
(2008) 01 BOM CK 0026
In the Bombay High Court
Case No : Contempt Petition No. 17 of 2007

Prashant Bansilal Bamb

APPELLANT

Vs

Shri Nand Lal, State Election Commissioner and Others

RESPONDENT

Date of Decision : 22-01-2008

Acts Referred:

Constitution of India, 1950 — Article 215, 226, 243, 243E, 243K
Contempt of Courts Act, 1971 — Section 12, 19, 2
Maharashtra Zilla Parishads and Panchayat Samitis (Manner and Rotation of
Reservation of Seats) Rules, 1996 — Rule 4

Citation : (2008) 3 BomCR 119 : (2008) 110 BOMLR 690 : (2008) 3 MhLj 346

Hon'ble Judges : B.R. Gavai, J

Bench : Single Bench

Advocate : P.M. Shah and P.S. Shendurnikar, for the Appellant; N.B. Khandare,
learned G.P. for respondent Nos. 3 and 4 and V.J. Dixit, for the Respondent

Judgement

B.R. Gavai, J.—The present petition has been filed by the original petitioner in Writ Petition No. 6389/2006, thereby pointing out to the notice of this Court the acts of the respondent Nos. 1 and 2, which, according to the petitioner amounts to contempt of court.

2. An order dated 20th June, 2006 prescribing reservation of seats in the electoral divisions of Aurangabad District for Zilla Parishad General Elections, 2007 was issued by the Election Commission for the State of Maharashtra. Writ Petition No. 5386/2006 came to be filed raising a grievance that the reservation of seats for the said elections was not in accordance with the provisions of the Maharashtra Zilla Parishads and Panchayat Samitis (Manner and Rotation of Reservation of Seats) Rules, 1996 (hereinafter referred to as "the said rules" for the same of brevity). The said petition was heard finally by the Division Bench of this Court

The main grievance of the petitioners in the said petition was that as the said rules were not made applicable, the reservations in most of the constituencies

were repeated. It was submitted that if the rotation was worked out in accordance with the said rules, the repetition in reservations would be avoided. A ground was raised by the State Election Commission before the Division Bench of this Court that the said rules of 1996 will not be applicable to the elections which are scheduled to be held in 2007 and they would be applicable only in the subsequent elections that may be held. This Court found that with the increase in the number of electoral divisions the reservation is likely to be repeated in respect of some electoral divisions. This Court further observed that, "however, the respondents ought to exercise proper care to see that as far as possible the reservation is not repeated. This does not appear to have been done. The respondents have not observed the aforesaid Rule 4 of 1996 in its letter and spirit. A ground regarding tenability of the petition in view of the Constitutional bar under Article 243 was also urged before this Court by the State Election Commission. However, this Court found that since the respondents have neither produced before this Court the notification nor have stated the date of notification declaring the election, the said ground was without substance and as such, rejected the said contention.

3. This Court, therefore, vide order dated 3rd October, 2006 made rule absolute in terms of prayer Clause (B) of the said petition, thereby quashing and setting aside the reservation as was directed by order dated 20th June, 2006. This Court further directed the respondents to forthwith allot the reservation by observing the rotation policy in its letter and spirit.

4. After the judgment and order was pronounced by this Court on 3rd October, 2006, a request was made on behalf of the State Election Commission for grant of stay to the judgment and order passed by this Court. Accordingly, this Court had granted stay to the aforesaid judgment and order for a period of 4 weeks from the date of the said judgment and order.

5. Being aggrieved by the judgment and order passed by this Court in W.P. No. 5386/2006, a SLP came to be filed before the Honourable Apex Court. In the SLP the grounds raised were that, (1) the said rules will not have applicability in the elections scheduled to be held in 2006 but it would be applicable only in the subsequent elections; and (2) that if the judgment and order of this Court were to be implemented, then it was impossible to hold the elections within the specified period.

6. The stay granted by this Court to its order dated 3rd October, 2006 was continued by the Honourable Apex Court at the stage of mentioning and thereafter again, on 3rd November, 2006, when the matter was listed for admission. The stay was continued for a period of two weeks.

7. The record shows that some other petitions with respect to the same subject matter were pending before this Court, one of them being W.P. No. 7232/2006. In the said petition, a statement was made on behalf of the State Election Commission on 20th October, 2006, to the effect that, " the State Election

Commission would not declare the election programme until further orders are passed by the Apex Court." In that view of the matter, the Division Bench of this Court did not find it necessary to pass any interim orders in those petitions. It further appears that the matter was again listed before this Court on 20th December, 2007. The matter was heard by the Division Bench of this Court on the said date and it was adjourned to 22nd December, 2006 for orders.

8. In the intervening period, i.e. on 21st December, 2006, an order came to be issued under the signature of the respondent No. 1 thereby publishing the Election Programme for the Zilla Parishads and Panchayat Samitis in the State of Maharashtra.

9. When the aforesaid petitions came up for hearing before the Division Bench on 22nd December, 2006, this Court was informed about the order dated 21st December, 2006 published by the State Election Commission. This Court found that the said notification was nothing else but a willful breach and violation of the judgment and order passed by this Court dated 3rd October, 2006. This Court further found that when the matter was listed on 20th December, 2006, the Election Commission had sought liberty to relieve itself from the undertaking, but, the said prayer was rejected. However, the Division Bench refrained from passing any orders since the SLP was already pending before the Honourable Apex Court.

