

(1988) 09 AP CK 0003

In the Andhra Pradesh High Court

Case No : Contempt Case No's. 278, 284, 322, 335, 354 and 416 of 1988

R.P.S. Junior College, Mydukur and Others

APPELLANT

Vs

R. Vaidyanatha Iyer

RESPONDENT

Date of Decision : 26-09-1988

Acts Referred:

Andhra Pradesh Education Act, 1982 — Section 2, 21, 3, 4, 42
Andhra Pradesh Gram Panchayats Act, 1964 — Section 2(15)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, Order 21 Rule 35
Constitution of India, 1950 — Article 213, 225, 226, 245, 246
Contempt of Courts Act, 1971 — Section 1, 12

Citation : AIR 1989 AP 96

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Advocate : R. Venugopal Reddy, for the Appellant; Govt. Pleader for Education, for the Respondent

Judgement

1. This bunch of cases gives birth to constitutional questions of far-reaching consequences entwined with contempt for disobedience to writs of Mandamus issued by this Court.

2. The indisputable facts are: that preceding the Andhra Pradesh Education Act (Act 1 of 1982), the Grant-in-Aid Code (Executive Instructions) was in vogue; the Government prescribed the procedure to establish private educational institutions; conditions for recognition and of the eligibility to grant-in-aid. Those conditions have been statutorised u/s 21 thereof. On their fulfilment the educational institutions become eligible for admission to grant-in-aid. G.O. Ms. No. 725, Education dt. July 7, 1977 directed to admit all the institutions started prior to April 4, 1977 to grant-in-aid in a phased manner between 1977 and 1980. The Government, in G.O. Ms. No. 238, Education dt. May 27, 1986 issued orders directing that the schools started on or after April 1, 1977 and were continuing as on Sept. 1, 1985, are directed to be admitted to grant-in-aid subject to the conditions mentioned therein. Similarly, for the additional sections

started by the aided schools or posts created, the benefit of grant-in-aid was accorded in G.O. Ms. No. 344 Education dt. July 22, 1985. Similarly to the colleges started between the above period, directions were issued in G.O. Ms. No. 424, Education, dt. Sept. 19, 1985 to admit all the colleges to grant-in-aid subject to the conditions stated therein. It is the petitioners' (Colleges) claim that despite their fulfilling the conditions, they were not admitted to grant-in-aid constraining them to approach this Court by filing the writ petitions. The facts in all these cases are same or similar. Therefore, the facts in C.C. No. 284/88 are sufficient to cover the grounds in other cases too. The petitioner filed W. P. No. 17985/87 seeking Mandamus directing the Government to admit it to grant-in-aid. The Government resisted the claim. This Court, by judgment dt. Jan. 21, 1988, allowed the writ petition and directed the respondents to admit the petitioner institution to grant-in-aid within two months from the date of receipt of that judgment which was admittedly received on Feb. 12, 1988 and two months' time expired by April 11, 1988. The contempt application was filed on June 17, 1988 and came up for admission on June 21, 1988, complaining that despite the expiry of two months, the respondent took no action to comply with the order and thereby he deliberately or wilfully disobeyed the orders of this Court, punishable u/s 12 of the Contempt of Courts Act 1971. On issue of notice on admission, the respondent, after prolonged ten adjournments, filed the counter-affidavit stating that the Government constituted a high level Committee in G.O. Rt. No. 220, Education, dated February 24, 1988 consisting of two Vice-Chancellors, Secretary (Services) Secretary (Finance); Directors of School and Higher Educations to look into the pending or any cases that may be referred to find whether the institutions have fulfilled the conditions prescribed. On receipt of the report with recommendation the institutions would be admitted and given grant-in-aid. The Andhra Pradesh Private Educational Institutions Grant-in-aid (Regulation) Ordinance (Ordinance 11 of 1988) was promulgated by the Governor in exercise of the legislative power under An. 213 of the Constitution, published on June 30, 1988, effective from July 22, 1985 which was replaced by the Andhra Pradesh Educational Institutions Grant-in-aid(Regulation) Act (Act 22 of 1988), for short, "the Act", came into force from August 29, 1988 declaring in Section 3 that no private educational institution other than a college established after April 1, 1977 and existing on Sept. 1, 1985 and no private college established after April 1, 1977 and existing on March 1, 1985 shall be entitled to receive any grant-in-aid unless the conditions prescribed are fulfilled and the Committee constituted in G.O. Ms. No. 220 dated Feb. 24, 1988 recommends to admit the institution to grant-in-aid. Sections 4 and 5 are not relevant. Section 6 declares that the provisions of the Act shall have effect notwithstanding any judgment, decree or order of any court, etc. Non obstante clause has been engrafted in Section 7 prohibiting the Court to entertain the proceedings or enforcing payment thereof; since the matter is covered by the Act, the respondent has not committed any contempt. On seeing the averment, I admitted the cases and the respondent appeared. The respondent filed additional counter-affidavit on Sept. 23, 1988. Therein it is stated that the respondent

instructed the Government Pleader to file writ appeals against the judgments in the writ petitions; to comply with the directions procedural formalities obtaining the concurrence of the Finance Department, etc. are necessary and consultations have to be made and therefore the delay is inevitable. It is also stated that the deponent has highest regard for the orders of the Court and he had no intention to disobey the orders of the Court.

3. Sri Venugopal Reddy, learned counsel for the petitioners has contended that on expiry of two months' time granted in the judgment, the respondent unless gives satisfactory explanation, his non-compliance constitutes wilful disobedience u/s 2(b) Of the Contempt of Courts Act and becomes liable for punishment u/s 12 thereof; it expired in this case on April 11, 1988; no explanation has been given as to why it was not complied with during that period; the Ordinance was issued on June 30, 1988; it reiterates the Government's commitment to admit the institutions to grant-in-aid but they profess that several complaints were received regarding ineligibility to admit the institutions to grant-in aid or to receive grant-in-aid; on that basis they made the law; this Court already has gone into merits and on satisfying that the petitioners complied with Section 21 and other instructions, directed to admit them to grant-in-aid; unless the directions are set aside on appeal, the respondent is enjoined to implement it; the Ordinance and the Act is a naked encroachment on the judicial power of this Court under Article 226 of the Constitution and Section 12 of the Contempt of Courts Act; the Legislature is devoid of power or authority of law to make the Act. Such a void law is no defence to disobey the orders of this Court. The defence should not be a cloak or a mask or a pretence or a colourable device to avoid implementation of the orders passed by this Court. The learned Advocate-General while narrating the circumstances leading to make the Act, raised two-fold contentions. Firstly, that u/s 43 of the Education Act, the Government have to admit private educational institutions to grant-in-aid subject to economic capacity provided in the annual budget u/s 42. The State is under financial constraint. It is unable to bear the financial burden by admitting the private educational institutions to grant-in-aid. Though the Government issued u/s 42 orders to admit the institutions to grant-in-aid; with a view to review misuse thereof a policy decision was taken and constituted a high level committee in G.O.Ms. No. 220 which would look into all pending cases or cases referred to examination and report. On receipt thereof, the Government would take a decision. It is also further contended that the Government received several complaints regarding the eligibility or ineligibility of certain institutions for admitting to grant-in-aid; the Government examined the complaints and found it necessary to make a law; the Ordinance and the Act were accordingly made; the financial constraints and numerous complaints are the objects to make the Act; when the Legislature has power to make law, validation or amendment thereof with retrospective effect, since Section 42 provides the basis for financial constraints to grant-in-aid, with a view to relieve the financial drain, the Act was brought on statute. The Act relieves with non obstante clause of the liability to

