

(1954) 08 MAD CK 0014

In the Madras High Court

Case No : Contempt Application No's. 5 and 6 of 1954

In Re: Mr. Hayles, Editor of "The Mail" and Another

Date of Decision : 27-08-1954

Acts Referred:

Constitution of India, 1950 — Article 215, 227
Contempt of Courts Act, 1971 — Section 3
High Courts Act, 1861 — Section 15
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 30, 30(1)
Industrial Disputes Act, 1947 — Section 7

Citation : AIR 1955 Mad 1 : (1955) CriLJ 1 : (1955) ILR (Mad) 1

Hon'ble Judges : Rajagopalan, J;Rajagopala Aiyangar, J;Balakrishna Ayyar, J

Bench : Full Bench

Advocate : A.C. Muthanna, for Hayles, K. Bhashyam, R. Srinivasan and S. Obul Reddi, for Govind Swaminathan, -General and Public Prosecutor as amicus curiae, for the Appellant;

Judgement

Mack J.

1. As Special Industrial Tribunal appointed by the Government of Madras, I adjudicated, while a sitting Judge of this Court, the disputes between

the managements and workers of malgamation Ltd. Madras, in their eleven concerns including ""The Mail"", Madras. My award, which may be

marked as Ex. P. 1, was pronounced on 8-2-1954 and notified in the Port St. George Gazette on 12-2-1954. It was passed substantially on an

agreement signed by Mr. Ladden, Chairman of Amalgamations Ltd., and Sri R. Venkataraman, President of the Simpson and Group Companies

Workers" Union, by which they settled all their differences in controversy, but left it to me to decide all matters of punishment for misconduct and

reinstatement agreeing to accept my decision as anal. I found it necessary to go into the origin and the history of these disputes in my award. In

The Mail"" of the 5th of April, in the leading editorial with the caption ""He is Right" there appeared the following extract as regards which I issued a

rule to the Editor of the Mail to appear before me and show cause why action should not be taken against him for criticism in contempt of the

Tribunal by a party to the dispute:

Occasionally, as happened recently in Madras, an adjudicator assumes that his task is to bring about some sort of mutual toleration in an industrial

establishment, so he proceeds to seek evidence and opportunities that will assist him in his own conception of the sort of settlement he thinks

desirable. In the end some sort of peace is patched up, but it cannot endure. Neither side is satisfied and a new dispute begins Brewing

immediately the Tribunal has announced its finding however pacificatory the language thereof may be.

The editorial as a whole was a strong attack on adjudication in support of an alleged denunciation by the Union Minister for Labour Sri V. V. Giri

of adjudication as enemy No. 1 of industrial harmony.

2. Mr. Hayles, the Editor of the ""Mail"" appeared before me in response to this rule on 14-4-1954 represented also by Sri Govind Swaminathan as

his counsel, who incidentally appeared for Amalgamations Ltd., and the managements in the adjudication proceedings. The statement filed by Mr.

Hayles on Sri Govind Swaminathan's advice is so remarkable that it may be set out in extenso:

1. I have not committed contempt of any authority, I state with respect that the Honourable Mr. Justice Mack has no jurisdiction whatever to

issue this rule and therefore it is illegal and incompetent.

2. The Honourable Mr. Justice Mack was constituted as a Tribunal by G. O. Ms. No. 4016 Development Department, date 4-9-1953, to

adjudicate on disputes between the workers and managements of various industrial concerns including the ""Mail"". The said Tribunal delivered its

award based on an agreement in respect of all the concerns on 8-2-1954 and the award was published by G. O. Ms. No. 343 dated 12-2-1954.

After the date of the delivery of the award, or at the latest after the publication of the award the Special Industrial Tribunal has ceased to exist and

no person can claim to represent such Tribunal.

3. Since the Special Industrial Tribunal does not exist, no individual can claim to

represent it or take action on its behalf.

4. An Industrial Tribunal whether special or otherwise only derives its powers under statute-

The Industrial Disputes Act, 1947. The powers of an Industrial Tribunal to deal with contempt is provided for in Section 11(8) of the Act. Apart

from this clause, there is no other provision whereby an Industrial Tribunal can take action for contempt. Section 11(8) does not apply to the facts

stated in the Rule.

5. For the above mentioned and other reasons, I most respectfully state that I am not prepared to furnish any explanation that may be called for

and pray that this Rule be discharged forthwith.

3. Mr. Govind Swaminathan in support of this statement challenged at the Bar of this Court my jurisdiction to issue this Rule. Not merely this, he

flatly and contumaciously declined to argue any question either of law or Jurisdiction before me on the ground that I was "functus officio" as

Industrial Tribunal. He was finally not even prepared either to admit or deny that the passage extracted in the Rule related to my adjudication of

this dispute and declined to answer any questions arising on the Rule.

4. I shall briefly, without paying it the compliment of prolonged judicial attention, deal with this summary challenge on what appear to be two short

grounds to the jurisdiction of a sitting Judge of a High Court to commit for acts amounting to contempt of himself. Article 215 of the Constitution

lays down that every High Court is a court of Record, and shall have all the powers of such a Court to punish for contempt of itself. Under Article

225 of the Constitution, the powers of Judges of a High Court sitting singly or alone shall be the same as immediately before the Constitution.

Prior to the Constitution, these powers were recognised as inherent in High Courts and Courts of Records and never arose out of any statute. This

is clear from the Contempt of Courts Act (Act 12 of 1928), the statement of objects and reasons annexed to that bill and subsequent decisions of

which mention need only be made to one a Lahore Pull Bench decision "In the, matter of Lala Harikishen Lal", AIR 1837 Lah 497 (A), that this

Act presumed the existence of powers of High Courts of Judicature to punish contempt of themselves as inherent powers conferred upon them by

no statute. This Act re-enacted with adoptions by Act 32 of 1952 empowered

High Courts to exercise the same jurisdiction, power and authority

in accordance with the same procedure and practice in respect of contempt of subordinate courts as they have and exercise in respect of

contempts of themselves.

The object of this Act was partly to enable High Courts to punish contempts committed in respect of subordinate courts, where such contempt is

not an offence punishable under the Penal Code, and partly to limit their own powers of punishment for contempt to simple imprisonment for a

term, which may extend to six months or fine which may extend to Rs. 2000.

In 1937 the Contempt of Courts (Amendment) Act (Act 12 of 1937) was enacted in view of, as would appear from the statement of objects and

reasons, a decision by a High Court that the power of punishment provided in Section 3, Contempt of Courts Act of 1926 related only to the

contempts of courts subordinate to it and had no application to a contempt of itself, to punish as regards which they possessed inherent powers to

pass a sentence without regard to the limits of Section 3 of Act 12 of 1926. The amendment to Section 3 was then enacted limiting the sentence a

High Court may impose for any contempt either In respect of itself or of a court subordinate to it to the limits of this section. I think I am right in

saying that this is the first time these inherent powers of ""High Court Judges"" engrafted now into the Constitution as being vested in them sitting

singly or in Benches have been challenged at the Bar.

5. From Mr. Hayles' statement, this challenge appears to be based on the ground that as a Special Industrial Tribunal, although a sitting Judge of a

High Court, I can only derive special or other powers from the Industrial Disputes Act of 1947 whose powers to deal with contempt are provided

for in Section 11(8). Section 11(8) reads as follows:

Every Tribunal shall be deemed to be a civil court for the purposes of Sections 480 and 482, Criminal P. C.

Section 480 Criminal P. C. empowers any civil, criminal or revenue court to take cognizance of certain offences such as those described in

Sections 175, 178, 179, 180 or 228, if committed in the view or presence of the court, and to punish the offender summarily that day itself to a

fine not exceeding Rs. 200 and in default to simple imprisonment for a term which may extend to one month. Section 482 Criminal P. O.

empowers any such court, if of opinion that the case called for more serious notice, to record the facts constituting the offence and forward it to a

Magistrate having jurisdiction to try the same for disposal. The Industrial Disputes Act by Section 11(8) merely conferred on ordinary Tribunals,

who may be Advocates or even businessmen who have done no judicial work before, empowered and functioning under its provisions limited

summary powers of punishing for contempt which every subordinate Civil, Criminal or Revenue Court has under Sections 480 and 482, Criminal

P. C. If contempt in any other form is committed before such a Court, or an ordinary Tribunal appointed under the Industrial Disputes Act, it can

only be dealt with under the Contempt of Courts Act on a report from the subordinate Court or otherwise and punished by the High Court in the

same way as a contempt of itself.

6. What then is the resulting position when a High Court Judge is appointed as a Special Industrial Tribunal and discharges these judicial functions

while a sitting Judge of the High Court. On many days I sat as High Court Judge doing special Tribunal work and then passed on to dispose of

work in other branches, criminal, civil and appellate. Sri S. Govind Swaminathan in his flat refusal even to argue before me on the ground that I

was "functus officio" as an Industrial Tribunal appears to have differentiated my discharge of Judicial functions in this Court in that capacity, from

my discharge of those judicial functions also as a High Court Judge. I am myself wholly unable to follow by what process of metabolism I became

emasculated of inherent powers to punish for contempt immediately I sat in this Court doing judicial work of a Special Industrial Tribunal, and how

I regained those powers when I proceeded to do other Judicial work. I must express my strong resentment at so Inhumane an attempt at the Bar

of my Court to vivisect my living personality as a High Court Judge in this astonishing manner seeking to cause out and render a portion of it, while

an Industrial Tribunal defunct, if not now in a state of advanced decomposition in the Sixth Court where I did this Judicial work.

There are now functioning in this High Court two of my learned brethren as Special Tribunals appointed as "persona designata" under the Estates

Abolition Act. So far as I can see, all High Court Judges appointed as Special Tribunals under any Act or for any purpose fall into the same

category. If the preposterous view taken in Mr. Hayles' written statement were to be adopted, it would mean that no High Court Judge will ever

consent to serve as a Special Tribunal, if it involves the temporary emasculation of his inherent powers though recognised also by the Constitution

as having been vested in him on his appointment as a High Court Judge, and continuing to vest in him so long as he sits as a Judge in any judicial

capacity until his retirement or resignation. I need scarcely say that no statute under which Judges are with their consent appointed as Special

Tribunals can ever deprive them of their inherent powers. Nor is it necessary that any statute which even provides for High Court Judges being

appointed as Special Tribunals should clothe them specifically with these powers to punish for contempt of themselves, which by reason of their

office as High Court Judges they carry with them in respect of whatever judicial functions they are called upon to perform.

7. I may here mention an anomaly in the Industrial Disputes Act, to which I have adverted, in para 29 of my Award which provided for an appeal

against an award, by a Tribunal to an Industrial Appellate Tribunal generally composed of ex-High Court Judges. In an adjudication by a High

Court Judge as Special Industrial Tribunal, an appeal was filed before an Industrial Appellate Tribunal and a writ petition against the latter's order

was heard before a single Judge of the same High Court. I observed in my award that it was anomalous that an award by a sitting Judge of a High

Court asked to do duty as an industrial Tribunal should be appealable to an appellate Tribunal over which a Judge of the High Court sitting singly

has exercised jurisdiction under Article 226 of the Constitution.

The anomaly of an appeal from a single High Court Judge sitting as an Industrial Tribunal to an Appellate Industrial Tribunal, which is subordinate

to a High Court under the Constitution, may have been mitigated by such a Writ Petition being heard by a Bench of Judges. However this may be,

I am unable to see how that anomaly in legislation can possibly have the effect of depriving sitting High Court Judges of their inherent powers of

punishing summarily for contempt in respect of any judicial proceedings before them. The question whether a sitting High Court Judge loses his

inherent powers by appointment as a Special Tribunal to do any form of judicial work under any statute has, as it appears to me, only to be posed

to be answered in a most emphatic negative.

8. A High Court Judge may withdraw to his file and try himself any case triable by a subordinate Court, civil or criminal, u/s 24, Civil P. C. and

Section 526, Criminal P. C. Does this mean that when he does so, he loses his inherent powers in the domain of contempt and is limited to the

subordinate Court's powers u/s 480 or Section 482, Criminal P. C. Any such suggestion would, I think, be ruled out as preposterous. I can see

no difference whatever between that type of case and a Judge doing with his consent and at the request of the Government the work of any

subordinate Court or Tribunal in a case of particular importance or complexity, appointed as "persona designata" and specially selected for this

judicial work. He would undoubtedly bring to his task the full powers of a High Court Judge including the inherent powers to punish for contempt

of itself, which no statute or appointing authority can ever take away from him.

