

(2015) 07 AHC CK 0149

In the Allahabad High Court

Case No : Contempt Application (Criminal) No. 1 of 2005

In Re : Pradeep Kumar Arora and Others

Date of Decision : 23-07-2015

Acts Referred:

Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 12, 13, 13 (3)

Citation : (2016) 1 ACR 450 : (2015) 7 ADJ 593

Hon'ble Judges : Sudhir Agarwal, J; Dinesh Gupta, J

Bench : Division Bench

Advocate : Sudhir Mehrotra, for the Appellant

Final Decision : Allowed

Judgement

Sudhir Agarwal, J—This Criminal Contempt has been registered pursuant to proceedings of criminal contempt initiated by writ Court in Writ Petition No. 16724 of 2002 (Pradeep Kumar Arora and another v. State of U.P. and others) wherein the Court while deciding the matter finally, formed an opinion that two petitioners are guilty of concealment of material facts from Court and have obtained interim order by such concealment, therefore, are prima facie guilty of criminal contempt. The Court formulated following charge against both the petitioners (hereinafter referred to as "Contemners") in its judgment dated 2.2.2005 whereby writ petition was finally decided and dismissed.

"That you, Pradeep Kumar Arora and Dr. Kailash Nath Gupta filed the writ petition giving an impression that there was no requirement of any specialisation in a particular subject-while making the appointment in Education Department; you concealed, knowingly and purposely, the fact that none of you had joined in the College of your placement by the Director of Higher Education nor you have stated that you had approached the Committee of Management of the respective institutions where you had been given the placement by the Director of Higher Education and the Committee of Management did not issue the appointment letters; you did not disclose that your appointment itself came to an end by operation of law as well as in terms of your placement order as you failed to join

the respective College of your placement within the stipulated period; and by suppressing these facts, you succeeded in obtaining interim order; though petitioner No. 1 joined but petitioner No. 2 did not join at the College in Bijnor in view of the interim order of this Court dated 24.4.2002, thus, played fraud upon the Court in order to get the placement of petitioner No. 1 in N.A.S. College, Meerut as the petitioner No. 2 is still working in Azamgarh."

Since criminal contempt proceedings are to be heard by a Bench assigned with such jurisdiction by Hon'ble The Chief Justice, therefore, it was registered separately as Criminal Contempt No. 1 of 2005 and proceeded accordingly. Presently, pursuant to Hon'ble Chief Justice's nomination vide order dated 26.3.2015, it has come-up before this Court.

2. The facts in brief, to understand as to what was concealment on the part of contemnors, which has constituted a "criminal contempt", it would be appropriate to have a bird eye view of facts involved in writ petition. No. 16724 of 2002.

3. U.P. Higher Service Commission (hereinafter referred to as the "Commission") issued an Advertisement No. 29 for making recruitment against vacancies of "Lecturers" in higher education colleges in State of U.P. pursuant to provisions of U.P. Higher Education Service Commission Act, 1980 (hereinafter referred to as the "Act, 1980") read with U.P. Higher Education Service Commission Rules, 1981 (hereinafter referred to as the "Rules, 1981") and U.P. Higher Education Services Commission (Procedure for Selection of Teachers) Regulations, 1983 (hereinafter referred to as the "Regulation, 1983").

4. The two petitioners were selected in the aforesaid recruitment. The Commission sent a List dated 7.7.2001, containing names of 121 successful candidates, selected by Commission for the post of Lecturers in B.Ed. Classes in various Higher Education Colleges. Contemnor No. 1-Pradeep Kumar Arora, was allotted vacancy of "Lecturer" in Vardhman College, Bijnor while contemnor No. 2-Dr. Kailash Nath Gupta, was allocated vacancy of Lecture in Nanakchand Anglo Sanskrit College, Meerut (hereinafter referred to as "N.A.S. College, Meerut"). Both these contemnors, instead of joining at their respective colleges, moved application before Director, Higher Education, requesting for interchange of their placement. The Director, instead of acceding to their request, proceeded to recommend one Harender Kumar, another selected candidate, to be appointed at N.A.S. College, Meerut for the reason that in the List dated 7.7.2001, contemnor No. 2-Dr. Kailash Nath Gupta was shown to have been selected in general category candidates but he was actually selected in OBC category candidates, and therefore, was placed at Serial No. 2 in the said list. Both contemnors then filed writ petition before this Court seeking following reliefs:

"(A) To, issue a writ, order or direction in the nature of mandamus commanding the respondent No. 1 to consider the claim of the petitioners for exchange of their placement order, in view of the fact that the petitioner No. 1 is on merit at

Sl. No. 44 and petitioner No. 2 is at Sl. No. 55 against the General Category and both are prepared to exchange their place of posting.

