwara Rajyapal ke madhayam se Supreme Court ke Chief Justice tatha High Court ko namon ka panel bheja jaata hai. Yah panel chaanbeen ke liye intelligence bureau ko bheja jataa hai. I.B. teen muddon par apni tippani bhejta hai. Ek Mudda Rajnitik Sanliptata ka bhi rahta hai. Goel ke liye tipani me "Bhrast Vyakti" likha gaya tha, Vistar se yah pata laga ki Goel Akhil Bhartiya Adhivakta Parishad ka Mahamantri thae jo ki R.S.S. ki ek Shakha Hai. Magar Mantralaya ne isi naam ko clear kar diya. Jab File Rashtrapati Bhawan gai to Rashtrapati K. R. Narayanan ne atrikat Judge ke pad ke liye M. K. Mittal ka naam manjoor kar liya magar Goel ke naam ko thukra diya. File vapas Kanun Mantralaya vapas bhej dee gai aur Arun Jaitley ne un ka bachav kiya. Goel ke prati I.B. dwara kee gai tippani ko Arun Jaitley ne apmanjanak nirupit kiya. File men Arun Jaitley ne uneh imaandaar Judge likha. Jaitley ka yah note 19 Mayi ko likha gaya. Is sifarish par do din bad hi yane 21 Mayi ko Pradhan Mantri ne hastaakshar karke file dubara Rashtrapati Bhawan bhej di. Choonki yeh file Pradan Mantri Karyalaya se dubara Rashtrapati key pass bheji gai thi atah Rashtrayapati us par hastakshar key liye baadhya the."

4. The legal notice dated 19-5-2003 sent by Shri Ajay Bansal, Advocate, reads as under:--

"From the office of Sh. Ajay Bansal Advocate, 193, Lajpat Nagar. Hisar.

To

1. The President of India, New Delhi
2. The Chief Justice, Supreme Court of India, New Delhi.
3. Sh. Adarsh Kumar Goel, alleged Justice Punjab and Haryana High Court, Chandigarh.

Sub: Legal Notice.

Respected Sir,

I above named Advocate do hereby serve you with the following legal notice on behalf of my self.

1. That I am practising Advocate/Government pleader in various stations at Haryana State of India for last about 21 years as I am a resident of Hisar, Haryana (India).
2. That on 9-5-2003 I had gone through with the following news, published in a leading newspaper of northern India known as Hari Bhumi. The news is published

as under :

(News item published in Hari Bhoomi as already reproduced earlier is reproduced in Hindi).

3. That a perusal of aforesaid news shows. How much down fall is existing in our system. It is mentioned that the appointment of Sh. A. K. Goel at the post of a Judge of High Court had not been done by the office of you through a bill of Parliament. Therefore it is evident that the appointment in question of Sh. A. K. Goel is nothing but an abuse and rape of the democracy of India. The said appointment of Sh. A. K. Goel at the post of a judicial officer of High Court is totally void, unconstitutional and shameful. So by this notice you are hereby requested to cancel the appointment of Sh. A. K. Goel at the post of Judicial Officer of High Court with all the consequential effects in the interest of our country India within one month of receipt of this notice, failing which I will be constrained to file a quo-warranto writ petition in the Apex Court of India.

Dated : 19-5-2003

Sd/- Ajay Bansal Advocate 193, Lajpat Nagar, Hisar."

5. The Court's earlier view is this Court took a view that an impression had been sought to be given that the report of the Intelligence Bureau was sacrosanct or the last word pertaining to Mr. Justice Goel. This, obviously, was not correct. The correctness of the report was considered by the Collegium of this Court and also of the Hon'ble Supreme Court and not accepted. This Court was of the prima facie view that by publishing such a brushed aside report belatedly after two years of taking of oath by Mr. Justice Goel as a Judge of this Court and by challenging his appointment vide the legal notice, the two newspapers and Shri Ajay Bansal, Advocate, had attempted to bring to disrepute and scandalise the administration of Justice of Mr. Justice Goel, the Collegium of this Court as also that of the Hon'ble Supreme Court of India besides of the Hon'ble Judge of the Supreme Court whose opinion was taken while recommending the elevation of Mr. Justice Goel, rendering all of them, prima facie, guilty of committal of criminal contempt of Court. Accordingly, exercising suo motu powers under Article 215 of the Constitution of India, notices were ordered to be issued to the following persons :--

"i) Shri Ajay Bansal, Advocate, Resident of House No. 193, Lajpat Nagar, Town and District Hisar (State Haryana).

ii) Shri Davinder Balian, Publisher of the newspaper Hari Bhumi.

iii) Capt. Abhimanyu Sindhu, Printer of the newspaper Hari Bhumi.

Nos. (ii) and (iii) c/o Hari Bhumi Complex, Near Power House, Model Town, Town and District Rohtak (State Haryana).

iv) Shri Balraj Arora, Printer and Publisher of the Times of India, SCO Nos. 72-75, Sector 8-C, Madhya Marg, Chandigarh, Times of India Press, Plot Nos.

254-57, Phase II, Industrial Area, Panchkula (State Haryana); and

v) Shri Akshay Mukul, reporter of the Times of India c/o Times of India Press, Plot Nos. 254-57, Phase II, Industrial Area, Panchkula (State Haryana)."

5.1 Notice was also issued to the Ministry of Justice, Government of India, through its Under Secretary, for production of relevant record pertaining to the appointment of Mr. Justice Goel in a sealed cover for our perusal.