10. Therefore, on 17th January, 2007, a motion was made before the Honourable Apex court that the Election Commission wants to withdraw the SLP and approach the High Court for review of the judgment and order dated 3rd October, 2006. The Honourable Apex Court, therefore, vide order dated 17th January, 2007 granted liberty to withdraw the SLP.

11. This Court on 14th December, 2007 heard Shri Shah, learned Senior Counsel appearing on behalf of the petitioner and Shri Sachin Shetye, the learned Counsel appearing on behalf of the respondent Nos. 1 and 2. While hearing the learned Counsel for the petitioner, so also, the learned Counsel for the respondent Nos. 1 and 2, affidavits in reply filed on behalf of the respondent Nos. 1 and 2 were considered in detail by this Court. From the perusal of the material on record and upon hearing the learned Counsel for the parties, this Court, came to the prima facie conclusion that the act of the respondents Nos. 1 and 2, in issuing the election programme vide order dated 21st December, 2006 was in disregard and breach of the orders passed by this Court on 3rd October, 2006 in W.P. No. 5386/2006 and in breach of the undertaking given to this on 20th October, 2007 in W.P. No. 7232/2006.

12. Taking into consideration the fact that the respondent No. 2, who happens to be Assistant Commissioner of the State Election Commission, had tendered his unconditional apology to the court at the very first instance in his affidavit in reply and was also personally present in the court, this Court refrained from proceeding further against the respondent No. 2 and the proceeding in so far as

the respondent No. 2 were discharged vide order dated 14th December, 2007.

13. However, this Court, finding that though the respondent No. 1 had filed his affidavit in reply, he had neither admitted his mistake in publishing the order dated 21st December, 2006, nor had he tendered his apology nor was he present in the court; this Court found that this was a fit case wherein the respondent was required to be charged for having committed contempt of this Court as punishable under Article 215 of the Constitution of India and Sub-section 2(b) r/w. Section 12 of the Contempt of Courts Act. This Court, therefore, framed charges against the respondent No. 1 Shri Nandlal, which were as under:

[1] That, your act of issuing order dated 21st December, 2006 in publishing the election programme in disregard to the order passed by this Court in W.P. No. 5386/2006 dated 3rd October, 2007 and specifically when there was no interim order operating after 20th November, 2006, and more particularly, when the matter was pending by way of SLP before the Apex Court, amounts to having committed contempt of this Court as per the provisions of Article 215 of the Constitution of India and Section 2(b) of the Contempt of Courts Act.

[2] That, your act of stating, "AND WHEREAS the State Election Commission is still of the opinion that the Rule regarding the rotation of seats is applicable only in a subsequent general election and the forthcoming general elections of 2007 are the first elections based on 2001 census figures of population" in the order dated 21st December, 2006 signed by you which was the contention of the State Election Commission and which has been specifically rejected by this Court, vide judgment and order dated 3rd of October, 2006 in W.P. No. 5386/2006, amounts to contempt of court as per the provisions of Article 215 of the Constitution and Section 2(b) of the Contempt of Court Act.

[3] That, your act of issuing order dated 21st December, 2006, thereby declaring election programme in breach of the undertaking given to this Court in W.P. No. 7232/2006 alongwith companion petitions and particularly when your request for getting relieved from the undertaking was rejected by this Court on 20th December, 2006, amounts to contempt of court as per the provisions of Article 215 of the Constitution and Section 2(b) of the Contempt of Court Act.

14. Vide order dated 14th December, 2007, this Court directed issuance of summons to the respondent NO.1 Shri Nandlal, to answer the aforesaid charges and show cause as to why he should not be convicted and punished for having committed contempt of this Court. The registry was also directed to issue notice to the respondent No. 1 in Form No. 1, returnable peremptorily on 17th January, 2007.

15. Accordingly, a notice was issued to the Respondent No. 1 Shri Nandlal. Shri Shetye, learned Counsel appeared before this Court on behalf of Shri Nandlal on the returnable date i.e. 17th January, 2008. Prior to that, an affidavit in reply was also filed by the respondent No. 1 sworn on 11th January, 2008 at Mumbai.

16. It appears that though the notice in Form No. 1 was directed to be issued by this Court vide order dated 14th December, 2007, the office had not served so, and mistakenly it was mentioned in the notice that the matter is posted for admission. In that view of the matter, though the respondent No. 1 was not personally present in the court, since a mistaken notice was sent by the registry, absence of Shri Nandlal on the said date was excused by the court. On the said date, Shri shetye made a statement that Shri Y.S. Jahagirdar, Senior Advocate was engaged to argue on behalf of respondent No. 1 and as Shri K.J. Abhyankar, the chamber senior of Shri Jahagirdar had passed away, he had gone to attend his funeral.

17. This Court had peremptorily kept the matter on 17th January, 2008. However, taking into consideration the genuine difficulty expressed on behalf of the learned Senior Counsel Shri Jahagirdar, this Court adjourned the matter till today. It was made clear in the order dated 17th January, 2008 that the matter would be heard finally today.

18. At the request of the learned Counsel for the petitioner, fresh notice in Form No. 1 returnable today was also issued to Shri Nandlal. The said notice was duly served and accordingly, Shri Nandlal, the respondent No. 1 is personally present in the court.

19. Shri Dixit, learned Senior Counsel appears for Shri Nandlal, to answer the charges framed by this Court against Shri Nandlal.

20. In so far as Charge No. 1 is concerned, Shri Dixit submits that the order passed by this Court on 3rd October, 2006 in W.P. No. 5386/2006 was challenged by the State Election Commission before the Honourable Apex Court. It is submitted that the Election Commission was facing great difficulty in implementing the order inasmuch, the provisions of Sub-rule (1) and Sub-rule(2) of the said rules were inconsistent. He submits that if reservation as provided under Sub-rule (1) was to be implemented, then it was difficult to follow sub-rule (2) of Rule 4 and vice versa.