9. In considering this serious challenge to the inherent powers of High Court Judges, I feel I must refer to and answer judicially another anomalous

position created on an Accountant-General's objection. The President of the Republic has accorded his permission to my being appointed as

Special Industrial Tribunal u/s 11(b)(i) of the second Schedule to the Constitution. This defines the actual service of a Judge as including the time

spent by a Judge on "duty as a Judge or in the performance of such other functions as he may at the request of the President undertake to

discharge. This sanction by the President had its origin in an accounts objection raised to a T. A. Bill of Rajagopalan J. who was appointed by the

Governor as Special industrial Tribunal like myself in G. O. Ms. No. 2118 dated 11-7-1950 to adjudicate the, disputes between the Meenakshi

Mills and their workers. He proceeded to Madura for enquiry and his T. A. bill was objected by the Accountant General on various grounds, one

being that the concurrence of the President was necessary, as apparently in the view of the Accountant-General he was performing functions other

than that of a Judge. In order so overcome the accounts objection, the President was addressed to accord his permission under this clause in order

to pass this T. A. bill.

Following this precedent, the President's sanction was obtained for my appointment as Special Industrial Tribunal to meet any similar account

contingency. I am quite unable to see how the inherent powers of a High Court Judge can be summarily taken away from him by an accounts

objection raised by the Accountant-General on his notions of what the functions of a Judge are. There can, in my view, be no doubt at all that the

time spent by a High Court Judge in the discharge of his work as Special Industrial Tribunal is time spent by a Judge on duty as such. The other

functions, he may at the request of the President undertake to discharge referred to in Section 11(b)(i) are functions other than judicial functions

such as for instance the time spent as an Ambassador or as Chairman of a Commission of Enquiry and so on. Under Article 227(1) of the

Constitution, every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises

jurisdiction. When a Judge of a High Court is appointed by Government to do the work of a Court or a Tribunal subordinate to it, such as an

ordinary industrial Tribunal under the Industrial Disputes Act, undoubtedly is, there can, in my view be no question that he is performing the duties

of an Industrial Tribunal as a High Court Judge in the plenitude of his inherent powers.

In this connection I would refer to the Privy Council decision -- "Goonesinna v. De Kretser AIR 1945 PC 83 (B), a decision from Ceylon in

which a writ of certiorari was taken out to quash an order made by a Supreme Court Judge Biting as an Election Judge. The Supreme Court

refused the writ on the ground that the Election court or Judge was in fact part of the Supreme Court itself and that it could not issue such a writ to

a part of itself. Lord Goddard delivering the judgment of the Privy Council dismissing the appeal, made the following observation:

It is well-settled and counsel did not seek to argue to the contrary, that a Court having jurisdiction to issue a writ of certiorari will not, and cannot,

issue it to bring up an order made by a Judge of that Court. Nor will a superior Court issue the writ directed to another superior Court -- "Reg v.

Justices of the Central Criminal Court", (1883) 11 QBD 479 and if the Election Judge is to be regarded as a special or independent tribunal his

court would, in their Lordships' opinion, be a superior court. Considering that the Court is held before a Judge of the Supreme Court from whose

decision there is no appeal, it could not be other-wise. But their Lordships are of opinion that the true view is that cognizance of these petitions is

an extension of, or addition to, the ordinary jurisdiction of the Supreme Court and consequently c"ertiorari cannot be granted to bring up any order made in the exercise of that jurisdiction.

I do not think it is necessary nor do I propose to quote any further authority. There is, of course, no decision bearing on this point for I know of

none in which the inherent powers of a Judge of a Court of record sitting in any Judicial capacity whatsoever has been challenged across the Bar of

this Court. I have no doubt at all that I possessed as a High Court Judge while I was sitting as an Industrial Tribunal and still have inherent powers

to punish for contempt of myself, sitting in that capacity.

10. The second ground on which my jurisdiction to issue this rule is challenged is an astonishing one. In answer to a question put to him during the

hearing of this rule and which I may say was I think the only one he deigned to answer, Sri Govind Swaminathan summarily asserted that any

Industrial Tribunal after it had delivered its judgment became "functus officio" and had no jurisdiction whatsoever even to report a subsequent

contempt of its proceedings to the High Court for action under Act 32 of 1952. This position was also accompanied by a flat denial to argue on

the ground that I was something defunct. All I can say is that this is a startling proposition of law, all the more startling in that it emanates from one

holding the office of State Prosecutor appearing for a private party.

It is really not necessary for me to state that there can be such a thing as serious contempt of court or a tribunal after it has pronounced its

judgment or award and from this stand point become "functus officio", if its judgment is made the target of malicious criticism in contempt of the

Court which pronounced it. To say that such a Court or Tribunal or even a subordinate court of the lowest category has no power even to report a

contempt of this kind to the High Court, no matter how inaccurately, how maliciously, with imputations of motives, corruption and so on, an attack

is made on that judgment after pronouncement in any press clearly shows an abysmal ignorance of the law relating to contempt. I clearly could not,

as an Industrial Tribunal, regard myself as a Court subordinate to the High Court, i.e., subordinate also to myself, and make a report as regards

contempt of the Tribunal for action by the High Court u/s 3, Contempt of Courts Act 32 of 1952. It is open even to any private party to move for

commitment of a person for contempt. I need only refer to -- ""Tuljaram Bao v. Governor of Reserve Bank of India AIR 1939 Mad 257 (D),

referred to in the Law of Contempt of Court by Tek Chand and Harbans Lal Sarin, 2nd Edn., at page 295, as ""The Madras Mail case."" The editor

in that case published a letter and also a leading article commenting on a scheme for reconstruction of a company, which was about to be placed

before the Court, Convicting the editor, it was held that to comment on a case, which was about to come before the Court with knowledge of the

fact is just as much a contempt as comment on a case actually launched. There can be just as much contempt of a Court committed after it has

delivered its judgment, even though the Judge who delivered the ""judgment and has been condemned has died shortly- afterwards.

11. If I had the slightest doubt about my jurisdiction to issue this rule as a High Court Judge, who had functioned simultaneously as a Special

Industrial Tribunal, I would have referred this vital point of jurisdiction to a Full Bench for decision. But for reasons given supra, I find no substance

whatsoever in the challenge to my Jurisdiction contumaciously put forward in the written statement of Mr. Hayles and flung by Sri Govind

Swaminathan on his behalf across the Bar of this court. This being the case, it must necessarily follow that Sri Govind Swaminathan has, as

counsel, been guilty of ex facie contempt before me at the Bar of this Court, when in challenging my jurisdiction to issue this rule he went further

and flatly declined to answer any questions arising on the rule, and that both Counsel and client have prima facie conjointly committed contempt.

12. I shall now deal with the original rule issued against Mr. Hayles, which becomes unfortunately necessary in view of his point blank refusal to

offer any explanation, much less to tender any apology. In the first place, Mr. Hayles was a party to the industrial dispute. He was examined as a

witness at considerable length. The shorthand- writer of ""The Mail"" took down a full note of all the proceedings before me as Special Industrial

Tribunal. He must, therefore, be presumed to have been aware of everything that transpired in the adjudication. The enquiry revealed strong

differences of opinion between Amalgamations Ltd. and Mr. Hayles, Editor of ""The Mail"" adverted to in para 21 of my award, where I stated that

as Editor from the commencement, he opposed the employees of a press joining a comprehensive trade union including workers from several

different factories of all grades. I also referred to a difference of opinion as between Mr. Ladden and Mr. Hayles re : the fixation of a time limit for

the release of the editorial. I made this observation : ""This difference of opinion between Mr. Hayles and Amalgamations Ltd. both as regards the

constitution of the Union and the dead line for the editorial to the knowledge of the Union group leaders in ""The Mail"", undoubtedly made a

substantial contribution to the complete-breakdown of discipline in this office.

It is also apparent from my award that there were far more persons up for punishment for misconduct in the Mail than in any other of the remaining

ten concerns. Mr. Hsyles was therefore an Editor as well as a party to the dispute. There can be no doubt I think that despite Mr. Hayle's refusal

to admit or deny, this offending passage related to my adjudication of this dispute. It is prima facie evident that the adjudication brought no

satisfaction to Mr. Hayles himself. I desired an explanation of what was meant by my seeking evidence and opportunities that would assist me in

my own conception of the sort of settlement I thought desirable. The settlement was a perfectly voluntary one, cer-tainly not superimposed upon

the parties by me, but signed and brought to me by Mr. Ladden representing the managements and Sri R. Venkatararaan as representing workers.

Finally, the concluding sentence would give the readers an Impression that neither side was satisfied with my adjudication and that my findings

given in the course of the adjudication or at the time of the award merely led to an epidemic of fresh disputes.

13. This prima facie unfair criticism of my adjudication in this editorial was made under the sheltering umbrella of Sri V. V. Giri's alleged strong

denunciation of adjudication as enemy No. 1 of industrial harmony to convince his readers that ""He (Mr. Giri) is Bight"". I would like here to

reproduce as not being in any way irrelevant a letter addressed by Sri V. V. Giri himself to me after the completion of this enquiry marked as Ex.

p. 2.

I am very happy at the very tactful way in which you dealt with the dispute in Simpsons. yOU alone could have done it. You have set an example

to all adjudicators as to how they should at every stage of adjudication, bring the parties together and (help them to) come to a settlement

themselves.

Mr. Hayles, of course, is entitled to his own opinion about my adjudication and so is Sri V. V. Giri and the other parties affected. I have filed this

letter merely to show that despite Sri Giri's strong denunciation of adjudication as a solution of labour troubles, it afforded no cover whatever for

an editorial attack on the labours of a particular adjudicator doing his best to discharge, under a system open to much criticism, an arduous task to

the best of his ability.

14. Condemnation of a system however strong and showing up its abuses with a view to reform or do away with it is perfectly legitimate

particularly in an editor of a paper. It is one of his main functions. Speaking for myself I may claim to be a strong critic of many abuses in our legal

system, which are in need of reform. Criticism of a system is one thing. Criticism of a particular court or a Judge labouring under that system is

something quite different and cannot be pursued it is needless to say, with complete impunity and is protected only if within the domain of fair

comment.

16. Finally I had good reason to think on reading this offending passage that the impression given by Mr. Hayles to his reading public that my

findings during the adjudication led to fresh disputes immediately they were pronounced was inaccurate and misleading. I received several days

prior to the publication of this editorial a booklet (Ex. P. 3) handed over to me in my chambers by Sri Govind Swaminathan himself in which the

whole of my award was translated into Tamil. It would appear from the copy itself that one was given to each of the workers in all the concerns of

Amalgamations Ltd. Ex. P.3 itself is prima facie evidence that the award as a whole was not unacceptable at any rate to the managements except

perhaps to Mr. Hayles.

In the "Mail" of 14-4-1954 in which at page 4 the contempt proceedings before me were quite correctly and accurately reported with the caption

Industrial Tribunal's findings is criticism allowable", there is found at page 1 col. 5 an account of the Second Anniversary celebration of the

Simpson and Group Companies Employees-Co-operative Credit Society (See para 13 of my award) presided over by the Governor of Madras. I

reproduce the following extract reported as having been made by the President of the Workers' Union Sri R. Venkataraman :

The presence of the Directors of the Company at the function was proof of the good employer employee relations that existed there, he said, and pointed out that "we may of course have quarrelled and gone to a Tribunal, but finally we have co-operated and come to an understanding and agreement; this is evidence of our good relations".

All this is prima facie evidence to show that the offending extract was both inaccurate and misleading and that Mr. Hayles could not resist the temptation of winging one or two barbs tinged with malice outside the domain of fair comment at my labours during this adjudication.

16. I do not propose to quote much case law, in the matter. Lord Halsbury in his Laws of England, 2nd Edn. Vol. 7, at page 7 has cited authority

for the position that speeches or writings misrepresenting proceedings of a court are contempts, and that nothing was more incumbent upon courts of justice than to preserve their proceedings from being misrepresented.

17. It is most regrettable that this rule for contempt, which would probably have been discharged in a few minutes on a frank admission that the

offending passage referred, to my adjudication of this dispute as Industrial Tribunal with a suitable explanation or apology should have been

aggravated into graver contempt even at the time of the first hearing of which both Mr. Hayles and his Counsel Sri Govind Swami Nathan are both

prima facie guilty. Their joint contempt placed me in a most unenviable, position. I had of course, I consider, powers, to punish them both

summarily for contempt and commit them to the penitentiary. In Tek Chand, and Sarin's "The Law of Contempt of Court, 2nd Edn. at page 209,

there is reproduced from -- 29 ALR44 (E)", a case in which an attorney in a pending case was convicted of gross contempt when he said that

unless the court decided the case in favour of, his client, the Judge would incur public imputation of corruption. The advocate "was suspended. In

that case, the court made the following observations :

Certainly it is a painful spectacle to see a court of justice arraigning a member of its Bar for contempt when the contempt consists in charging the

court in advance of its decision with corruption....And in every case of what is called contempt in facie curiae the Judge is under a painful necessity

of sitting, in the same sense, as a Judge in his own case. Cruel as it is for a Judge to be compelled to act under this necessity, it must be borne for

the sake of public justice.