6. Shri Ajay Bansal, Advocate, in his affidavit has submitted that he had nothing personal against Hon"ble Mr. Justice Adarsh Kumar Goel whom he does not know personally. He has further stated that he has no information on his own either for or against Justice Goel. According to him, legal notice dated 19-5-2003 issued by him was prompted from the disturbing information disclosed in the newspaper report. He has explained that the published information had raised suspicion/doubt in the mind of general public about a sitting High Court Judge and could damage the Institution and being an Advocate of long standing, he has only initiated the legal procedure for finding out the truth as he honestly believed that the cloud of suspicion must be dispelled from public mind and truth must triumph. According to Mr. Bansal, he had merely performed a public duty and had in good faith tried to take the aid of the constitutional remedies available to him. He has further submitted that he has not published any information but has only acted on published information. Mr. Bansal has, however, admitted use of "bitter" language but has attributed it to his past experiences of corruption in Judiciary and the mental disturbance which had been caused to him by such experiences. He concedes that the language used by him in the notice seemed unduly harsh and unnecessary and, therefore, he has tendered his unconditional apology for the use of intemperate language in the notice.

7. Shri Devender Balian, Contemner No. 2, in his short affidavit has pointed out that the notice appears to have been issued to him under the impression that he is the Publisher of the Hindi Daily Hari Bhoomi which is not correct. He has pointed out that Shri Abhimanyu, Contemner No. 3, was the Printer and Publisher of the newspaper. He has, however, stated that he holds the Courts and judiciary in high esteem. He has also tendered unconditional apology in case any act of commission or omission attributable to him is found to have interfered with the administration of justice.

8. Shri Abhimanyu, Contemner No. 3, has explained that a news item with the heading "Govt. ignored IB Report on High Court Judge" had appeared in the Times of India, a widely circulated English daily on 8-5-2003. A shorter report covering some of the points in the said news item had appeared in Hari Bhoomi on the next day, i.e. 9-5-2003, in which the said report was projected in a separate perspective. This, according to him, was evident from the subheading which, translated into English, would read as under :--

"Need for transparency in the appointment of Judges."

Thus, it is explained that the news item was published with the objective of exploring the possibility of evolving a system which ensured maximum impartiality and transparency in the matter of appointment of Judges at the higher echelons. According to him, the question of method and criteria for appointment of Judges in the High Court in the country has been a matter of public debate for the over last two decades and the matter is still being agitated in the Press, the Parliament and other academic circles. It has been further claimed that the endeavour in publishing the news item was to bring to the fore some significant dimensions relevant to the appointment of Judges of the High Court and that its object was not to cast aspersions on any Hon"ble Judge. The theme of the news item is claimed to be reflected in the sub-heading highlighting the need for transparency in the process of appointment. It is, thus, claimed that there has been no conscious attempt in the news item to project the report of the Intelligence Bureau as sacrosanct and that if such an impression is gathered on the reading of the news item, the same is totally unintentional. Contemner No. 3 has also tendered an unconditional apology and expressed deep and sincere regrets in case this Court still comes to the conclusion that the news item has cast aspersions on any Hon"ble Judge or has, in any manner, directly or indirectly interfered with the administration of justice.

(9) Shri Balraj Arora, Contemner No. 4, in his reply has explained that it was not his intention to convey any impression to the public at large by the news article dated 8-5-2003 that the report of the Intelligence Bureau was sacrosanct or the last word pertaining to the appointment of Hon"ble Mr. Justice A. K. Goel. He has further offered his unconditional and unqualified apology to this Court if this is the impression which has been unwittingly and unintentionally conveyed or gathered from a reading of the news item dated 8-5-2003. He maintains that he had no intention to bring into disrepute or scandalise the administration of justice by Mr. Justice A. K. Goel, the Collegium of this Court, the Collegium of the Hon"ble Supreme Court of India and the Hon"ble Judge of the Supreme Court whose opinion may have been sought for recommending the elevation of Mr. Justice Goel. Contemner No. 4 has also tendered unconditional and unqualified apology in this regard if such an impression is conveyed by the news item. Without prejudice to the unconditional apology tendered by him as aforesaid, Shri Balraj Arora has explained that the sole purpose/intention of publishing the news item dated 8-5-2003 was to shed light upon a matter of great public interest, i.e. procedure of appointments in the Judiciary with the illustration of the case of Hon"ble Mr. Justice A. K. Goel. It is further submitted that the article is unbiased and unopinionated narration of facts and events leading to the appointment of Hon"ble Mr. Justice Adarsh Kumar Goel as a Judge of this Court in 2001. It has been further pointed out that the focus was not merely the report of the Intelligence Bureau but the entire factual matrix based on the Governmental documents available with the answering Contemner. It has also been submitted that since the said material had been received by the author/correspondent in the last week of April, 2003, the matter was deliberated upon

by the Bureau Chief as well as the Resident Editor and the Executive Editor of the newspaper which had, ultimately, culminated in the news item dated 8-5-2003. It was, therefore, explained that there was no mala fide intention in taking up the issue at a belated stage. It has also been submitted that the bona fides of the newspaper are evident from the fact that on the day the news article was published, the Hon"ble Minister for Law and Justice addressed a letter dated 8-5-2003 to the Editor of the Times of India and the relevant extracts from the said letter were immediately and prominently published on the very next day, i.e. 9-5-2003 under the title "Law Minister"s Rejoinder". Thus, according to the answering Contemner, this very act demonstrates the fair and unbiased manner of reporting adopted by the newspaper. It has also been contended that the news article pertains to procedure of appointment and does not make any comment on the integrity, administration of justice or the capacity of any judicial authority. It is claimed that no comments whatsoever had been made on the working of Mr. Justice A. K. Goel in his capacity as a judicial officer and that the thrust of the article was to highlight the importance of bringing about transparency in the system. The news item has also been Justified on the basis of freedom of expression guaranteed under Article 19(1)(a) of the Constitution of India and it is claimed that the Press ought to be given freedom within reasonable limits even when the focus of its critical attention is a Court, including the highest Court.