obey the orders of the Court. The law is valid and good defence for the respondent for non-compliance. Even otherwise, the respondent bona fide believes that he need not obey the orders of the Court by operation of Sections 3, 6 and 7 of the Act unless the Committee u/s 3 makes recommendation; thereby it does not constitute wilful disobedience amenable to punishment u/s 12 of the Contempt of Courts Act.

4. Before embarking upon an enquiry into the power of the Legislature to make law trench into judicial power, it needs a slight explanation of the proceedings in the Court. The cases after prolonged adjournments were posted at request and argued by Shri R. Venugopal Reddy on Sept. 16, 1988. The Government Pleader, when his turn came up, requested for pass over till after lunch. But after lunch, he managed to be absent, as a result, the cases were adjourned to Sept. 20, 1988. At request of the learned Advocate General, they were adjourned to Sept. 22, 1988 and the cases were heard at full length occupying the entire day. The Government failed to produce the record for perusal. With a view to peruse records before dictating the judgment, when I am directing to produce the record and ordered to post the case for judgment on Sept. 23, 1988, the learned Advocate General, at the end, brought to my notice the order passed by my learned brother, Upendralal Waghrey. J. in W.R.M.P. No. 17013/88, etc. dt. Sept. 16, 1988 directing all the matters Writ Appeals as well as writ petitions touching the Act to be posted before a Division Bench for final hearing before the end of Sept. 1988, and requested to postpone the cases. I felt surprised at such belated request after spending five hours valuable judicial time and with grace with due apology the learned Advocate General withdrew his request when he is informed that at no point of time the above order was brought to my notice. On Sept. 23, 1988 at 10-30 a.m. the record of only of the Director of Higher Education has been produced which is of little assistance to the Court and I passed over the matter to 2-15 p.m. for production of the Government record At 2-15 p.m. the record relating to Writ Petition No. 17985/87 (Contempt Case No. 284/88) alone was produced. No other records have been produced.

5. The diverse contentions give rise to crucial question whether the respondent committed wilful disobedience of the Mandamus dt. Jan. 21, 1988, etc. Admittedly, the two months' time prescribed for compliance expired on April 11, 1988. Till date it has not been complied with. Therefore, ex facie it constitutes wilful disobedience. u/s 2(b), "Civil contempt" means wilful disobedience of any judgment, decree, direction, order, other process or wilful breach of undertaking given to a Court, etc. In *M. Ratnamaniyam v. K.S.R. Sarma* (1988) 2 APLJ (HC) 132, this Court considered the scope of Section 2(b) and held "to punish a contemner for civil contempt the necessary ingredient to be satisfied is wilful disobedience or wilful breach of an undertaking. The word "wilful" may mean "wantonly, intentionally or deliberately or it may mean consciously". It was further held that it is for the contemner to demonstrate his conduct from record that it is not a wilful disobedience. Generally it is difficult to establish by direct evidence of the wilful disobedience by the contemner since the animation to

disobey or omit to implement the judgment, writ, direction, order or a decree or other process is locked up in his/her mind. It is difficult to unravel by direct evidence. An inference of wilful disobedience would be deduced from the facts and circumstances and thereby it is an inferential fact. The burden is on the contemner to satisfy the Court from the record that his conduct or action or omission is not wilful disobedience of the judgment, writ, order, direction, decree or other process of the Court. Therefore, the conduct must be bona fide and the defence taken must be a valid one satisfying the conscience of the Court that on a given facts and circumstances the contemner is justified in his defence or conduct. The defence must not be a cloak, mask, pretence, pretext, camouflage or a colourable device to avoid implementation of the judgment, writ, order, direction or decree or other process of the Court. It must be bona fide and valid one. The defence taken in this regard in the two counter-affidavits of the respondent has already been elaborated hereinbefore. The main thrust is the Ordinance which was replaced by the Act and the alleged procedural delay. The question, therefore, is whether the Act is a valid one so as to enable the contemner to fall back upon. Since the contention in this regard of Sri Venugopal Reddy and the learned Advocate General have already been extracted, it needs no reiteration. The object of the Act is "to regulate the payment of grant-in-aid to private educational institutions in the State of Andhra Pradesh". It contains an unusual lengthy preamble running into five paragraphs to explain the intention to make the Act. Paras. 1, 2 and 3 relate to the orders in G.O.Ms. No. 424, G.O.Ms. No. 438 and G.O.Ms. No. 344 referred to hereinbefore.

Paragraph 4 is relevant and it reads thus :

"And whereas the Government have received several complaints that the schools and Colleges opened after the 1st April, 1977 and the additional sections and posts created in schools admitted to grant-in-aid prior to that date have not satisfied the conditions for admission to grant-in-aid and are yet claiming the grant-in-aid."

Paragraph 5 relates to the constitution of a high level committee in G.O. Rt. No. 220, etc. It is well settled that preamble is only one of the sources to cull out the intention in making the enactment but it does not control the language in the text in considering the validity of the statute. The intention in para 4 is receipt of complaints that the schools and colleges admitted to grant-in-aid have not satisfied the conditions for admission and they intend to go into that question statutorily. If really the intention to make law is the financial constraints engrafted in Section 42 of the Education Act as now contended by the learned Advocate General and stated in a writ petition, one would expect express mention in this regard also when the Act elaborately dealt with its intention in as many as five paragraphs. Therefore the reliance on Section 42 is only an afterthought and it bears little relevance. Moreover, in the annual budgets for 1985-86 to 1988-89, no provision was made towards grant-in-aid to the institutions to be admitted during the relevant years. The Act consists of eight

sections. u/s 1, the Act applies to all private educational institutions in the State and it comes into force from July 22, 1985. Section 2 is not relevant. Section 3 with non obstante clause provides that despite orders in G.O.Ms. No. 238 and G.O.Ms. No. 424, no private educational institution shall be entitled to receive any grant-in-aid; it shall be entitled to receive such grant-in-aid only from the date it satisfies the conditions for admission to grant-in-aid specified in the Education Act and recommended by the Committee to admit and release the grant-in-aid. Section 4 with the same non obstante clause provides that no private school admitted to grant-in-aid shall be entitled to receive grant-in-aid in respect of any additional sections or posts created, unless the Committee recommends the release of grant in respect thereof. Section 5 reiterates that any educational institution received grant-in-aid without satisfying the conditions for such grant or recommendation by the Committee, the Government reserved its right to direct the institution to refund the grant already received as specified therein. Sections 6 and 7 are most material to resolve the controversy and they read thus :

"6. Act to override other laws, etc. The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force of any judgment, decree or order of any Court, or other authority or any authority or any order to the contrary.

