

(2008) 04 AHC CK 0233
In the Allahabad High Court

Krishna Kumar Agarwal

APPELLANT

Vs

Sri V.K. Jain and Others

RESPONDENT

Date of Decision : 22-04-2008

Acts Referred:

Contempt of Courts Act, 1971 — Section 12, 19, 2

Citation : (2008) 3 AWC 2238

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Dilip Gupta, J.—This Contempt Petition has been filed against two officers of the U.P. Power Corporation namely Sri V.K. Jain, Executive Engineer and Sri Har Bhagwan Arora, Deputy General Manager as well as against the District Magistrate Ghaziabad, Sri Santosh Yadav and the Tehsildar Hapur, Sri K.B. Singh with the allegation that the opposite parties have willfully disobeyed the interim order dated 10th January, 2005 passed by this Court in Writ Petition No. 54627 of 2004.

2. The aforesaid Writ Petition had been filed by the present petitioner for quashing the demand notices dated 6th April, 2004 and 12th April, 2004 that had been issued by the Executive Engineer/Prescribed Authority, U.P. Power Corporation Limited, Hapur purportedly in exercise of the power conferred u/s 3 of the U.P. Government Electrical Undertakings (Dues Recovery) Act, 1958. In the said writ petition the U.P. Power Corporation Limited, Shakti Bhawan through its Chairman was arrayed as respondent No. 1 while the Executive Engineer/Prescribed Authority, U.P. Power Corporation Limited, Hapur was arrayed as respondent No. 2. The respondents were represented in the Court by their learned Standing Counsel. On 10th January, 2005 when the matter was taken up by the Court, the respondents prayed for and were granted three weeks" time to file the counter affidavit. The petitioner was granted two weeks" thereafter to file the rejoinder affidavit and the petition was directed to be listed thereafter. The

Court, considering the fact that the amount was sought to be recovered from the petitioner who was not a consumer but an employee of the U.P. Power Corporation Limited, also ordered that the operation of the notices/directions dated 6th April, 2004 and 12th April, 2004 issued by the Executive Engineer/ Prescribed Authority shall remain stayed.

3. It has been stated in the petition that the certified copy of the interim order dated 10th January, 2005 was sent by the petitioner to Sri V.K. Jain, Executive Engineer/Prescribed Authority, who has been arrayed as opposite party No. 1 in this Contempt Petition, by registered post (in fact should be speed post) on 7th February, 2005. It has also been stated that this order was sent by post as the said officer refused to receive the same on 18th January, 2005 and 3rd February, 2005. It has also been stated in the petition that when the applicant learnt that the said Executive Engineer was persuading Sri Har Bhagwan Arora, Deputy General Manager, Electricity Division, Ghaziabad, who has been arrayed as opposite party No. 4 in the present Contempt Petition, to initiate the recovery proceedings against the applicant, he also sent the interim order to him by registered post (should be speed post) on 28th February, 2005. In paragraph 5 of the Contempt Petition, it has also been stated that the office of the District Magistrate, Ghaziabad, informed him that a letter had been sent by Sri Har Bhagwan Arora for initiation of the recovery proceedings against him and, therefore, he submitted an application before Sri Har Bhagwan Arora on 30th May, 2005 to bring to his notice the aforesaid interim order dated 10th January, 2005, which application was received in his office on the same date. In paragraph 6 of the Contempt Petition, it has been stated that Sri V.K. Jain persuaded Sri Arora for initiation of the recovery proceedings against the applicant and Sri Arora in turn pressurised Sri Santosh Yadav, District Magistrate, Ghaziabad, who has been arrayed as opposite party No. 2 in this Contempt Petition, to initiate the recovery proceedings. Subsequently, Sri K.B. Singh, Tehsildar, Hapur, Ghaziabad, who has been arrayed as opposite party No. 3 in this Contempt Petition, called the petitioner in his office and when informed about the interim order, merely asked the petitioner to approach Sri V.K. Jain for withdrawing the recovery letter sent to the District Magistrate. The applicant, therefore, submitted applications before Sri Har Bhagwan Arora on 11th July, 2005, 5th August, 2005, 26th September, 2005, 20th October, 2005 and 7th November, 2005 which were received in the office on the same dates and copies of the applications along with the endorsement about receipt have all been annexed as Annexures 6 to 10 to the petition. In paragraph 7 of the Contempt Petition, it has been stated that in spite of the fact that the opposite parties had clear knowledge of the interim order passed by this Court, the applicant was arrested on 9th November, 2005 in the morning by Sri K.B. Singh, Tehsildar, Hapur on the basis of the recovery notices which had been stayed by this Hon"ble Court and put in civil prison. It has also been stated in the subsequent paragraphs that thereafter the wife of the petitioner requested Sri V.K. Jain for releasing her husband from the civil prison but no heed was paid and, therefore,

she had to file a Habeas Corpus in this Court. It is only subsequently that Sri V.K. Jain sent a letter to the Tehsildar on 10th November, 2005 to release the applicant who was then released on 10th November, 2005 from civil prison at about 10.00 PM. In paragraph 12 of the petition, it has been stated that 9th November, 2005 had been fixed for performance of a formal ceremony in connection with the marriage of his daughter Reema Agarwal but the same could not materialise due to his arrest and that his arrest would also be creating hurdles in the performance of the marriage of his daughter.