10. An identical reply has been filed on behalf of Shri Akshay Mukul, Contemner No. 5, Staff Correspondent of the English Daily the Times of India.

11. Mr. Surya Kant, learned Advocate General, Haryana, assisted the Court as amicus curiae, at our request, Mr. R. S. Bains, Advocate, addressed us for Contemner No. 1, Mr. R. S. Cheema, Senior Advocate, addressed us for Contemner Nos. 2 and 3. Mr. M. L. Sarin. Senior Advocate, addressed us for Contemner Nos. 4 and 5. They also cited several authorities.

12. The basic thrust of the defence of the Contemnors, as explained in their respective replies and also as projected in the course of arguments by their counsel, is that two news items published in the two news papers merely highlighted the need for bringing transparency in the procedure for appointment of Judges to the High Courts, which is a matter of public interest and is being debated at various levels including the parliament. It is also claimed that no attempt whatsoever has been made to bring to disrepute and scandalise the administration of Justice of Mr. Justice A. K. Goel or the Collegiums of this Court or that of the Hon"ble Supreme Court of India. It has also been claimed that Press has a public duty to perform by highlighting such aspects to strengthen the Institution of judiciary. It is contended that the matter of appointment of Judges is in public domain and there is a need for transparency. Such a need is recognised even by the Parliament which is hotly debating the Bill regarding constitution of a Judicial Commission for the purpose of making judicial appointment. Thus, the learned counsel contended that the Court should not be hypersensitive to the views expressed on the selection process of Judges and the

Press should be free to publish fair comments in the interest of democracy in general and the Institution of Judiciary in particular. Most of the authorities have been cited on the aforesaid propositions.

13. In view of the stand taken by the Contemners, we first consider as to whether the news items published in the Times of India and Hari Bhoomi merely deal with the need for evolving a system for appointment of Judges at the higher echelons to ensure Impartiality and transparency or is it an attempt to bring to disrepute and scandalise the administration of Justice of Hon"ble Mr. Justice A. K. Goel, who was specifically mentioned by name in the two news reports. The answer to this question would hinge upon the impression that an ordinary reader of the news reports may gather.

14. We have carefully gone through the two news items and are left with a definite impression that an effort has been made to scandalise the appointment of Mr. Justice Goel as a Judge of our High Court thereby bringing him into disrepute in the eyes of the general public. Since the reports were stated to be based on the Governmental documents claimed to be in the custody of Contemner Nos. 4 and 5, this Court had asked them to disclose the same. Accordingly, they furnished photostat copies of five pages from the records of the Ministry of Law pertaining to the appointment of three Judges of this Court, including Justice Adarsh Kumar Goel. It has been conceded that except for the copies of these five pages no other material is available with the Contemners. We have perused these documents. Page-1 contains paragraphs 2.1 and 3 of some report full text of which was not available with Contemners Nos. 4 and 5 and, thus, they could not possibly know the context in which the observations in the said paragraphs had been made. The next three pages are copies of a note by Shri Arun Jaitely, Minister for Law, Justice and Company Affairs, dated 19-5-2001 in which the comments made by the President of India in the Minutes of 3-5-2001 have been discussed and a reference has also been made to an audience sought by the Hon"ble Law Minister with the Hon"ble President on 18-5-2001 to put forward the aforesaid case. This note was put up before the Prime Minister who had appended his signatures thereon as a token of approval on 21-5-2003. The 5th page is a photostat copy of the approval granted by the President of India to the appointment of three Judges including Mr. Justice Goel, in which certain observations have been made.

15. We had called for the production of relevant record pertaining to the appointment of Mr. Justice Goel in a sealed cover. The records were produced before us by Mr. S. Twickly, Under Secretary, Department of Justice, Ministry of Law and Justice, Government of India, New Delhi, on 25-8-2003. It is true that the five pages available with Contemners No. 4 and 5 are part of the said record. However, a bare perusal of these documents shows that it was not the complete record pertaining to the appointment of Mr. Justice Goel. The Contemners did not have the benefit of the observations made by the President in his note dated 3-5-2001. They did not even have the information about the events subsequent

to 3-5-2001 which had, ultimately, culminated in the note of the Law Minister dated 19-5-2001 which had been put up before the Prime Minister. They also did not have the complete report of the Intelligence Bureau and had merely based the news reports on the summary of the report in an incomplete note. Further, the note prepared by the Law Minister on 19-5-2001 had referred to the subsequent events which have also not been properly presented in the news reports. It is evident that a slant has been given in the news reports to convey an impression to a common reader that the Law Minister had dismissed the Intelligence Bureau report about the integrity, of Justice A. K. Goel at his own level and that the Government had made his appointment by Ignoring the said report.

