
(1982) 08 AHC CK 0055
In the Allahabad High Court

Ram Prakash and Bros. and Others	Vs	APPELLANT
Nagar Mahapalika and Others		RESPONDENT

Date of Decision : 13-08-1982

Acts Referred:

Contempt of Courts Act, 1971 — Section 10, 11, 2, 20, 23

Citation : (1983) 9 AWC 29 : (1983) CriLJ 753

Hon'ble Judges : S.C. Mathur, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

S.C. Mathur, J.—Ram Prakash and brothers through Sri Ram Prakash had directed this application under S- 11 of the Contempt of Courts Act, 1971 against the Nagar Mahapalika, Lucknow and six of its officials viz. Sri Rajiv Ratan Shah, the then administrator, Sri J. C. Seth, Upnagar Adhikari, Sri Mahesh Chandra. Up-Prashasak, Sri S.K. Sabbarwal, Nagar Adhiyanta, Sri Viswanath Prasad Srivastava, Inspector and Sri Lekhram Chowdhary. Inspector. During the pendency of the application Sri S.K. Sabbarwal and Viswanath Prasad Srivastava died and the application against them abated. Nagar Mahapalika, opposite party 1 is a statutory body and only its officials can be punished for the alleged contempt. The application therefore survives against Sri Shah, Sri Seth, Sri Chandra and Sri Choudhary. These officers are alleged to have removed the petitioner's wooden stall at Hazaratganj, Lucknow on 2-2-1975 in violation of the interim injunction issued by the learned District Judge, Lucknow on 8-7-1965, Annexure 4, which was confirmed by this Court through its judgment and order Dt. 23-11-1972 passed in appeal preferred by the Nagar Mahapalika, Lucknow.

2. The petitioner's case is that in the year 1948 he put up a stall on a piece of land situate at Hazaratganj, Lucknow after obtaining the same on rent from its owner Newal Kishore Estate. According to him this stall was 16" away from the footpath and was much behind the alignment of the arcade in which certain persons had put up stalls. In short, the petitioner's case is that his stall was not

situate either on a public or Mahapalika road or public or Mahapalika land. On 9-6-1965 the Nagar Mahapalika issued notice to the petitioner stating therein that his stall was unauthorised and required him to show cause why the same may not be removed. The petitioner submitted his reply stating therein that he had not made any encroachment and that the notice was illegal. The Nagar Adhiyanta (Bhawan) sent reply D/- 25-1-69 accepting that the petitioner's stall was not situate on Mahapalika land and that the notice was being treated as cancelled and the legal proceedings were being dropped. Before receipt of this reply the petitioner had filed regular suit 1 of 1965, in the Court of the learned District Judge, Lucknow, challenging the legality of the notice and right of the Nagar Mahapalika to remove his stall. Similar notices had been given to certain other stall holders also and they too joined the petitioner in filing the suit against the Mahapalika. In this suit an application was moved for interim injunction on which the following order was passed on 10-6-1965 (Annexure A to the affidavit dated 19-3-1982 filed along with Criminal Misc. Application, 171 of 1982).

Heard. Issue notice for 9-7-65. Restrain meanwhile as prayed. The Deputy Nazir will serve the injunction order today in this case as well as the other four similar cases... .

3. On the basis of the above order formal injunction order was issued and served upon the Mukhya Nagar Adhikari on 10-6-1965 itself. Relevant portion of the order reads as follows:

...this court doth order that an injunction be awarded to restrain you, Mukhya Nagar Adhikari, Nagar Mahapalika, Lucknow defendant in the above case, your servants, agents and workers from evicting, dispossessing the above noted plaintiffs from their stalls, till the disposal of this application....

4. Against the above ex parte interim injunction objection was filed on behalf of Mahapalika but the same was rejected on 8-7-1965 with the following observation:

...In this state of affairs it cannot be said that it is a very clear case in favour of the defendant or that the plaintiffs have no case. Accordingly, even though the defendant proposes to act in the public interest, it is desirable to restrain if from removing the stalls during the pendency of the suits. I accordingly order that in each of the above suits the injunction already issued shall be maintained.