(B) To, issue a writ, order or direction in the nature of mandamus directing the respondent authorities to take immediate decision on the representation and the affidavit made by both the petitioners within the stipulated period in view of the fact that the petitioner No. 1 is senior to petitioner No. 2 in merit and once the vacancy is available and no other claimant in the General Category is available, the petitioner No. 1 is entitled for placement at the place of petitioner No. 2 and since the post vacated by the petitioner No. 1, in alternative, can be given to the petitioner No. 2 according to his claim by exercising the power under Section 13 (3) read with Section 12, Section Proviso of the Act of 1980.

(C) To, issue any other writ, order or direction which this Hon"ble Court may deem fit and proper on the facts and circumstances of the present writ petition filed by the petitioners before this Hon"ble Court.

(D) To, award the costs of the writ petition to the petitioners"

(Emphasis added)

5. Some of material facts pleaded in writ petition by contemnors are that both were selected in general category candidates list, placing contemnor No. 1- Pradeep Kumar Arora at Serial No. 42 and contemnor No. 2-Dr. Kailash Nath Gupta at Serial No. 55 and both could be exchanged, particularly, considering the fact that in application filed by contemnor No. 1 before Commission, he has given preference of college at Meerut at Serial No. 1 and he is higher in merit list, therefore, entitled to such place of choice. Reliance was placed on Sections 12 and 13 of Act, 1980, stressing that order of preference shown by candidates shall be given due consideration by the authorities concerned. The colleges of preference given by contemnors No. 1 and 2 were mentioned in Paras 11 and 12 of writ petition, as under:

"11. That the petitioner No. 1 has provided preference to the institution in the following manner:

- (1) N.A.S. College, Meerut.
- (2) Meerut College, Meerut.
- (3) K.V. Degree College, Machra, Meerut.

12. That so far as petitioner No. 2 is concerned, he has provided preference in respect to the colleges in the following manner:

- (1) N.A.S. College, Meerut.
- (2) M.L.K. College, Balampur.
- (3) Kisan College, Bahraich.

(4) Vardhman College, Bijnor."

6. Writ petition was prepared on 16.4.2002 and filed whereupon, this Court on 24.4.2002 passed an ex-parte interim order to the following effect:

"In the meantime we direct the petitioner No. 1 and 2 may inter change their posting. In other words, petitioner No. 1 is permitted to join as Lecturer in Education in N.A.S. College, Meerut while petitioner No. 2 may join at Vardhman College, Bijnor till further orders."

(Emphasis added)

7. Pursuant to interim order dated 24.4.2002, contemnor No. 1 joined at N.A.S. College, Meerut but contemnor No. 2 did not join at Vardhman College, Bijnor.

8. On 22nd May, 2002, Ompal Singh (respondent No. 5 in the writ petition) filed an impleadment application seeking recall of order dated 24.4.2002 stating that since Contemnor No. 1 did not join at N.A.S. College, Meerut, therefore, his placement order was cancelled by competent authority and vide order dated 24.1.2002, Director, Higher Education informed N.A.S. College, Meerut about placement of one Harender Kumar for appointment in the said College.

9. Challenging placement order, Ompal Singh also filed a Writ Petition No. 14938 of 2002 claiming his own placement at N.A.S. College, Meerut whereupon Court on 12.4.2002 had passed following interim order:

"It has been averred in writ petition that petitioner is M.A. in Mathematics and M.Ed as also Gold Medallist in M.Phil.

The advertisement was made for Nanak Chand Anglo Sanskrit College Meerut for the post of Lecturer having qualification B.Ed./Mathematics. The petitioner is specialized in Mathematics whereas Harandra Kumar respondent No. 5 is M.A. in History and prima facie is not eligible.

Considering the averments in the writ petition particularly the fact that respondent No. 5 is allegedly not qualified for appointment on the said post we stay the impugned order dated 24.1.2002 (Annexure-1 to the Supplementary Affidavit).