In the present case, there was no such personal attack on me but a flouting of jurisdiction, refusal by an advocate even to argue on the ground that

I was defunct and a point blank refusal by both counsel and client to answer any questions arising on the rule.

17A. "in re Shamlal", AIR 1932 Lah 502 (F), it was held that when, the contempt is committed in the face of a court it is that court which is the

proper tribunal to decide the whole matter. No Judge relishes being a Judge and a prosecutor in his own court. In -- "Sukhdev Singh v. Hon"ble

C. J. and Judges of the Pepsu High Court AIR 1954 SC 186 (G), the Supreme Court dealt with an unusual application asking for transfer of

certain contempt proceedings from the Pepsu High court to any other High Court and in the alternative asking that at least the matter should not be

heard by two of the Judges of the High Court who were named. In dismissing the application, their Lordships emphasised that neither the Supreme

Court nor the Legislature has power to deprive the High Court of their right and power by ordering a transfer of such proceedings to another High

Court and that even as to transfer from one Judge to Another there again there is no original Jurisdiction which the Supreme Court can exercise.

A further observation pertinent in this most embarrassing case I have had to deal with is that when the Criminal P. C. does not apply to matters of

contempt triable by a High Court, it can deal with it summarily and adopt its own procedure. In the words of their Lordships, all that is necessary is

that the procedure is fair and that the contemner is made aware of the charge against him and is given a fair and reasonable opportunity to defend

himself. Their Lordships finally observed that it was desirable on general principles of Justice that a Judge, who has been personally attacked,

should not as far as possible hear a contempt matter, which to that extent concerns him personally. It is otherwise when the attack is not directed

against him personally.

18. In view of these authorities, I decided to Issue a rule against Sri S. Govind Swaminathan, which I did on the 21st of April, asking him to

appear before me on Thursday, the 22nd and show cause why action should not be taken against him for "ex facie" contempt of court in that when

challenging my Jurisdiction to punish as Industrial Tribunal, despite Article 2 of

the Constitution, he flatly declined to address any argument to the court on the matter of jurisdiction though asked to do so and further more refused to answer any questions arising on the rule issued to "Mr.

Hayles though appearing for him as counsel.

19. I was presiding over the Criminal Sessions this month at which Sri Govind Swaminathan was the State Prosecutor. I showed him every

consideration I could and this rule signed by me as Judge of the High Court was served on him after he had concluded a sessions case which had

gone into its third day. I also before I rose called him near the Judge's seat and told him that it would be better if he did not prosecute the

remaining three cases for this sessions himself but would arrange that one of his assistants should do so. On the 22nd of April when Sri Govind

Swaminathan appeared in response to the rule, I made the following Order :
""Advocate-General appears "suo motu" and desires to be heard as

Advocate-General and not as Counsel for Sri Govind Swaminathan. Sri Obulla Reddi appears for Sri Govind Swaminathan and asks for time till

Wednesday, the 28th. He should file a written statement in answer to the rule by the 23th inst. Advocate General's voluntary offer to assist me in

this matter of very grave importance is of course readily accepted and with some relief. I shall fix a date for hearing him after Sri Swaminathan files

his written statement on 28-4-1954."" There is a very full report in the Indian Express, Ex. P. 8.

20. I come now to a most unhappy account of what can only be described as a somewhat hysterical orgy of contempt of court. Sri Govind

Swaminathan's reply to my rule was a Writ Petition No. 319 of 1954 filed by him on the 23rd afternoon (Friday) through Sri K. Bhashyam, an

advocate Impleading me as ""Mr. E. E. Mack, Industrial Tribunal."" The prayers in this writ were to quash the rule issued against him, to transfer the

contempt proceedings from my file to some other competent Court or Judge, and also to transfer the sessions cases now pending before my file.

This petition was admitted by a learned Bench by an order, which has caused me the very greatest embarrassment in taking the contempt matter

before me to a termination. The opinion expressed at the time of the admission of this writ petition was this;

Prima facie we are inclined to the opinion that an Industrial Tribunal as such will

neither have power nor jurisdiction to commit any party or counsel for contempt itself. We also think that the fact that a Judge of the High Court happens to be appointed as Industrial Tribunal would not make any difference.

With the expression of this opinion, interim stay of further proceedings against Sri Govind Swaminathan was directed pending disposal of the main

writ petition. All I need say here is that I made a representation to my Lord the Chief Justice in which I claimed my right to dispose of this matter

before me as I had intended to by referring the rules with my findings on the question of jurisdiction etc., to a Pull Bench for determination. He was

pleased to accede to that request and raised the stay on my assurance that the whole matter would be referred to a Putt Bench on the 3rd of May,

that is, today.

21. I now come to an extraordinary publication by the Editor of "The Mail" in the first two columns of the first page of the "Mail" of Friday, the

23rd itself in which the opinion of the learned Bench at the time of admission of the Writ Petition was splashed across the first two columns of the

front page in the thick headlines, with more than two full columns devoted to an account of the hearing before the Bench, and reproducing all the

allegations made in the writ petition itself. I have marked the publication as Ex. p. 4 and the writ petition served on me as Ex. p. 5. There were

published a number of wild allegations made in the writ petition, viz., that I had gone out of my way and used my position as a High Court Judge

improperly, that amounted in law to an abuse of powers, that my assumption of jurisdiction as Judge was against all sense of justice and fair-play,

that all the proceedings, which I had initiated, were highly irregular and illegal and so on and so on.

This publication by the Editor of the Mail, still unpurged of his contempt, I can only describe as a riot of "triumphant contempt not only of me but

also of all Judges of this Court. In the manner it was published, it gives the reading public, ignorant of the meaning of legal phraseology, the

undoubted impression that though a sitting Judge of the High Court, I was being arraigned before a Pull Bench charged with all manner of

irregularities on a complaint, by the State Prosecutor of Madras. This publication, Ex. P. 4, is in striking contrast to the report made by "the Hindu

about the proceedings before the writ Bench to which I can take no exception at all. There can be little doubt in my mind that Sri Govind

Swaminathan, as counsel of the Editor of "The Mail" placed at the latter's disposal a full copy of the writ petition he filed against me on the 23rd,

which was published in "The Mail" that same evening with his knowledge and approval. There has, therefore, been committed a grossly aggravated

contempt in the publication of Ex. p. 4 both by counsel and client.

22. On the 28th of April, the stay was dissolved by the learned Bench in the following order:

Mr. Justice Mack has since Informed us that he has decided to refer the question of jurisdiction, which is the main and substantial question in this

case for decision by a Bench or Full Bench before he proceeds to pass any final orders and that he is unable to do so because of the Interim order

of stay which we passed in this case on April 23. We consider that the course suggested by Mr. Justice Mack is the proper and satisfying course

for determination of the question of Jurisdiction. In these circumstances, we dissolve the order of stay which we made on April 23.

Mr. Justice Mack expects to deliver his order of reference on May 3rd. The main writ application will be posted on May 4 for dismissal, as, in our

opinion, it will become unnecessary in view of the reference of the question of jurisdiction by Mr. Justice Mack.

I may add here that on the 28th the learned Bench dismissed an application for the issue of a writ of prohibition filed on behalf of Mr. Hayles to

prohibit my proceeding further on the rule Issued to him and to quash it as being illegal and without jurisdiction

23. From the press report of the proceedings before the learned Bench on the 28th of April, marked as Ex. P. 6, there appears to have been some

discussion as regards an alleged order I issued to Sri Govind Swaminathan, prohibiting his appearance at sessions and the Advocate General

appears to have undertaken to make some representation to me. I am bound to say that he saw me during the interval without my being apprised

of any such undertaking given before the Bench, and that he mumbled something in my chambers, which appeared to me to be wholly unintelligible.

In fact, I could not make out head or tail of what he was asking me to do. On Friday, the 30th was posted the last sessions case for disposal at the

current sessions. Sri Govind Swaminathan appeared for the State and rather surprised me by Insisting on his right to prosecute on the footing that

he was entitled to do so as a member of the Bar and on specific Instructions from the Government.

My Court stenographer did not take down a note of the exchanges between the Bench and the Bar in this connection. They have however been

very correctly reproduced with, so far as I can remember, verbatim accuracy by the very competent press reporters of ""The Hindu"", ""The Indian

Express"" and ""The Mail."" On the footing of the report in the Mail Ex. P. 7, I have called upon Sri Govind Swaminathan to show cause today

across the Bar why he should not be punished summarily for contempt of court. That was an entirely separate contempt, which has nothing

whatsoever to do with the question of jurisdiction and the rules issued against Mr. Hayles and Mr. Govind Swaminathan, which are directly before

me. It was also an act of contempt committed by Sri Govind Swaminathan as State Prosecutor. I am, therefore, dealing with it separately in a

separate order. In view of my undertaking to my Lord the Chief Justice to make a reference to a Full Bench and to pass no final orders of

punishments on these rules, I can do no more nor do I desire in this case to award any punishment myself than to pass on the heavy responsibility

of disposing of two rules I have issued to a very Full Bench, after an authoritative pronouncement on the very important question of Jurisdiction

involved.

24. I would like to say one or two words about, the part played by the Advocate-General in this matter as head of the Law Officers of the State

and ex-officio Chairman of the Bar Council. I am bound to say that when he intervened "SUE motu" at the first hearing of the rule on the 22nd, he

gave me the impression that he was appearing as counsel on Sri Govind Swaminathan's behalf despite his assurance, which I accepted at its face

value, that he desired to assist the court (Vide a full Press report of this hearing in the Indian Express, Ex. p. 8). Sri Govind Swaminathan as State

Prosecutor was aware of the Advocate-General's Intervention and my acceptance of his impartial assistance. I find it myself extremely difficult to

believe that Sri Govind Swaminathan as State Prosecutor did not consult the Advocate-General about the Writ Petition he filed before a learned

Bench of this court in challenge to the rule I passed against him. I do not desire to be unfair to the Advocate General. All I would say is this, that if

he as head of the Bar was not appraised by Sri Govind Swaminathan as state Prosecutor of the Writ petition he was going to file against me

without filing any statement in reply to the rule I issued the contempt of Sri Govind Swaminathan both against this court and the State Government,

which employs him, becomes all the more aggravated.

25. it appears to me nothing short of midsummer madness to resist a rule for contempt of court on such technicalities, as "functus officio" and so

on. I remember describing in a previous judgment of mine the majority of technicalities as the ""spawn of perverted legal ingenuity"". The attempt to

resist this rule on this technical question of jurisdiction was also singularly pointless. Even if I were to hold that I had no Jurisdiction, and submit to

being bereft as Industrial Tribunal of my inherent powers, I would merely have reported the contempt to be taken cognizance of and dealt with in

the usual manner by a Pull Bench of the "High Court. Even if the Bench were to reverse my present finding as regards jurisdiction, they would

undoubtedly take cognizance of the contempt on the facts set out in this reference under the Contempt of Courts Act and punish it as though it

were a contempt of themselves. The result is that Mr. Hayles, even if he should succeed on this question of jurisdiction is no nearer purging himself

of his contempt.

26. I have laboured in this matter with, my patience taxed to breaking point In order to vindicate two vital principles (1) the inherent powers of

every Judge of this court performing any judicial function to punish for contempt of himself, and (2) the right of each single Judge to continue any

judicial proceedings he has initiated and take it to a conclusion without any interference by way of a writ of certiorari issued to him by a Bench on

which he is impleaded as a respondent. If interferece by way of a writ of certiorari with proceedings before single Judge is allowed, even before a

Judge passes any order, it would make it difficult for him to discharge his duties in accordance with the oath he has taken ""to perform the duties of

his office without fear or favour, affection or ill-will.