21. It is further submitted that the Election Commission had received the letter dated 12th December, 2006 issued by Shri Makrand Dnyaneshwar Adkar, the learned Advocate who was representing the State Election Commission before the Honourable Supreme Court, wherein he had stated that the Apex Court has orally granted permission to go ahead with the election programme. He, therefore, submits that the act of the respondent NO.1 in issuing the order dated 21st December, 2006 was bonafide, under a legal advise and was in furtherance to fulfill the constitutional mandate as enshrined in Article 243E of the Constitution of India. It is, therefore, submitted that the act was not deliberate one so as to invite consequence under the Contempt of Courts Act.

22. In so far as the Charge No. 2 is concerned, it is submitted that averments mentioned in the second charge, which, in the opinion of the court amounts to contempt of court, were upon interpretation of the Election Commission on Rule

4 of the said Rules. It is, therefore, submitted that since the said averment which were incorporated in the order were on the basis of the interpretation of the Election Commission, it can not be said that the said averments were incorporated in the order so as to commit contempt of the order passed by this Court.

23. In so far as the Charge No. 3 is concerned, it is submitted that the undertaking which was given to this Court by the Election Commission on 20th October, 2006, was to operate only till 6th November, 2006 and not thereafter. It is submitted that the undertaking has not been continued thereafter and as such it can not be said that there was any act on the part of the respondent No. 1 which could be said to be willful, intentional or deliberate act, so as to disobey the orders passed by this Court.

24. Shri Dixit, in addition to the aforesaid specific replies to the charges levelled against the respondent No. 1, has taken the court through the record of various proceedings. Shri Dixit, submits that taking into consideration the increase in population and delimitation of constituencies, it was impossible for the State Election Commission to comply with the order passed by this Court dated 3rd October, 2006. As already submitted by him hereinabove, if sub-rule (1) of Rule 4 of the said rule was to be implemented, then, it was not possible to follow sub-rule (2) and if sub-rule (2) of the said rules was to be implemented then it was not possible to follow sub-rule (1). He, therefore, submits that accordingly the State Election Commission had approached the Apex Court by way of filing a Special Leave Petition, pointing out all these difficulties to the notice of the Apex Court.

25. Shri Dixit further submits that, initially, vide order dated 6th November, 2006, the Honourable Apex Court was pleased to extend the stay granted by this Court for a further period of 2 weeks. He further submits that subsequently since the Election Commission was required to complete the election process on or prior to 20th March, 2007 so as to comply with the constitutional mandate of Article 243E and the law laid down by the Apex Court in the case of Kishan Singh Tomar v. Municipal Corporation Ahmedabad the matter was moved again before the Apex Court on 12th December, 2006. He submits that the learned Counsel appearing for the State Election Commission, mentioned the matter before the Apex Court and intimated the Apex Court that the earlier interim order being time bound, the Election Commission was not in a position to conduct the elections. He further submits that it was also brought to the notice of the Apex Court that the Commission is not in a position to conduct the election in view of the judgment and order of the High Court dated 3rd October, 2006. It is submitted that, Shri Adkar vide letter dated 12th December, 2006 had informed the Election Commission that on such mentioning, the court indicated orally that the Commission can go ahead with the Election Programme and the Honourable Court directed the matter to be listed in the second week of January, 2007. He, therefore, submits that the election programme which was published on 21st

December, 2006 was in pursuance of the letter addressed by Shri Adkar, the counsel appearing for the Election Commission before the Honourable Apex Court.

26. He further submits that thereafter SLP pending before the Honourable Apex Court was withdrawn on 17th January, 2007, with liberty to approach this Court by filing review petition, to seek a review of the orders passed by this Court on 3rd October, 2006. He submits that subsequently, some petitions arising out of the same subject matter had come up before this Court bearing W.P. No. 6389/2006 with companion matters wherein this Court, vide order dated 9th February, 2007, granted liberty to the Election Commission to work out its own modalities and suitable measures to provide for the reservations in accordance with Article 243K of the Constitution and the said Rules. He submits that, in fact, thereafter the elections have been held by complying with the orders issued by this Court dated 3rd October, 2006 and 9th February, 2007. He further submits that as a matter of fact on 17th January, 2007 itself, the notification dated 21st December, 2006 was stayed by the Election Commission. He further submits that the order dated 21st December, 2006 was stayed on 17th January, 2007 and subsequently was not implemented. He, therefore, submits that since subsequently the elections have been held in accordance with the rules, no action for contempt is warranted against the respondent No. 1.

27. Shri Dixit, the learned Counsel appearing on behalf of the respondent relies on the judgment of the Apex Court in the case of Indian Airport Employees Union Vs. Ranjan Chatterjee and another, , Anil Ratan Sarkar and Others Vs. Hirak Ghosh and Others, , Ashok Paper Kamgar Union and Others Vs. Dharam Godha and Others, . He further relies on the judgment in the case of Kishansing Tomar Vs. Municipal Corporation of the City of Amedabad and Others, , to point out that the Election Commission was bound to hold the election programme within the stipulated time frame.

28. He also relies on the judgment of the Apex Court in the case of "Rejesh Kumar Singh v. High Court of Judicature at Madhya Pradesh" in Appeal (Cri.)321 of 2001, in support of the proposition that the contempt jurisdiction is to be exercised sparingly and only in a case where the act of a person amounts to deliberate and willful disobedience of the order passed by the court.