However it is clarified that if respondent No. 5 has a degree in M.A. Mathematics then this interim order will be inoperative."

(Emphasis added)

10. It was also pointed out by Shri Ompal Singh that contemnor No. 2-Dr. Kailash Nath Gupta was earlier selected by Commission pursuant to Advertisement No. 28 for the post of Lecturer and was appointed as Lecturer (B.Ed.) in Maltari College, Azamgarh but this fact was not disclosed by him in the writ petition filed by contemnors in which an interim order dated 24.4.2002 was passed.

11. In rejoinder affidavit to the impleadment application filed by Shri Ompal Singh, it was also brought to the notice of Court that despite the intimation dated 24.1.2002 allocating Harender Kumar for appointment at N.S.A. College, Meerut, he was not permitted to join and reason was communicated by management of N.A.S. College, Meerut to the Director by letter dated 31.1.2002, but this fact was not disclosed in the writ petition.

12. On behalf of Director, Higher Education, a counter affidavit was filed in the writ petition filed by two contemnors, stating, while allocating selected candidates to various colleges, due regard is given to preference indicated by candidates as also the requirement of colleges. Justifying placement of Contemnor No. 1 against vacancy in Vardhman College, Bijnor, it was pointed out that requirement of college for Lecturer (B.Ed.) was with specialisation in Commerce while in N.A.S. College, Meerut, the management required Lecturer (B.Ed.) with specialisation in Mathematics. It is on account of these reasons, contemnor No. 1 was given placement at Vardhman College, Bijnor and contemnor No. 2 was given placement in N.A.S. College, Meerut. It was also said that mutual exchange or interchange was not permissible as that may result in suppression to claim of other successful candidates. It was also pointed out that contemnor No. 2 was wrongly shown in list of general candidates and that was modified by Commission by placing contemnor No. 2 in list of OBC category candidates at Serial No. 2. Consequently, on 13.5.2003, this Court passed following order:

"The petitioner No. 2 has sworn affidavit on personal knowledge and made false averments in para 32 of the writ petition. He is directed to remain present before this Court on 22.5.2003 at 2.00 p.m. to explain under what circumstances he has made factual averments in para 32 that the vacancy of commerce has ever been advertised in N.A.S. College Meerut and how he has verified this fact on personal knowledge in his affidavit. He is directed to file affidavit explaining his conduct why he should not be dealt with criminal contempt. List this petition for further hearing on 22.5.2003 at 2.00 p.m."

(Emphasis added)

13. Para 32 of the writ petition, which was referred by this Court in order dated 13.5.2003, reads as under:

"32. That it is necessary to mention here that the said Harendra Kumar belongs to B. Ed. subject History, while no post in the B.Ed. History is available in N.A.S. College, Meerut. The said institution requires only lecturer in the subject B.Ed. Math and Commerce. In the similar manner, the institution Vardhman College, Bijnor requires the lecturers in B.Ed. in the subject Math and Commerce. The director of education is ignoring the requirement of the institution and trying to adjust another candidate rather considering the grievance of the petitioner before this Hon"ble Court."

(Emphasis added)

14. Contemnor No. 2-Dr. Kailash Nath Gupta filed affidavit seeking to explain the averments made in para 32 stating that it was made on the basis of report of management of college and an apology was also tendered.

15. When writ petition was heard finally and judgment reserved on 19.1.2005, the writ Court passed following order:

"Judgment reserved.

Shri Kailash Nath Gupta, petitioner No. 2 is directed to file his affidavit as under what circumstances he had made averments in paragraph 32 of the petition regarding placement of Harender Kumar, and as to whether he was aware of the cancellation of his placement in N.A.S. College, Meerut.

Affidavit be filed within ten days from today.

Director of Higher Education is directed to transmit the original record of the appointment/placement of Lecturer in Education Department in N.A.S. College, Meerut as well as Vardhman College, Bijnor alongwith the order cancelling the placement of Shri Kailash Nath Gupta in N.A.S. College, Meerut and the application sent by the Committee of management of that College for the cancellation of his placement for not joining within time.

The record may be transmitted forthwith and in any case not later than one week from today.

Copy of this order may be given to the learned Chief Standing Counsel S.M.A. Kazmi by tomorrow."

16. The contemnor No. 2 filed supplementary affidavit in which he did not explain as to how he come to know about Letter dated 24.1.2002 regarding placement of Harender Kumar in N.A.S. College, Meerut, though regarding his own cancellation of placement, he said that no such letter was communicated to him.