27. I must in conclusion express my painful surprise at the assault made by an Advocate or Barrister and or State Prosecutor on the inherent

powers of Judges of this Court to punish summarily, any person, either advocate or client for contempt of themselves. These powers have never been laid down in any statute, but have been asserted and established after centuries of struggle by great Judges of the past, and bequeathed by the British people as a priceless legacy to the great democratic countries including the United States of America. These inherent powers freely accepted, recognised and Insisted upon by the great lawyers, who moulded the Indian Constitution, stand now enshrined in Article 215 of the Constitution. I have felt strongly that these inherent powers were being put in jeopardy by this onslaught on them by a State Prosecutor with obviously extremely superficial knowledge of their origin and history. It is the duty of the present generation of Judges to pass on these inherent powers intact and untarnished to posterity.

In describing these powers, Tek Chand and H. L. Sarin at page 74 of their book on the Law of Contempt have said this:

In all cases of contempt tried "brevi manu" the Judge plays a three-fold role. He is the party injured, he is the prosecutor and he is the Judge. And

what is more, his power to punish for his own contempt was till lately unlimited. The contemner did not even possess the right of appeal; in short,

his right there is none to dispute. Judges have a power which even the highest executive head of the State or any legislative Officer does not possess.

It is well for the Bar and the public to remember that the Judges have these vast powers, which they can exercise individually, so that they should

never give, either advocate or client, any"" ground for a contemned Judge being forced to have recourse to summary punishment across the"" Bar.

This potent weapon in the hands of a Judge-calls of course for equally great caution in its wielding and with the vast privilege there are

correspondingly heavy duties of restraint and circumspection. In my more than 30 years service as Magistrate and Judge including six years as a

Judge of this court, this is the very first occasion on which I have resorted either to the provisions of Section 430 or 6. 482, Criminal P. C. as a

court subordinate to the High Court or invoked the inherent powers of a Judge to punish summarily for contempt, which I have found I

undoubtedly possess while sitting in the High Court in any capacity.

28. In view of the strong challenge made to the inherent powers of High Court Judges, who sit as. Special Tribunals and the attempt to shear off

their inherent powers, I would refer the two rules I have issued with my finding on jurisdiction to my Lord the Chief Justice for placement before a

Pull Bench, which ""with greatest respect, should not consist of less than seven Judges. I also think that in view of the importance of this matter and

my dissatisfaction with the part played by the Advocate-General of Madras In this matter, notice on this reference should go both to the

Advocate-General of the Madras and the Andhra States, this unfortunate matter having risen in the High Court while it served the two States.

Rajagopalan, J.

29. On 4-9-1953 the Government of Madras, in the exercise of powers vested in it u/s 7(i), Industrial Disputes Act (Act 45 of 1947), constituted

a special Industrial Tribunal to adjudicate the industrial disputes between the managements and workers of the Amalgamations Ltd. Madras, and

its allied concerns, and appointed Mr. Justice Mack of the Madras High Court as the sole member of that Tribunal. The Tribunal gave its award on

8-2-1954. By its order dated 12-2-1954 the Government of Madras directed the publication of that award, and the award was published in the

Port St. George Gazette on 17-2-1954. u/s 17A, Industrial Disputes Act, 1947, that award became enforceable on the expiry of 30 days from the

date of its publication. Section 20(3) of that Act provides:

Proceedings before a Tribunal shall be deemed to have commenced on the date of the reference of a dispute for adjudication and such

proceedings shall be deemed to have concluded on the date on which the award becomes enforceable u/s 17A.

With reference to a publication in the ""Mail"" on 5-4-1954, Mr. Justice Mack issued a notice to Mr. Hayles, the Editor of the Mail on 6-4-1954

which runs:

Proceedings of the Honourable Mr. Justice Mack, Industrial Tribunal, Madras Dated 6-4-1954

Sub: Dispute btween workers and managements of Amalgamations Ltd., Madras, and its branches in the State.

Ref: ""The Mail"" editorial with caption ""He is Right"" in the edition of the Mail of 5-4-1954.

A rule is issued against the editor of ""The Mail"", Madras to appear before the Tribunal, who adjudicated the dispute between concerns of

Amalgamations Ltd, (including the ""Mail"") and their workers, on Wednesday 14-4-1954, sitting in the Fourth Court at 10-45 a.m. and explain

whether the portion of the Editorial in the ""Mail"" of the 5th April extracted infra related to the Tribunal's adjudication of this dispute, and, if this be

the case, to show Cause why action should not be taken against the Editor of the ""Mail"" for such criticism in contempt of the Tribunal by a party to

the dispute :

Occasionally, as happened recently in Madras, an adjudicator assumes that his task is to taring about some sort of mutual toleration in an industrial

establishment, so he proceeds to seek evidence and opportunities that will assist him in his own conception of the sort of settlement he thinks

desirable. In the end some sort of peace is patched up but it cannot endure. Neither side is satisfied and a new dispute begins brewing immediately

the Tribunal has announced its finding however pacificatory the language thereof may be.

sd/-

E. E. Mack

Industrial Tribunal.

To

The Editor, ""The Mail"", Mount Road, Madras.

Copy to: 1. The Chairman, Amalgamations Ltd., Mount Road, Madras.

2. The Secretary, Simpson Group companies workers" Union, Mount Road, Madras.

30. In response to this notice, Mr. Haylea appeared before Mr. Justice Mack on 14-4-1954 with Sri Govind Swaminathan as counsel. A written

statement was filed that day on behalf of Mr. Hayles which ran:

Statement of Mr. A. A. Hayles, Editor of Madras Mail

I, A. A. Hayles, Director of Associated Publishers (Madras) Ltd. and Editor of the ""Mail"" state as follows:

1. I have not committed contempt of any authority. I stats with respect that the Hon"ble Mr. Justice Mack has no jurisdiction whatever to issue this

rule & therefore it is illegal and incompetent.

2. The Hon"ble Mr. Justice Mack was constituted as a Tribunal by G. O. Ms. 4016 Development dated 4-9-1953 to adjudicate on disputes

between the workers and managements of various industrial concerns including ""The Mail"". The said Tribunal delivered its award based on an

agreement in respect of all the concerns on 8-2-1954 and the award was published by G. O. Ms. 343 dated 12-2-1954. After the date of

delivery of the award or at the latest after the publication of the award, the Special Industrial Tribunal has ceased to exist and no person can claim

to represent such Tribunal.

3. Since the Special Industrial Tribunal does not exist, no individual can claim to represent it or take action on its behalf.

4. An Industrial Tribunal, whether special or otherwise only derives its powers under statute -- The Industrial Disputes Act, 1947. The powers of

an Industrial Tribunal to deal with contempt is provided for in Section 11(8) of the Act. Apart from this clause, there is no other provision whereby

an Industrial Tribunal can take action for contempt. Section 11(8) does not apply to the facts stated in the Rule.

5. For the abovementioned and other reasons, I most respectfully state that I am not prepared to furnish any explanation that may be called for

and pray that this Rule be discharged forthwith. Madras, 14-4-1954.

Sd/-

A. A. Hayles.

31. The note recorded by Mr. Justice Mack on what happened next on 14-4-1954 was:

Mr. Govind Swaminathan for Mr. Hayles declines to argue any question of law before me on the ground that I am "functus officio" as Industrial

Tribunal. He also contends that I have therefore no jurisdiction even to make a report to the High Court for action under the Contempt of Courts

Act. He is not even prepared to admit or deny that the passage extracted in the rule relates to my adjudication of the dispute between the concerns

of Amalgamations Ltd. and its workers. Further orders on this rule reserved.

Sd/-

E. E. Mack, 14-1-1954.

32. On 21-4-1954 Mr. Justice Mack ordered the issue of a notice to Sri. Govind

Swaminathan in the following terms:

Proceedings of the Hon^{ble} Mr. Justice Mack Wednesday, 21-4-1954.

Sub: Disputes between workers and managements of Amalgamations Ltd., Madras, and its branches in the State.

Ref: ""The Mail"" editorial with caption ""He is right"" in the edition of the ""Mail"" of 5-4-1954.

Sri. S. Govind Swaminathan appeared on 14-4-1954 as counsel for the Editor of ""The Mail"" Mr. Hayles, who was asked to show cause on a rule

issued why action should not be taken against him for criticism in contempt of the Tribunal who adjudicated the dispute. A rule is also issued

against Sri. S. Govind Swaminathan as counsel to show cause on Thursday, 22-4-1954 at 10-45 a.m. why action should not be taken against him

for. ex facie contempt of court in. that when challenging Mr. Justice Mack's jurisdiction to punish summarily for contempt as Industrial tribunal,

despite Article 215 of the Constitution, he flatly declined to address any argument to the Court on the matter of jurisdiction though asked to do so

and further more refused to answer any questions arising on the rule issued to Mr. Hayles, though appearing for him as counsel.

Sd/-

E. E. Mack,

Judge, High Court, 21-4-1954

To

Sri. S. Govind Swamirathan,

State Prosecutor, High Court, Madras.

33. Subsequent to the issue of this notice, the rule issued to Mr. Hayles was numbered as Contempt Appln. No. 5 of 1954 and that issued to Sri.

S. Govind Swaminathan as contempt Appln. No. 6 of 1954.

34. It may not be necessary for our present purposes to set out the course of proceedings between 22-4-1954 and 3-5-1954 with reference to

the rule Issued by Mr. Justice Mack to Mr. Hayles and Sri. Govind Swaminathan. On 3-5-1954 our learned brother Mack J. pronounced his

order of reference to a Full Bench wherein he recorded: "".....I would refer to the two rules I have issued with my finding on jurisdiction to my Lord

Chief Justice for placement before a Pull Bench."" Thus, under the terms of the

reference, the whole matter in relation to, the two rules was referred to a Full Bench. To dispose of that reference, which was placed before us under the orders of my Lord the Chief Justice, we formulated the following questions as those that arose for determination on the reference:

1. is the reference to the Full Bench competent?
2. When a Judge of a High Court is appointed-as a Tribunal under the Industrial Disputes Act, has he all the powers of a High Court Judge to punish persons for contempt under Article 215 of the Constitution?
3. With reference to notice dated 21-4-1954 issued to Sri. S, Govind Swaminathan which is the subject of Contempt Appin. No. 6 of 1954 had the learned Judge, E. E. Mack J. jurisdiction to issue this notice as a Judge of this Court?
4. Has any prima facie case of contempt been made to justify the issue of a notice
 - (a) in respect of the matter stated in the notice dated 6-4-1954?
 - (b) in respect of the matter stated in the notice dated 21-4-1954?

35. Question 2 : The answer to this question should, we think, help to clear the ground to a considerable extent before we consider the other three questions.

36. Though the fourth of the questions formulated by us specifically raises the issue, whether a prima facie case of contempt has been made out

against (1) Mr. Hayles and (2) Sri Govind Swaminathan, we propose at this stage to assume without deciding that question, that with reference to

what was published in the ""Mail"" dated 5-4-1954, Mr. Hayles was prima facie guilty of contempt, and with reference to what happened before

Mr. Justice Mack on 14-4-1954, Sri Govind Swaminathan was prima facie guilty of contempt. We feel that the question of jurisdiction, which

arises for our determination under question 2 can well be discussed and decided on this assumption without at this stage answering the fourth

question.

37. In his order of reference Mack J. recorded his finding that as a Judge of this court he had jurisdiction to punish (1) Mr. Hayles and (2) Sri

Govind Swaminathan for contempt of court. With all respect we owe to our learned brother Mack J., we have to consider, the question of

jurisdiction afresh.

38. We have assumed for purposes of determining the question of jurisdiction that the publication made by Mr. Hayles on 5-4-1954 and the

conduct of Sri Govind Swaminathan on 14-4-1954 prima facie constituted contempt. The next question is, did either or both constitute contempt

of the High Court, or did either or both constitute contempt of the Industrial Tribunal the sole member of which was a learned Judge of this Court.

39. "Ex facie" the publication of 5-4-1954 made by Mr. Hayles which is the subject-matter of the rule issued to him, can only be in contempt of

the proceedings of the Industrial Tribunal to which the passage referred. Here again we are assuming for the present that that passage referred to

the proceedings before the Industrial Tribunal of which Mr. Justice Mack was the sole member. That has yet to be proved, and we are not

deciding the question, whether that passage referred to the proceedings before that Tribunal. The passage complained of certainly did not refer to

any proceedings of the High Court of Madras.

40. The notice dated 6-4-1954 directed Mr. Hayles "...to appear before the Tribunal to show cause why action should not be taken... .for

such criticism in contempt of the Tribunal" It is no doubt true that our learned brother. Mack J. was all along of the view that it was contempt of

the High Court, though the passage complained of referred to the proceedings before the Industrial Tribunal. With all respect to the learned Judge,

we are unable to agree with him. Whether the High Court has power to punish for contempt in this case is a question distinct from, did it amount

prima facie to contempt of the High Court? In our opinion, the offending passage published by Mr. Hayles could only refer to the proceedings of

the Industrial Tribunal.