4. This Court on 20th December, 2005, while entertaining the Contempt Petition, issued notices to Sri Santosh Yadav, District Magistrate, Ghaziabad and Sri K.B. Singh, Tehsildar, Hapur, District Ghaziabad as it found that a prima facie case had been made out.

5. An application dated 13th February, 2006 along with an affidavit sworn on 10th February, 2006 was filed by Sri Santosh Yadav, District Magistrate, Ghaziabad for discharging the contempt notice issued against him. It was mentioned therein that the interim order dated 10th January, 2005 was never served upon him; that on 28th May, 2005 a recovery certificate was sent by the Power Corporation for recovery of the amount and in view of the said recovery certificate, the citation was issued against the petitioner on 24th June, 2005 and it is on the basis of this citation that the petitioner was arrested on 9th November, 2005 as he did not deposit the amount. It has also been stated that the petitioner had challenged the recovery notices dated 6th April, 2004 and 12th April, 2004 but the citation that had been issued was on the basis of the demand notice dated 28th May, 2005 and that when the Executive Engineer sent the letter dated 10th November, 2005, the applicant was released from civil prison.

6. A counter affidavit sworn on 13th February, 2006 was also filed by Sri K.B. Singh, Tehsildar, Hapur repeating almost the same averments that had been made by the District Magistrate in his counter affidavit namely that the citation dated 24th June, 2005 had been issued against the petitioner on the basis of the recovery certificate dated 28th May, 2005 sent by the Power Corporation and that recovery proceedings were initiated against the petitioner on the basis of the demand notice dated 28th May, 2005 and not on the basis of demand notices dated 6th April, 2004 and 12th April, 2004. What needs to be mentioned is that, in the said affidavit there is no averment that the interim order dated 10th January, 2005 passed by this Court in the Writ Petition had not been brought to his notice.

7. This Court on 16th May, 2007 noticed the submissions made by the learned Standing Counsel that neither the District Magistrate nor the Tehsildar were parties to the writ petition and while issuing the recovery certificate dated 28th May, 2005, the Electricity Department did not intimate the authorities about the interim order passed by this Court and the recovery authorities were under the bona fide impression that the recovery was a separate recovery inasmuch as the

notices dated 6th April, 2004 and 12th April, 2004 were involved in the writ petition. The Court, however, was prima facie satisfied that the notices dated 6th April, 2004 and 12th April, 2004 were in respect of the same recovery for which the recovery certificate dated 28th May, 2005 had been issued. The Court, therefore, directed that the matter may be listed on 4th July, 2007 on which date the Tehsildar was directed to bring all the records before the Court.

8. When the matter was taken up on 4th July, 2007, the learned Standing Counsel appearing for the Tehsildar took a stand that the recovery certificate had been issued by the Deputy General Manager of the Power Corporation on 28th May, 2005 despite the interim order passed by this Court and, therefore, the disobedience was on the part of the Deputy General Manager of the Power Corporation as the Tehsildar had simply proceeded to recover the amount pursuant to the said recovery certificate.

9. This Court, therefore, issued notice to the Deputy General Manager of the Power Corporation fixing 1st August, 2007 on which date he was directed to appear in person to explain why he had issued the recovery certificate on 28th May, 2005 despite the interim order passed by the Court. The Court also noticed that in the affidavit filed by the Tehsildar it had not been stated whether he had knowledge of the order of this Court though it was clear that he had knowledge of the order. The Court, therefore, directed the Tehsildar to explain his conduct and he was also directed to appear before the Court on the date fixed.

10. The matter was next taken up by the Court on 1st August, 2007. The Deputy General Manager as well as the Tehsildar appeared before the Court. The Court passed the following order.

Sri Har Bhagwan Arora is present in Court. He is represented by Sri Ranjit Saxena, Advocate, Sri Kunwar Bahadur Singh, opposite party No. 3 is also present.

When it has been pointed out to Sri Ranjit Saxena that the copy of order of this Court dated 10th January, 2005 has been sent by registered post on 07.2.2005 to opposite party No. 1 and on 28.2.2005 it has also been sent by registered post to the opposite party No. 4 and consequently the same has been sent by letter dated 30.5.2005, which has been acknowledged in his office. Such acknowledgement is at page-26 of the Contempt Petition and further an acknowledgment of the letter dated 11.7.2005 is at page-29 why the letter dated 28th May, 2005 has been written by him to the District Magistrate for realisation of the amount. He submitted that he does not possess the copy of Contempt Petition, therefore, he is not able to look into the matter. He requests that the matter may be posted after two weeks to enable him to look into the record and file proper reply in this regard.

List on 21st August, 2007. On that date Sri Har Bhagwan Arora shall appear in person. Sri Kunwar Bahadur Singh, Tehsildar shall also appear in person.

Sri Govind Krishna, learned Counsel for the petitioner, may provide copy of Contempt Petition to Sri Ranjit Saxena by tomorrow.

11. On 21st August, 2007 a counter affidavit was filed on behalf of the Deputy General Manager and a reply was also filed on behalf of the Tehsildar. A week's time was granted to the petitioner to file a reply and the matter was directed to be listed on 5th September, 2007. On the request made on behalf of Sri Ranjit Saxena the matter was adjourned for 6th September, 2007.