16. Considering in this light, the following factual position emerges from the report published in the Times of India :--

i) The caption "Govt. ignored IB report on High Court Judge" is clearly contrary to the factual position which is evident not only from the record of the Law Ministry but also from the note of the Law Minister which, admittedly, was available to the Reporter. The Law Minister had clearly pointed out that after the President had made some observations in Minutes of 3-5-2001, the matter had been reconsidered by the Collegium of this Court as also by that of the Supreme Court. It is further pointed out that both the Chief Justice of this Court and the Collegium had taken into account the association of Justice Goel with All India Adhivakta Parishad as its General Secretary and had reiterated that Shri Goel had "impeccable reputation of being an upright and honest Advocate". The Law Minister's note clearly points out that the Chief Justice of this Court and the Collegium did not find "any justification for slur cast upon his reputation". It is also mentioned that these views had been recorded after the Chief Justice had widened the scope of consideration and had obtained the views of some Judges who were not members of the Collegium. Thus, the caption of the news report is totally misleading and factually incorrect.

ii) In the news report, it has been mentioned "In a confidential note dated May 19, 2001, Jaitely dismissed the IB finding on Goel's integrity as a "slur". A perusal of the note of Mr. Arun Jaitely, on the other hand, clearly mentions that it was the Chief Justice of the Punjab and Haryana High Court and the Collegium who did not find any justification for the slur cast upon the reputation of Mr. Goel. Thus, by ascribing these observations to Mr. Jaitely, an effort has been made by the Reporter to support the caption that it Is the Law Minister and the Government who had dismissed the Intelligence Bureau report.

iii) The news report also clearly suggests that the appointment of Justice Goel despite the adverse IB report about this integrity was promoted due to his political affiliation with the Lawyer's Wing of the R.S.S. This is clearly an opinion expressed by the Reporter and not a statement of the factual position on the basis of documents in the possession of the respondents. This suggestion of the Reporter clearly casts aspersions on the Collegiums of this Court and the Hon"ble

Supreme Court which had reiterated the recommendation for the appointment of Justice Goel and also on the Judge of the Supreme Court who was consulted in this behalf.

17. The news report published in the Hari Bhoomi is also in the same terms. In fact, in this report another factor has been introduced when it has been stated that the President had rejected the name of Justice Goel. Contemner No. 3 has not been able to refer to any material in his possession to justify this statement which is factually incorrect.

18. Contemnors Nos. 4 and 5 have tried to Justify their bona fides by contending that they had promptly published the rejoinder of the Law Minister on the very next day i.e. 9-5-2003. To appreciate this contention, we may take note of the material published in the Times of India dated 9-5-2003 under the caption "Law Minister's Rejoinder", which reads as under :--

"With regard to the report in The Times of India on 8th May, 2003 on the appointment of Judges in the Punjab and Haryana High Court.

The Chief Justice of the Punjab and Haryana High Court after consulting two of the senior-most Judges had recommended on 19th May, 2000, the names of seven persons for being considered for appointment as Judges of Punjab and Haryana High Court. This was prior to my assumption of office as Minister of Law, Justice and Company Affairs.

As per the established practice the Government forwarded the names of these seven persons along with its own opinion and material collected by the Governmental agencies to the Chief Justice of India for advice.

After considering all the material before them the Chief Justice of India and two of the senior Judges of the Supreme Court advised the Government on 16-9-2000 that the relevant information and material contained in the reports of various agencies should be placed before the High Court Collegium for reconsideration.

They also suggested that Chief Justice of the High Court should consult some more Judges other than those he has consulted earlier.

The Chief Justice of the High Court consulted the collegium of seven Judges instead of customary three Judges.

After collecting the opinion of seven Judges the Chief Justice of the High Court observed that the observations contained in the report of the Governmental agencies were sweeping remarks based on "conjecture, surmises and half truths." The Chief Justice opined that Justice A. K. Goel had impeccable reputation of an upright and honest person.

The Government placed the opinion of seven Judges and Chief Justice of Punjab and Haryana High Court before the Supreme Court collegium which advised the Government to appoint four of the seven recommendations made.

Under the present dispensation, the Government expresses its opinion and is, thereafter, bound by the advice of the collegium of the Supreme Court. The Government in this case acted accordingly. Your report indicating that the Government had overruled the intelligence reports and appointed a person is based on inference from distorted facts.

--Arun Jaitley"

Akshaya Mukul replies: Jaitley has stated that the Government was merely expressing its opinion on judicial appointments. But his note of May 19, 2001 had said "political leanings per se should not stand in the way of a recommendee for consideration of his case for appointment as a Judge of a High Court." The Law Minister further argued, Goel is a "self-made person who has risen from adversity deserves to be encouraged,"

19. A perusal of the above shows that the reply of Contemner No. 5 to the rejoinder of the Law Minister clearly conveys the impression that he was still trying to justify his opinion expressed in the news report that IB's report about Justice Goel's integrity and political leanings had been overruled by the Law Minister which had resulted in the appointment of Mr. Justice Goel. We are, therefore, satisfied that the news items published in the two newspapers are not merely an expression of opinion about the system of appointment of Judges in general but is a calculated attempt to tarnish the image of Justice Goel. An impression has been sought to be conveyed to the general reader that a dishonest person has been appointed as a Judge merely because of his political affiliation with the Lawyers' Wing of R.S.S. This motive, to a common reader, would not only be attributable to the Law Minister or the Government but also the Collegiums of this Court and the Hon'ble Supreme Court and to the Hon'ble Judge of the Supreme Court who was consulted in this matter.

20. The next question, therefore, is as to whether the news items concerning Mr. Justice Goel are tenacious and contumacious or not. The scope of law of Contempt in a somewhat similar situation came up for consideration before a Full Bench of this Court recently in A. J. Philip, Printer, Publisher and Officiating Editor, The Tribune Press, Sector 29, Chandigarh (Crl. OCP 10 of 2003) (2004 (1) PLR 421). In that case, suo motu contempt action had been initiated on the basis of a letter written by an Hon'ble Judge of this Court with reference to a news item appearing in The Tribune dated 24-5-2003. The news item was, admittedly, false. The Resident Editor and the Correspondent were held to be prima facie guilty of contempt vide order dated 19-9-2003. Dealing with the scope of the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution, after referring to various authorities of the Apex Court, it was observed as under :--

The decisions noted above show that the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution has been treated as the basic right of every human being. Its reach and scope is wide and

pervasive. The right to know and the right to information have been treated as integral part of right to freedom of speech and expression. Freedom of Press in its widest amplitude has also been recognised as a part and parcel of the right to freedom of speech and expression. The Courts have zealously guarded against any invasion or infringement of this right, but, at the same time, recognised that reasonable restriction can be imposed on the right guaranteed under Article 19(1) (a) of the Constitution in the interest of general public. In *Re: Harijai Singh and Another*; In *Re: Vijay Kumar*, and In *Re: Arundhati Roy*, , the Supreme Court has, in no uncertain terms, held that the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution is not unbridled and that in the garb of exercising this right, no citizen or newspaper can scandalise, run down or denigrate the institution of Judiciary.