7. Notwithstanding any Government Order, any judgment, decree or order of any Court or other authority, no private educational institution other than a college established after the 1st April 1977, and existing on the 1st Sept., 1985 and no private college established after the 1st April, 1977 and existing on the 1st March, 1985, shall be entitled to claim or received any grant-in-aid except as provided for in this Act and accordingly:

(a) no suit or other proceeding shall be maintained or continued in any Court against the Government or any person or authority whatsoever for payment of any grant-in-aid; and

(b) no Court shall enforce any decree or order directing the payment of any grant-in-aid except to the extent provided by this Act."

6. Section 8 repeals the Ordinance. A reading of Section 6 would show that the provisions of the Act i.e., Sections 6 and 7 (material for the purpose of the cases) shall have effect notwithstanding anything contained in any judgment, decree or order of any Court, or any order to the contrary. Thereby it annuls the judgment, decree or orders of any Court. Section 7 with non obstante clause further declares that notwithstanding any judgment, decree or order of any Court, no private educational institution other than a college established after 1st April 1977 and existing on 1st Sept. 1985 and no private college established on the 1st April, 1977 and existing on the 1st March, 1985 shall be entitled to claim or receive any grant-in-aid except as provided for in this Act. It would mean that despite the judgment decree or order of any Court, unless the high level

Committee goes into (matter?) u/s 3, under G.O. Rt. No. 220 that the institutions satisfied the conditions and recommends for release of grant-in-aid, the educational institutions shall not be entitled to claim or receive any grant-in-aid. Similarly, Clause (a) of Section 7 accordingly declares that no suit or other proceeding shall be maintained or continued in any Court against the Government or authority whatsoever for the payment of any grant-in-aid. Thus Clause (a) of Section 7 excludes the jurisdiction of any Court to maintain or continue to maintain any suit or proceeding in any Court for the payment of grant-in-aid. Clause (b) thereof further declares that no Court shall enforce any decree or order directing the payment of any grant-in-aid except to the extent provided by this Act, obviously despite the judgment or order of this Court. It would thus be clear that the private educational institutions get entitlement to claim grant-in-aid or receipt thereof only on recommendations made by the high level committee. No Court shall enforce any decree or order passed by it in that regard and thereby, by legislative declaration, Section 7 nullifies the effect of a judgment, decree, order passed by any Court obviously including this Court passed under Article 226 with the mandatory language engrafted viz., ""shall". Their stand in the counter-affidavit and the argument of the learned Advocate-General fortifies this conclusion. It is an undisputed fact that the Ordinance closely followed the heels of the orders passed in several writ petitions. No civil suits were laid in any civil Courts.

7. The immediate question, therefore, is whether the Andhra Pradesh State Legislature is competent to make the Act to go into the legality of the Court orders; prohibit individuals from laying any suit or other proceeding in a Court claiming payment of grant-in-aid and equally prohibit enforcement thereof and reopen the judgments or orders passed by this Court.

8. The Constitution deals establishing federal legislature, executive and judiciary; equally State legislature, executive and judiciary; delineating the power of the, legislature, executive and the judiciary and directs the three organs of the State to function within the demarcated spheres engrafted in the Constitution. As regards the judicial power of the Supreme Court is concerned, on establishment and constitution of the Supreme Court, the powers etc. of the Judges of the Supreme Court have been dealt in Chapter IV -- "Union judiciary" and right to enforcement of the fundamental rights enshrined in Part III of the Constitution by judicial review was conferred on the citizen in Article 32 and Clause (4) thereof expressly prohibits suspension of the rights to judicial review except as provided in the Constitution and given no power in the Constitution in this regard. Similarly the High Courts in the States have been established under Part VI in Chapter V, and the right to judicial review, notwithstanding the right created under Article 32 and not in derogation thereof, has been assured to every citizen to approach the High Court and the High Court shall have power within its territorial jurisdiction to issue to any person or authority including the Government, directions, orders or writs including the writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, certiorari or any of them

for the enforcement of the fundamental rights or for any other purpose. The power of the High Court is a constituent larger power than the Supreme Court. There is no power in the Constitution given to the Parliament or the State Legislature to suspend the power of judicial review under Article 226. Therefore, every citizen, every management of a private educational institution or an institution as such has been assured and is entitled as a constitutional right to seek judicial redress from the High Court and it shall be the duty of the High Court to exercise its jurisdiction; in an appropriate case by issue of any writ, order or direction including Mandamus, even for the purpose of directing to admit and release grant-in-aid provided the petitioner satisfies the statutory conditions prescribed under the Education Act or the valid rules made thereunder. Thus, the judicial review, redress enforcement of the relief are constitutional rights which a citizen/person has under Article 32 or 226 of the Constitution.

9. The right to judicial review is now well settled, (which ?) is the basic structure of the Constitution. Democracy is a basic structure Division of power between the legislature, executive and judiciary is also a basic feature of the Constitution. In Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, while considering the power of the Parliament in enacting the Election Laws (Amendment) Act, 1975 and the Constitution (Thirty-ninth Amendment) Act, 1975 excluding the power of judicial review of the election of the Prime Minister and Speaker and dealing with separation of powers of the legislature, executive and judiciary, Chandrachud, J. (as he then was) held in para. 686 that the truth of the matter is that the existence and the limitations on the power of the three departments of Government are due to the normal process of specialisation in governmental business which becomes more and more complex as civilization advances. The legislature must make laws, the executive enforce them and the judiciary interpret them because they have in their respective fields acquired an expertise which makes them competent to discharge their duly appointed functions. In para. 687, it is stated that "the political usefulness of the doctrine of separation of powers is now widely recognised though a satisfactory definition of the three functions is difficult to evolve. But the function of the Parliament is to make laws, not to decide cases.....Indian Parliament will not direct that an accused in a pending case shall stand acquitted or that a suit shall stand decreed. Princely India, in some parts, often did it." In para 688, it is held that in a federal system which distributes powers between three coordinate branches of Government though not rigidly, "disputes regarding the limits of constitutional power have to be resolved by Courts" and therefore, as observed by Paton, "the distinction between judicial and other powers may be vital for the maintenance of the Constitution itself." (A Text Book of Jurisprudence, Vol. 4, page 295). The power is an encroaching nature, wrote Madison in the "The Federalist". The encroaching power which the Federalists feared most was the legislative power and that, according to Madison, is the danger of all republics. Alien says that the history of both the United States and France has shown on many occasions that the fear was not unjustified." (Law and Order, page 12)