Against the above order Nagar Mahapalika filed first appeal from order in this Court which was dismissed on 23-11-1972 (Annexure 5) with the following observations.-

For the discussion in the foregoing I see no force in these appeals which are dismissed. The orders of the learned District Judge are confirmed...

The petitioner alleges that although the above injunction order was in operation on 1-2-1975 Sri Seth and Sri Chandra opposite parties 3 and 4 respectively came to the petitioner's stall and asked him to remove the same by the following

morning otherwise it would be removed by the staff of the Mahapalika. Thereafter on the following day i. e. on 2-2-1975 at 3 A.M. the petitioner sent a telegram to Sri Shah opposite party 2 and to the Mahapalika's counsel Sri K. K. Narain and Sri B. L. Kaul reminding them that in view of the subsistence of the injunction order the threatened action was illegal and would amount to committing the contempt of Court. In spite of this reminder the petitioner's stall was removed by the Mahapalika resulting in the petitioner's dispossession from the stall. In para 30 of the affidavit the petitioner asserts that opposite parties 3 to 7 have by demolition of the petitioner's stall acted against order passed in the F.A.F.O.

5. In their separate affidavits opposite parties 2 to 6 have not disputed the factum of the injunction order and of the removal of the petitioner's stall. Their case however is that through mutual agreement the injunction order was waived by the petitioner. In his counter affidavit Sri Shah has elaborated about the agreement and waiver thus:

In Hazaratganj, Lucknow a number of unauthorised encroachments have been made and several unauthorised structures have come up which create serious problems for the administration and also prevented improvement and beautification of the area. He tried to tackle the problem by offering alternative sites to the owners of the unauthorised structures, and encroachers, in the old post office compound, Lucknow, where a multi-storeyed commercial complex was going to be constructed. In furtherance of this attempt he convened a meeting of such persons on 11-1-1975 and 12-1-1975 in which Sri Ram Prakash, the petitioner, in his capacity as Assistant Secretary of the Hazaratgani Stall Holders Association, Lucknow was also present, Sri Ram Prakash and other stall holders offered to remove their stalls provided alternative sites were provided to them in the old post office compound. This offer was accepted and on 12-1-1975 the stall holders gave a letter which bore the signatures of Sri Ram Prakash also, agreeing to remove the stalls and to shift to new site. Copy of this letter is filed as Annexure B-I to this counter affidavit. In pursuance of this agreement the stalls of all those persons who had subscribed to the agreement D/- 12-1-1975 were removed on 2-2-1975. Alternative sites were allotted to the stall holders who with the solitary exception of the petitioner, occupied the same. Sri Shah has not indicated in what manner the petitioner's stall was unauthorised.

6. The defence of opposite parties 3, 4 and 6 is identical to the defence of Sri Shah. None of these opposite parties including Sri Shah has denied knowledge of the injunction order. They have merely denied the petitioner's assertion that he reminded them of the injunction order when they went to demolish his stall. It is therefore established that opposite parties 2, 3, 4 and 6 had knowledge of the injunction order. It is therefore not necessary to examine the correctness or otherwise of the petitioner's assertion that he reminded them about the injunction order. These opposite parties have also not disputed their presence in the area where the work of the removal of stall was carried out. It is therefore

established that the work of removal of stall was carried out under the supervision of the opposite parties and they were connected with it

7. The defence of opposite party 7 is slightly different. He stated that in February 1975 he was assigned the work of catching and seizing stray cattle and he had no knowledge of the injunction order. He admits that he was deputed to supervise the work of removal of the stalls on 2-2-1975 and that he was present in the area. In the rejoinder affidavit the petitioner has merely pleaded lack of knowledge about the assertions made by this opposite party regarding the assignment of his duties, In the absence of specific denial, the claim of the opposite party has to be accepted. It is therefore established that opposite party 7 was not working in the section dealing with encroachments and unauthorised constructions. His plea that he was not aware of the injunction order is consequently plausible and is accepted. He cannot therefore be held guilty of committing contempt of court. The notice issued to him is liable to be discharged.