The issue can be looked from another angle. Part-III of the Constitution guarantees fundamental rights (some of these rights are available only to the citizens) including the right to freedom of speech and expression, Part-IVA specifies fundamental duties of every citizen which include the duty to abide by the Constitution and respect its Ideals and institutions. In our opinion, a citizen, who seeks to exercise fundamental rights guaranteed under Part-III of the Constitution Is under a constitutional obligation to do his duties and one, who does not do his fundamental duties, has no right to enjoy fundamental rights. Those involved in the management and running of the media can claim protection of the fundamental right to speech and expression only till they are prepared to do their duties identified in Article 51-A which, as mentioned above, include the duty to abide by the Constitution and respect its ideals and institutions. The print and electronic media which claims to be the watchdog of the public interest is under an onerous obligation to refrain from printing or publishing in words or otherwise news items etc. which have the tendency to scandalise the constitutional institutions including the Judiciary. This is not to suggest that it cannot report the true facts about the system and even point out lacunae and deficiencies, but they do not have the right to scandalise by printing or publishing false reports or indulge in a propaganda which has the tendency of shaking public confidence in the system as a whole."

20.1 The Full Bench also relied on the following observations of the Supreme Court in *Dr. D.C. Saxena, Contemnor Vs. Hon'ble the Chief Justice of India*, (Paras 39 & 40) :--

Therefore, it is of necessity to regulate the Judicial process free from fouling the foundation of justice to ward off the people from undermining the confidence of the public in the purity of fountain of justice and its due administration. Justice thereby remains pure, untainted and unimpeded. The punishment for contempt, therefore, is not for the purpose of protecting or vindicating either the dignity of the Court as a 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. If the authority of the Court remains undermined or impeded the fountain of justice gets sullied creating distrust and disbelief in the mind of the litigant public or the right-thinking public at large for the benefit of the people. Independence of the Judiciary for due course of administration of justice must be protected and remain unimpaired. Scandalising the Court, therefore, is a convenient expression of scurrilous attack on the majesty of justice calculated to undermine its authority and public confidence in the administration of justice. The malicious or slanderous publication inculcates in the mind of the people a general disaffection and dissatisfaction on the judicial determination and indisposes in their mind to obey them. If the people's allegiance to the law is so fundamentally shaken it is the most vital and most dangerous obstruction of justice calling for urgent action. Action for contempt is not for the protection of the Judge as private individual but because they are the channels by which justice is administered to the people without fear or favour. As per the Third Schedule to the Constitution oath or affirmation is taken by the Judge that he will duly and faithfully perform the duties of the office to the best of his ability, knowledge and judgment without fear or favour, affection or ill-will and will so uphold the Constitution and the laws. In accordance therewith, Judges must always remain impartial and should be known by all people to be Impartial. Should they be imputed with improper motives, bias, corruption or partiality, people will lose faith in them. The Judge requires a degree of detachment and objectivity which cannot be obtained if Judges constantly are required to look over their shoulders for fears of harassment and abuse and irresponsible demands for prosecution or resignation. The whole administration of justice would suffer due to its rippling effect. It is for this reason that scandalising the Judges was considered by Parliament to be a contempt of Court punishable with imprisonment or fine.

Scandalising the Court, therefore, 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 law of libel or slander, yet defamatory publication concerning the Judge as a Judge brings the Court or Judges into contempt, a serious impediment to justice and an inroad on the majesty of justice. Any caricature of a Judge calculated to lower the dignity of the Court would destroy, undermine or tend to undermine public confidence in the administration of justice or the majesty of justice. It would, therefore, be scandalising the Judge as a Judge, in other words, imputing partiality, corruption, bias, improper motives to a Judge is scandalisation of the Court and would be contempt of the Court. The gravamen of the offence is that the lowering his dignity or authority or an affront to the majesty of Justice. When the contemner challenges the authority of the Court, he interferes with the performance of duties of Judge's office or judicial process or administration of justice or generation or production of tendency bringing the Judge or Judiciary into contempt. Section 2(c) of the Act, therefore, de fines criminal contempt in wider articulation that any publication, whether by words, spoken or written, or by

signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which scandalises or tends to scandalise, or lowers or tends to lower the authority of any Court; or prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner, Is a criminal contempt. Therefore, a tendency to scandalise the Court or tendency to lower the authority of the Court or tendency to interfere with tendency to challenge the authority or majesty of justice, would be a criminal contempt. The offending act apart, any tendency if it may lead to or tends to lower the authority of the Court is a criminal contempt. Any conduct of the condemner which has the tendency or produces a tendency to bring the Judge or Court into contempt or tends to lower the authority of the Court would also be con tempt of the Court."