In paragraph 689 it is further emphasised that-

" I do not suggest that such an encroaching power will be pursued relentlessly or ruthlessly by our Parliament. But no Constitution can survive without a conscious adherence to its fine checks and balances. Just as Court ought not to enter into problems entwined in the "political thicket", Parliament must also respect the preserve of the Courts. The principle of separation of powers is a principle of restraint which "has in it the precept innate in the prudence of self-preservation (even if history has not repeatedly brought it home), that discretion is the better part of valour". Courts have, by and large, come to check their valourous propensities. In the name of the Constitution, the Parliament may not also turn its attention from the important task of legislation to deciding court cases for which it lacks the expertise and the apparatus. If it gathers facts, it gathers facts of policy. If it records findings, it does so without a pleading and without framing any issues. And worst of all, if it decides a Court case, it decides without hearing the parties and in defiance of the fundamental principles of natural justice....."

In that regard, Clause (4) of Article 329-A was held to be ultra vires of the Constitution. It is not necessary to reiterate the ratios by the other learned Judges.

10. Arthus T. Vanderbilt in his "The Doctrine of Separation of Powers and its present day Significance" -- University of Nebraska Press, 1953 Edition, at page 37 states that -- "Men have known from sad experience centuries before Lord Acton said it that "Power tends to corrupt, and absolute power corrupts absolutely". A reign of law, in contrast to the tyranny of power, may be achieved only through separating appropriately the several powers of the Government". At page 4, he states that it is by balancing each of these three powers (Legislature, Executive and Judiciary) against the other two, that the efforts in human nature towards tyranny can alone be checked and restrained, and any degree of freedom preserved in the Constitution. Jefferson was of the same mind: "The concentrating of these in the same hand is precisely and the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands and not by a single one; 173 despots would surely be as oppressive as one". He further states that Madison was equally emphatic: "The accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one a few, or many, and whether hereditary, self-appointed, or elective, may justly be despotic. At page 51, he further states thus : "..... a government of law rather than of official will or whim. This goal can only be attained by a government of limited powers distributed both vertically and horizontally, as a glance at the dictatorships of today and yesterday will demonstrate to all who are willing to learn from the experience of others". In "Law and the Executive in Britain" (1949 Edition) Bernard Schwartz states at page 19 thus : "In the State towards which we are evolving, on the other hand, government tends gradually either to take over to control the functions heretofore performed by these other institutions. As it does so, it comes into

ever increasing contact with the individual life. "It is in this ceaseless contact of the individual with the State that the danger of arbitrariness has specially arisen." In "Limited Government and Judicial Review", (Tagore Law Lectures) Basu quotes Justice Miller of the American Supreme Court that in the absence of any such limitations, even the most democratic depository of power becomes a "depotism of the majority, if you choose to call it so, but it is none-the-less despotism." In Modern Constitution by Wheart, 1966 Edition, at pages 138-139, the learned author states that limited Government has come to mean that unlimited power should not be reposed in any body of men, not even a representative body. Basu in "Limited Government and Judicial Review" states at page 275 that where Constitution operates as a higher law, any act which transgresses the mandates of the higher law becomes unconstitutional and since not only the executive but the legislature itself is limited by that higher law.

11. Thus, the doctrine of separation of powers between Legislature, executive and judiciary stemmed from experience to prevent rein of tyranny or concentration of despotic power in a single individual or a body of few or many or an elective one which may justly be called despotic majority if we choose to call it so. Unlimited power reposed even in any body of men or even a representative body is a negation of constitutional scheme of republic form of Government and transgresses the mandate of the Constitution which creates it. The Constitution itself limits the power of its instrumentalities viz., legislature, executive and judiciary. The division of powers was intended not to avoid friction incident to the distribution of the governmental powers among the three organs, but to save people from autocracy.

12, The immediate question then is what is the distinction between judicial power and the legislative power. Stroud's Judicial Dictionary, Fourth Edition, Volume 4, the word "Judicial" has defined at pages 1448-1449 thus:

"The word "Judicial" has two meanings it may refer to the discharge of duties exercisable by a judge or justices in court; or to administrative duties which need not be performed in court, but in respect of which it is necessary to bring to bear a judicial mind i.e., a mind to determine what is fair and just in respect of the matters under consideration. Justices, for instances act judicially when administering the law in court, and they also act judicially when determining in their private room what is right and fair in some administrative matter brought before them e.g., the levying of a rate....."

In "Words and Phrases -- Legally Defined" by John. B. Saunders, Volume 3, at page 113, "Judicial Power" has been defined :

" If a body which has power to give a binding and authoritative decision is able to take action so as to enforce that decision, then but only by then, according to the definition quoted, all the attributes of judicial power are plainly present."

Prem's Judicial Dictionary, Volume II, at page 923, "Judicial power" as defined by Chief Justice Griffith in Huddart Parker and Co. v. Moorehead (1909) 8 CLR 330

approved by the Privy Council in *Shell Company of Australia v. Federal Commr. of Taxation* (1931) AC 275 at p. 283 means the power which every sovereign authority must of necessity have to decide controversies between its subjects, or between itself and its subjects, whether the rights relate to life, liberty or property. The exercise of this power does not begin until some tribunal which has power to give a binding and authoritative decision (whether subject to appeal or not) is called upon to take action.

13. In *Corpus Juris Secundum*, Volume 50, pages 560-561, it is stated thus :

"The distinction between judicial and a legislative act, duty, function, or power is well defined. The first deals with, or determines, what the law is, and what the rights of the parties are with reference to transactions already had. The second relates to, or prescribes, what the law shall be in future cases arising under it. Whatever an act undertakes to determine a question of right or obligation, or of property, as the foundation on which it proceeds, such act is to that extent a judicial one, and not the proper exercise of a legislative function.

The real test, in distinguishing between that which is legislative and that which is judicial, lies not in the fact that a hearing is afforded, or that an officer or agency makes an investigation, ascertains facts, uses discretion in acting in a given case, or reaches conclusions on evidence taken in the course of hearing of parties interested; but the subject of inquiry is the determinative factor."