17. The writ Court found that in select list dated 7.7.2001, in general category candidates list, contemnor No. 1 was at Serial No. 52 while contemnor No. 2 was shown at Serial No. 55, though mentioning OBC Candidate against the name of contemnor No. 2. In the list of O.B.C. Category candidate, Harender Kumar was at Serial No. 1 and Om Pal Singh was at Serial No. 2.

18. Director, Higher Education issued letter dated 22.1.2001 intimating the Management of Vardhman College, Bijnor regarding appointment of contemnor No. 1 as lecturer (B.Ed.) in that college and Management was directed to issue appointment letter giving 21 days" time for joining to candidates. The said letter was also endorsed to Principal of College and Contemnor No. 1. It was also specifically mentioned in the said letter, if the selected candidate failed to join the post on the basis of letter issued by Management of the college, then it shall be presumed that he is not desirous to join the post, and in such circumstances, his name shall not be considered in any other college and appointment shall automatically stand cancelled. A similar letter dated 23.10.2001 was issued in

respect of contemnor No. 2 to Management of N.A.S. College, Meerut with the copy to the contemnor No. 2. These two letters were not brought on record before writ Court since petitioners did not file copy of said letters in the writ petition. Writ Court further came to the conclusion that facts about placement of Harender Kumar in N.A.S. College, Meerut vide Director's letter dated 24.1.2002 was deliberately not disclosed though petitioners were aware that Management is going to appoint Harender Kumar at N.A.S. College, Meerut, which facts were actually stated in para 32 of the writ petition but basis of such statement of fact was not disclosed.

19. It is in these circumstances and due to false and misrepresentation of Contemnors, an interim order was passed giving benefit to Contemnor No. 1 enabling him to join as lecturer at N.A.S. College, Meerut and writ Court, therefore, inferred that petitioners are guilty of concealment of material facts and thereby obtained a favourable interim order, which otherwise could not have been passed, if correct facts would have been disclosed.

20. Before this Court, reply to counter affidavit has been filed by contemnor No. 2-Dr. Kailash Nath Gupta vide affidavit sworn on 25.2.2005. It is said therein that Advertisement No. 29 of 2000 was published on 5.7.2000 for making recruitment on the post of lecturer in B.Ed. in various colleges. In the said advertisement (Annexure No. 2 to the affidavit), there was no mention of such subject. Preferential subject in respect to Subject Lecturer was Education (B.Ed.). Alongwith application form issued to candidates there was detail about number of colleges wherein vacancies exist in reference to different subjects. For subject B.Ed., fifty five colleges were notified. Out of 55 colleges, against 9 colleges preferential subject was mentioned. Preferential subject was not mandatory requirement otherwise it must have been mentioned against all colleges notified with subject B.Ed. The requirement of such subject was only on account of demands of college rather than operation of law.

21. The result of selection was declared on 7.7.2001 (Annexure 4) to the affidavit. So far as Vardhman College, Bijnor is concerned, whereof Contemnor No. 1 was given placement, there was no requirement of any preferential subject. The qualification for Lecturer (B.Ed.) prescribed in statute 11.13 (2) of 1st Statute of Chaudhary Charan Singh University (hereinafter referred to as "Meerut University") is as under:

"11.13(2) In the case of any college affiliated to the University, the following shall be the minimum qualification for the post of a Lecturer in the Faculty of Education:

(a) an M.Phil degree or a recognised degree beyond the Master's level or published work indicating the capacity of the candidate for independent research work; and

(b) a consistently good academic record with at least first or high second class Master's degree in Education and also Master's degree or an equivalent degree

of a foreign University, in a relevant subject."