29. It could be seen that the petitioner in W.P. No. 5386/2006 had challenged the reservation as provided by order dated 20th June, 2006 issued by State Election Commission. It was the specific contention of the petitioner that the reservation as provided, was in utter disregard to the said rules.

On being noticed, the State Election Commission appeared in the matter. It was specifically submitted on behalf of the State Election Commission in reply to the said petitions that the said rules were not applicable for the elections to be held in 2007 and the reservation policy as provided in the said rules, would be observed only in the next elections and an affidavit in reply in support of this proposition was also filed on behalf of the Election Commission. This Court, after

hearing the learned Counsel for the parties and after rejecting the contention of the Election Commission that the rules will have to be followed from the subsequent elections and not in the elections in 2007, allowed the said petition in terms of prayer Clause (B). This Court further observed in the said order that the rotation policy was not observed by the Election Commission in its letter and spirit as mandated by the relevant rules and therefore, directed the respondent to forthwith allot the reservation by observing the rotation policy in its letter and spirit.

30. The effect of Prayer Clause (B) in the said petition was to quash and set aside the reservation as was provided on 20/6/2006 and to provide for fresh reservations in accordance with the rules.

31. While disposing of the said petitions, this Court had also stayed its order for a period of four weeks. The Election Commission, thereafter, challenged the judgment and order of this Court dated 3rd October, 2006, before the Honourable Apex Court by filing a Special Leave Petition. In the said Special Leave Petition, initially, on 6th No. vember, 2006, the Honourable Apex Court had granted stay for 2 weeks. However, it is clear that thereafter the stay has not been extended by the Apex Court. It is thus clear that after 20th No. vember, 2006, there was no stay to the judgment and order passed by the Division Bench of this Court on 3rd October, 2006.

32. Vide order dated 21st December, 2006, the order has been issued by the respondent No. 1 under his signature thereby reiterating the reservations which were quashed and set aside by this Court by order dated 3rd October, 2006. It is to be noted that in the said order, though a reference has been made to the order passed by this Court, the respondent No. 1 has stated that after application of its mind, as directed by the Honourable High Court to follow the policy of rotation in letter and spirit and has tried its best to implement the Rules regarding rotation but has come to a final conclusion that the delimitation and the reservation of seats as done by the State Election Commission needs no change.

33. It is to be further noted that the reservation as was provided vide order dated 20/6/2006 had specifically been quashed and set aside by this Court. By the order 21st December, 2006, again, the said reservation has been provided, which had been quashed and set aside by this Court. It is thus clear that the order issued by respondent No. 1 on 21st December, 2006, is in clear breach of the orders passed by this Court on 3rd October, 2006. In so far as the contention of the respondent No. 1 regarding legal advise is concerned, it is to be noted that the respondent No. 1 relies on the communication of Shri Makrand Adkar to the effect that the Honourable Supreme Court has orally granted permission to go ahead with the Election programme. However, from the perusal of the order dated 21st December, 2006, it would clearly appear that though it refers to the order passed by this Court in W.P. No. 5386/2006, and 3 hearings before the Apex Court, there is no whisper to the oral permission given by the Apex Court

or to the letter issued by Shri Makrand Adkar.

34. In any case, it is a settled law that the orders of the court are always in black and white. The court never passes oral orders. A reference in this regard may be made to the judgment of the Apex Court in the matter of Competent Authority Vs. Barangore Jute Factory and Others, . The Apex Court has observed thus:

The learned Counsel for the acquiring authority submits that possession was taken on the basis of oral observations of the court. This is a totally misconceived plea. Court orders are always in black and white. Oral orders are never pass?

In my considered view, reliance placed by the learned Counsel for the respondent No. 1 on the so called letter of Advocate Shri Adkar, is totally misplaced.

35. It has been specifically stated in the two affidavits filed on behalf of the respondent No. 1 that he is a high constitutional functionary. It is stated that he has held high positions in the past. it is further stated that he has always been known to obey the the order of the honourable court. A person with such a vast experience, is expected to know that the court only passes orders in writing. The respondent No. 1 who was holding so many responsible posts in the past, as stated by him, ought to have known that after the expiry of the stay granted by the Honourable Apex Court on 6th No. vember,2006, which was to continue only till 20th No. vember, 2006, the order passed by this Court on 3rd October, 2006 was holding the field and he could not have acted in breach of the said orders. In any event, if there was any ambiguity, the respondent No. 1 could have either sought clarification from this Court or sought permission from the Honourable Supreme Court or could have taken legal advice from the constitutional functionaries like the learned Attorney General of India or the learned Advocate General, before taking such a drastic step of issuing the order in total breach and disregard to the orders passed by this Court.

36. I am of the considered view that the order dated 21st December, 2006 is in utter disregard to the orders passed by this Court dated 3rd October, 2006 in W.P. No. 5386/2006.

37. In so far as the second charge is concerned, in my view, it is a very serious charge. The respondent No. 1 in the order dated 21st December, 2006 has in verbatim reproduced the contentions which were raised by the Election Commission before this Court in W.P. 5386/2006, which contentions have been specifically rejected by this Court. The Division Bench of this Court has specifically observed in para.6 of the order dated 3rd October, 2006 as under

However, while doing so the authorities must apply their minds and ensure that the rule regarding rotation of reservation is followed both letter as well as in spirit. Apparently, this does not appear to have been done in the present matter.