8. Sri S.K. Sabbarwal has filed a more detailed counter affidavit. In addition to what has been stated by Sri Shah and opposite parties 3, 4 and 6 he has disputed the petitioner's claim of being in authorised possession of the land and the stall. He has stated that the said land is part of a public thoroughfare and does not belong to the Nawai Kishore Estate, and the petitioner's stall caused obstruction to the pedestrians and cyclists using this thoroughfare. In the present proceedings this question of title is not necessary to be examined. It is already the subject matter of the regular suit in which the injunction order in question was passed.

9. In view of the above defence the material question that arises for determination is whether any completed agreement took place between the petitioner and the Nagar Mahapalika whereby the injunction order was waived. The terms of the agreement are said to be contained in Annexure B-1. Since this document is the sheet-anchor of the defence, it will be desirable to reproduce it in extenso. The document is in Devnagri script. Its rendering in the Roman Script is as follows:

Mahoday,

Ham Hazaratganj stall holders

Association ke samast padadhikari evam sadasya aap se vichar vimarsh ke uprant is parinam par pahunchne hain ki yadi ham logon ko suraksha evam... pardan karte hooye ham longon ko purane post office ke compound me bathene ki anumati pradan kar dijavey to ham log sweccha se unme apney stall laga lenge. Ja se he Nagar Mahapalika ko puraney post office compound ke bhoomi prapt in jayey vase he hamen apne vartman asthan se stall ko hatakar post office compound men nagar mahapalika hamen kripya asthan allot kar stall laganey ke anumati de de. Yah prastay ham apney samast nyaya adhikaron ko surakshit rakhte hooyey jo ki ab tak nayadhin hain aap ke samaksh prastut kar rahe hain. Saath hi ham log yah aaswsan bhi dete hain ki puraney post office

compound men dookanon evam bhawanon ke nirman ke prarambh swaroop yadi ham longon ke apney stall hateney ki awasyakata padegi to ham aap ke nidesha anusar usi compound men uchit asthan par hata lengey. Ham log pakki dukane nirmitt ho jane par dukanon ka jo chaloo...Kiraya (prevalent market rent") anya dokandron se liya jayega woh dene swikar kartey hain. Us samai tak jab tak ki pakki dukanen nirmitt nahin ho jati tab tak bhoomi ka reasonable kiraya jo bhi Mahapalika dwara nirdharit kiya jayeygan Mahapalika me dete rahenge. Ham log aap se yeh bhi ashwasan chahtey hain ki is asthan par pani, safai, roshni evam anya anivarya suvedhaon ki uchit vwavastha mahapalika staljon ke asthantaran karney se poorv awasya kare de taki ham log apne aap vyapar bhali bhanti chala saken.

Ant men ham log aap se nishchit taur par Asthaniya roop men vyavasi karney ka anubandha karna chahtey hain jaise ki bhagisya men ham logon ki aajeevika surakshit rah sake.

Agrim dhanyavad ke saath,

Bhavadiya Ha. Adhchhya. Hazaratganj stall Holder Association Hazaratganj, Lucknow. Ha.

(Mahamantri)

Dinank : 12-1-1975

(emphasis supplied)

10. Shorn of details what was stated in the above letter is to this effect:

After exchanging views with you if have come to this decision that if we are permitted to have stalls in the compound of the old post office we would voluntarily have our stalls there. As soon as the compound of the old post office becomes available to the Nagar Mahapalika, a place therein may be allotted to us with permission to shift our stalls from the present place to the allotted places, This proposal is made without prejudice to the rights involved in the pending suits, We also desire from you an assurance that before the stalls are transferred proper arrangement shall be made for water supply, cleanliness, light and other conveniences so that we may be able to do our business properly. In the end we want to enter into a permanent agreement with you regarding our business so that our source of livelihood may remain secure.