In *Mayers v. United States* (1926) 272 US 52 at p. 293 Justice Brandeis has held that the doctrine of the separation of powers was adopted by the convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction incident to the distribution of the governmental powers among the departments, to save the people from autocracy- Edward S. Corwin, in "The Constitution, What it means today", 14th Edition at page 204, has observed :

" "Judicial power" is the power to decide cases and controversies in conformity with law and by the methods established by the usages and principles of law. Like legislative and executive power, judicial power too is thought to connote certain incidental or inherent attributes. One of these is the ability to interpret the standing law, whether the Constitution, acts of Congress or judicial precedents, with an authority to which both the other departments are constitutionally obliged to defer."

At page 571 of *Corpus Juris Secundum*, Volume 50, it is stated :

"In distinguishing judicial power from legislative power it has been held that judicial power is exercised in the decision of cases; the legislative, in making general regulations, by the enactment of laws. To declare what the law is or has been is judicial power; to declare what it shall be is of legislative. The latter acts from considerations of public policy, and the former is guided by the pleadings and evidence in the case. To enact laws is an exercise of legislative power; to

interpret them is an exercise of judicial power. It is legislative power to prescribe rules of action; it is judicial power to determine whether, in a particular case, such rules of action have been transgressed. An essential element of judicial power, distinguishing it from legislative power, is that it requires the ascertainment of existing rights."

Basu in "Tagore Law Lectures" on Limited Government and Judicial Review", at page 22, states that:

"The utility of Judicial Review lies in safeguarding the interests of the individual against those who are in power at any given point of time and offering an assurance that anybody who is affected may have a day in Court where the humblest and the most powerful are entitled to the same treatment. The institution of the Court is an umpire in dispute between the State and the individuals not merely gives its decision but also the reasons therefor."

At page 23, he states that :

"The Court enunciates the reason or principle on which a question before it has been decided as a binding precedent, or ratio decidendi."

Thus, it is the settled law that the legislature is invested with the power to lay down the policy and law and the rules and it is the judicial power to interpret the law on the basis of the pleadings and evidence placed before it, the rights of the parties in the light of the law laid down by the legislature and the executive to enforce the law, because they have in their respective fields acquired expertise which make them competent to discharge their duly appointed functions. The administration of justice is one of the most essential functions of the State. The judicial system deals with the administration of law through the agencies of Courts to resolve the dispute between citizen and the citizen; citizen and the State or State and the State.

14. Part XI in Chapter I, of the Constitution deals with distribution of legislative powers. Article 245 gives exclusive power to the Parliament to make laws for the whole or any part of the country and the legislature of a State for the whole or any part of the State. Article 246 distributes the powers between Parliament and the Legislatures of the States and Clause (3) thereof adumbrates that subject to Clauses (1) and (2), the Legislature of any State has exclusive power to make laws with respect to any matters enumerated in List in the Seventh Schedule (State List). Item 25 of the Concurrent List relates to Education, including technical education, etc., subject to the provisions of Entries 63, 64, 65 and 66 of List I. Therefore, the exercise of power in List III by the State Legislature is subject to the law made by the Parliament.

15. At the cost of repetition, the contention of Sri Venkataramanaiah, learned Advocate General is that once the legislature of the State has power to make law, power to pass Amendment Act or Validation Act, it is empowered to legislate on the right to admit the private educational institutions to grant-in-aid subject

to its financial commitment in the annual budget u/s 42 and the fulfilment of the conditions prescribed u/s 21 of the Education Act; when complaints have been received of ineligibility and misuse of grant-in-aid, the Legislature is free to make law afresh and in that process it is free to engraft by legislative device of employing non obstante clause removing the defects in admitting the private educational institutions to grant-in-aid by appointing a high level committee; entrust the pending cases or cases already concluded for investigation and to recommend for admitting to grant-in-aid. It is not an encroachment into the judicial power but is a legislative device. Accordingly, the Act is a valid law. The question then is whether the contention is well founded and merits acceptance.

In *The Municipal Corporation of The City of Ahmedabad and Another, Vs. The New Shrock Spg. and Wvg. Co. Ltd. etc. etc.*, the question arose was whether by Gujarat Amendment Act of 1968 introducing Section 152-A(3) to the principal Act would overrule the decision of the Court. The facts therein are : The companies own Immovable properties which were assessed to property tax on the basis of "flat rate". It was assailed in writ petitions under Article 226. The High Court dismissed the writ petitions. But on appeal, the Supreme Court held that the Corporation has no power to assess the buildings on flat rate method and it was reported in *New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others*, . The attachment proceedings for recovery of the amounts due under "the assessments already made were again the subject matter of pending writ petitions. At that stage, amendment was made with retrospective effect validating the assessments already declared invalid. That was again questioned In that context it was held that:

"Prima facie that provision (Sub-section (3) of Section 152-A) appears to command the Corporation to refuse to refund the amount illegally collected despite the orders of this Court and the High Court. That provision attempts to make a direct inroad into the judicial power of the State. The legislature under our Constitution have within the prescribed limits powers to make laws prospectively as well as retrospectively. By exercise of those powers, the legislature can remove the basis of a decision rendered by a competent Court thereby rendering that decision ineffective. But no legislature in this country has power to ask the instrumentalities of the State to disobey or disregard the decisions given by Courts."

Accordingly, Sub-section (3) of Section 152-A was declared ultra vires of the power.

16. In *Janapada Sabha Chhindwara Vs. The Central Provinces Syndicate Ltd. and Another*, the Municipal Board levied cess u/s 51 of the Central Provinces Local Self-Government Act 1921) at the rate of 3 pies per ton on coal extracted within the area, which was later enhanced from time to time up to 9 pies per ton. The Act was repealed with effect from June 11, 1948 by the Central Provinces and Bcrar Local Government Act, 1948. The Rules made under the Act 1920, taxes