41. The notice issued to Sri Govind Swami-nathan (Contempt Appln. No. 6 of 1954) arose out of the proceedings instituted by the issue of the

rule to Mr. Hayles. The rule issued to Mr. Hayles to appear before the Industrial Tribunal on 14-4-54 was in relation to an alleged contempt of

that Tribunal, and the proceedings on 14-4-1954 were in pursuance of that notice to appear before that Industrial Tribunal. No doubt, all along the

respondents (Mr. Hayles and Sri Govind Swaminathan) contended that the Industrial Tribunal was "functus officio" long before 6-4-1954. We

reserve for discussion at a later stage the soundness or otherwise of the

contention, that there could be no contempt of an Industrial Tribunal which had ceased to function as an Industrial Tribunal. To answer the limited question, whether the contempt alleged to have been committed by Sri Govind Swaminathan was of the High Court or of the Industrial Tribunal .a decision on the Question, whether the Industrial Tribunal itself was "functus officio" on 21-4-1954 may not be very material. If the test of provenance were to apply, and in our opinion it should, the proceedings on 14-4-1954 before Mr. Justice Mack, which were the basis of the rule issued by him to Sri Govind Swaminathan on 21-1-1954, were before the Industrial Tribunal before which Mr. Hayles had been asked to appear by the notice dated 6-1-1954, and before which Mr. Hayles and his counsel Sri Govind Swaminathan appeared.

42. The terms of the notice issued by our learned brother Mack J. to Sri Govind Swaminathan were to show cause why action should not be taken against him for ex facie contempt of court in that when challenging Mr. Justice Mack's jurisdiction to punish summarily for contempt as Industrial Tribunal despite Article 215 of the Constitution....

That itself even without reference to the terms of the notice issued on 6-4-1954 makes It clear in our opinion that the proceedings on 14-4-1954 were in an enquiry, into the alleged contempt of the Industrial Tribunal.

43. In our opinion the contempt with which Mr. Hayles was charged and the contempt with which Sri Govind Swaminathan was charged were both in relation to the proceedings before the Industrial Tribunal, of which, no doubt, a learned Judge of this Court has been the sole member.

44. The next question is, did they constitute contempt of the High Court, or at least did they also, In addition to being contempt of the Industrial Tribunal, constitute contempt of the High Court, i.e., did the fact that a Judge of this court adjudicated the industrial dispute as a duly constituted Industrial Tribunal make the contempt complained of contempt of the High Court?

45. It should be fairly clear that adjudication of Industrial disputes under the Industrial Disputes Act, 1947, is not within the Jurisdiction of the High Court as such. That jurisdiction is only conferred on the special statutory tribunals created by that Act. Section 10, Industrial Disputes Act read with Section 7 makes that clear. 60 it was not in the exercise of the jurisdiction of the High Court of Madras that the learned Judge discharged his

functions as an Industrial Tribunal duly constituted u/s 7(i), Industrial Disputes Act. It was not the office as a Judge of the High Court that our

learned brother Mack J., held at the time of his appointment u/s 7(i) of the Act that conferred Jurisdiction on him as Industrial Tribunal. That

jurisdiction could only be traced to and founded on Section 7(i), Industrial Disputes Act. That, as we pointed out before, did not confer any

jurisdiction on the High Court as such. It should follow that the proceedings before the learned Judge, who constituted the Industrial Tribunal, were

not proceedings of the High Court, of which he was no doubt a Judge. It is not the office he holds that makes every act of his during his tenure of

office as a Judge of the High Court an act done or even purported to be done in the exercise of the Jurisdiction of that High Court.

46. The expression ""actual service"" of a Judge of a High Court has been defined in paragraph 11 (b)(I) of the Second Schedule to the Constitution:

Actual service includes (I) time spent by a Judge on duty as a Judge or in the performance of such other functions as he may at the request of the

President undertake to discharge.

That definition envisages the possibility of a Judge of a High Court being entrusted with functions other than judicial and quasi-Judicial functions.

Quite obviously that definition was not intended to confer any Jurisdiction on the High Court in relation to the performance of such other functions

as a Judge of that High Court may, at the request of the President, undertake to discharge. In the definition of ""actual service"" of a Judge of a High

Court, no distinction is drawn between the various classes of ""such other functions as a Judge may, at the request of the President, undertake to

discharge"", that is, between judicial functions, quasi-judicial functions and functions other than judicial and quasi-judicial functions. Even if it is

judicial or quasi-judicial work that a Judge of a High Court undertakes, if that work is unconnected with the Jurisdiction of the High Court, the fact

that he holds the office of a Judge of that High Court cannot make that a work of that High Court and within its jurisdiction.

47. It was contended before us that the Industrial Tribunal was not a ""court"" and that the work it did was not judicial work either. The nature of the

proceedings before an Industrial Tribunal and an adjudication by such a Tribunal has come up for consideration in the past before courts. In -- The

Sree Meenakshi Mills Ltd. Vs. The State of Madras and Others, , the learned Chief Justice referred with approval to the observations of the Privy

Council in -- "Labour Relations Board of Saskatchewan, v. John East Iron Works Ltd. AIR 1949 PO 129 (I).

The jurisdiction of the Board (Labour Relations Board) is not Invoked by the employee for the enforcement of his contractual rights: those,

whatever they may be, he can assert elsewhere. But his reinstatement which the terms of his contract of employment might not by themselves

justify, is the means by which labour practices regarded as unfair are frustrated and the policy of collective bargaining as a road to industrial peace

is secured. It is In the light of this new conception of Industrial relations that the question to be determined by the Board must be viewed.

48. The learned Chief Justice himself observed:

Many, if not all, of the so-called disputes between employers and employees in industrial concerns are not founded on contractual rights and

obligations, but on considerations outside strict legal rights and obligations..... The ultimate decisions of such tribunals have to be determined not

merely by the application of legal principles of ascertained facts, but by considerations of policy also.

49. in -- State of Madras Vs. C.P. Sarathy and Another, , Patanjali Sastri c. J. observed:

But the adjudication by the Tribunal is only an alternative form of settlement of the disputes on a fair and just basis having regard to the prevailing

conditions in the industry and is by no means analogous to what an arbitrator has to do in determining ordinary civil disputes according to the legal

rights of the parties.

50. The decision in -- The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees" Union, Delhi,

, was earlier in point of time, and the principles laid down there were referred to in -- The Sree Meenakshi Mills Ltd. Vs. The State of Madras and

Others, " and -- State of Madras Vs. C.P. Sarathy and Another, ". The question that arose for determination in -- The Bharat Bank Ltd., Delhi

Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees" Union, Delhi, ", was whether an Industrial Tribunal constituted

under the Industrial Disputes Act was a court within the meaning of Article 136

of the. Constitution. The majority of the Supreme Court held that the functions and duties of the Industrial Tribunal constituted under the Industrial Disputes Act, 1947, are very much like those of a body discharging judicial functions although it is not a court. At p. 189, Kania O. J. observed :

In my opinion, the functions and duties of the Industrial Tribunal are very much like those of a body discharging judicial functions, although it is not a court. . . . While the powers of the Industrial Tribunal in some respects are different from those of an ordinary civil court and it has Jurisdiction and powers to give reliefs which a civil court administering the law of the land (for instance, ordering reinstatement of a workman) does not possess in the discharge of its duties it is essentially working as a judicial body.

The view expressed by Pazl All J. at 190, was:

Now there can be no doubt that the Industrial Tribunal has, to use" a well known expression, "all the trappings of a court" and performs functions which cannot but be regarded as judicial.

Mahajan J (as he then was) observed at p. 197 :

It is no doubt true that by reason of the nature of the dispute that they have to adjudicate, the law gives them wider powers than are possessed by ordinary courts of law, but powers of such a nature do not affect the question that they are exercising judicial power. . . . That circumstance does not make them anything else but tribunals exercising judicial power of the State, though in a degree different from the ordinary courts and to an extent which is also different from that enjoyed by an ordinary court of law. They may rightly be described as quasi-judicial bodies because they are out of the hierarchy of the ordinary judicial system" but that circumstance cannot affect the question of their being within the ambit of Article 136.

51. Thus while the Industrial Tribunal is itself a quasi-judicial Tribunal, its functions are judicial. But they are Judicial functions of the Tribunal and not of the High Court, even if a Judge of that High Court constituted the Industrial Tribunal.

52. Even apart from the plain language of Section 7, Industrial Disputes Act, 1947, the anomalies that one can envisage should bar an

interpretation of that section by which the jurisdiction of an Industrial Tribunal, the sole member of which is a Judge of a High Court is equated to the Jurisdiction of the High Court of which he is a Judge. Suppose a Tribunal is constituted under Article 7(i) of the Act consisting of a Judge of a High Court as the Chairman, a District Judge and an industrialist. Merely because the Chairman of such a Tribunal is a Judge of the High Court, the whole Tribunal does not become part of that High Court, and the jurisdiction vested in such a Tribunal does not merge in, or constitute an extension of the jurisdiction of that High Court. Nor obviously can it be an extension of the jurisdiction of a District Court, the Judge of which is the other member of the Tribunal. The industrialist member, of course, is not by himself a court. The Tribunal itself is not a court. The jurisdiction of such a Tribunal could not be that of a High Court while at the same time being that of a District Court and also of no court at all. That was why we stated earlier, it is not the office which the member of a Tribunal held before his appointment to an Industrial Tribunal that can confer jurisdiction on the Tribunal and the appointment of a Judge of a High Court either as chairman or as the sole member of a Tribunal constituted u/s 1, Industrial Disputes Act cannot by itself enlarge the Jurisdiction of that High Court.

53. In -- "Ex parte Van Sandau", (1844) 1 Ph 445 (L), Mr. Van Sandau was the solicitor on one side and Messrs. Turnver and Hensman, on the other. Mr. Van Sandau, dissatisfied with a decision of the Court of Review wrote, printed and published a libel upon the court of Review, upon the eminent Judge of that Court, and upon Messrs. Turnver and Hensman with respect to this matter. Mr. Van Sandau was committed for contempt.

He afterwards apologised and he was discharged. The Lord Chancellor observed : The next point urged was that the Court of Review possessed no authority to commit for contempt. But by the Act 5 and 8, W. 4, C. 29, Section 26, it is declared that the Court of Review shall be a court of Record, and may have, use, and exercise all the powers, rights, and privileges of a court of record, as fully to all intents and purposes as the same are used by any of His Majesty's courts of law at West minster; and the court is in terms authorised to commit for contempt. But a distinction was taken. It was said that, under this clause, a Judge sitting alone cannot commit for contempt. This requires some explanation. The court originally consisted of four

Judges; the number was afterwards reduced to three, and certain powers were given to them sitting as the court of review; but the Judges might also sit alone in performing the other duties prescribed by the Act.

When, therefore, the Act says that a Judge or commissioner sitting alone shall not commit for a contempt, it obviously means a Judge sitting not as the court of review, but acting as a Judge in the exercise of the other duties prescribed by the statute. By a subsequent Act, power is given to a single Judge to constitute the court of review; but the Judge so sitting as the court of review does not come within the exception as to commitments for contempt, which relates only to a single Judge sitting in his individual character for "the purposes already stated and not as the court of review.

The objection originates in a misapprehension of the meaning of the Act of Parliament and is obviously unfounded.