11. Annexure B-1 was addressed to the Administrator. A perusal of this document indicates that it contained a proposal for the consideration of the Administrator and before it could be acted upon by either party, it had to be accepted by the Administrator and the acceptance had to be communicated to the party making the proposal. In the counter affidavit a bald assertion has been made that the proposal was accepted. When it was accepted and how it was accepted has not at all been indicated. Even the order of the Administrator through which the order may have been accepted has not been filed. Regarding

the communication of the acceptance either to the petitioner or to the President of the Association, there is not even a whisper. It has therefore not been established that the proposal made in Annexure B-1 was either accepted by or on behalf of the Nagar Mahapalika. Consequently the petitioner did not become liable to remove his stall as pleaded by the opposite parties.

Even if it is assumed that the proposal contained in Annexure B-1 was accepted by the Administrator, the Nagar Mahapalika could not acquire right to remove the stalls until it fulfilled two conditions : first, allot alternative site in the old post office compound and, second, give assurance that proper arrangements shall be made for water supply, cleanliness, light and other conveniences. There is no averment in any of the counter affidavits, that these two conditions had been satisfied before the stalls were removed. The plea of waiver therefore cannot be sustained. It is also negated by the specific stipulations made in Annexure B-1 that the proposal is made without prejudice to the right's involved in the pending suits.

12. In view of the above, I hold that no completed agreement took place between the petitioner on the one hand and by or on behalf of the Nagar Mahapalika on the other whereby the benefit of the injunction order was waived. The subsistence of the injunction order and its knowledge to opposite parties having been established, and the factum of the removal of the petitioner's stall having been admitted, and the plea of waiver having failed it is established that opposite parties 2 to 4 committed contempt of this Court and of the court of the District Judge, Lucknow when they removed the petitioner's stall in dispute.

13. Sri Umesh Chandra, learned Counsel for the opposite parties however raised a number of pleas which may now be examined. It was argued that the action was barred by the limitation prescribed u/s 20, Contempt of Courts Act, 1971, which reads as follows:

No court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. According to the learned Counsel the alleged contempt was committed on 2-2-1975 but till today even though a period of more than seven years has passed no action has been taken by this Court in terms of the rules contained in Chapter (2) of the Rules of Court, 1952 framed u/s 23, Contempt of Courts Act, 1971, The present petition was filed on 14-2-1975 i. e. only a few days after the commission of the alleged contempt. By order of the same date the petition was ordered to be placed before Hon"ble the Chief Justice. On 24-2-1975. Hon"ble Chief Justice passed this order "Before Hon"ble K.N. Singh." On 26-2-1975 K. N. Singh J. passed the order thus : - "Issue notice". According to the learned Counsel the order "issue notice" does not amount to initiation of proceedings within the meaning of Section 20. This brings us to the question as to what is the full import of the term "Issue notice". The notice of a motion is not issued to the opposite party as a matter of course. It is issued only when the court comes to the conclusion after application" of

mind that a prima facie case has been made out against the opposite party. By issuing notice the court calls upon the notice to show cause why relief claimed against him in the petition may not be granted and this is all that is required for initiation of proceedings. For initiation of proceedings the court has to be satisfied after application of mind that a prima facie case has been made out in favour of the petitioner.

This view finds support from a Division Bench decision of the Gujarat High Court in *Dineshbhai A. Parikh Vs. Kripalu Co-operative Housing Society, Nagarvel, Ahmedabad and Others*, of the judgment this observation appears:

Action under Contempt of Courts Act 1971 can be taken if the court has applied its mind and initiated proceedings by passing some order within a period of one year from the date of the alleged act of contempt.

In my opinion therefore the order "issue notice" amounts to initiation of proceedings and since this order was passed well within the period of the one year prescribed u/s 20, the petition cannot be rejected on the ground of limitation.