22. Under the statute, therefore, for appointment on the post of Lecturer (B.Ed.), there is no requirement of any preferential subject. An advertisement contrary to statute could not have been published. It was not the requirement of law but depends upon specific demand of College made to Director, Higher Education. Before issue of Letter dated 22.12.2001 by Director Higher Education in respect of appointment of Contemnor No. 1 in N.A.S. College, Meerut, Management sent a Letter dated 27.11.2001 changing its specific demand and intimating Director, Higher Education for placement of Lecturer (B.Ed.) with preferential qualification in Commerce and Biology. Contemnor No. 1, on the basis of Management's altered demand with regard to preferential subject, moved application before Director for change of his placement from Vardhman College, Bijnor to N.A.S. College, Meerut and a similar request was made by Contemnor No. 2 for change of his placement from Meerut to Bijnor. For Vardhman College, there was no requirement of preferential subject and hence there was no concealment of misrepresentation on part of petitioners before writ Court. It is then further said that Director, Higher Education issued intimation dated 23.10.2001 for placement and appointment of Petitioner No. 2/Contemnor No. 2 at N.A.S. College Meerut with direction to Management to issue appointment letter giving 21 days' time for joining pursuant where to, Manager, N.A.S. College, Meerut, issued letter on 19.11.2001 directing petitioner No. 2 to join within 21 days from the date of issuance of said letter. Management by Letter dated 23.3.2002 then informed the Director, Higher Education that Contemnor No. 2, instead of submitting joining, submitted a letter dated 30.11.2001 seeking 15 days' further time for joining, which was allowed but despite that he did not join till 23.12.2001. It is in these circumstances, Management made a request for nomination of another candidate vide Letter dated 5.1.2002 pursuant where to, Director, Higher Education issued Letter dated 24.1.2002 recommending appointment of "Harender Kumar" another selected candidate in N.A.S. College, Meerut.

23. It is also said that petitioner No. 2 sent a Letter dated 18.3.2002 to the College seeking permission to join for which Management sought approval from Director, Higher Education vide letter dated 23.3.2002. Thereafter, writ petition was filed in which interim order was passed on 24.4.2002 and pursuant thereto, Management of Vardhman College, Bijnor issued appointment letter to petitioner No. 2 vide letter dated 1/27 September 2002. There are some more facts stated as to why petitioner No. 2 did not join immediately and delayed the matter but to our mind, real charge on which, petitioners have been found guilty has not been endeavoured to be explained in aforesaid affidavit.

24. On behalf of Contemnor No. 1 also an affidavit in reply to the charge has been filed, sworn vide affidavit dated 25.2.2005, which is similar to the stand taken by Contemnor No. 2. However, minor difference in the facts are about date of issuance of letters by N.A.S. College, Meerut. In Para 10 he has said that Management issued a letter dated 27.11.2001 changing preferential subject as

Commerce and Biology. Director, Higher Education, however, issued letter dated 22.12.2001 directing Management, to issue appointment letter to petitioner No. 1 giving 21 days time to join, and in case, he does not join within time, appointment shall automatically stand cancelled. Copy of this letter dated 22.12.2001 is Annexure 5 to the affidavit. Petitioner No. 1 in the light of changed demand of Management of N.A.S. College, Meerut requested Director, Higher Education by submitting an application for change of placement from Vardhman College, Bijnor to N.A.S. College, Meerut and a similar request was made by petitioner No. 2 also. The Management issued Appointment letter dated 1.2.2002 (Annexure 6 to the affidavit) appointing petitioner No. 1 as Lecturer in BA Department in Vardhman College, Bijnor. The petitioner No. 1 received this letter between 10 February 2002 to 15 March 2002, and on 12.3.2002 made a request for allowing three weeks further time to join. Vardhman College, then issued a letter on 18/29 April 2002 permitting petitioner No. 1 to join positively by 15.5.2002 failing which Director, Higher Education shall be informed accordingly.

25. Rest of reply is similar to what has been said by petitioner No. 2 but nothing has been disclosed to clarify, how they could mention in para 32 of the writ petition that Harender Kumar is being sought to be appointed in N.A.S. College, Meerut, which para was sworn on the basis of personal knowledge in the writ petition and in respect where to the writ Court made a clear observation that despite specifically asked, no explanation has been made in respect to aforesaid averment.

26. A supplementary affidavit has also been filed by contemnor No. 1 vide affidavit, sworn in March, 2015 but we do not find that same has any relevance to real issue in question. The writ Court has specifically found that a specific averment was made at para 32 of writ petition, without disclosing in between facts, giving rise to the statement of facts in para 32 of writ petition how they come to know that Management at N.A.S. College, Meerut is going to appoint Harender Kumar as Lecturer (B.Ed.) therein. On these aspects, neither before the writ Court nor before this Court, anything has been said. The petitioner No. 1 has tried to clarify his position that at Vardhman College his appointment was allowed to remain open on 6.5.2002, and therefore, his appointment has never stood cancelled due to non submission of joining within the prescribed time.