54. The Act itself, which conferred on the court of review powers of a Court of Record, which includes the power to punish contempt of itself differentiated between the powers of a Judge of that court as the Court of Review and the statutory powers he could exercise but not as the, court of review. For contempt of proceedings before such a Judge when he did not sit as a court of review, he had no power to punish as a court of review. A subsequent enactment gave power to a single Judge of the court to constitute the court of review, and he had the power to punish contempt of proceedings before such a court as a duly constituted court of review. Whether the statutory powers be given by the same Act or by different Acts should make little difference to the application of the principle enunciated in -- (1344) 1 Ph 445 (LV. If a Judge of a High Court discharges statutory functions as an Industrial Tribunal, but those functions are not those of the High Court of which he is a Judge, such a Judge, though a Judge of a court of record within the meaning of Article 215 of the Constitution, cannot punish for contempt, because it is not a contempt of the High Court as such, but only a contempt of that Judge in relation to the statutory functions he discharges, which statutory functions are independent of the Jurisdiction vested in the High Court,

55. In "Re Tyrone Election Petition, Macartney v Corry", (1873) 1. B. 7 CL 242 (M) the facts were : During the pendency of an Election petition before the court of Common Pleas in Ireland, Mr. Carson, the proprietor of a

newspaper, published in his Journal a series of articles which were calculated to interfere with the due course of Justice, intended to prejudice the public mind against the petitioner, to prevent witnesses affording him their evidence, to deter him from prosecuting his petition, and. If he abandoned it, to deter any other qualified person from becoming petitioner in his stead. An application was made to the Judge in Chamber to punish Carson, the proprietor of the newspaper, for contempt. The learned Judge held that the publications were contempt of the court of Common Pleas, and he also held that the Judge on the "rota", sitting in Chamber had no jurisdiction to commit for the contempt; At p. 246 the learned Judge observed :

The election petition is a cause pending in the court of Common Pleas, and it is not until the trial commences before the Election Judge that the full jurisdiction of the court comes into operation. It is true that the petition in question became attached to me as senior Judge on the "rota" before whom it was eventually to be ""tried, and that I had authority to entertain motions and make orders for the carrying out the proceedings preliminary to the trial. I had such authority under the statute and General orders of the Election Judges, but until the trial commences I would act not as an independent court, but in aid of the court of common Pleas. This application for an attachment is collateral to the cause, and the contempt was a contempt of the court of common pleas, to be dealt with properly by that court, and not by me.

The learned Judge left it open to the petitioner to renew the motion in the court of Common Pleas if he should think fit. If a Judge of the Court of Common Pleas acted, not as that court, but acted only in aid of that court, and therefore had not the power to punish for contempt of the court of Common Pleas, it is a little difficult to hold that a Judge of a High Court, who acted not even in aid of the High Court, but exercised a jurisdiction independent of the High Court, could punish as a High Court contempt not of the High Court but of the Industrial Tribunal of which that learned Judge was the sole member.

56. In -- "The Colonial Bank of Australasia v. Willan", (1874) 5 PC 417, the Privy Council had to consider the position of the court at Mines of Victoria in relation to the Supreme Court of that State. The Court of Mines was first created by the Statute of 1857, which was subsequently

replaced by the Mining Statute of 1865; the Statute of 1865 created a Chief Judge of the Court of Mines, who was to be one of the Judges of the

Supreme Court, and statutory provision was made for appeals to the Chief Judge against the decisions of the other Judges of the Court of Mines.

Section 244 of the Mining Statute of 1865 provided that no proceedings under that Act should be removed or removeable into the Supreme Court

save and except as ""hereinbefore provided"". Their Lordships of the Privy Council held that in relation to the Supreme Court, the courts of Mines

stood on the footing of inferior courts.

Their Lordships further held that the power of the Supreme Court to issue a certiorari to the Court of Mines in respect of any proceedings under

the Mining Statute of 1865 had been taken away by the statute. But their Lordships also held at p. 442 :

It is, however, scarcely necessary to observe that the effect of this is not absolutely to deprive the supreme Court of its power to issue a writ of

certiorari to bring up the proceedings of the inferior court, but to control and limit its action on such writ. There are numerous cases in the books

which establish that, notwithstanding the private clause in a statute, the court of Queen's Bench will grant a certiotrari; but some of these authorities

establish, and none are inconsistent with, the proposition, that in any such case that court will not quash the order removed, except upon the

ground either of a manifest defect of Jurisdiction in the tribunal that made it, or of manifest fraud in the party procuring it"".

That one of the Judges of the Supreme Court was a member of the Court of Mines, the Chief Judge of that court, in no way altered the status of

the Court of Mines as an inferior court. The Judge of the Supreme Court, who was appointed also a Judge of the Court of Mines, did not carry

with him all the Jurisdiction and powers of the Supreme Court when he discharged his statutory functions as the Chief Judge of the court of Mines.

The application of the principle laid down in that case to the facts before us should show that the appointment of a Judge of the High Court to an

Industrial Tribunal u/s 7, Industrial Disputes Act would not alter the status of the Industrial Tribunal or equate it with the High Court itself.

57. Considerable reliance was placed on the decision of the Privy Council in -- AIR 1945 PC 83 (B)". in that case one of the Judges of the

Supreme Court of Ceylon was appointed the Election Judge to enquire into an election dispute under the Ceylon (State Council Elections) Order-

in-Council, 1931. The main question that arose for decision in that case and in the appeal before the Privy Council related to the power of the

Supreme Court of Ceylon to issue a writ of Certiorari directed to the Election Judge or Court. Their Lordships of the Privy Council, after

examining the relevant provisions of the Order-in-Council at p. 84 observed :

While the Ordinance constituting the Supreme Court does not confer on it original, but only appellate, Jurisdiction in civil cases, their Lordships

are of opinion that cognizance of election petitions is a special jurisdiction conferred on the Supreme Court by the Order-in-council (of 1931), and

that is abundantly clear from the provisions to which they have referred." Their Lordships also referred to the well established principle, that a

superior court would not issue a writ of certiorari to another superior court, and that an election Judge constituted a superior court. But it was not

on that ground that the ultimate decision was rested. Their Lordships observed :

But their Lordships are of opinion that the true view is that cognizance of these petitions is an extension of, or addition to, the ordinary jurisdiction

of the Supreme Court, and consequently certiorari cannot be granted to bring up any order made in the exercise of that Jurisdiction.

It was another aspect of this problem that was decided by the Supreme Court in -- National Sewing Thread Co. Ltd. Vs. James Chadwick and

Bros. Ltd. (J. and P. Coats Ltd., Assignee), , where the learned Judges quoted with approval the rule laid down by Viscount Haldane L. C. in --

"National Telephone Co. Ltd. v. Postmaster-General", 1913 AC 546 (P), and observed :

The rule is well settled that when a statute directs that an appeal shall lie to a court already established, then that appeal must be regulated by the

practice and procedure of that court.

As we have already pointed out, adjudication of an industrial dispute under the Industrial Disputes Act, 1947, cannot be viewed as an extension of

or addition to the ordinary Jurisdiction of the High Court of Madras. The decision in -- AIR 1945 PC 83 (B)", in no way supports the proposition,

that if a Judge of a High Court is appointed the sole member of an Industrial Tribunal u/s 7, Industrial Disputes Act, the jurisdiction he exercises as

industrial Tribunal is the jurisdiction of the High Court itself.

58. We shall deal at less length with some of the other cases cited before us, because they do not bear directly on the limited question of

Jurisdiction, which we are considering at this stage.

59. In -- "King v. Clement", (1821) 106 ER 918 (Q), it was not a question of jurisdiction to punish contempt that was raised or decided, but the

legality of the order of Lord Chief Justice Abbot sitting as court of General Jail Delivery.

60. In -- "Ex parte Pernandez", (1861) 142 EB 349 (R), what was held was that a court of Assize was a superior court, and that the Judge had

Jurisdiction to commit for contempt.

61. In -- "Dale's case, (1881) 6 QBD 376 (S)", one of the points for decisions was the position of Lord Penzance as official principal of the

Arches Court of Canterbury and his power to punish contempt for disobedience of his orders. Lord Coleridge C. J. observed at 403:

Lord Penzance was made by 37 and 38 vict. C.85, an ecclesiastical judge in an ecclesiastical court; there was a cause cognizable before him;

there was a person duly cited; there was a lawful order made with which that person was required to comply; that person refused to pay

obedience to such lawful order. It seems to follow that by the plain and direct enactment of 53 Geo. 3, this significavit properly issued. I think this

would have been so if Lord Penzance had remained only Judge of the provincial court of Canterbury; it is nonetheless so according to. the view I

have already expressed, because since the passing of the Act the events contemplated in the seventh section have happened, and he has become

official principal of the court of Arches.

Earlier at p. 400, the learned Chief Justice pointed out ;

Not that proceedings, though in the court of Arches, ceased to be proceedings under and limited by the statute, but that proceedings under and

limited by the statute became statutory proceedings In the court of Arches.

62. Such a claim cannot be made in the present case. The proceedings before the Industrial Tribunal did not become either under the Industrial

Disputes Act, 1947, or under any other statute, proceedings before the High Court of Madras.

63. In -- "Queen v. Lefroy", (1873) 8 QB 134 (T), the point actually decided was that the Jurisdiction of the Judge of a county Court was

confined by Section 113 of 9 and 10 Vict. C. 95, to contempts committed in court, and that he had no power to proceed against a person for a

contempt committed out of court. At p. 137 Cockburn C. J. observed :

The power to commit for contempt is fully gone into by Blackstone and Hawkins; but though this power is recognised in the superior courts, it is

nowhere said that an inferior court of record has any power to proceed for contempt out of court; and there is an obvious distinction between the

superior courts and other courts of record. In the case of the superior courts at Westminster, which represent the one supreme court of the land,

this power was coeval with their original constitution, and has always been exercised by them. These courts were originally carved out of the one

supreme court, and are all divisions of the aula regis, where it is said the king in person dispensed justice, and their power of committing for

contempt was an emanation of the royal authority, for any contempt of the court would be contempt of the sovereign. But it is a very different

matter with respect to the county courts and similar inferior courts.

64. -- "In re Johnson", (1887) 20 QBD 68 (U), the actual point for decision was whether the conduct complained of amounted to contempt of

court. Lord Esher M. R. held that that conduct was, and was intended to be, an insult to the administration of justice. After referring to the oft

quoted opinion of Wilmot C. J. in -- "Rex v. Almon", (Wilmot's Notes of opinions and Judgments, 243, 265), the learned Master of the Rolls

observed at p 72 :

If he (the Judge) is acting judicially in the office of a Judge, he is acting as a Judge of the High Court of Justice. It signifies not where he is sitting,

or what he is doing in such Judicial capacity. If any one attempts to interfere improperly with such judicial proceeding, provided it is done with

sufficient nearness, it is a contempt; a contempt not of the Judge, but of the High Court as a Judge of which he is acting.

With reference to the facts of that case, the learned Master of the Rolls held at p. 73 :

The Judge was acting for the court Judicially and in the administration of Justice, and what the appellant did was an Insult to the administration of

Justice.

These observations have, however, to be construed with reference to the facts in issue in that case. The proceedings were before a Judge at

Chambers in the Royal Courts of Justice in the exercise of the ordinary jurisdiction of that court. The observation of the learned Master of the

Rolls, that the contempt was not of the Judge but of the High Court, as a Judge of which he was acting, should bar any application of the principle

laid down by him even to judicial proceedings, if those proceedings are not in the exercise of the jurisdiction of the High Court. We have already

pointed out in this case that the Industrial Tribunal was a quasi-judicial tribunal, though the proceedings before that Tribunal would come within the

scope of judicial proceedings. But these proceedings of the Industrial tribunal were not in exercise of the jurisdiction of the High Court.

65. The discussion upto this point may be summed up thus : The proceedings before the learned Judge, who constituted the Industrial Tribunal,

were not proceedings of the High Court, of which he was no doubt a Judge. Any contempt committed in relation to such proceedings would

certainly be contempt of that Industrial Tribunal. True, it would also be in contempt of the learned Judge who presided over that Tribunal. But

nonetheless it is only con-tempt of the Tribunal and not contempt of the High Court.

66. In the view we have recorded above, that there was no contempt of the High Court as such, it may not be necessary to go into the origin and

the extent of the undoubted inherent power of the High Court to punish contempt of itself, now enshrined in Article 215 of the Constitution.

67. The next question is, has the High Court, as a Superior Court of Record, power to punish contempt of an Industrial Tribunal constituted under

the Industrial Disputes Act, 1947? , Despite the fact that such a Tribunal was presided over by a Judge of the High Court, the Industrial Tribunal

was, in relation to the High Court, an inferior tribunal subject to "the superintendence of the High Court under Article 227 of the Constitution.

68. The position in England under the Common law was explained in 7 Halsbury's Laws of England (Hailsham's Edn.) at page 23, paragraph 36 :

The King's Bench division has a general superintendence over all crimes whatsoever, and watches over the proceedings of inferior courts, not

only to prevent them from exceeding their Jurisdiction or otherwise acting contrary to law, but also to prevent persons from interfering with the course of justice in such courts."".

69. The principles on which that jurisdiction was rested were explained in -- ""King v. Davies", 1906 1 KB 32 (V), which were followed in -- ""Rex v Daily Mail; Ex parte Farnsworth", 1921 2 KB 733 (W). After pointing out at p. 42 of the report In -- 1906 1 KB 32 (V)", the essential difference between the jurisdiction exercised by the Court of King's Bench and that exercised by the other courts, which possessed none of the relations with the inferior courts which have always appertained to the King's Bench Wills J. observed:

It is the peculiar function of the King's Bench to exercise superintendence over the inferior courts and confine them to their proper duties.