12. The Court passed the following order on 6th September, 2007.

Heard Sri Govind Krishna, the learned Counsel for the applicant. Sri Ranjeet Saxena, the learned Counsel appearing for respondent No. 4 and the learned Standing Counsel appearing for the Tehsildar, respondent No. 3.

Pursuant to the earlier order of the Court, the opposite party Nos. 3 and 4 are present in person today.

The applicant alleges non-compliance of the order dated 10.1.2005 whereby the recovery notices dated 6.4.2007 and 12.4.2007 amounting to Rs. 20,98,358/- was stayed by the Writ Court. The applicant alleges that inspite of the stay of the recovery certificates, the Tehsildar arrested the applicant which was pursuant to the letter written by respondent No. 4 dated 28.5.2005 (a copy of which has been annexed as Annexure 2 to the counter affidavit of opposite party No. 4).

Sri Ranjeet Saxena, the learned Counsel for opposite party No. 4, submitted that the opposite party No. 4 was not arrayed as a necessary party in the writ petition and that the letter dated 28.5.2005 was issued to the District Magistrate on the basis of a letter written by Sri V.K. Jain, the Executive Engineer. The applicant submits that the said letter was issued without having the knowledge of the fact that the recovery certificate was stayed by the High Court.

In view of this fact let the notices be issued to Sri V.K. Jain, opposite party No. 1. The Registry is directed to issue notice within 48 hours.

List this matter for admission and for orders on 8.10.2007 by which time the said respondent may file a counter affidavit.

Considering the fact that has been brought on record coupled with the fact that the opposite party No. 4 has retired from service, the opposite party No. 4 is not required to appear in person on the next date but would be represented through its counsel as notices has not yet been discharged against him. In so far as opposite party No. 3 is concerned, he is required to appear again on the next date fixed.

13. A counter affidavit was filed on behalf of Sri V.K. Jain, Executive Engineer opposite party No. 1. The Court directed that the matter be taken up on 29th October, 2007.

14. When the matter was taken up on 29th October, 2007, the Court noticed that

the order-sheet of the case before the Tehsildar clearly shows that the interim order had been served upon him and the plea that had been taken by him was that he had proceeded with the matter since the Deputy General Manager had sent the recovery certificate on 28th May, 2005 and that he was not sure whether the recovery certificate was actually based on the earlier two notices which had been stayed by this Court. Sri V.K. Jain, Executive Engineer put the blame on Sri Har Bhagwan Arora, Deputy General Manager while the latter has put the blame on the former for disobedience of the interim order. In such circumstances, the Court was prima facie of the opinion that charges should be framed against opposite party Nos. 1, 3 and 4.

15. On 20th November, 2007 the Court framed the charges against opposite party Nos. 1, 3 and 4. A reply was filed by opposite party Nos. 1, 3 and 4.

16. I have heard Sri Govind Krishna, learned Counsel for the applicant. Sri Umesh Narain Sharma, learned Senior Counsel assisted by Sri Mayank Agarwal has made submissions on behalf of Sri V.K. Jain (opposite party No. 1.) while Sri P.N. Saxena, learned Senior Counsel has been heard on behalf of Sri K.B. Singh, Tehsildar, Hapur (opposite party No. 3) Sri Ranjeet Saxena has made submissions on behalf Sri Har Bhagwan Arora, Deputy General Manager (opposite party No. 4).

17. The facts relating to opposite party Nos. 1, 3 and 4 are different and, therefore, I propose to separately deal with them.

Opposite Party No. 1

Sri V.K. Jain Executive Engineer/Prescribed Authority U.P. Power Corporation Ltd. Hapur.

18. The charge levelled against Sri V.K. Jain is that though the interim order dated 10th January, 2005 had been brought to his notice, he had sent the communication dated 19th May, 2005 to the District Magistrate, Ghaziabad for recovery of Rs. 25,98,358/- as arrears of land revenue from the petitioner. In paragraph 3 of the Contempt Petition it has been specifically stated that the petitioner made efforts to serve the certified copy of the order upon him on 18th January, 2005 and 3rd February, 2005 but as he refused to receive the same, it was sent by registered post (should be speed post) on 7th February, 2005. The petitioner has annexed as Annexure 3 to the affidavit photostat copy of the communication dated 7th February, 2005 which mentions about the notices dated 6th April, 2004 and 12th April, 2004 and also mentions that this Court had stayed the notices and it also mentions that certified copy of the interim order was enclosed. The petitioner has also enclosed photostat copy of the speed-post receipt dated 7th February, 2005 which shows that the letter was addressed to the Executive Engineer, Vidhyut Vitaran Khand, Town Hall, Hapur. It has also been stated in the petition that despite this, Sri V.K. Jain was persuading Sri Har Bhagwan Arora, Deputy General Manager to initiate the recovery proceedings and it is because of the pressure exerted by Sri Har Bhagwan Arora on the

District Magistrate that the Tehsildar arrested the petitioner on 9th November, 2005 on the basis of the recovery certificate sent by the Power Corporation.

