

(2012) 08 RAJ CK 0038

In the Rajasthan High Court

Case No : Civil Appeal No's. 2504-2505 of 2012

Salauddin Ahmed and Another

APPELLANT

Vs

Samta Andolan

RESPONDENT

Date of Decision : 29-08-2012

Acts Referred:

Constitution of India, 1950 — Article 16, 16(4A), 16(4B), 309, 335

Citation : (2012) CriLJ 4564

Hon'ble Judges : Chelameswar, J;Altamas Kabir, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Altamas Kabir, J.—These appeals arise out of the common judgment and order dated 23rd February, 2012, passed by the Division Bench of the Rajasthan High Court in D.B. Civil Contempt Petition No. 941 of 2010 and D.B. Civil Contempt Petition No. 359 of 2011, whereby the alleged contemnors were held to be guilty of contempt of court for having violated the order passed by the Division Bench of the Jaipur Bench of the Rajasthan High Court on 5th February, 2010, in D.B. Civil Writ Petition No. 8104 of 2008. From the materials on record it transpires that on 27th November, 1972, the State of Rajasthan issued a Notification providing for reservation for Scheduled Castes/Scheduled Tribes candidates to the extent of 15% for Scheduled Castes and 7.5% for Scheduled Tribes. Subsequently, on and from 3rd October, 1973, such reservation was increased to 16% and 12% for Scheduled Castes and Scheduled Tribes candidates, respectively. On 29th January, 1981, the Rules for promotion based on the criteria of seniority-cum-merit were introduced. In 1992, in the case of Indra Sawhney etc. etc Vs. Union of India and others, etc. etc., this Court had held that reservation in promotional posts for Scheduled Castes and Scheduled Tribes candidates was not permissible. The effect of the said decision was neutralized by the Constitution (Seventy Seventh Amendment) Act, enacted on 17th June, 1995, whereby Article 16(4A) was inserted in the Constitution to provide for

reservation in respect of Scheduled Castes and Scheduled Tribes candidates in promotional posts.

2. The aforesaid amendment led to a spurt of litigation. In 1996, while considering the said issue in the case of Ajit Singh Januja and others Vs. State of Punjab and others, this Court held that even if the person in reserved category is promoted earlier than a general category candidate due to operation of roster, and subsequently, the general category candidate was also promoted, the candidates in the general category would regain their seniority as existing in the cadre prior to promotion. This method of allowing a subsequent promotee to regain seniority came to be known as the "catch-up" principle. On 30th January, 1997, the Union of India issued a memorandum to all the various departments asking them to implement the decision rendered by this Court regarding regaining of seniority pursuant to the said direction. Thereafter, on 1st April, 1997, the State of Rajasthan followed suit and introduced the "catch-up" principle. A provisional seniority list of candidates belonging to the Rajasthan Administrative Services was issued on 26th June, 2000, on the basis of the Notification dated 1st April, 1997. However, it was never given effect to and was ultimately quashed by the Rajasthan High Court in Writ Petition (Civil) Nos. 2968 of 2000, 2176 of 2000, 3373 of 2000 and 3385 of 2000.

3. In 2001, the Parliament passed the Constitution (Eighty Fifth Amendment) Act inserting the words "consequential seniority" for members of reserved category. Thus the said amendment removed the basis of the judgment rendered by this Court in Union of India and others etc. Vs. Virpal Singh Chauhan etc., and in Ajit Singh-I's case (supra). The provisions of the said amendment were given retrospective effect from 17.6.1995, in order to remove the provision relating to the "catch-up" principle with retrospective effect.

4. In 2002, a writ petition was filed before this Court by the All India Equality Forum against the State of Rajasthan, seeking to strike down the Constitution (Eighty Second Amendment) Act and the Constitution (Eighty Fifth Amendment) Act of 2001. The writ petitioner claimed similar reliefs as in M. Nagaraj and Others Vs. Union of India (UOI) and Others, Thereafter, on 11th November, 2002, the interim order regarding implementation of Article 16(4-A) of the Constitution was clarified and it was indicated that if certain candidates from reserved category were entitled to promotion in terms of the provisions of Article 16(4-A), they would be promoted. It was, therefore, the stand of the Union of India that the interim order could not be construed to be a bar to implementation of the amendment to Article 16(4-A). The order also provided that no person was to be reverted from their existing placement or standing in the seniority list.

5. After having introduced the same, the State of Rajasthan by its Notification dated 28th December, 2002, withdrew the "catch-up" principle after the introduction of the Constitution (Eighty Fifth Amendment) Act. From the Notification dated 28th December, 2002, it would be seen that an attempt was made to preserve the rights of general category candidates, who had already

been promoted vide Notification dated 1st April, 1997. It was also indicated that persons who had already been promoted vide Notification dated 1st April, 1997, were not to be reverted.

6. The vires of Articles 16(4-A), 16(4-B) and Article 335 of the Constitution was challenged and in *M. Nagaraj and Others Vs. Union of India (UOI) and Others*, it was considered by a Constitution Bench of this Court, which upheld the validity of Articles 16(4-A), 16(4-B) and the amendment to Article 335 of the Constitution, but imposed certain conditions regarding reservation in promotion and accelerated promotions. This Court directed that the State should collect quantifiable data, after which the Committee should also examine the requirements relating to backwardness, inadequacy in representation and efficiency for the purpose of grant of reservation in promotion and accelerated promotions. One of the areas of dispute between the parties is that the State Government also withdrew the "catch-up" principle in favour of general category candidates with retrospective effect, but without following the principles enunciated in *M. Nagaraj's* case (*supra*). On 24th June, 2008, a seniority list was drawn up without considering the "catch-up" principle, which also gave effect to the Notification dated 25th April, 2008.