imposed or assessments made under that Act shall continue to be in force under the Amended Act and the taxes shall be deemed to be due to the Sabha. The levy was challenged under Article 32 and held to be within Section 41 of 1920 Act. Then the validity of the enhancement was challenged in the High Court which is upheld. But on appeal with regard to enhancement, the Supreme Court held that the enhancement without sanction of the local Government was illegal and restrained to recover the same. It was reported in *The Amalgamated Coalfields Ltd. and Another Vs. The Janapada Sabha, Chhindwara*, . To rectify the defect pointed out in the impost of the cess. Amendment Act 18 of 1964 was made. Therein Section 3 provides that notwithstanding anything contained in any judgment, decree or order of any court, the cesses imposed, assessed or collected or purported to have been imposed assessed or collected by the Board in pursuance of the notifications notices specified in the Schedule shall for the purposes, be deemed to be, and to have always been, validly imposed, assessed or collected as if enactment under which they were so issued stood amended at all material times so as to empower the Board to issue the said notifications/ notices and validate the acts done thereunder. For removal of doubts, a declaration to that effect was made under Sub-section (2). This was challenged as being encroachment into judicial power. While upholding the contention, it was held that the nature of the amendment to 1920 Act was not indicated and on the words used in the Act, it is plain that the Legislature attempted to overrule or set aside the decision of the Supreme Court. That, "in our judgment, is not open to the Legislature to do under our Constitutional scheme. It is open to the Legislature within certain limits to amend the provisions of an Act retrospectively and to declare that the law shall be deemed to have been, but it is not open to the Legislature to say that a judgment of a Court properly constituted and rendered in exercise of its power in a matter brought before it shall be deemed to be ineffective and the interpretation of the law shall be otherwise than as declared by the Court." In *State of Tamil Nadu and Another Vs. M. Rayappa Gounder and Others*, under the Madras Entertainments Tax Act 1939 assessment already made were reopened by issuing subsequently notices to assess them were challenged in a writ petition in the High Court The High Court has held that there was no power to re-assess under the Act. The Act was amended validating the assessment and collection of the tax thereunder was sought to legalise with non obstante clause. The Validation Act was challenged. It was held that the section does not change the law retrospectively. It attempted to validate the invalid assessment. It also attempted to overrule the decision of the High Court. The section was therefore held to be invalid.

17. In *Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Others*, the respondent-Municipality levied impost on lands and buildings belonging to the appellant Company at a certain percentage of the capital value. The writ petitions were filed questioning the assessment. During the pendency, the Legislature passed Validation Act which was challenged by amending the writ petition. The writ petitions were dismissed and appeals were filed in the Supreme

Court challenging the Validation Act. It was contended that the validation was ineffective in carrying out the avowed objects. In considering that objective, it was held thus :

"When a legislature sets out to validate a tax declared by a Court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition of course, is that the legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative-competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a Court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal."

In that case, in view of the fact that the defect pointed out by the Court in the existing law was removed by suitable legislative amendments, the validation was upheld.

18. In *The Government of Andhra Pradesh and Another Vs. Hindustan Machine Tools Ltd.*, relied on by the Advocate General, "house" was defined u/s 2(15) of the Andhra Pradesh Gram Panchayats Act. The Gram Panchayat, Khudbullapur levied property tax on the buildings constructed within the factory premises of the respondent; relying upon the definition of "house", this Court held that the buildings constructed by the respondent were not liable to impost of property tax and accordingly the writ petitions were allowed. The matter was carried in appeals to the Supreme Court. During their pendency, the definition of "house" was suitably amended and also the assessments made were validated by the Amendment and Validation Act, 1974. That was challenged. In those circumstances, the Supreme Court held thus :

"If the old Section 2(15) were to define "house" in the manner that the amended Section 2(15) does, there is no doubt that the decision of the High Court would have been otherwise. In fact, it was not disputed before us that the buildings constructed by the respondent meet fully the requirements of Section 2(15) as amended by the Act of 1974."

Therefore, it was held that Validation Act was perfectly within the legislative competence and it does not impinge upon the judicial power. The decision is, therefore, of little assistance of the respondent.

19. Equally, the decision in *Utkal Contractors and Joinery (P) Ltd. and Others Vs.*

State of Orissa, renders little assistance. Therein purporting to exercise the power under the Orissa Forest Produce (Control of Trade) Act, 1981, a notification was issued directing that it would apply to sal seeds in the whole of the State of Orissa. The petitioners entered into a contract for the collection of sal seeds in certain specified forest divisions on payment of royalty. Thereafter, the Government refused to accept royalty from the petitioners on the ground that the notification had the effect of rescinding the existing contracts which were challenged in the writ petition. The writ petition was dismissed by the High Court. On appeal, the Supreme Court while considering the validity of the notification declared that the notification was not applicable to the forest produce grown in Government forests and the contract of the petitioners cannot be rescinded by the notification. Then the Orissa Forest Produce (Control of Trade (Amendment and Validation) Ordinance, 1987 was made removing the defect pointed out and revalidated the action already taken. While considering that question it was held that the amendment was not an encroachment on the judicial power. In that context it was held that the executive policy of the Government, or the Statement of Objects and Reasons of the Act or Ordinance cannot control the actual words used in the legislation. But the legislature may, in exercise of the plenary power conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law. There is no prohibition against retrospective legislation. The power of the legislature to pass a law postulates the power to pass it prospectively as well as retrospectively. That of course, is subject to other constitutional limitations. The rendering ineffective of judgments or orders of competent Courts by changing their basis by legislative enactment is a well-known pattern of all validating acts. Such validating legislation which removes the causes of ineffectiveness or invalidity of action or proceedings cannot be considered as encroachment on judicial power. But the legislature cannot by a bare declaration, without more, directly overrule, reverse or set aside any judicial decision. In that case it was held that the base was suitably removed by the Ordinance rendering the judgment ineffective. Therefore, the Validation Act was upheld.

20. In *Arcot N. Veeraswami Vs. M.G. Ramachandran and Others*, the High Court in exercise of the power u/s 92 C.P.C. framed a scheme for the administration of Panchaippa's Trust. Notwithstanding the governance of the Pachaiaippa's Trust under the scheme framed by the High Court, the Ordinance 1980 was initially issued and extended from time to time, and later, Tamil Nadu Pachaiaippa's Trust (Taking over of Management) Act (11 of 1981) was made. Its validity was questioned. V. Ramaswami, J. exhaustively considered the distinction between judicial power and legislative power and various decisions touching the subject and held in para 16 that once a competent court has exercised its jurisdiction and rendered a decision determining the rights of the parties, that decision cannot be interfered with or nullified by the legislature and the same can be got rid of only by an appeal or a revision to a higher court or by review or reopening by the court which rendered the decision, even though with reference to persons

not parties to the decision, the legal basis on which the decision was rendered can be altered by the legislature by amending the law with retrospective effect. That is to say, the basis of the decision could be nullified as to its applicability to future cases. But so far as the rights and obligations flowing from that case are concerned, unless the legislature specifically provides for reopening of that decision by the court which decided it, it will be binding on the parties. That is, while the legislature can nullify the basis of a decision, it cannot override the decision of the court. Therefore, whenever an act undertakes to determine a question of right or obligation and property as the foundation on which it proceeds, such act to that extent is a judicial one and it is not a proper exercise of legislative power. In that case, since the scheme was framed in exercise of the judicial power, that power cannot be annulled or abrogated by legislative enactment nullifying the scheme framed u/s 92 C.P.C That ratio squarely applies to the facts on hand.