19. In the counter affidavit, Sri V.K. Jain has denied that he refused to receive the interim order passed by this Court. It has also been stated that the letter sent by speed-post was not received by him and, therefore, he had no knowledge about the order passed by this Court. It has also been denied that he ever persuaded Sri Har Bhagwan Arora for initiating recovery proceedings against the petitioner. It has also been stated that he came to know about the interim order dated 10th January, 2005 only on 9th November, 2005 when the wife of the petitioner apprised him about that, whereupon he made a telephonic call to the learned Counsel for the Power Corporation who had appeared before the Court on 10th January, 2005 who told him that a stay order had been passed by the Court. In the affidavit, however, he has not denied that he sent the letter dated 19th May, 2005 to the District Magistrate for recovering the amount of Rs. 25,98,358/- from the petitioner as arrears of land revenue. It has, however, been stated that the said letter was returned to him with an endorsement that he should give the details of the movable and immovable property of the petitioner.

20. A rejoinder affidavit has been filed by the petitioner. It has been reiterated that the letter was sent to the opposite party No. 1 by speed-post on 7th February, 2005 at the correct address and mere denial of having received the said letter does not serve any purpose since there was no reason for him not to send the certified copy of the order to him.

21. In reply to the charge that had been framed against him almost identical pleas have been taken and, therefore, it is not necessary to repeat the same.

22. Two things that clearly emerge from the pleadings of the parties is that there is no specific denial by Sri V.K. Jain that the letter sent by the applicant by speed post on 7th February, 2005 was not received in his office as all that he states in the affidavit is "that it was not received by him." This apart, what has to be noticed is that the interim order dated 10th January, 2005 had been passed after hearing learned Counsel appearing for the respondent Power Corporation and the learned Counsel had also taken three weeks time to file the counter affidavit. The counter affidavit does not mention that the learned Counsel appearing for the Power Corporation did not intimate the Department that a counter affidavit was to be filed and the High Court had also stayed the operation/directions of recovery pursuant to the notices dated 6th April, 2004 and 12th April, 2004. The postal receipt regarding speed post shows that the letter had been sent to the Executive Engineer, Electricity Distribution Division, Town Hall, Hapur. It was not sent to Sri V.K. Jain by name. In such circumstances the letter would have been received in the office. It was, therefore, incumbent upon him to have specifically stated that the letter was not received in the office in case he wanted to rebut the receipt of the letter but in the counter affidavit all that he states is that the letter was not received by him and, therefore, he had no knowledge of the order passed by this Court. This leads to the inference that the letter had been

received in the office. There also appears to be no plausible reason as to why the petitioner will not serve the certified copy of the interim order upon the Executive Engineer who had issued the notices relating to recovery of the amount. As noticed above, the learned Counsel appearing for respondent-Power Corporation had also appeared before the Court on 10th January, 2005 when the interim order had been passed and he had also sought time to file the counter affidavit. There is no averment in the counter affidavit that the learned Counsel appearing for the Power Corporation had not intimated the Corporation about the passing of the interim order and nor has any letter of the learned Counsel been filed to show that he had not written to the Department giving intimation about the interim order and the necessity of filing a counter affidavit. The letter, which was sent by the petitioner by speed post, was addressed to the Executive Engineer and, therefore, after its receipt should have been placed before the Executive Engineer.

23. It is true that the communication dated 19th May, 2005 sent by Sri V.K. Jain to the District Magistrate was returned with the endorsement that he should give details of the movable and immovable property of the petitioner but it is equally true that Sri V.K. Jain had also sent a copy of the letter dated 19th May, 2005 to Sri Har Bhagwan Arora as a result of which Sri Har Bhagwan Arora sent the communication dated 28th May, 2005 to the District Magistrate, Ghaziabad for recovering the amount of Rs. 25,98,358/- as arrears of land revenue which fact is apparent from the communication dated 28th May, 2005 sent by Sri Har Bhagwan Arora to the District Magistrate, Ghaziabad. It is on the basis of this letter dated 28th May, 2005 that the recovery citation was issued which ultimately led to the arrest of the petitioner on 9th November, 2005. Sri V.K. Jain, therefore, cannot contend that the petitioner was not arrested on the basis of the letter dated 19th May, 2005 sent by him.

Opposite Party No. 4

Har Bhagwan Arora, Deputy General Manager, Electricity Distribution Division, Hapur Ghaziabad.

24. It has been mentioned in this petition that a certified copy of the interim order was sent to Sri Har Bhagwan Arora by Registered Post (should be Speed Post) on 28th May, 2005 and the copy of the communication dated 28th February, 2005 along with the postal receipt of the Speed Post dated 28th February, 2005 has been annexed as Annexure 4 to the Contempt Petition. A perusal of the letter indicates that the interim order dated 10th January, 2005 passed by this Court staying the recovery notices dated 6th April, 2004 and 12th April, 2004 was enclosed. The postal receipt clearly shows that the envelope was addressed to Har Bhagwan Ji Arora with his designation and complete official address. It has also been mentioned in this petition that subsequently the petitioner brought to his notice the interim order through letters which were served in his office on 11th July, 2005, 5th August, 2005, 26th September, 2005, 20th October, 2005 and 7th November, 2005 and copies containing the

endorsement about receipt of the letters have been annexed as Annexure 6 to 10 to the Contempt Petition. The charge against him is that in spite of service of the aforesaid interim order he sent the communication dated 28th May, 2005 to the District Magistrate, Ghaziabad for recovery of the amount from the petitioner.