20.2 While holding the Resident Editor and the Correspondent of the Tribune, prima facie guilty of committing contempt of Court, the Full Bench concluded as under:--

"On the basis of above discussion, we hold that the news item in question was concocted and published with the clear intention to scandalise the entire Judiciary by making a patently false and mischievous assertion that a Judge of the High Court was connected with the corruption case registered against the two members of subordinate judiciary and his name has been included in the F.I.R. already registered. The author of the news item was aware of its falsehood and yet he manipulated its publication on the front page with a mala fide intention to bring in disrepute the judicial system of the two States and Union Territory, Chandigarh. Unfortunately, those involved in the printing and publication of the newspaper acted in a most irresponsible manner by allowing a patently false news item to be published least realising that the same would cause irreparable damage to the constitutional institution of Judiciary, They should realise that their irresponsible and abrasive actions, like the present one, have the potential of eroding the independence of the Judiciary by creating a wrong impression in the mind of the litigating public about its integrity and credibility. They should also realise that independent Press can only survive if it is protected by an independent Judiciary, else it will become a target of forces bent upon to destroy the democratic institution of the country."

20.3 Similarly, a Division Bench of the Patna High Court In Re : Resident Editor of the Hindustan Times 1989 Pat LJR 821, to which one of us (the Chief Justice) was a party, has considered the law of contempt in detail in an identical situation. The Division Bench referred to the Judgment of the Calcutta High Court In Re : Tarit Kanti Biswas, AIR 1918 Cal 988 : (1918 Cri LJ 530), and extensively quoted various observations of Mookerjee, J., some of which are reproduced below :--

"..... The principle deducible from these cases is that punishment is inflicted for attacks of this character upon Judges, not with a view to protect either the

Court as a whole or individual Judges of the Court from a repetition of the attack, but with a view to protect the public, and specially those who, either voluntarily or by compulsion, are subject to the Jurisdiction of the Court, from the mischief they will incur, if the authority of Tribunal be undermined or impaired."

"In my opinion this Court has undoubted jurisdiction to deal summarily with persons who have committed contempt by scandalous attack upon the Judges, and such power should be exercised in the present instance. When I hold this I do not overlook the assertion of the printer and publisher that the articles before us were published by him in good faith and in the public interest. The sincerity of this plea appears to me to be open to the gravest doubt. But, even on the assumption that this allegation is literally true, I desire to add that, while I do not underrate in the least degree the importance of the liberty of the press, I cannot hold it expedient that any class of the community should be privileged to attack the Courts so as to interfere with the rights of litigants or to embarrass the administration of Justice. The publishers of newspapers have the right, but no higher right than others, to bring to public notice the conduct of Courts, and provided the publications are true and fair in spirit; there is no law to restrain the freest expression of the disapprobation that any person may entertain of what is done in or by the Courts. But liberty of the press must not be confounded with licence or abuse of that liberty, and though it may be true that where the liberty of press and freedom of public comments end, there tyranny begins, it is at least equally true that where vituperation begins, there the liberty of the press ends; and the inherent power of the Superior Courts of the Record to punish any publication calculated to interfere with the administration of justice cannot be deemed in any way restricted by considerations of the kind urged by the printer and publisher."

The Division Bench further observed that the post Constitution view of the Supreme Court found its first expression in the case of Bathina Ramakrishna Reddy Vs. The State of Madras, and the following observations of the Apex Court were highlighted (Paras 11 and 12)

"When the act of defaming a Judge is calculated to obstruct or interfere with the due course of justice or proper administration of law, it would certainly amount to contempt. The offence of contempt is really a wrong done to the public by weakening the authority and influence of Courts of law which exist for their good. As was said by Sillmot C.J., Willmot's Opinions p. 256: Rex v. Davies 30 at p. 40-41.

"attacks upon the judges excite in the minds of the people a general dissatisfaction with all judicial determination..... and whenever man's allegiance to the laws is so fundamentally shaken it is the most fatal and dangerous obstruction of justice and in my opinion calls out for a more rapid and immediate redress than any other obstruction whatsoever, not for the sake of the judges as private individuals but because they are the channels by which the king's justice is conveyed to the people."

"..... The article in question is a scurrilous attack on the integrity and honesty of a judicial officer. Specific instances have been given where the officer is alleged to have taken bribes or behaved with impropriety to the litigants who did not satisfy his dishonest demands. If the allegations were true, obviously it would be to the benefit of the public to bring these matters into light. But if they were false, they cannot but undermine the confidence of the public in the administration of Justice and bring judiciary into disrepute. The appellant, though he took sole responsibility regarding the publication of the article, was not in a position to substantiate by evidence any of the allegations made therein"

The Division Bench after analysing the case law on the subject observed as under:--

"..... but those who attack the judiciary must remember that they are attacking an institution which is indispensable for the survival of the rule of law but which has no means of defending itself. In the very nature of things, it cannot engage itself in an open war nor indulge in releasing contradictions. The sword of justice is in the hands of the Goddess of Justice, not in the hands of mortal Judges. Therefore, Judges must receive the due protection of law from unfounded attacks on their character."

The Bench was also of the view that the Press could not claim its right of freedom of speech and expression as a defence to such mischievous reports. The Court observed that "Freedom of speech, apart from other confines, must, therefore, stand limited by the privileges of the Legislature and the Courts." The Division Bench further observed as under :--

"..... A writing, casting, imputation of impropriety, lack of integrity and oblique motives to a Judge constitute a contempt of Court for the reason that such imputation or impropriety, lack of integrity and oblique motives may in the ultimate shake public confidence in the Courts and administration of Justice and harm public interest." .

In his concurring judgment, one of us (the Chief Justice) had concluded as under :--

"Scurrilous attack on a Judge in respect of his conduct or his judgment has adverse effect on the administration of Justice and in a country like ours has the inevitable effect of undermining the confidence of the public in the Judiciary and if the confidence in the Judiciary is shattered the due administration of justice definitely suffers."