27. We are not concerned herewith appointment at Vardhman College, Bijnor but from writ Court's order it is evident that petitioner No. 1 succeeded in getting appointment at N.A.S. College, Meerut pursuant to interim order by, (i) not disclosing the facts that appointment of petitioner No. 2 has already been cancelled; (ii) educational authorities have not issued any placement of another candidate for N.A.S. College, Meerut; (iii) the appointment in N.A.S. College, Meerut is still open to petitioner No. 2 so as to permit exchange with petitioner No. 1; (iv) Management on its own is going to appoint some other candidates, Harender Kumar without there being any appropriate order from Director. Had these facts, would have been clarified in writ petition as already observed by writ

Court, there may not have been any occasion to pass an interim order permitting interchanged joining pursuant where to, petitioner No. 1 could succeed in getting appointment at N.A.S. College, Meerut after obtaining ex-parte interim order dated 24.4.2002.

28. Learned counsel for contemnors attempted to create confusion regarding qualification for the post of Lecturer (B.Ed.) and other aspects though the issue in question is very short. The petitioners drafted writ petition in a manner to show that the two petitioners had been selected and allocated in two colleges; one at Meerut and another at Bijnor. Both have requested for exchange of allocation and made application before Director, Higher Education. The occasion for this interchange is still open to the Director and there is no such subsequent event, which has resulted in cessation of right of appointment/joining of either of two petitioners, hence to persuade the Court for immediate interim order. They stated in para 32 of writ petition that on one hand, Director has not taken any decision on their applications for exchange while on the other hand, he is pressurising the Management to appoint and allow joining of one Harender Kumar at N.A.S. College, Meerut. It is in this background, Court passed ex-parte interim order. If the facts that letter of appointment was issued to petitioner No. 2 by the Management of N.A.S. College, Meerut to join by a particular date but he did not join and, instead, sought extension of time and even that was allowed, still he failed to join, and thereafter, the Management treating the offer of appointment having automatically cancelled, requested Director, Higher Education for sending another selected candidate and pursuant thereto, Director has also issued order allocating Harender Kumar to be appointed as Lecturer in N.A.S. College, Meerut and that is how the Management at Meerut has proceeded to appoint Harender Kumar would have been disclosed, this Court would not have any occasion to pass ex-parte interim order in the manner, it was passed, which benefited Petitioner No. 1 i.e. Contemnor No. 1 to get appointment and joining at Meerut in place of Petitioner No. 2, who has already ceased his right to get appointment at Meerut. The Petitioner No. 1 is beneficiary of concealment of material facts and Petitioner No. 2 has acted in connivance with petitioner No. 1 for such a situation. This is how the petitioners/contemnors were required to explain the averments made in para 32 of writ petition but instead of explaining the same, contemnors have tried to explain various other aspects, which in our view are not germane to issue for purpose of considering this criminal contempt.

29. On concealment of aforesaid facts and whatever was shown in para 32 of writ petition neither before writ Court nor before this Court, any explanation has come forward on part of both the petitioners.

30. It is, thus, clear that petitioners are guilty of not only concealment of material facts but also attempting to mislead this Court so as to obtain an interim order in their favour. The appointment of petitioner No. 2 in N.A.S. College, Meerut having already stood cancelled and another selected candidate

having been nominated, in absence of any challenge to said order making placement of Harender Kumar in N.A.S. College, Meerut, no petition for seeking appointment at N.A.S. College, Meerut at the instance of petitioner No. 2 or anyone else could have been maintainable, and therefore, it is also clear that here is a case where petitioners are guilty of concealment of material facts and thereby obtaining favourable order, hence have committed a criminal contempt.

31. A false statement made in Court or in pleadings or concealment of a fact, intentionally attempted to mislead the Court to obtain favourable order, tends to impede the administration of justice and amounts to criminal contempt. A Constitution Bench in Naraindas Vs. The Government of Madhya Pradesh and Others, AIR 1974 SC 1252 : (1974) CriLJ 924 : (1975) 3 SCC 31 : (1974) SCC(Cri) 727 : (1974) 6 UJ 325 , has said:

"Now there can be no doubt that if a wrong or misleading statement is deliberately and wilfully made by a party to a litigation with a view to obtain a favourable order, it would prejudice or interfere with the due course of the judicial proceedings, and thus, amount to contempt of Court."