14. A second limb of the above argument was that the order was not passed in the manner prescribed by this Court in the rules framed u/s 23 of the Contempt of Courts Act, 1971, and therefore it is no order in the eye of law and consequently this order cannot be taken notice of, for reckoning the period of limitation prescribed u/s 20. Rule 20 of these rules provides as follows:

Such allegation contained in the petition as appears to the court to make out a prima facie case of contempt, of court against the person concerned shall be reduced into charge or charges by the court against the person, and notice shall be issued only with respect to those charges....

According to the learned Counsel unless, while issuing the notice charge was framed as required in the above Rule, there could be no initiation of proceedings. The purpose of framing the charge is to pinpoint the matter on which the reply of the notice is required. Although the rule uses the word "shall" before the words "be reduced into, charge or charges" the same in my opinion, is not mandatory and the proceedings will not be vitiated if the court while issuing the notice does not frame the charge or charges. Further in the present case, the petitioner has not suffered any prejudice on account of the failure of the court to frame charge because the material facts are not complicated and the alleged contempt does not comprise of several acts but comprises of a single fact. The second limb of the argument also therefore fails *Gulab Singh and Another Vs. The Principal, Sri Ramji Das*, cited by the learned Counsel is of no assistance to him. In para 3 of the judgment it has been observed thus:

...It is only when the court decides to proceed against the contemner on a prima facie case having been made out that it initiates the proceedings by issuing notice and process.

15. All this having been done within one year in the present case, on the authority of the judgment it cannot be said that the action is barred by limitation.

16. It was next argued by the learned Counsel that the order of injunction had been passed by the learned District Judge and not by this Court and therefore the petitioner should have applied for taking action to the court below instead of applying to this Court. The order of injunction passed by the court below was a judicial order and the same merged in the appellate order of this Court, whereby the injunction order was confirmed. Therefore by removing the petitioner's stall the opposite parties violated not only the order of the court below but also of this Court. Consequently the opposite parties have committed contempt of this Court also. Further under the Contempt of Courts Act this Court is competent to punish for the contempt committed of subordinate courts. This is apparent from the language of Sections 10 and 11 of the Act.

17. Sri Umesh Chandra next argued that since the disobedience was alleged of an order of injunction passed under Order XXXIX of the C.P.C. the appropriate remedy to be adopted was to apply under Order XXXIX, Rule 2-A.

According to the learned Counsel an application under Rule 2-A would lie only to the court below as it was the court below which had passed the order of injunction and this, court had merely confirmed the same. Rule 2-A reads as follows:

Rule 2-A. (1) In the case of disobedience of any injunction granted or other order made under Rule 1 or Rule 2 or breach of any of the terms on which the injunction was granted or the order made, the court granting the injunction or making the order, or any court to which the suit or proceeding is transferred, may order the property of the person guilty Of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year at the end of which time, if the disobedience or breach continues the property attached may be sold and out of the proceeds, the court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.

Under Clause (1) of the above rule, action for disobedience can be taken by the court granting the injunction or making the order or any court to which the suit or proceeding is transferred. This Court was not the court to which the proceeding was transferred and therefore the latter portion of the clause extracted above will not apply. But is the court not the court which granted the injunction or made the order so as to attract the first part of the clause? I have held above that the principle of merger was applicable and the order of the court below merged in the order of this Court. Since the order of the court below merged in the order of this Court, this Court is also the court which granted the

injunction or made the order. The appellate Court has the same power : r to order punishment as the original court has.