21. Even in respect of curative acts, Sutherland in his "Statutes and Statutory Construction", Vol. II, at page 137, in para 2213 states that a curative act is a statute passed to cure defects in prior law, or to validate legal proceedings, instruments, or acts of public and private administrative authorities which in the absence of such act would be void for want of conformity with existing legal requirements, but which would have been valid if the statute had so provided at the time of enacting. At para 2214 the states that curative acts like other legislations may not intervene in matters purely judicial. Sutherland in his "Statutes and Statutory Construction", Vol. I, states in para 1904 at page 333, that amendments are frequently used; but clearly no court will enforce the amendment unless the law as amended is constitutional. Constitutional limitations may be complied with, but not avoided by amendment. From a conspectus of the ratio decidendi in the bead-role of decisions referred to hereinbefore, the settled-law is that the distinction between the legislative power and the judicial power is apparent. The Legislature is competent to make the law or amend or validate the law declared by the court either prospectively or retrospectively. The court decisions always binds the parties unless it is reversed on appeal or reviewed or fundamentally altered and in the altered circumstances, the decision could not have been rendered even in the first instance. The Legislature has no power to make a law declaring or nullifying the decision of a competent court invalid or ineffective and the interpretation of the law shall be otherwise than as declared by the court either directly or indirectly without removing the base, on which the judgment or order is rendered. The base is the construction put up as found in the judgment on a pre-existing legislative enactment or a statutory rule by the court contrary to what is purported to have been intended by the Legislature. By employing appropriate language expressly and clearly mentioning in the legislation, the base should be removed and thereby the Legislature could prospectively or retrospectively amend or validate or both by a valid law since the legislative competence is sine qua non and always the prime factor. If the Legislature lacks competence, then even the

amendment or validation prospectively or retrospectively always remains to be void, unconstitutional or invalid. No Legislature has power to ask the instrumentalities of the State to disobey or disregard the decision given by courts. Such a law is a direct inroad into the judicial power of the State nor the Legislature is competent to declare indirectly that the decision is open to review by a new law. In such an event it is a naked encroachment into judicial power and amounts to legislative overruling a judicial decision in exercise of legislative power, a negation of constitutional scheme.

22. Section 3(1) of the Act declares that unless the high level Committee constituted in G.O.Ms. No. 220, Education (SSE-I) Department, dt. Feb. 24, 1988 recommends to admit the institution to grant-in-aid, no private educational institution shall be entitled to receive grant-in-aid Sub-section (2) thereof further declares that only on recommendation by the Committee that the institution satisfied the conditions for admission to grant-in-aid, the grant-in-aid shall be released Section 6 of the Act declares that notwithstanding any judgment, decree or order (obviously of this Court), the Act shall have effect. The Act as the title indicates is a fresh regulatory enactment. No attempt was made to remove the base for the judgment. On the other hand, the base for the judgment is conditions prescribed in Section 21 of the A.P. Education Act and the orders issued in G.Os. referred to hereinbefore. That was reiterated in the preamble of various paragraphs. The compliance of those conditions was gone into by this court and rendered the judgment on hearing both sides. For the reasons of the receipt of complaints of non-fulfilment of conditions, the matters were reopened by constituting a committee by an Executive order and ordered the Committee to reopen the judgment or order. It is necessary to clear one cloud for making legislation afresh by the legislative policy is clearly within legislative competence. It is open to refer the cases not covered by the judgment of a court or admitted to grant-in-aid to the Committee for consideration. But under its thin edge of that power, the question is whether the Legislature could make an inroad into the judicial power to reopen the judgment, decree or order of any court or of this court issued under Article 226 of the Constitution by placing the self same matter before the high-level Committee and give the legislative sanction to it u/s 3 of the Act. In other words, would it be open to the Legislature by process of legislation to sit over the judgment of this court or any court and nullify the effect thereof u/s 6 of the Act? It is admitted by the Advocate-General on instructions to a question put by the court that after the Committee was constituted its sitting took place on Sept. 5, 1988 and the subject-matter in these cases have been placed before the Committee. That would clearly show that the Act was made to reopen the judgments of this court instead of giving effect to them and implementation thereof. The matters are now stood referred to the Committee and reopened the eligibility of the petitioner-institutions for admission to grant-in-aid Thus the case which attained finality (subject to appeals claimed to have been filed but details not given) directing to admit the institutions to grant-in- aid by the orders of the court are reopened by exercise

of legislative power. The main part of Section 7 of the Act by engrafting non obstante clause disables the private educational institutions (colleges or schools) which were established between April 1, 1977 and March 1, 1985 and are existing, to claim or receive grant-in-aid except as provided in this Act. Thereby the right to claim or receive grant-in-aid which the institutions had under the judgment, order or Mandamus under Article 226 of the Constitution is rendered ineffective. Attempting to reopen the cases covered by the orders of the court to admit them to grant-in-aid is a legislative re-opening of judicial orders under the Act. It is, therefore, a clear naked encroachment into the judicial power of this court, exercised under Article 226 of the Constitution. It is already seen that no civil suits were filed nor decrees obtained. The right to grant-in-aid acquired by the petitioners under the judgments and the writs of Mandamus issued by judicial review under Article 226 of the Constitution were not expressly mentioned in Section 3, Section 6 or Section 7 of the Act. What cannot directly be done, cannot indirectly be permitted to be done by the Legislature by engrafting generic or vague or elusive expressions like "any court", "any order" (of any court) and "to the contrary" directly impinging upon the power of this court or nullifying the effectivity, efficacy and enforceability of the orders of passed under Article 226 of the Constitution trespassed into the judicial power of this Court. Sections 3, 6 and 7 of the Act seek to take away the right accrued by the judgment of this court without mentioning or expressly saving them. Thus I have no hesitation to hold that the Legislature clearly trespassed into the judicial power by reopening the judgment judicially pronounced under Article 226 of the Constitution, which the Legislature of the State of Andhra Pradesh clearly lacks and thereby Sections 3 and 6 and declaration in Section 7 of the Act are ultra vires and void.

23. Equally, Section 7(a) of the Act by declaring that no proceedings shall be maintained or continued in any court, the Legislature protruded into the constitutional right to review entrusted to the High Court under Article 226 of the Constitution for which the Legislature of the State of Andhra Pradesh is devoid of power under Article 246 of the Constitution or any entry in the State List or Concurrent List of the Seventh Schedule under the Constitution. Therefore, the declaration with non obstante clause in Section 7(a) of the Act is also a clear unwarranted encroachment into the judicial power of review of the High Court under Article 226 of the Constitution.