25. In the first counter affidavit filed by him along with the application dated 1st August, 2007, it has been stated that Sri V.K. Jain Executive Engineer had sent the communication dated 19th May, 2005 to the District Magistrate, Ghaziabad regarding the recovery to be made from the petitioner but a copy of this letter was also endorsed to him and it is only on the basis of the said letter that he sent the letter dated 28th May, 2005 to the District Magistrate. It has also been stated that at no point of time he was shown the copy of the stay order of the High Court and he had no knowledge about the stay order of the High Court. However, in the subsequent counter affidavit, which was sworn on 21st August, 2007, he has denied that the letter dated 28th February, 2005 which was sent to him by speed post was received and in support thereof he has placed the communication dated 16th August, 2007 sent by the Superintending Engineer. This communication mentions that the letters dated 28th May, 2005, 30th May, 2005, 11th July, 2005, 5th August, 2005, 26th September, 2005 and 20th October, 2005 have not been entered in the diary register. It has also been mentioned in the counter affidavit that the endorsement contained in the letters regarding receipt are false and that he was not a party in the writ petition and, therefore, the contempt petition is not maintainable.

26. Thus, from the averments made in the various affidavits it is clear that there is a dispute about service of the interim order as Sri Har Bhagwan Arora has not only stated that the letter sent by Speed Post was not entered in the diary register but has also denied the receipt of the various communications said to have been served by the petitioner in his office. It is not the case taken up by him that the letter sent by Speed Post was not sent at the correct address. It is also not the case taken up by him that the interim order does not exist in the files of the Department and all that he has stated is that the said letter was not entered in the diary register and from this a presumption is sought to be drawn that the said letter is not on the record.

27. Sri Ranjit Saxena learned Counsel appearing for Sri Har Bhagwan Arora, however, submitted that the postal receipt of the letter dated 7th February, 2005 sent by speed post to Sri V.K. Jain is numbered 1920 but the number of the postal receipt of the letter dated 28th February, 2005 sent to Sri Har Bhagwan Arora on a subsequent date is 1288. He, therefore, submitted that false receipts have been filed by the petitioner. In the rejoinder affidavit it has been stated that the receipts are genuine and separate booklets must have been utilised by the Post-Office. It needs to be mentioned that Sri Har Bhagwan Arora has not made any effort to find out from the post-office whether the receipt is correct or not and only a presumption is sought to be drawn from the Serial Nos. contained in the receipt that it is false. It has, therefore, to be presumed that the letter sent

by Speed Post was received in his office and since the letter is addressed to him there is no reason why the said letter should not have been placed before him.

28. Sri Ranjit Saxena, learned Counsel further submitted that Contempt Petition does not lie against Sri Har Bhagwan Arora as he was not a party in the writ petition. This contention cannot be accepted in view of the decision of the Supreme Court in *The Aligarh Municipal Board and Others Vs. Ekka Tonga Mazdoor Union and Others*, wherein it was observed:

...a command to a body corporate is a command to all who are officially responsible for the conduct of the affairs and if any one of them, who has any part to play in compliance of the orders of the court fails to take action within his power, even though he might not be a party to the original proceedings, is liable u/s 12 of the Contempt of Courts Act.

Opposite Party No. 3

K.B. Singh, Tehsildar Hapur, District Ghaziabad

29. The charge against him is that in spite of specific knowledge of the interim order dated 10th January, 2005 he arrested the petitioner on 9th November, 2005 in the morning on the basis of the citation dated 24th June, 2005 which was issued pursuant to the notice dated 28th May, 2005 sent by Sri Har Bhagwan Arora.

30. In the first affidavit filed by Sri K.B. Singh along with an application dated 13th February, 2006, all that has been stated is that on 28th May, 2005 a recovery certificate was sent by the Power Corporation and, therefore, the citation was issued on 24th June, 2005 requiring the petitioner to deposit the amount but as the petitioner did not deposit the said amount he was arrested. It has also been stated that the citation had not been issued on the basis of the demand notices dated 6th April, 2004 and 12th April, 2004. There is, however, no averment in the affidavit that he had no knowledge of the interim order.

31. A reply to the aforesaid affidavit was filed by the petitioner in which the order-sheet of the case before the Tehsildar was enclosed. The order dated 4th August, 2005 passed by the Tehsildar clearly shows that the citation was issued on 24th June, 2005 and the Tehsildar had directed the Naib Tehsildar to study the interim order passed by this Court and give his comments. The order sheet also shows that comments were subsequently submitted by the Naib Tehsildar mentioning therein that the petitioner had submitted the interim order dated 10th January, 2005 before the Tehsildar on 29th June, 2005 while the recovery certificate had been sent by the Deputy General Manager on 28th May, 2005. It also mentions that the District Magistrate was not impleaded as a respondent in the writ petition and since the order passed by this Court on 10th January, 2005 was prior to the issuance of the recovery certificate dated 28th May, 2005, the recovery can be made from the petitioner. It is on the basis of the aforesaid comments that the Tehsildar directed the Naib Tehsildar on 5th November, 2005

to make the recovery on priority basis.