The learned Judge observed at p. 43 :

This, however, as it seems to us, was only one exercise of the duty of seeing that they did impartial Justice, and if and when the attainment of that

end required that the misdeeds of others should be corrected as well as the misfeasances of the inferior courts themselves, It seems to us that it is

no departure from principle, but only its legitimate application to a new state of things, if others whose conduct tends to prevent the due

performance of their duties by those courts have to be corrected as well as the courts themselves.

The inherent power of the King's Bench (now the Queen's Bench) in England to punish con-tempt of the court and tribunals subordinate to it was

thus based on its duty to protect those courts and tribunals, which duty itself was correlated to the inherent power of the King's Bench to exercise

superintendence over the subordinate courts and tribunals.

70. In India the power of a High Court as a Superior Court of Record to exercise supervision over the courts and tribunals within its territorial

Jurisdiction is now enacted by Article 227 of the Constitution which runs :

Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

71. In -- Waryam Singh and Another Vs. Amarnath and Another, , their Lordships of the Supreme Court held :

The- words "in relation to which" obviously qualify the word "territories" and not

the words "Courts and Tribunals.

The history of the statutory recognition accorded to this power of superintendence by Section 15, High Courts Act, 1861, and Section 107,

Government of India Act, 1916, was discussed by a Division Bench of this court in -- In Re: Gangalakurthi Pattisam and Others, and by the

Supreme Court in -- Waryam Singh and Another Vs. Amarnath and Another, ". At p. 217 the learned Judges of the Supreme Court pointed out :

The material part of Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915, except that the

power of superintendence has been extended by the Article also to Tribunals.

Neither Section 15, High Courts Act, 1861, nor Section 107, Government of India Act, 1915, nor Article 227 of the Constitution specifically

vested in the High Court power to punish contempt of the courts and tribunals subordinate to it. Nor was there any statutory recognition in these

enactments of such a power. The distinction between the statutory power of superintendence and the inherent power of the High Court to punish

contempt of inferior courts subordinate to it was brought out in sharp relief by a Full Bench of this court in -- "In re Venkat Row", 21 MLJ 832

(Z). In that case Mr. Venkata Rao was charged with contempt of a subordinate court, based on the letter he had sent to the District Munsif of

Bellary a court subordinate to the Madras High Court charging the District Munsif with malicious and improper conduct in the course of a judicial

enquiry before him. The High Court of Madras issued a rule calling upon Mr. Venkata Rao to show cause why he should not be dealt with

according to law for contempt of court. On the issue of the jurisdiction of the High Court to punish Mr. Venkata Rao for that contempt, the learned

Chief Justice observed at p. 838 :

It seems to me that there are two questions for us to consider. First, have we inherent Common Law Jurisdiction in the matter? And, secondly,

have we statutory jurisdiction under the powers conferred on this court by Section 15 of the High Courts Act?

In answering the first question in the affirmative, the learned Chief Justice referred to the principles laid down by Wills J. in -- "King v. Parke",

1903 2 KB 432 (ZI) and -- 1906 1 KB 32 (V). The second question was answered in the negative: at p. 842 the learned Chief Justice recorded :

I am not prepared to hold we have Jurisdiction u/s 15 of the Indian High Courts Act which gives us powers of superintendence with regard to subordinate courts.

We are in respectful agreement with the principles laid down by the Full Bench in -- 21 MLJ 832 (Z). While Article 227 of the Constitution, which replaced Section 15 of the High Courts Act, 1861 extended the power of superintendence of the High Court to tribunals also, Article 227 did not itself vest in the High Court any power to punish contempt of subordinate courts and tribunals. The inherent power of the High Court to punish contempt of such courts and tribunals was not however touched by Article 227 of the Constitution, even as Section 15, High Courts Act left it untouched.

72. To what extent, if any, that inherent power of the High Court to punish a contempt of a tribunal duly constituted under the Industrial Disputes Act, 1947, one of the tribunals subordinate to the High Court, has been defined or taken away by statutory enactment, is the next question.

Section 30, Industrial Disputes (Appellate Tribunal) Act, (Act 48 of 1950) runs :

Powers of the Appellate Tribunal in relation to contempts, (1) if any person

(a) when ordered by an industrial tribunal or the Appellate tribunal to produce or deliver up any document, being legally bound, intentionally omits

to do so, or

(b) when required by an industrial tribunal or the Appellate tribunal to bind himself by an oath or affirmation to state the truth, refuses to do so, or

(c) being legally bound to state the truth on any subject to an industrial tribunal or the Appellate Tribunal, refuses to answer any question put to him

touching such subject by such industrial tribunal or the Appellate Tribunal, or

(d) refuses to sign any statement made by him when required to do so by an Industrial Tribunal or the Appellate Tribunal, or

(e) Intentionally offers any insult or causes any interruption to an Industrial Tribunal or the Appellate Tribunal at any stage of its Judicial

proceedings, he shall be deemed to be guilty of contempt of such Industrial Tribunal or the Appellate Tribunal, as the case may be.

(2) If any person commits any act or publishes any writing, which is calculated to improperly influence an industrial tribunal or the appellate

Tribunal to or bring such industrial tribunal or the Appellate tribunal or any member thereof into disrepute or contempt or to lower its or his

authority, or to interfere with the lawful process of any such industrial tribunal or the Appellate Tribunal, such person shall be deemed to be guilty

of contempt of such industrial tribunal or the Appellate Tribunal, as the case may be.

(3) The Appellate Tribunal shall have & exercise the same jurisdiction, power and authority, in accordance with the same procedure and practice,

in respect of contempts of itself and of all the industrial tribunals as the High Courts have and exercise in respect of themselves and courts

subordinate to them under the Contempt of Courts Act, 1923 (XX of 1926).

73. Act 48 of 1950 defined contempts of Industrial Tribunals and the Labour Appellate Tribunals, and vested power to punish such contempt not

in the High Court but in the Industrial Tribunal u/s 30 (1) of the Act, and in the Labour Appellate Tribunal u/s 30 (2) of the Act. No doubt that Act

does not purport to deal with or affect the inherent jurisdiction of the High Court to punish contempts of inferior tribunals, which stems from the

power of superintendence possessed by the High Court as its necessary concomitant; but nonetheless when the Indian Parliament has made

specific statutory provision for the punishment of contempts of Industrial Tribunals, the High Court, in our opinion, should not thereafter invoke its

inherent Jurisdiction to punish any contempt of the Tribunal created under the Industrial Disputes Act, 1947, even assuming that such a power

exists.

74. The next question that falls to be considered is whether the inherent power of the High Court to punish contempts of Industrial Tribunals

survives after Section 30 of the Industrial Disputes (Appellate Tribunal) Act, (48 of 1950) came into force.

75. The inherent power of the High Court to punish contempts of a Tribunal like the Industrial Tribunal subordinate to it was based on what was

described as correlative duty of the High Court, correlated to the power of superintendence which a High Court had over the tribunal. In -- 1906

1 KB 32 (V)", Willis J. quoted the observations of Wilmot C. J. in "Rex v. Almon" (Wilmot's Notes of Opinions and Judgments, pp. 255-356),

and observed at p. 41 of the report:

With a few verbal alterations, these eloquent words will apply with at least equal force to writings, the direct tendency of which is to prevent a fair

and impartial trial, or at least one that can be so considered, from being had in courts of inferior jurisdiction which have"" not the power of

protecting themselves from such encroachments upon their independence;

After quoting again at p. 41 the observations of Wilmot C. J. in "Rex v. Almon", (Wilmot's Notes of opinions and judgments, pp. 255-256) ""the

several parts of the system, he adds, act in combination together to attain the only end and object of all laws, the safety and security of the people

Wills J. observed at pp. 41-42:

Words which, it appears to us, are as appropriate to the question we have in hand as they" were in the case with which he was dealing, to the

application under different circumstances of the same great principle, that courts for the administration of Justice exist for the benefit of the people,

that for the benefit of the people their independence must be protected from unauthorised Interference, and that the law provides effective means

by which this end can be secured. If it is to be secured at all in the case of the inferior courts, it can only be secured by the action of this court, for

they have not the power to protect themselves.

We have already extracted above the passage, at p 43 of the report in 1906 1 KB 32 (V)", where Wills J. referred to the peculiar function of the

King's Bench to exercise superintendence over the inferior courts and confine them to their proper duties and correlated the duty to punish

contempt of the inferior courts to that power of superintendence. We have also pointed out that the principles laid down by Wills J were

approved of by a Full Bench of this court in 21 MLJ 832 (Z)" (see p. 840). The assumption and the exercise of the power to punish? contempts of

inferior courts and tribunals were based on the recognition of the fact, that the subordinate tribunal had no power to protect itself, and that there

was no court other than the King's Bench that could afford that protection. That was why contempt of other superior courts did not come within

the Jurisdiction of the King's"" Bench in England. When an inferior court can protect itself, or when any other statutory provision is made for the

protection of the tribunal from contempt, the correlative duty of the superior court like the King's Bench in England and the High Court in India

ceases, When that duty ends, the basis for the exercise of the inherent power to punish contempt of a subordinate tribunal disappears.

Act 48 of 1850 gave statutory power to protect an Industrial Tribunal from contempt to the Industrial Tribunal itself u/s 30 (1) of the Act and to

the Labour Appellate Tribunal u/s 30 (2) of the Act. To that extent the correlative duty of the High Court to protect an inferior tribunal, namely,

the Industrial Tribunal, ended, It is not that Act 48 of 1950 itself specifically extinguished that duty or the High Court's power to punish contempt

based on that duty. It is just a case of alteration in circumstances, an alteration resulting from Act 48 of 1950, which the High Court recognises. It

is that recognition that bars further exercise of the inherent power of the High Court to protect an Industrial Tribunal from contempt, to the extent

to which other and adequate statutory protection has been provided by Section 30 of Act 48 of 1950.

76. The principle on which contempt of courts and tribunals is punished, whatever be the authority that is empowered to punish, was explained

thus by Wills J. in 1906 1 KB 32 (V)":

What then is the principle which is the root of and underlies the cases in which persons have been punished for attacks upon courts and

Interferences with the due execution of their orders? It will be found to be, not the purpose of protecting either the court as a whole or individual

judges of the court from a repetition of them, but of protecting the public, and especially those who, either voluntarily or by compulsion, are subject

to its jurisdiction, from the mischief they will incur if the authority of the tribunal be undermined or impaired.

The learned Judge also quoted with approval the observations of Bowen L. J. in -- "Helmores V. Smith", (1886) 35 Ch D 449 (Z2):

The object of the discipline enforced by the Court in case of contempt of court is not to vindicate the dignity of the court or the person of the

Judge, but to prevent undue interference with the administration of justice.

In its ultimate analysis, contempt of court is contempt of the authority of the Sovereign State exercised through its courts duly constituted for the

administration of justice. That the English Jurists traced it back to the King of England dispensing justice in the "aula regis" does not affect the

principle. The power of the King's Bench exercised to punish contempt of itself

and of the courts and tribunals subordinate to it was the power of the Sovereign State. It is a similar power that the High Courts in India exercise. It is obviously open to Parliament of India, which exercises the Sovereign authority of the State over this portion of the legislative field, to provide specifically for the exercise of the power of the Sovereign State to punish contempts of any specified classes of courts or tribunals.

In relation to the Industrial Tribunals and the classes of contempts enumerated, in Sub-sections 1 and 2 of Section 30 of Act 48 of 1950, the State, acting through Parliament, has conferred that power on the Industrial Tribunals and on the Labour Appellate Tribunal by Section 30 of Act 48 of 1950. The High Court is bound to respect that statutory provision, and it can no longer invoke its inherent power to punish contempts of an Industrial tribunal to the extent that the requisite power has been conferred on an Independent statutory tribunal like the Labour Appellate Tribunal by Section 30 (2) of Act 48 of 1950. The contempts with which Mr. Hayles and Sri Govind Swaminathan were charged in the rules issued to them by our learned brother Mack J. fall, in our opinion, within the scope of Section 30 (2) of Act 48 of 1950.

77. In our opinion, after the Industrial Disputes (Appellate Tribunal) Act (Act 48 Of 1950) specifically provided for punishment of contempts of Industrial Tribunals and vested that power in the Tribunals specified in Section 30 of the Act, the High Court should no longer exercise its inherent power to punish the contempts specified in Sub-sections (1) and (2) of Section 30, Industrial Disputes (Appellate Tribunal) Act (Act 48 of 1950).