24. As regards Section 7(b) of the Act, the declaration that no court shall enforce any decree, order or judgment directing payment of any grant-in-aid except on recommendation by the high level Committee, is also beyond the legislative competence for two reasons. Firstly, when a judicial order was made and it becomes enforceable, there should be a remedy under law. Orders issued under Article 226 of the Constitution are enforceable under the writ rules issued by this court under Arts. 225 and 226 of the Constitution. In *G. Agamiah v. Military Estate Officer* (1986) 2 Andh LT 582, the question was whether a writ of Mandamus can be enforced under Order 21 Rule 32 or 35, C.P.C. It was

contended therein that it could be enforced only by way of proceedings u/s 12 of the Contempt of Courts Act. and execution under Order 21, Rules 32 and 35, C.P.C. are not maintainable. This court, while considering that question, has held that the enforcement u/s 12 of the Contempt of Courts Act is one remedy and the writ of Mandamus can be enforced under Order 21, Rules 32 and 35, C.P.C. But Section 7(b) of the Act prohibits the enforcement of writ or order, or decree. An order issued in exercise of the constitutional power under Article 226 of the Constitution is enforceable at law. But Section 7(b) of the Act prohibits such enforcement. The State Legislature clearly makes an inroad into constitutional power under Article 226 of the Constitution and writ Rules. So it lacks jurisdiction to prohibit enforcement of any decree or order. Secondly, item 14 of the Concurrent List (List III) in the Seventh Schedule gives power to make law of "contempt of court but not including the contempt of the Supreme Court." In exercise thereof, the Contempt of Courts Act 1971 was made. Section 2(b) of the Contempt of Courts Act defines "Civil contempt"". Wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court is made punishable u/s 12 of the Contempt of Courts Act. The enforcement of the orders is one of the modes under the Contempt of Courts Act. Section 7(b) of the Act clearly trenches into the occupied field of the Contempt of Courts Act, thereby it is also clearly beyond the legislative competence or the jurisdiction of the Legislature of the State of Andhra Pradesh. Moreover, no executive action can be kept beyond judicial review. By conjoint operation of Sections 3, 6 and 7 of the Act, the recommendation of the high level Committee is kept beyond judicial review and it is a negation or rule of law under the constitutional scheme. Of course, the area of consideration is not germane for the purpose of these cases. Therefore, Section 7(a) and (b) of the Act also are void ab initio and ultra vires of the powers of the Legislature. Thus the necessary conclusion is that the defence set up by the contemner has no legal base, and unavailable to him.

25. The question then is whether the respondent is liable to punishment u/s 12 of the Contempt of Courts Act. In *Gulshan Kallu and Others Vs. Zila Parishad, Etawah, U.P. and Another*, , it was held that the State Government and its officials should set the standard to other litigants in the matter of compliance with the orders of the court to subserve the efficacy of the rule of law lest it remains merely a meaningless phrase or an empty formality. When the orders were issued by this court, the State Government being the highest Executive should display highest regard and enforce the orders with least avoidable delay as a co-ordinate instrumentality of the State. If there is any delay in implementation, it should take expeditious steps to place the genuine reasons or germane problems and seek extension of time as responsible officer. It does not lie in its mouth to say that procedural procrastination would be a justification for non-compliance. It falls foul from their mouth to say that the delay on their part is a justification or defence. In *Abdul Razack Sahib Vs. Mrs. Azizunnissa Begum and Others*, , when a conditional order of stay of execution was made on

committing default in payment thereof, proceedings were laid u/s 1 of the Contempt of Courts Act 1952. Therein it was held that proceedings by way of contempt of courts should not be used as a "legal thumbscrew" by a party against his opponent for enforcement of his claim. Since the conditional stay was granted and on committing default, it is open to the party to lay execution and have the decree enforced. The execution by way of contempt of courts may not be expedient. In those circumstances, the ratio therein clearly renders no assistance to the State. It is not the case that there is any other forum for the petitioners to have the Mandamus executed. It is the legislative impediment that stood in the way. Therefore, if it is found that the contemner is otherwise unjustified, he is liable to punishment. Bhagwan Giri Goswamy President, Dhamtari Co-op. Marketing Society Ltd. Vs. R.P. Nayak, is also a case where the arbitrator has admittedly jurisdiction under the contract to adjudicate the dispute, Pendency of the suit in a court per se does not oust his jurisdiction to adjudicate the dispute between the contracting parties. Initiation of the arbitration proceedings and continuation thereof by the arbitrator even after receipt of notice of the suit do not per se constitute a contempt unless there is an order prohibiting the arbitrator to proceed further and he proceeded thereafter. Therefore, the decision renders little assistance to the State. In both the decisions, there appears to be some mixing up of the areas of consideration and the scope of contempt proceedings with regard to civil and criminal contempt. "Civil contempt" is defined in Section 2(b) of the Contempt of Courts Act and "criminal contempt" is defined u/s 2(c) thereof. The areas of consideration in respect thereof are entirely different. One cannot be mixed up with the other though the object is to uphold the majesty and the dignity of the court. With regard to "Civil contempt", it is wilful disobedience or omission to implement the judgment, order, decree or Mandamus or a wilful breach of an undertaking given to a court. The "criminal contempt" is entirely different.

26. The immediate question, therefore, is whether the contemner-respondent committed wilful disobedience. It is seen that in the first case, record has been placed before me. Though there is no explanation as regards the action taken between Feb. 12, 1988 and April 11, 1988 and the time fixed by the court stood expired, though the explanation in the additional counter is that a letter was written to the Government Pleader to file writ appeals. What has happened thereafter and the steps taken in that regard have not been explained. Mere pendency is no ground unless the appellate court stays or suspends the operation of the order. The Ordinance was issued and was published on June 30, 1988, and the Act was made and came into force on Aug. 29, 1988. The case was referred to the high level Committee on Sept. 5, 1988. The note-file discloses that the draft G.O. was prepared to pay grant-in-aid amount, but the Finance Department nailed it on usual objection which could be satisfactorily explained but has not been done. With regard to the other cases, no record has been produced. Though Sri Venugopal Reddy is justified in contending that the contemner has shown no semblance of effort for compliance and to draw adverse

inference against him, I find on the facts and circumstances of the case that the respondent may not alone be personally blamed Under those circumstances, taking a realistic view I hold that the respondent alone cannot be convicted. On these peculiar facts and in the circumstances of the case, I find no justification to convict the contemner u/s 12 of the Contempt of Courts Act. However, ten days's time from today is granted to comply with the orders in the writ petitions, irrespective of the result in the appeals. I hope and trust that the orders would be implemented in right earnestness.

27. With the above directions, the contempt cases are dismissed No costs. Advocate's fee Rs. 500/- in each.