18. It was also argued that remedy under Rule 2-A was an efficacious alternative remedy and therefore the Court may decline to exercise jurisdiction under the Contempt of Court's Act. In support of the argument the learned Counsel cited A. Ramalingam Vs. V.V. Mahalinga Nadar, ; 1971 All WR (HC) 290 Smt. Indu Tewari Vs. Ram Bahadur Chaudhari and Others, , Smt Indu Tewari v. Ram Bahadur Chaudhary). In the Madras case (supra) it was held that the remedy under Order 39, Rule 2 (3) (which was in similar terms as the present Rule 2-A) was a far more adequate and satisfactory remedy where disobedience was alleged of an order passed under Order 39. In Krishi Utpadan Samiti case (supra) M. H. Beg. J., (as he then was) held that jurisdiction under the Contempt of Courts Act was discretionary and its exercise might therefore be refused if there were other more suitable remedies available like the one under Order 39, Rule 2 (3) or criminal prosecution. In Smt. Indu Tewari Vs. Ram Bahadur Chaudhari and Others, para 3 J. M. L. Sinha, J., observed thus:

In my opinion, a person who has got an effective alternative remedy of the nature specified in O. XXXIX, Rule 2-A or under Order XXI Rule 32, Civil P.C. shall not be permitted to skip over that remedy and take recourse to initiate proceedings under the Contempt of Courts Act. The least that can be said is that it would not be a proper exercise of discretion on the part of this Court to exercise its jurisdiction under the Contempt of Courts Act when such an effective and alternative remedy is available to any person.

In view of these authorities the material question to be considered is whether on the facts of the present case the alternative remedy under Rule 2-A is efficacious. The question of efficacy is to be considered with reference to the purpose of the provision. As held by their Lordships of the Supreme Court in the case of The State of Bihar Vs. Rani Sonabati Kumari, proceedings under Order 39, Rule 2 (3) C. P. C. (equivalent to Rule 2-A) are in substance designed to effect the enforcement of the Order. Can this enforcement be achieved in present case.? In order to achieve enforcement of the injunction order, the petitioner will have to be put back in possession of the land over which the stall had been put. This was possible If the land had undisputedly belonged to the Nagar Mahapalika. On this there is serious controversy between the parties. According to the petitioner the land belonged to the proprietors of the Newal Kishore Estate from whom he had taken the same on rent. This appears to be the case of the proprietors of the Estate also. If the land belonged to the proprietors of the Newal Kishore Estate, the consequence of removal of the petitioner's stall is that the said proprietors have re-entered into possession of the land and that even the Mahapalika has been rendered incapable of enforcing the injunction order and restoring the position that obtained immediately prior to the removal of the petitioner's stall. In Ramalingam's case (supra) the Madras High Court insisted upon the alternative remedy under order 39 Rule 2 (3) where the situation was

strictly inter parties; third party's rights were not involved. In the present case on account of the involvement of the rights of the proprietors of the Newal Kishore Estate who were not impleaded in the suit, the remedy under Rule 2-A cannot be said to be efficacious. Action under the Contempt of Courts Act cannot therefore be refused on the ground of the existence of alternative remedy.

19. Sri Umesh Chandra sought to justify the removal of the petitioner's stall with reference to Section 117 (6) (b) U. P. Nagar Mahapalika Adhiniyam, 1959. According to the learned Counsel on account of the introduction of the automatic traffic signal lights in Hazaratgani an emergent situation had arisen for removal of all obstructions to the free flow of traffic and therefore the Mukhya Nagar Adhikari could cause removal of the petitioner's stall notwithstanding the courts' injunction against the Nagar Mahapalika. Section 117 (6) (b) reads as follows:

(6) Without prejudice to the generality of the provisions of sub-sec- (5), the Mukhya Nagar Adhikari shall also:

(a) ...

(b) in an emergency take such immediate action for the service or safety of the public or the protection of the property of the mahapalika as the emergency shall require notwithstanding that such action cannot be taken under this Act without the sanction, approval or authority of or some other municipal authority or of the State Government.

From the underlined portion it is apparent that the action under the above provision is one for which normally sanction or approval of some municipal authority or of the State Government is required. This provision does not authorise Mukhya Nagar Adhikari to act in violation or disobedience of the order of the Court.