This Court further observed,

This rule does not carved out any exception in respect of the increase in the population as determined by the census. The rotation policy has to be strictly adhered to. It is inevitable that on account of increase in the population and increase in the number of electoral divisions the reservation is likely to be repeated in respect of some electoral divisions. However, the respondents ought to exercise proper care to see that as far as possible the reservation is not repeated. This does not appear to have been done. The respondents have not observed the aforesaid rule 4 of 1996 Rules in its letter and in spirit

38. It could be further seen from the affidavit filed on behalf of the Election Commission, that it was a specific case of the Election Commission before this Court that the said rules would not be applicable to the elections of 2007, but, said rules would be made applicable only in the subsequent elections. The said contention was specifically rejected by the Division Bench of this Court on 3rd October, 2006. In spite of it, in the order dated 21st December, 2006, which is signed by the respondent, following averments are made.

AND WHEREAS for the said purpose a public meeting was conducted by the respective Collectors or Tahsildars on 20th June, 2006 and the draft order of formation of electoral divisions and electoral colleges was published and objections and suggestions were called;

AND WHEREAS Shri Uday Khanderao Pawar and another have filed a Writ Petition 5386/2006 in the High Court, Mumbai Bench at Aurangabad contending that State Election omission has not followed the Maharashtra Zilla Parishad and Panchayat Samiti (Manner and Rotation of Reservtion of Seats) Rules, 1996 regarding rotation of electoral divisions and praying that the draft delimitation order dated 20th June, 2006 shall be cancelled;

AND WHEREAS Hon"ble High Court, Aurangabad Bench has passed an order on 3rd October, 2006 that the State Election Commission shall follow the policy of rotation in letter and spirit;

AND WHEREAS the State Election Commission has filed an SLP viz. No. 17539 of 2006 in the Honourable Supreme Court of India and after three hearings it is kept for next hearing in the 2nd week of January, 2007;

AND WHEREAS even though the State Election Commission has contested the order of the Hon"ble High Court, Mumbai before the Hon"ble Supreme Court of India through the SLP and the matter may be finally decided by the supreme Court of India; in view of the decision of the Hon"ble High Court dated 3rd October, 2006, the State Election Commission has reconsidered its view regarding 1) the census figures of population; 2) formation of electoral divisions and reservation of seats as per the provisions of the Act and Rules and 3) seats where reservation has been allegedly repeated; and the State Election Commission has come to a conclusion that it has followed scrupulously the provisions of the Act and the Rules thereunder and even the Honourable High Court has in its order dated 3rd October, 2006 has observed that in view of the

increase in population repetition to some extent is bound to be there;

AND WHEREAS the State Election Commission has applied its mind as directed by the Hon'ble High Court to follow the policy of rotation in letter and spirit and has tried its best to implement the Rules regarding rotation but has come to a final conclusion that the delimitation and the reservation of seats as done by the State Election Commission needs no change;

AND WHEREAS the State Election Commission is still of the opinion that the Rule regarding the rotation of seats is applicable only in a subsequent general election and the forthcoming general elections of 2007 are the first elections based on 2001 census figures of population;

AND WHEREAS if the provisions of the Act and the Rules as also the provisions of the Constitution regarding the determination of number of seats, formation of electoral divisions and reservations of seats for Scheduled Caste and Scheduled Tribes etc. are to be implemented in the true letter and spirit, it will not be proper and correct to change the reservation of seats as per the rules regarding rotation in the first general election based on the census figures of population of 2001.

39. It can thus clearly be seen that the respondent No. 1 has again reiterated the stand which was taken by the Election Commission before this Court in W.P. No. 5386/2006 and which was specifically rejected. It is needless to state that once this Court had taken a particular view while exercising its jurisdiction under article 226 of the Constitution of India, it was only the Apex Court, which could have upset the said view or this Court which in its review jurisdiction could have reviewed the same. As long as, the view taken by this Court is either upset by the Honourable Apex court or reviewed by this Court, it was not permissible for any authority including a constitutional authority to reiterate the view which has been rejected by the order passed by this Court. In my view the aforesaid averments in the order dated 21st December, 2006 are such that it undermines the reputation, authority and dignity of this Court.

40. In so far as charge No. 3 is concerned, it is stated that the Election Commission had given a qualified undertaking which was to operate only till 6th November, 2006. However, from the order dated 20th October, 2006 it could be seen that the undertaking which was given to this Court and which has been recorded by this Court is to the effect, " The State Election Commission will not declare the Election programme until further orders of the Honourable Supreme Court". In that view of the matter, the contention that the undertaking was a qualified one, which was to operate only till 6th November, 2006, in my view, is not correct.

41. It is further to be noted that when some of the petitions were listed before this Court on 20th December, 2006, an attempt was made on behalf of the Election Commission to withdraw itself from the said undertaking. However, the court had not passed any order permitting the Election Commission to withdraw

the aforesaid statement. In this respect, it will be appropriate to reproduce the relevant portion from the order passed by the Division Bench of this Court on 22nd December, 2006 in W.P. No. 7232/2006 alongwith companion matters.