21. We are, therefore, of the considered view that the present case is fully covered by the decisions of the Full Bench of this Court in the case of A. J. Philip (supra) and also by that of the Patna High Court In Re : Resident Editor and others of the Hindustan Times (supra). In both cases, the contemnors were held to have committed criminal contempt of Court under similar circumstances.

22. We do not, therefore, deem it necessary to deal with various authorities cited

before us which deal with different situations. There is no dispute about the law laid down in those authorities. The Hon''ble Supreme Court in *Reliance Petrochemicals Ltd. Vs. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd. and Others*, has also held that the law of contempt has to be judged in the backdrop of the facts of such case.

23. Accordingly, we are of the view that Contemnors Nos. 3, 4 and 5 are guilty of having committed criminal contempt of Court by publishing the news items in the two newspapers. Contemner No. 2 Devender Balian had been issued notice on the assumption that he was the publisher of the newspaper *Hari Bhoomi*. However, in his reply he has correctly pointed out that the Publisher of that newspaper is Contemner No. 3 Shri Abhimanu and not him. Accordingly, the Rule issued to him is discharged.

24. We shall now deal with the case of Contemner No. 1: namely Shri Ajay Bansal, Advocate.

A perusal of the legal notice issued by Shri Bansal shows that his action has been prompted by the news report published in the *Hari Bhoomi*. In fact, the said news report has been reproduced in full in the notice itself and action has been proposed on that basis. The language used in the notice is intemperate and undesirable. Counsel for Shri Ajay Bansal has attributed it to His lack of proper knowledge of English. In fact, Shri Ajay Bansal has conceded in his reply that the language used by him is bitter. He has attributed it to his bitter experiences in the Judiciary. He has further stated that he had now realised that the same was unduly harsh and unnecessary for which he has tendered an unconditional apology. We are not satisfied with the explanation offered by Shri Ajay Bansal. He claims to be an Advocate of long standing and well conversant with the provisions of law. He also claims to be conversant with his constitutional rights such as filing of a writ petition. He, cannot therefore, claim to be unaware of the Constitutional procedure for removal of a Judge. He knew that a Judge cannot be removed either by the President of India or by the Chief Justice of India. Under these circumstances, serving a legal notice asking them to remove a Judge or else face a writ petition, Is nothing but an attempt to over awe the Judiciary and interfere in its independent functioning. Similarly, describing an Hon''ble Judge as "alleged Justice" is an attempt to tarnish his image as a Judge. By describing an Hon''ble Judge as "alleged Justice", authority of the Court has been challenged which, as held by the Supreme Court in *D. C. Saxena's case* (supra), amounts to interference with the performance of duties of Judge's office and administration of Justice. Thus, it Is not merely a case of use of intemperate and harsh language but a calculated attempt on his part to tarnish the image of an Hon''ble Judge in particular and judiciary as a whole. Thus, we are of the view that he is also guilty of having committed criminal contempt of Court.

25. The next question for our consideration Is as to whether the persons, who have been found to have committed criminal contempt of Court should be punished and if so what be the quantum of punishment.

26. As far as Contemner No. 1 Ajay Bansal is concerned, his explanation has been found to be totally unsatisfactory. He has only admitted to use of harsh and intemperate language and has tendered an apology for the same. He has, however, justified his legal notice by explaining it as a sequel to the two news reports which had appeared in the Hari Bhoomi and the Times of India. As already observed earlier, the legal notice to the three constitutional authorities, including the highest one, the President, was totally unwarranted. We are, therefore, satisfied that his offence cannot be brushed aside lightly. Such an action on the part of any individual is condemnable but it is doubly so when it comes from a person who claims to be an advocate of long standing. On the last day he without our leave, has even absented himself. However, instead of awarding any Imprisonment, we impose on him a fine of Rs. 2,000/- to be deposited within three months failing which he shall undergo simple imprisonment of two months apart from warning him to be careful in future.

27. Now, we come to the cases of Contemnors No. 3 to 5 : namely, Sarvashri Capt. Abhimanyu Sindu, Balraj Arora and Akshay Mukul. As already observed earlier, their cases are akin to the case of the Editor of The Tribune which has come up before the Full Bench in A.J. Philips case (supra). Shri A.J. Philip, the Editor, and Shri Rajmit Singh, the Correspondent, were held to be guilty of committing contempt of Court. However, while considering the question of punishment in view of the unconditional apologies tendered by the two contemnors, vide its order dated 12-1-2004, the Full Bench had held as under :--

"The law vests wide discretion in the Court, in such matters. Of course, the discretion must be exercised essentially in consonance with the principles governing the field. Press is not a mere instrument of propaganda, much less malicious one. It is a field which even provide education and character to the society at large. It must over reach the temptation to create sensations by spreading false news, It must discard for ever reporting out of malice, Jealousy and unprotected enthusiasm, founded on ill desires. The duty of law in such situation will demand guilty to be punished rather than showing of mercy. Keeping in view the conduct of the respondents before the Court reference can usefully be made to what Swami Vivekananda said :--

Might and Mercy
guide the conduct
of human beings.
The exercise of
Might is invariably
the exercise
of selfishness.
The exercise of

Mercy is heavenly.