32. Every abuse of process of Court though may not amount to criminal contempt but a calculated attempt to hamper due course of judicial proceeding or administration of justice shall definitely amount to contempt of Court. In Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another, AIR 1980 SC 946 : (1980) CriLJ 684 : (1980) 3 SCC 311 : (1980) SCC(Cri) 688 : (1980) 2 SCR 1172 : (1980) 12 UJ 474 , the Court said that in such a case, punishment to contemnor is necessary to prevent the abuse of the process of law and making a mockery of judicial process else it adversely affects the interest of public in administration of justice.

33. In Afzal and another Vs. State of Haryana and others, AIR 1996 SC 2326 : (1996) CriLJ 1679 : (1996) 1 JT 328 : (1996) 1 SCALE 340 : (1996) 7 SCC 397 : (1996) 1 SCR 573 and Mohan Singh Vs. Late Amar Singh Thr. The Lrs., AIR 1999 SC 482 : (1998) 6 JT 98 : (1998) 5 SCALE 115 : (1998) 6 SCC 686 : (1998) 1 SCR 252 Supp : (1998) AIRSCW 3648 : (1998) 7 Supreme 147 , it is held that a false and misleading statement deliberately and wilfully made by a party to the proceedings to obtain favourable order, amounts to prejudice or interference with due course of judicial process, and it will amount to criminal contempt. Every party is under a legal obligation to make truthful statement before Court for the reason that by causing obstruction in due course of justice by concealment or false statement etc., the party undermines and obstructs the very flow of unsoiled stream of justice, which has to be clear and pure, and no one can be permitted to take liberty of it by soiling its purity.

34. In In Re: Sanjiv Datta and Others, (1995) CriLJ 2910 : (1995) 3 JT 538 : (1995) 2 SCALE 704 : (1995) 3 SCC 619 : (1995) 3 SCR 450 : (1995) 2 UJ 786 , the Court said:

"Some members of the profession have been adopting perceptibly casual

approach to the practice of the profession, as is evident from their absence when the matters are called out, the filing of incomplete and inaccurate pleadings, many times even illegible and without personal check and verification, the non-payment of Court fees and process fees, the failure to remove office objections, the failure to take steps to serve the parties, yetal. They do not realize the seriousness of these acts and omissions. They not only amount to the contempt of the Court but do positive dis-service to the litigants and create embarrassing situation in the Court leading to avoidable unpleasantness and delay in the disposal of matter. This augurs ill for the health of our judicial system."

35. Concealment of material facts or making false assertions before this Court amounts to criminal contempt. The concealment/omission or mis-statement of facts by petitioners also amounts to "criminal contempt". (See, Shri Shankatha Prasad Mishra v. Authorised Controller Sri Moti Lal Nehru Inter College, Basupur, District Ghazipur and others, 1996 All LJ 119 ; Dhananjay Sharma Vs. State of Haryana and Others, AIR 1995 SC 1795 : (1995) 4 JT 483 : (1995) 3 SCALE 138 : (1994) 2 SCALE 745 : (1995) 3 SCC 757 : (1995) 3 SCR 964 ; Gulshan Kumar Vs. The Collector, Ghaziabad and others, AIR 1994 All 243 and Dr. Khetpal Singh v. State of U.P. and others, 2009(8) ADJ 355 (DB)).

36. Though, writ Court has observed about the factum of concealment of material facts by petitioners and obtaining relief on the basis thereof, and thereby committing criminal contempt but we have examined the entire matter independently, on the basis of material available on record and have arrived at our conclusions, independently.

37. We, hold both petitioners guilty of committing "criminal contempt" as defined under Section 2(c) of Act, 1971. Thus, charge levelled against Contemnors 1 and 2 stand proved.

38. Now coming to question of sentence, we are of the view that nature of "criminal contempt" committed by petitioners is quite serious. It also amounts to gross abuse of process of law. Therefore, it justify severe punishment.

39. Having given our anxious consideration and serious thought to the entire circumstances and finds conduct of contemnors quite grave and serious, which demand severe punishment, we, award punishment of simple imprisonment of six months to both contemnors and fine of Rs. 2,000/- each. In case of non-payment of fine, contemnors shall undergo further simple imprisonment of three months. Contempt application stands allowed and disposed of accordingly.