32. It needs to be mentioned that when these facts were brought to the notice of the Court through the reply filed by the petitioner, this Court on 16th May, 2007 directed the Tehsildar to bring all the records before the Court. It is, therefore, clear that Sri K.B. Singh in the initial affidavit filed by him concealed from this Court the fact that the order dated 10th January, 2005 had actually been served upon him on 29th June, 2005 and that he had directed the Naib Tehsildar to submit his comments and it was on the basis of the comments submitted by the Naib Tehsildar that the recovery proceedings were directed to take place on priority basis. In reply to the said affidavit Sri K.B. Singh has even given to the extent of stating that proceedings against the petitioner would have been taken for stealing the documents from the file of the Tehsildar but action has not been taken since the Contempt Petition is pending in this Court.

33. It is, therefore, clear that the interim order dated 10th January, 2005 had actually been served upon Sri K.B. Singh on 29th June, 2005 who instead of finding out the correct facts either from the office of the Power Corporation or from the Standing Counsel at the High Court thought it proper to seek comments from his Junior Officer namely the Naib Tehsildar and on the basis of the comments submitted by the Naib Tehsildar, he issued the directions for taking recovery proceedings on priority basis.

Discussion

34. Having stated the stand of the petitioner as well as the defence of the opposite parties it has to be seen whether the opposite parties have willfully disobeyed the order of this Court. Section 2(b) of the Contempt of Courts Act, 1971 defines "Civil Contempt" to mean wilfull disobedience of any judgment or order. It is, therefore, clear that disobedience alone will not amount to civil contempt but such disobedience has to be "wilfull".

35. The Supreme Court in *Ashok Paper Kamgar Union v. Dharam Godha and Ors.* (2003) 11 SCC 1 , and in *State of Orissa and Others Vs. Md. Illiyas*, explained the meaning of "wilfull".

36. In *Ashok Paper Kamgar Union* (supra) the Supreme Court explained:

Section 2(b) of the Contempt of Courts Act defines "civil contempt" and it means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of undertaking given to a court. "Wilful" means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose....

37. In *Mohd. Illiyas* (supra) the Supreme Court pointed out:

At this juncture it is desirable to consider the true, import of the word "wilful". An act is said to be "wilful" if it is intentional, conscious and deliberate. (See : Rakapalli Raja Rama Gopala Rao Vs. Naragani Govinda Sehararao and Another,

The expression "Wilful" excludes casual, accidental, bona fide or unintentional acts or genuine inability. It is to be noted that a wilful act does not encompass accidental, involuntary, or negligence. It must be intentional, deliberate, calculated and conscious with full knowledge of legal consequences flowing therefrom. The expression "wilful" means an act done with a bad purpose, with an evil motive.

"Wilful" is a word of familiar use in every branch of law, and although in some branches of law it may have a special meaning, it generally, as used in courts of law, implies nothing blameable, but merely that the person of whose action or default the expression is used is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing, and intends to do what he is doing, and is a free agent. (Per Bowen L.J. in *Re Young and Harston* 31 Ch. D. 174). It does not necessarily, connote blame, although the word is more commonly used of bad conduct than of good. (See *Wheeler v. New Merion Board Mills* (1933) 2 K.B. 669). Whatever is intentional is wilful. (per Day J. in *Gayford v. Chouler* (1898) 1 Q.B. 316). As observed by Russel C.J. in *R. v. Senior* (1899) 1 Q.B. 283, "wilfully" means deliberately and intentionally.

38. The Courts have from time to time emphasised that the contempt power should be exercised with scrupulous care and only when the case is clear and beyond reasonable doubt. It has also been emphasised that punishment is called for when the lapse is deliberate for securing the confidence of the people.

39. In *Monoharlal Vs. Sri Prem Shankar Tandon and Others*, , this Court observed:

Another fact which has to be considered is that contempt proceedings are of an extraordinary nature and they give special power to all the Courts of record. It is a power which is exercise summarily and the Court should be reluctant to exercise this extraordinary power particularly in a civil contempt, and this power should never be exercise if the offence complained of is of a slight or trifling nature and does not cause any substantial loss or prejudice to the complainant. This power should be exercised with scrupulous care and only when the case is clear and beyond reasonable doubt. See *Emperor Vs. Murli Manohar Prasad and Others*, and in the matter of *Muslim Outlook, Lahore*, AIR 1927 LAH 610 (SB).

40. In *R.D. Ram v. Ratan Kumar Tandon* 2007 (9) ADJ 689, this Court observed:

...

The contempt proceedings are quasi-criminal in nature and are, thus, punitive. The standard of proof required to establish a charge in contempt proceedings is the same as in any other criminal proceedings, and has to be proved beyond

reasonable doubt. The guilt of a person for having committed contempt of Court must rest on reasonable certainty. Suspicion, no matter how strong and speculative, must not form the basis of contempt.

41. In *Debabrata Bandopadhyay and Others Vs. The State of West Bengal and Another*, the Supreme Court observed:

A question whether there is contempt of Court or not is a serious one. The Court is both the accuser as well as the judge of the accusation. It behoves the Court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in Courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be punished-----Punishment under the law of Contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged.

42. The Supreme Court in *Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another*, made the following observation:

It may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not in order to protect the dignity of the court against insult or injury as the expression ""contempt of court" may seem to suggest, but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with.