The Election Commission has issued a notification and has declared the election programme and the elections are scheduled to be held in the month of February, 2007. Apparently what we notice is that the direction as issued by us in Writ Petition No. 5386/2006 by our judgment dated 3.10.2006 have not been carried out at all by the respondent. Apparently, there is no stay operating to the judgment since 6.11.2006. The election programme has been issued by respondents in utter disregard to the direction issued by this Court. Apparently, the learned Counsel appearing on behalf of the Election Commission has not been able to place on record before us any directions which have been issued by the Supreme Court authorising the Election Commission to declare the election programme save the letter dated 12.12.2006 by which the Advocate for the Election Commission in the Supreme Court has informed the Election Commission that Supreme Court had indicated orally that the Commission can go ahead with the election programme. The said decision is controverted by the counsel for the petitioners who claim that no such oral directions had been issued by the Supreme Court. The said statement which was made by Shri Shelke, learned Counsel for Election Commission has been continued from time to time whenever these petitions were listed before the Court. This Court had therefore refrained itself from passing any interim orders on the strength of the aforesaid statement. Mr. Shelke, learned Counsel for Election Commission has on 20.12.2006 sought to withdraw the aforesaid statement. However, this Court has not passed any orders permitting the Election Commission to withdraw the aforesaid statement. A suddenly the Election Commission has declared the Election programme and we are of the considered opinion that these petitions are likely to be rendered infructuous on the basis of the declaration of the election programme as the acceptance of nomination papers would begin some time in third week of January, 2007. Prima facie, the issuance of the said notification is wilful breach and violation of our judgment dated 3.10.2006 in Writ Petition No. 5386 of 2006 as indubitably there is no stay operating in respect of the said judgment.

42. Shri Shelke, learned standing counsel appearing in the aforesaid proceeding before this Court on behalf of the Election Commission was specifically asked today, during the course of hearing, as to whether he had informed the Election Commission regarding the proceeding that had taken place before this Court on 20th December, 2006. Shri Shelke submits that on the same day, he had informed Shri Mohite, the respondent No. 2 that this Court had heard the matters on 20th December, 2006 and closed it for orders and posted the matters for orders on 22nd December, 2006. Shri Mohite, who is personally present in the court was asked, as to whether he had informed about the same to respondent NO.1 Shri Nandlal, Shri Mohite states that on the same day, he had informed Shri Nandlal that the matters were heard by this Court and are posted for orders on

22nd December, 2006. In that view of the matter, I do not find as to what prevailed upon the respondent No. 1 in issuing the notification immediately on the next day i.e. 21st December, 2006. In my view this was an attempt to preempt this Court from passing orders on 22nd December, 2006 on the ground that the Election Programme is already set in motion and, therefore, this Court was powerless in view of the constitutional mandate of Article 243ZG.

43. It can thus clearly be seen that Writ Petition No. 7232/2006 and other companion matters were heard and closed for orders on 20th December, 2006 and kept for orders on 22nd December, 2006. Though an attempt was made, the Election Commission was not relieved of its undertaking given on 20th October, 2006. It is thus clear that the order dated 21st December, 2006 issued by the respondent No. 1 when the Division Bench of this Court was seized of the matter, amounts to interference in the administration of justice. In that view of the matter, I find that the order dated 21st December, 2006 is also in breach of the undertaking given to this Court in Writ Petition No. 7232/2006.

44. It has been strenuously urged by the learned Counsel appearing for the respondent No. 1 that the orders passed by the Division Bench of this Court dated 3rd October, 2006, could not have been complied with in view of the constitutional mandate and the judgment of the Apex court in the case of "Kishanchand Tomar" (supra). However, it is to be noted that the ground regarding impossibility to comply with the orders passed by this Court was already pending before the Apex Court. As already discussed hereinabove, when an order was passed by this Court, it could have been altered only by the Honuorable Apex Court in a SLP or by this Court, if a review was filed before this Court.

45. The Honourable Apex court in the case of T.N. Godavarman Thirumulpad through the Amicus Curiae Vs. Ashok Khot and Another, , has held that, "Respect should always be shown to the court. If any party is aggrieved by the order which in its opinion is wrong or against rules or implementation is neither practicable nor feasible, it should approach the court"

46. It is thus clear that the ground which is sought to be raised that in view of impossibility to implement the orders passed by this Court, the election programme was published on 21st December, 2006 is totally contrary to the law laid down by the Honourable Apex Court. In any case, in an affidavit filed by the respondents it has been stated that in pursuance to the orders dated 9th February, 2007, the rotation of reservation in accordance with the said rules, as directed by judgment and order passed by this Court dated 3rd October, 2006 and 9th February, 2007, has infact been provided by amending the orders issued earlier. It could thus be seen that if the respondents were in a position to comply with the rules after 9th February, 2007, nothing precluded them from following the rules as directed by this Court vide order dated 3rd October. 2006. Though the learned senior counsel states that in the order dated 9th February, 2007, liberty was granted to the Election Commission to work out the suitable

measures and modalities for implementation of the rotation policy and as such, the reservation is provided; the learned Counsel has not been in a position to point out anything from the order dated 3rd October, 2006, which prevented the Election Commission from working out any measures for implementation of the rotation policy. In that view of the matter, I am unable to accept the contention put forth by the respondent No. 1 in this behalf.

47. It is needless to state that even if there were to be some changes in the reservation, which were to be provided in accordance with the order dated 3rd October, 2006, passed by this Court, the elections could have been very well held prior to 20th March, 2007. It is further to be noted that in the affidavit in reply filed on behalf of the State of Maharashtra before the Hon'ble Supreme court, it has been categorically stated that it had accepted the orders passed by this Court on 3rd October, 2006. It is further stated in the said affidavit that if the judgment of the High Court was not accepted and implemented, the very purpose of making the reservation and providing for rotation amongst constituencies as set out in the constitution would be defeated and grave prejudice would be caused to the electorates whose constituencies had been repeatedly reserved and this would be continued for another 5 years. It is further stated that it is feasible to work out the rotation and complete the election programme before stipulated period i.e. till 20th March, 2007. The State of Maharashtra which was to provide necessary infrastructure for holding the election has categorically assured that the State would extend all possible assistance to the State Election Commission to work out rotation in all the districts.