20. Sri Umesh Chandra then argued that under the Act distinct duties and functions have been assigned to the Mukhya Nagar Adhikari and if he is sought to be restrained through an order of the court from discharging those functions, he would have been impleaded in the suit so as to make the injunction order binding upon him and if he is not impleaded he cannot be punished for violating the order. My attention was not drawn to any provision under which the function of removing obstructions to the free flow of traffic was the special prerogative of the Mukhya Nagar Adhikari in the sense that he may be said to act as a statutory authority, apart from the Nagar Mahapalika. On the contrary from clauses (XXIX), (XXX) and (XXXI) of Section 114 it is apparent that it is an obligatory duty of the Nagar Mahapalika. As such the Mukhya Nagar Adhikari which office at the relevant time was held by Sri Shah acted only as an instrumentality of the Nagar Mahapalika and not as a separate statutory authority. In the circumstances, impleadment of Mukhya Nagar Adhikari in the suit was not necessary. Under Sub-section (5) of Section 117 the executive power of the Mahapalika vests in the Mukhya Nagar Adhikari and Sri Shah exercised the power while passing the order for removal of petitioner's stall. He cannot therefore

disclaim his liability arising from the disobedience of the injunction order. The argument of the learned Counsel omits to take notice of Rule 5 of Order 39 which says that an injunction directed to a Corporation is binding not only on the Corporation, but also on all members and officers of the Corporation, u/s 4 of "he Act, a Mahapalika is a body corporate, i. e., a corporation, and the order of injunction issued by the Court was directed to the Mukhya Nagar Adhikari and it restrained the servants, agents and workers of the Mahapalika also. In view of this, the argument of the learned Counsel is not sustainable.

21. It was next contended that the opposite parties acted in a bona fide manner and they may not be punished. An action may be said to be bona fide if the same is taken on a mistaken notion of the factual or legal position. In the instant case the factual and legal positions were as clear as daylight and the action of the opposite parties in removing the petitioner's stall cannot be said to be bona fide. In my opinion, the disobedience to the injunction order was willful and amounts to the civil contempt within the meaning of Section 2(b). Contempt of Courts Act. This disobedience has interfered substantially with the due course of justice.

22. The question that now survives for consideration is whether the apology tendered by the opposite parties should be accepted. Shri Shah is a member of the Indian Administrative Service. This service constitutes the permanent administrative wing of the Government and in the absence of the elected representatives of the people the entire brunt of the administration is borne by the members of this service. Its members occupy high administrative offices. The heads of the various departments and corporations are invariably drawn from this service. At the time the petitioner's stall was removed there was no elected Mahapalika in the city of Lucknow and Shri Shah was the head of this Mahapalika. The actions of a head of department should be such that they may be emulated by his subordinates. A head of the department can enforce discipline on his subordinates only when he is himself disciplined. If he is himself indisciplined he cannot effectively command discipline from his subordinates. Observance of the rule of law is a part of this discipline. Shri Shah with the full knowledge of the injunction order caused removal of the petitioner's stall and thereby committed breach of the discipline which he was required to maintain as a member of the responsible administrative service. There is no extenuating circumstance to allow him to go unpunished by accepting his apology. The position of the other opposite parties is however different.

They were subordinate officers and obviously they could not muster enough courage to disobey the illegal orders of Shri Shah. In the circumstances, the apology tendered by them deserves to be accepted.

23. In view of the above, I discharge the notice issued to Sri Lakh Ram Chowdhary opposite party No- 7. He has to bear his own costs. Sri Rajiv Ratan Shah, opposite party No, 2, is held guilty of having committed contempt of this Court and of the Court of the District Judge, Lucknow and is sentenced to pay the fine of Rs. 500/- (Rupees five hundred only) and in default of payment of fine to

undergo simple imprisonment for .45 days. While holding Sri J. C. Seth and Sri Mahesh Chandra opposite parties 3 and 4, respectively also guilty of having committed contempt of this Court and of the Court of the District Judge, Lucknow, I accept the apology tendered by them and refrain from passing any sentence of punishment against them but they shall pay to the petitioner the costs of the present proceeding which is assessed at Rs. 200/- No order of costs is made against opposite party No. 2. The amount of fine and the costs shall be paid within two months.