43. In *The Oriental Insurance Company Ltd. Vs. Smt. Narinder Kaur and others*, the Supreme Court while dealing with a case where there was a clear direction observed:

The Contempt of Courts Act, 1971 has been introduced in the Statute Book for the purpose of securing the feeling of confidence of the people in general and for due and proper administration of justice in the country....

44. In *Shiv Lal v. Ram Babu Dwivedi* 2006 (4) ADJ 507, this Court summed up the position as under:

Thus in view of the aforesaid discussions, it is clear that the power of Courts of record is extra-ordinary in nature, therefore, the Courts should be reluctant to exercise this power particularly in a civil contempt and this power should not be

exercised if the offence complained of is of a slight or trifling nature and does not cause any substantial loss or prejudice to the complainant. Even a civil contempt, when the proceedings are taken under the contempt of Courts Act, assumes a quasi-criminal nature, therefore, this power should be exercised with scrupulous care and only when the case is clear and beyond reasonable doubt. Before punishing a person under the provisions of Contempt of Court Act there must be wilful and deliberate defiance of the order of Court, it should not be merely accidental and casual in nature. It is not each and every defiance and disobedience of the order of Court can be held wilful disobedience of the order of the Court. To arrive at a correct conclusion, every aspect of the matter referred herein before inasmuch as bonafide of the contemner is to be examined by the Court dealing with contempt proceedings.

45. It is on the basis of these broad principles that the facts of the present case have to be examined.

46. It is the specific case taken up by Sri K.B. Singh, Tehsildar that the basis for issuing the citation against the petitioner on 24th June, 2005 was the communication dated 28th May, 2005 sent by Sri Har Bhagwan Arora, Deputy General Manager Electricity Department Division, Hapur Ghaziabad to the District Magistrate. Sri Har Bhagwan Arora has stated that he sent the said communication dated 28th May, 2005 on the basis of the communication dated 19th May, 2005 which was sent by Sri V.K. Jain to the District Magistrate, Ghaziabad with a copy endorsed to him.

47. The petitioner states that the interim order dated 10th January, 2005 was served both upon Sri V.K. Jain and upon Sri Har Bhagwan Arora. In this connection he has stated that the interim order dated 10th January, 2005 was not only passed after hearing learned Counsel for the petitioner and the learned Standing Counsel appearing for the Power Corporation and nothing has been brought on record by these two officers of the Power Corporation to show that the learned Counsel did not intimate the Power Corporation about the two orders but that the interim order had been sent to these two officers by speed-post and there is no specific denial by these two officers that the said order was not received in their office. The petitioner has also stated that even subsequently the communications were served in the office of Har Bhagwan Arora on 11th July, 2005, 5th August, 2005, 26th September, 2005, 20th October, 2005 and 7th November, 2005 and in this context the receipts containing the endorsement have been annexed though it has been stated by Sri Har Bhagwan Arora that they have not been entered in the diary register.

48. Sri V.K. Jain and Sri Har Bhagwan Arora have each made an attempt to put the blame on the other. This is clear from the fact that Sri V.K. Jain has stated that the citation was issued on the basis of the communication dated 28th May, 2005 sent by Sri Har Bhagwan Arora and not on the basis of the communication dated 19th May, 2005 sent by him. On the other hand Sri Har Bhagwan Arora has stated that he sent the communication dated 28th May, 2005 to the District

Magistrate only on the basis of the communication dated 19th May, 2005 sent by Sri V.K. Jain. While dealing with the facts relating to Sri V.K. Jain and Sri Har Bhagwan Arora in the earlier part of this judgment it has been observed that the letters sent by the petitioner by speed post to Sri V.K. Jain and Sri Har Bhagwan Arora were received in their offices and there also appears to be no plausible reason as to why the petitioner, against whom recovery notices were issued by the Power Corporation, will not serve the interim order dated 10th January, 2005 passed by this Court on these officers.

49. The evidence on record clearly leads to the inevitable conclusion that the interim order had been served upon Sri V.K. Jain and Sri Har Bhagwan Arora but despite service of it, they sent the communication dated 19th May, 2005 dated 28th May, 2005 respectively. They have, therefore, willfully disobeyed the interim order passed by this Court on 10th January, 2005.

50. As for Sri K.B. Singh Tehsildar, it is clear that the interim order dated 10th January, 2005 was served upon him on 29th June, 2005. What is surprising is that instead of faithfully complying with the order he asked his subordinate to give comments on the interim order and what is also surprising is that he accepted the comments submitted by the Naib Tehsildar that the recovery can be made from the petitioner on the basis of the citation since the officers of the Power Corporation would not have issued the letter dated 28th May, 2005 if this Court had stayed the recovery notices on 10th January, 2005. He has also taken a stand that what had been stayed by the High Court were the notices dated 16th April, 2004 and 12th April, 2004 issued by the Executive Engineer whereas the citation had been issued on the basis of the communication dated 28th May, 2005 and an attempt has, therefore, been made by him to show that there was some doubts. Even if it is assumed that there was any doubt, he should have sought a clarification from the officers of the Power Corporation or the learned Standing Counsel in the High Court or the learned Counsel for the Power Corporation.