48. In that view of the matter, I find that the so called bogie of impossibility, which has been harped upon by the learned Counsel for the respondent No. 1 is only imaginary one.

49. As already discussed hereinabove, since I have taken a view that it was feasible for the Election Commission to hold the elections prior to the due date even after observing the judgment and order passed by this Court dated 3rd October, 2006, which in fact, and even according to the Election Commission, has been followed in the election held in the month of March, 2007, the reliance placed on the judgment of the Honourable Apex Court in the matter of "Kishansingh Tomar " (cited supra) is not of much assistance to the respondent No. 1.

50. In so far as the judgment in the matter of "Indian Airports Employees Union" (cited supra) is concerned, reliance is placed on the said judgment to contend that if an action is taken on a wrong interpretation of the judgment and order of the court, no action for contempt is invited, in view of the fact that when the order passed by the court is capable of two interpretations and a party eventually acts on one interpretation, the act cannot be said to be deliberate or willful or intentional so as to commit the act of contempt. However, when there is no scope of two interpretations of the order passed by the court, when the order

is clear and unambiguous, a party cannot contend that though it has erroneously interpreted it, it should be granted benefit. The order passed by this Court dated 3rd October, 2006 is clear and unambiguous. It is clearly observed by this Court that the reservation provided earlier was not in accordance with the said rules. It is clearly held that the Election Commission should follow the reservation policy as prescribed under the rules. In unequivocal terms the reservations provided earlier were struck down and direction to observe the rotation policy in accordance with the said rules was issued. In that view of the matter, the reliance placed on the said judgment is of no use.

51. In so far as the judgment in the case of "Anil Ratan Sarkar" (cited supra) is concerned, no doubt this Court is expected to exercise caution and unless otherwise satisfied beyond doubt, should not take action for contempt. However, the said judgment in my view is against the stand taken by the respondent. As already discussed hereinabove, the judgment of this Court is not capable of being given two interpretations. The Honourable Apex Court has itself observed in para. 20 as under:

The order of this Court cannot possibly be interpreted as per the understanding of the respondents, but as appears from the plain language used therein. Neither the order is capable of two several interpretations nor there is any ambiguity and the same does not require further clarity. The order is categorical and clear in its context and meaning. The Courts order are to be observed in its observance, rather than in its breach.

52. In so far as the judgments in the matter of "Ashok Paper Kamgar Union" (supra) and in the matter of " Rajesh Kumar Singh v. High Court of Madhya Pradesh" are concerned, the ratio laid down is, unless the act is found to be intentional, willful or deliberate, no action for contempt is warranted. No. doubt, the weapon of contempt is to be exercised very sparingly. In normal circumstances a party should not be proceeded further with contempt. However, at the same time, it is the duty of the Court to see to it that the orders passed by the court are implemented by every authority, howsoever high it may be. The rule of law is enshrined in our constitution. The democratic set up rests on rule of law. Every person is bound to comply with the orders passed by the court. A message cannot be permitted to go that a person can flout the orders passed by the court, disobey them and still, this Court should not proceed further against such person for not obeying the orders passed by this Court.

53. Merely because subsequently the order dated 21st December, 2006 was stayed on 17th January, 2007 and thereafter reservations as provided under the order dated 3rd October, 2007 and further order passed by this Court on 9th February, 2007 are provided, it cannot be a ground to release a person from the contempt jurisdiction when it is found that the earlier action is in total disregard and breach of the orders passed by this Court. The orders passed by this Court are to be implemented at any cost unless they are set aside by the Honourable Apex court or reviewed by this Court in its review jurisdiction. In that view of the

matter, I find that the action of the respondent No. 1 in issuing the order dated 21st December, 2006 is in utter disregard to the orders passed by this Court dated 3rd October, 2007 and in breach of the undertaking given in W.P. No. 7232/2006 on 20th October, 2006 and specifically when the court had not permitted the election commission to withdraw the undertaking given by it earlier, when the attempt to withdraw the undertaking was made on 20th December, 2006. I further find that the act of the respondent NO.1 in issuing the order dated 21st December, 2006, when this Court had closed the matters for orders on 20th December, 2006 after hearing at length, kept them for orders on 22nd December, 2007, also amounts to interference with the administration of justice.

I further find that the aforesaid paragraphs mentioned in Charge No. 2, shows total disrespect to the authority and dignity of this Court, inasmuch ,as the contentions which were raised by the Election Commission before this Court and which were rejected by this Court, have been reiterated.

54. I, therefore, hold the respondent No. 1 guilty of the aforesaid charges and further hold that the respondent No. 1 is guilty of having committed contempt of this Court punishable under Article 215 of the Constitution and Section 2(b) of the Contempt of Courts Act.

55. At this stage, I have heard the learned Counsel for the petitioner, the learned Counsel for respondent No. 1 and Shri Khandare, the learned Government Pleader,who appears to assist the court, on the point of sentence.

56. Shri Kulkarni, learned Counsel appearing on behalf of the petitioner submits that the attitude of the respondent No. 1 even after issuance of the contempt notice shows disrespect to the orders passed by this Court. It is submitted that though the respondent NO.2 had tendered his apology earlier, the respondent No. 1 has not tendered apology. It is submitted that only after the charges were framed by this Court, as an afterthought, an apology has been tendered by the respondent No. 1. It is, therefore, submitted that apology should not be accepted and the matter may be seriously viewed.