78. It is well settled that when a statute specifically provides for the exercise of a power by a named authority, the ambit and location of that power is thereafter to be sought within the limits prescribed by that statute itself without further recourse to any Common Law incidents. By way of analogy see -- "Attorney-General v. De Keyser's Royal Hotel", 1930 AC 508 (Z3), where the limits of the prerogative power of the Crown were discussed. Up to the date on which Act 48 of 1950 came into force, the High Court had inherent power to punish contempt of an Industrial Tribunal, based on its correlative duty to protect such a Tribunal from contempt of it. It is not necessary for our present purpose to discuss the position in law at a time when the statutory power of correction of subordinate

courts was so to speak suspended, i.e., between 1937 and 1950

when the Government of India Act, 1935 was in force. Article 227 of the Constitution, as we have pointed out above, restored that power

previously conferred on the High Court by Section 107, Government of India Act, 1915.

79. Our conclusion of that aspect of the case is that for the contempts with which Mr. Hayles and Sri Govind Swaminathan were charged, the,

only competent authority that has the power to punish is the Labour Appellate Tribunal u/s 30 (2) of Act 48 of 1950 and not the High Court of

Madras.

80. In view of what we have said above about the effect of the Industrial Disputes (Appellate Tribunal) Act, (48 of 1950) on the exercise of the

inherent power of the High Court to punish contempts of an Industrial Tribunal, it may not be necessary to consider at any length the question,

whether the Contempt of Courts Act 12 of 1926 as amended by Act 12 of 1937 and subsequently replaced by the Contempt of Courts Act 32 of

1952 affected that inherent power, though the question was argued at considerable length before us. That the Contempt of Courts Act, 1926, was

declaratory of the inherent power of a High Court to punish contempts of itself and of courts subordinate to it is now well settled. In -- Bathina

Ramakrishna Reddy Vs. The State of Madras, Mukherjea J. observed at p. 151

It may be pointed out in this connection that although the powers of the High Court in India established under the Letters Patent to exercise

jurisdiction as Superior Courts of Record in punishing contempt of their authority or processes have never been doubted, it was a controversial

point prior to the passing of the Contempt of Courts Act, 1926, as to whether the High Court could, like the Court of King's Bench in England,

punish contempt of courts subordinate to it in exercise of its inherent Jurisdiction. The doubt has been removed by Act 12 of 1926 which expressly

declares the right of the High Court to protect subordinate courts against contempt, but subject to this restriction that cases of contempt which have

already been provided for in the Indian Penal Code should not be taken cognizance of by the High Court. This seems to be the principle underlying

Section 2 (3) of the Contempt of Courts Act.

There was also the further limitation on the quantum of punishment that could

be inflicted by the High Court imposed by Section 3 of Act 12 of 1926.

81. In -- "State v. Brahma Prakash", Am 1950 All 556 (Z5), Mootham J. delivering the judgment of the Pull Bench observed at p. 558:

.....he (the counsel) contended that although Art. 215 of the Constitution of India gave power to a High Court as a Court of Record to punish for

contempt of itself, it made no provision for punishment by a High Court of contempts of courts subordinate to it, & that, therefore, after 26-1-

1950, it no longer had that power. We are of the view that there is no substance in this argument. Prior to 26-1-1950 the power of the High Court

to punish for contempt of courts subordinate to it was not to be found in the Government of India Act, 1935, but in the Contempt of Courts Act;

that Act has been preserved by the Constitution of India, and in our opinion..... the power of the High Court to punish for contempt of courts

subordinate to It remains Intact.

Since that decision, of course, the Contempt of Courts Act of 1952 was passed.

82. We have pointed out above that an Industrial Tribunal constituted under the Industrial Disputes Act, 1947 is not a court. Nonetheless we are

expressing no opinion now on the question, whether the Contempt of Courts Act of 1952 applies or not to tribunals which are not courts. If the

Act did not apply to Industrial Tribunals, the position would be that the inherent power of the High Court to punish contempt of an Industrial

Tribunal would have been left intact. But Act 48 of 1950 vested the power to punish contempts of Industrial Tribunal in that Tribunal and also in

the Labour Appellate Tribunal. We have already pointed out that thereafter the High-Court would not invoke or exercise its inherent power to

punish contempts of Industrial Tribunals, though such tribunals were subordinate to it. If the Contempt of Courts Act did apply to Industrial

Tribunals also, the specific provision made in Act 48 of 1950 for, punishment of contempts of Industrial Tribunals excluded the operation of the

general provisions in the Contempt of Courts Act, 1952. In either view of the case, the High Court itself had no power after Act 48 of 1950 came

into force to punish contempts of Industrial Tribunals.

83. Our answer to the second question is therefore to the negative. When a Judge of the High Court is appointed as industrial Tribunal under the

Industrial Disputes Act, he has not the powers of a Judge of that Court to punish persons for contempt of the Industrial Tribunal under Article 215

of the Constitution.

84. Question 3:

With reference to the notice dated 21-4-1954 issued to Sri Govind Swaminathan which is the subject of Contempt Appln. No. 6 of 1954, had

the learned Judge, Mr. Justice E. E. Mack. Jurisdiction to issue the rule as a Judge of this Court?

85. The real question is, whether the High Court had Jurisdiction to issue the rule to Sri Govind Swaminathan to show cause against punishment for

the contempt of court committed by him on 14-4-1954. In answering question 2, we have found (1) the proceedings dated 14-4-1954 were

before the Industrial Tribunal, of which the learned Judge had been the sole member, and that they were not proceedings of the High Court, (2) the

High Court had no jurisdiction to punish the contempt alleged to have been committed on 14-4-1954 and (3) the Industrial Tribunal, of which the

learned Judge had been the sole member, had no Jurisdiction either to punish that contempt. These findings, in our opinion, are sufficient to answer

the third question before us in the negative.

86. One other contention of Mr. Bhashyam the learned counsel for the respondent Sri Govind Swaminathan, we can dispose of at this stage. He

urged that the Industrial Tribunal had become "functus officio" when it gave its award, or at least on the date when the proceedings before that

Tribunal should be deemed to have concluded u/s 20(3) of the Industrial Disputes Act, 1947. His further contentions were, that nothing said or

done subsequent to that date, even if it amounted to contempt of, that Tribunal, was punishable as contempt, and that, in any event, an Industrial

Tribunal which had become "functus" officio" had no power to punish such a contempt It is unnecessary to deal with the second of these

contentions, because we have held that under Act 48 of 1950 it was the Labour Appellate Tribunal and not the Industrial Tribunal that had

Jurisdiction to punish the class of contempts that fell within, the scope of Section 30 (2) of that Act. The contempt alleged to have been committed

by Sri Govind Swaminathan fell within the scope of Section 30 (2) of Act 48 of 1950 despite the charge, that the contempt committed by him on

14-4-1954 was in "facie curiae".

87. We are unable to countenance the contention of Mr. Bhashyam, that there could be no contempt of court punishable as such when the court or

Tribunal, in relation to the proceedings in which the contempt was committed, has ceased to exist. Whether it is a case envisaged by Mr.

Bhashyam, "'the cause is dead; the court lives'", or it is a case of the cause being determined and the court that determined it also ceasing to exist,

anything in contempt of such a court is punishable as contempt of court. Whether that court itself could punish that contempt does not affect the

question. We need only refer again to the observations of Wills J, in 1906 1 KB 32 (V)", on what is the true concept of contempt of a court to

reject the contention, that there can be no contempt of a court or Tribunal which has ceased to exist. At p. 40 of the report in King v. Davies (V)",

Wills J. observed:

What then is the principle which is the root of and underlies the cases in which persons have been punished for attacks upon courts and

Interferences with the due execution of their orders? It will be found to be, not the purpose of protecting either the court as a whole or the

Individual judges of the court from a repetition of them, but of protecting the public, and especially those who, either voluntarily or by compulsion,

are subject to its jurisdiction, from the mischief they will incur if the authority of the tribunal be undermined or impaired.

The continuity Contemplated, which has to be protected from attack is of the administration of justice in accordance with the laws of the State and

of the machinery devised by the State for that administration. Of that machinery, the Industrial Tribunal, of which the learned Judge had been the

sole member, was an integrated part. That it was an "ad hoc" tribunal over which he presided made no difference. In our opinion the power of a

court over a cause has no relevance to and does not determine its power to deal with a contempt of itself.

88. Despite our rejection of the arguments based on the theory of "functus officio", our answer to the third question is in the negative.

89. Question 1:

Is the reference to the Pull Bench competent?

Whether the High Court had Jurisdiction to punish Mr. Hayles and Sri Govind

Swami-nathan for the contempt of court alleged to have been committed by them was the question which our learned brother Mack J. referred to a Full Bench, and about the competence of such a reference there can, in our opinion, be no doubt. That we answered the question of jurisdiction in the negative does not affect the validity of the reference, which was made by a learned Judge of this Court.

90. Another objection which Mr. Bhashyam advanced to the validity of the reference was that the rules framed by this court to regulate the proceedings for contempts of subordinate courts and of the High Court, published in the Rules Supplement Part II, page 28 of the Port St. George

Gazette dated 17-3-1954 had not been complied with before Mack J. took cognizance of the contempt alleged to have been committed (1) by

Mr. Hayles and (2) by Sri Govind Swaminathan. Rules 1 and 2 of these rules run:

Rule 1; Cases of contempt of subordinate Courts referred to the High Court by them, shall first be dealt with in the Administrative side. They will

be placed before the Judge in charge of the District in which the subordinate court making the reference is situated or before the Judge in respect

of whom the contempt is alleged to have been committed as the case may be and the Chief Justice for directions to send the papers to the.

Advocate-General for taking appropriate action.

Rule 2: Applications for contempt filed by the Advocate-General shall be presented in the ""Sessions office and registered and numbered as contempt applications.

These rules, rules of practice, were not meant to be exhaustive. The preamble to the rules themselves specifically recorded that they did not apply

to the proceedings otherwise specifically provided for by Order 21 of the rules of the High Court, 1927, in relation to the Original side. As the

learned Advocate-General rightly pointed out, these rules could not obviously refer to cases of contempt "in facie curiae". In the case of Sri

Govind Swaminathan, the charge was that he committed contempt "in facie curiae". It is no doubt true that before the rules were issued to Mr.

Hayles and Sri Govind Swaminathan, the orders of the Chief Justice were not obtained and the papers were not sent to the Advocate-General

under Rule 1." The Advocate-General had no opportunity to comply with B. 2 to file applications for contempt. But non-compliance with these

rules of practice could not affect "the validity of the rules issued by Mack J., had the High Court Jurisdiction to Issue those rules to show cause

why they should not be punished for contempt of court.

91. In (1821) 106 ER 918 (Q)", Bayley J. observed at p. 922:

Besides, the rule which requires personal service, is merely a rule of practice, of which every court judges for Itself.

The Jurisdiction invoked by the learned Judge to Issue the rules was the Jurisdiction of the High Court, and non-compliance with the rules of

practice by itself did not affect that Jurisdiction.

92. We answer question 1 in the affirmative, and we hold that the reference to the Full Bench was competent.

93. Question 4: In view of what we have held, that the High Court had no jurisdiction to punish either Mr. Hayles or Sri Govind Swaminathan

upon proof, that the contempts with which they were charged had been committed, we find it unnecessary to answer this question. Should the

question, whether even a prima facie case of contempt has been made out, ever come up before the appropriate tribunal which has jurisdiction to

decide it, no discussion of ours on these points should embarrass them.

94. We shall record again our answers to the questions which we set down for determination.

Question 1: The reference to the Pull Bench Is competent.

Question 2: When a Judge of the High Court is appointed as Industrial Tribunal under the Industrial Disputes Act, he has not the powers of a

Judge of that High Court to punish persons for contempt of the Industrial Tribunal under Article 215 of the Consti-tution.

Question 3: No learned Judge of this Court had the jurisdiction to issue the rule dated 21-4-1954 to Sri Govind Swaminathan to show cause why

he should not be punished by the High Court for contempt of court.

Question 4: We consider it unnecessary to answer this question.

95. Basing our order principally on our find-ings under question 2, we direct that the rule dated 6-4-1954 issued to Mr. Hayles and the rule dated

21-4-1954 issued to Sri Govind Swaminathan be discharged.

96. We thank the learned Advocate-General for his invaluable assistance. It was in response to the notice, issued to him by this Court he appeared

before us to assist the Court.