The above news shows erratic attitude of the contemner who admittedly without verifying the facts and gauging the authenticity of the sources which allegedly gave him information published the news, clearly showing the action to be faux pas. The responsibility of a Journalist, particularly, from the field of legal Journalism places upon him divest responsibility. Disorderly conduct by a journalist besides causing irreparable damage to the institution will also cause serious embarrassment to the newspapers itself. No extent of eloquence can justify such irresponsible reporting. The principle of harmony and balance, by its very existence to any legal system, carve out exception to such behaviour. Such reporting is not a Journalism misconduct simpliciter but is an offence of serious gravity. Adverse effect and consequences thereof can be discernly and lucidly classified into two categories, one which affects the system and the person concerned transiently and Is likely to wither away by passage of time while other Is a permanent damage caused to the institution and administration of justice. This conduct would normally be unforgivable. These serious contemptuous acts, that too of such grave nature, would hardly leave the Court with much choice. Still there is no proscription (sic) on the Jurisdiction of the Court to consider the consequences of the apology tendered by the contemnors in the interest of justice and to maintain high standards of judicial magnanimity.

The above enunciated principles indicate the institutional tolerance which the judiciary possesses in the larger interest of the public and administration of justice. Maintaining the majesty of law is the linchpin to the wheels of Justice. Curio, are the cases where it would be inevitable for the Court to take recourse to vigours of penal statute. Such cases where punishing the contemner is essential, have been distinctly explained by different pronouncements, and thus, they must be understood in their correct perspective and in institutional interest. One factor which tilts the balance in favour of the contemner to some extent is that a clarification was issued by the paper in the very next issue. According to them, the news was also not published in the later editions of the paper. The contemnors tendered unqualified apology before the Court at the very first available opportunity and at no point of time even attempted to support or justify the erroneous and irresponsible act.

We would now deliver upon the matter in the light of the principles aforesaid to ensure that such baseless and undesirable news items are not reported by the respondents in future. We would be willing to accept the unqualified and unconditional apology tendered on behalf of Shri A.J. Philip and Shri Rajmeet Singh, but subject to their filing a specific affidavit that in addition to the decisions taken by their management, they shall strictly adhere to the prescribed standards of Journalism and ensure without fail assurance to the Court of not repeating such a conduct in future under any circumstances.

At the cost of repetition and as it is inevitable for us, we re-emphasize the conclusions arrived at by us in our judgment and order dated Sept. 19, 2003 :--

".....,.... It is rather unfortunate that newspaper, which has a standing of over one century and which has done yeoman service to the community and has acted as a watch dog of public interest, has become a play ground for those, who do not have respect for the dignity of others and who do not hesitate to scandalise the constitutional institutions including Judiciary and thereby shake the people's confidence in its impartiality and integrity."

We could not have reminded the respondents to the dimensions of their public obligations in any better way. We do express a pious hope that the respondents would ensure adherence to high standards of journalism keeping in view their own stature. The larger public interest imposes obligation upon them requirement of sincere reporting to ensure maintenance of dignity of all the affected parties.

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Despite all this, we direct the respondents, who are statutorily and otherwise, responsible for printing, publication and circulation of newspaper like the Tribune and legal journalism at large to adhere to the following guidelines-directions and take preventive and corrective steps so to maintain high ethical standard of journalism and not to cause interference with the administration of justice and lower the dignity of the constitutional institutions of the judiciary.

1. The journalist is peddled with more responsible (sic) what he says or writes is likely to affect the public to a greater degree than what an ordinary citizen says alright. Thus, he should be strictly factual and correct to the actual news.
2. Honest collection and publication of news basis being right of fair comment and criticism with the exceptions of principle that it is apprehensive to a journalist to cast or impute the motive to any one including the institution of judicial administration. Before any news or articles in relation to administration of justice or function of judicial administration is published, concerned quarter must ensure that information is factually accurate. Facts are not distorted and no essential facts are suppressed.
3. Responsibility shall be assumed for all information and comments published. If the responsibility is disclaimed, this shall be explicitly stated before the publication. Proceedings of Courts are not misrepresented. Residuum of established administration that despite the fact that trial is in public and publicity may be given to their proceedings, but the newspapers publishing must state true and accurate and devoid of malice or an attempt to scandalise the Courts or Judges.
4. Immediate steps be taken for providing an inbuilt mechanism for counter checking the correctness of news and articles relating to legal Journalism and at least ensure authenticity of the sources of publication in normal course of its business.

The onerous duty and obligation and pervasive obligation to which legal

journalism must be subjected to have been indicated by us above. The respondents now and its erstwhile Editor, even earlier, were found guilty of contempt of Court and, thus, heavy burden lies upon them and its management to take all such measures without fail to ensure complete prevention to such repetitions. The above referred parameters of dignified journalism, particularly in reference to constitutional institution like judiciary, are not exhaustive, but are merely indicative of the onerous responsibility placed upon the press, which has a pious duty of correct reporting in public interest. These standards and restrictions enunciate broadly what is expected of the publishers of papers in law. Of course, compliance thereto cannot be an absolute defence in an action for contempt, as it would depend upon facts and circumstances of each case. However, their compliance would certainly prevent interference in proper administration of justice and minimise gravity of the offence to some extent. Freedom of journalists in the matters of application of law is not at a better level than that of an individual citizen. On the contrary, a greater responsibility is cast upon the Editor and management of the paper to be cautious and careful in reporting the matters.

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We accept the unconditional and unqualified apology tendered by Shri A.J. Philip, Editor, and Shri Rajmeet Singh, Reporter, but subject to the conditions that affidavits, as directed supra, shall be filed by them during the course of the day."

28. The three contemnors have indeed tendered their unconditional apology at the very outset. However, they have also attempted to justify their action. Thus, we are of the view that they have not fully purged themselves of contempt. However, in view of the facts and circumstances of the case especially that an unqualified apology has been tendered at the very outset, we are inclined to accept their unconditional and unqualified apology in terms of the decision of the Full Bench in the case of A.J. Philip (supra), subject to same conditions. Thus, the three contemnors are also required, to furnish their affidavits on similar terms.

29. The Rules issued to Contemner Nos. 3 to 5 are made absolute.