57. Shri Dixit, learned Counsel appearing on behalf of the respondent No. 1 on the contrary submits that the respondent No. 1 has an unblemished service record. He has put in 35 years of service without there being any single stigma to his career. It is further submitted that the respondent No. 1 has also acted in various inquiries as per the directions of this Court and assisted this Court in the administration of justice. It is further submitted that the actions were bonafide and not for personal gain and, therefore, the unconditional apology tendered by the respondent No. 1 be accepted.

58. Shri Khandare, learned Government Pleader, who appears to assist the prosecution submits that taking into consideration the facts and circumstances of the case, the court may pass appropriate orders.

59. The purpose of contempt jurisdiction is only to ensure that the rule of law and the majesty of law is maintained. The observance of the orders passed by this Court is fundamental to the democratic set up and working of the constitution. A person, howsoever high he may be, is bound to comply with the orders passed by this Court. Even a Judge of this Court cannot say that he is not bound to obey the orders passed by this Court.

60. In response to the notice dated 24/1/2007 the respondent Nos. 1 and 2 had filed their affidavits. When the matter was heard on 14/12/2007, though this Court found that both the respondents were guilty of contempt, the court did not proceed to take any action against the respondent No. 2 taking into consideration the fact that the respondent No. 2, at the very first opportunity, had tendered apology and also remained present in the court. The court had proceeded against the respondent No. 1 taking into consideration the fact that the respondent had neither admitted his mistake, nor tendered his unconditional apology, nor remained present in this Court in response to the notice of this Court. In that view of the matter, charges were framed against the present respondent.

61. As already discussed hereinabove, in my considered view, I find that the charges have been proved against the respondent No. 1. The respondent No. 1 in his first affidavit in reply has stated that he is a constitutional functionary and, therefore, there can not be any intention to commit the breach of the orders of this Court. He has reproduced 5 constitutional functionaries in his affidavit in reply i.e. Supreme Court Judges, High Court Judges, Chief Election Commission of India, Comptroller and Auditor General of India and State Election Commissioner. In the latter part of the affidavit, he has given justification of the actions taken by him. In the subsequent affidavit in reply, which is filed pursuant to the charges framed by this Court on 14/12/2007, the respondent No. 1, for the first time, has accepted that some of his actions though bonafide and though not intended to flout the orders or to bring this Honourable Court in disrepute or to lower the dignity of the Honourable Court, have given an impression that he has disregarded or disobeyed the orders intentionally. He has further stated in the affidavit in reply that he has held various posts as an IAS Officer for the last 35 years and he is holding the post of State Election Commissioner since 15.6.2004. It is submitted that the courts have appreciated his efforts made by him under the directions of the court or otherwise in investigating various misdeeds or maladministration of authorities. The respondent No. 1 has also tendered unconditional apology in the second affidavit in reply.

62. Every authority including the constitutional authorities are bound by the orders of the courts. The law makes no difference between the king and the subject. Law is equally applicable to all. Howsoever high a person may be, he is equally bound by the orders passed by the courts. On the contrary, the person holding a high position is expected to be more cautious while dealing with the orders of the court. A person like the respondent No. 1 who holds constitutional post is also expected to see to it that the constitutional mandate of all the

constitutional authorities working in their respective spheres is scrupulously followed. In that view of the matter, he was bound to comply with the orders passed by this Court in its letter and spirit.

63. The Honourable Apex Court in the matter of "T.N. Godavarman v. Ashok Khot and Ors." has observed in para.31 as under:

Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward." The Honourable Apex Court has further reproduced the portion of the judgment of the Apex court in " L.D. Jaikwal v. State of U.P."

We are sorry to say we cannot subscribe to the "slap-say-sorry and forget" school of thought in administration of contempt jurisprudence. Saying "sorry" does not make the slapper taken the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to "say" sorry -it is another to "feel" sorry.

64. It is thus clear that though the respondent No. 1 was issued a notice by this Court on 21/4/2007, and though he has filed affidavit in reply on 22/3/2007, he has neither admitted his mistake nor tendered an apology. Only when the charges were framed by this Court vide order dated 14/12/2007, he has filed the second affidavit, therein admitting his mistake and tendering unconditional apology. In view of the law laid down by the Apex Court in the case of " T.N. Godavarman. v. Ashok Khot", I am afraid, it will not be possible for this Court to accept the belated unconditional apology of the respondent No. 1 which is coming forward only after the charges were framed against him. As such, the unconditional apology tendered by the respondent No. 1 is rejected.

65. This Court could have taken a serious view of the matter and considered sentencing the respondent No. 1 to suffer imprisonment or to pay fine. However, it is to be noted that the contempt jurisdiction is not a vindictive jurisdiction. It has come on record and which is not disputed that the respondent No. 1 has an unblemished record of 35 years of service in IAS cadre. It is also not in dispute that there is no stigma to his long career. The respondent No. 1 is 62 years of age. In that view of the matter, I am not inclined to pass an order of imposing sentence against present respondent No. 1. However, I find that the act of the respondent No. 1 is clearly in contempt of the orders passed by this Court. As such, I am inclined to issue admonition to the respondent No. 1 for having committed contempt of this Court. The respondent No. 1 is hereby warned that hereinafter he would not act in any manner which would amount to disobedience or disregard to the orders passed by this Court and hereinafter take every precaution to see to it that the orders passed by this Court are implemented in

true spirit.

66. In view of the statutory appeal provided u/s 19 of the Contempt of Courts Act, the orders passed by me shall stand stayed for a period of 30 days, in order to enable the respondent No. 1 to prefer an appeal before the Division Bench of this Court.