51. The question, therefore, that remains to be considered is whether in such circumstances Sri K.B. Singh should have issued directions to the Naib Tehsildar to make recovery on priority basis on the basis of the citation, when the petitioner had placed the interim order passed by this Court before him. This aspect was considered by the Supreme Court in *Bijay Kumar Mahanty Vs. Jadu @ Ram Chandra Sahoo*, and it was observed that if there was any doubt about the order a clarification should have been sought. The observations are:

Police Officers are supposed to be the members of a disciplined force. It is of utmost importance to curb any tendency in them to flout orders of the Court. It is more so when flouting of order results in deprivation of personal liberty of an individual. If protectors of law, to take revenge, defy court orders they will have to be sternly dealt with and appropriate punishment inflicted also with a view to send a message across the board that such an act cannot be countenanced.

...

The High Court, on appreciation of evidence, held that copy of the bail order was produced before the appellant who arrested the respondent despite it. The appellant was held guilty of contempt and was sentenced for civil imprisonment for a period of seven days....

It is of paramount public interest that the people, after obtaining an order of the Court, should not feel helpless or without any remedy when such order is flouted.

...

The rule of law is the foundation of the democratic society. The judiciary is the guardian of the rule of law. If the orders of the court are disobeyed with impunity by those who owe an obligation to the society to preserve the rule of law, not only would individual litigants suffer, the whole administration of justice would be brought into disrepute.

...

...The appellant admitted that as per his belief the respondent had been granted bail. If that was so, appellant would have given an opportunity to the respondent to produce that order instead of arresting him despite that belief. The appellant wanted to arrest the respondent any way.

...

Lastly, it was contended that instead of imprisonment, fine be imposed on the appellant. In a matter of this nature, where a Police Officer, disregarding the bail order, arrests a person because case against him is of alleged assault on a police official, we do not think that mere sentence of fine would meet the ends of justice. No interference is called for in the judgment and order of the High Court.

52. In *Bank of Baroda Vs. Sadruddin Hasan Daya and Another*, the Supreme Court also observed:

Coming to the question of sentence, we are conscious of the fact that the power to punish for contempt must always be exercised consciously, wisely and with circumspection. At the same time, the court should act with seriousness and severity where justice is jeopardized by a grossly contemptuous act of a party. If the judiciary is to perform its duties and functions effectively and true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society (see *In re: Vinay Chandra Mishra* (the alleged contemner),

53. The Tehsildar has an important role to play and great responsibility is placed upon him as certain matters are also decided by him. He is also instrumental in making recoveries and citations are also issued by him. Great care and caution

has to be exercised by him as issuance of the citation results in severe consequences including arrest of the person concerned. Once the interim order dated 10th January, 2005 was placed before him and this interim order clearly mentions that the two recovery notices dated 6th April, 2004 and 12th April, 2004 issued by the Executive Engineer of the Power Corporation have been stayed, he should have respected the interim order and stayed further proceedings in the citation issued by him on 24th June, 2005 but he could not have played with the liberty of the petitioner.

54. The Supreme Court in *Bijay Kumar Mohanty (supra)* pointed out that when flouting of an order results in deprivation of personal liberty of an individual, an appropriate punishment should be inflicted with a view to send a message across the board that such an act cannot be countenanced because if the orders of the Court are disobeyed with impunity by those who owe an obligation to the society to preserve the rule of law, not only would the individual litigant suffer but the whole administration of justice would be brought into disrepute. It has also been observed that in such a case, mere imposition of fine does not serve the purpose.

55. It has now to be determined what punishment should be imposed upon opposite parties.

56. It is true that the petitioner had not been arrested by Sri V.K. Jain or Sri Har Bhagwan Arora but it is equally true that the citation was issued by Sri K.B. Singh, Tehsildar Hapur on 24th June, 2005 on the basis of the communication dated 28th May, 2005 sent by Sri Har Bhagwan Arora and the said communication was sent by Sri Har Bhargwan Arora on the basis of the communication dated 19th May, 2005 sent by Sri V.K Jain.

57. Taking into consideration the entire facts and circumstances of the case as brought on record, the Court is of the opinion that the ends of justice would be met if a fine of Rs. 2000/- is imposed upon Sri V.K. Jain Executive Engineer (opposite party No. 1) and a fine of Rs. 2000/- is also imposed upon Sri Har Bhagwan Arora Deputy General Manager, Electricity Department Division, Hapur District Ghaziabad (opposite party No. 4). This fine shall be deposited by them within a period of one month before the Registrar General of this Court. The Registrar General of this Court, upon deposit of the aforesaid amount will release the same in favour of the petitioner after due verification by an Advocate of this Court.

58. Sri K.B. Singh Tehsildar is sentenced to civil imprisonment for a period of two weeks. The said sentence shall, however, remain suspended for a period of two weeks from today to enable him to file an Appeal u/s 19 of the Contempt of Courts Act, 1971, if he is so advised. However, in the event the Appellate Court does not suspend the execution of the punishment, the Chief Judicial Magistrate, J.P. Nagar shall immediately take him into custody for serving the sentence.

59. With the aforesaid directions and orders, this Contempt Petition is finally disposed of.

60. Let a copy of this judgment be placed before the Registrar General of this Court and a copy be also sent to Chief Judicial Magistrate, J.P. Nagar.