7. On 22nd August, 2008, D.B. Civil Writ Petition No. 8104 of 2008 was filed by Bajrang Lal Sharma and others, challenging the said Notification dated 25th April, 2008, and the seniority list drawn up consequent thereto. While entertaining the writ petition, the Division Bench of the High Court stayed the said Notification dated 25th April, 2008.

8. On 4th March, 2009, a seniority list was prepared, but the same was quashed by the learned single Judge. The Notifications dated 28th December, 2002 and 23rd April, 2008, were challenged before the High Court by several candidates belonging to the general category and the same were ultimately quashed by the High Court on 5th February, 2010, on the ground that the conditions precedent laid down in *M. Nagaraj's* case (*supra*), had not been followed. The High Court was also of the view that the right which had vested to the candidates by virtue of the Notification dated 1st April, 1997, and had been protected by Notification dated 28th December, 2002, had been illegally taken away vide Notification dated 25th April, 2008.

9. On 16th November, 2010, the general category employees filed a contempt petition against the Chief Secretary for not implementing the order passed by the High Court on 5th February, 2010, which was registered as D.B. Civil Contempt Petition No. 914 of 2010 in D.B. Civil Contempt Petition No. 8104 of 2009, titled as *Samta Andolan v. Salauddin Ahmad & Anr.* On an application filed before this Court, this Court vide its order dated 16th November, 2010, stayed the contempt proceedings pending before the High Court.

10. The case made out in the Contempt Petition was that despite the judgment dated 5th February, 2010, and the dismissal of the various Special Leave

Petitions filed by the State of Rajasthan and others on 7th December, 2010, the State authorities were not complying with the said judgment. According to the petitioners in the Contempt Petitions, the judgment of the High Court passed on 5th February, 2010, became final after the dismissal of the Special Leave Petitions, but despite the same, they were not being complied with by the concerned authorities of the State. The authorities were deferring compliance of the judgment dated 5th February, 2010, on the ground that they were undertaking the exercise of collecting quantifiable Page 1111 data required to enable the State of Rajasthan to exercise its powers under Article 16(4-A) of the Constitution. It was the further grievance of the Contempt Petitioners that the letter issued by the State on 14th February, 2011, was in purported compliance of the judgment dated 7th December, 2010, passed in SLP(C) No. 6385 of 2010 (reported in Suraj Bhan Meena and Another Vs. State of Rajasthan and Others, asking all the Departments to give information with regard to the SC/ST employees from 1.4.1997 onwards on year-wise basis, which was not contemplated in the M. Nagaraj judgment. It was also the case of the Contempt Petitioners that Article 16(4-A) is an enabling provision based on the Government's information with regard to the backwardness and inadequate representation of SC/ST employees, which could not be given retrospective effect.

11. On account of the inaction of the alleged contemnors on the said ground, the Contempt Petitioners not only prayed for taking severe action against the contemnors, but to also give suitable directions to the said Respondents/Contemnors to implement the judgment dated 5th February, 2010, passed in D.B. Civil Writ Petition No. 8104 of 2008 and that the petitioners be allowed to regain their accrued and vested seniority.

12. As indicated hereinabove, the Division Bench of the High Court found the appellants herein to be guilty of having committed contempt of Court for deliberate and wilful violation of the order passed by the Division Bench of the Jaipur Bench of the Rajasthan High Court on 5th February, 2010.

13. Thereafter, on 7th December, 2010, the State of Rajasthan filed a SLP against the order passed by the High Court on 5th February, 2010, by which the Notifications dated 28th December, 2002 and 25th April, 2008, had been quashed. While upholding the judgment of the High Court, this Court also observed that the claims of the reserved category candidates could be considered after following the principles laid down in M. Nagaraj and Others Vs. Union of India (UOI) and Others, . On 22nd December, 2010, a substantive writ petition was filed by Captain Gurvinder Singh & Ors. etc. challenging the vires of the Rajasthan Scheduled Castes, Scheduled Tribes, Backward Classes, Special Backward Classes & Economically Backward Classes (Reservation of Seats in Educational Institutions in the State and of Appointments & Posts in Services under the State) Act of 2008, hereinafter referred to as "2008 Act". The main ground of challenge was with regard to the reservation exceeding the 50% ceiling due to extension of reservation to Special Backward Classes &

Economically Backward classes. The High Court by its order dated 22nd December, 2010, restrained the State from giving effect to Sections 3 and 4 of the 2008 Act. It is the case of the appellants that the said order was directed against the reservation in respect of Special Backward Classes & Economically Backward Classes and had nothing to do with reservation in respect of promotion for Scheduled Castes and Scheduled Tribes candidates.

14. On 31st March, 2011, the State Government constituted the Bhatnagar Committee to look into the different aspects relating to reservation in promotion and consequential seniority in terms of the judgment rendered in M. Nagaraj's case (supra). Immediately, thereafter, on 13th April, 2011, a further contempt petition was filed by Shri Bajrang Lal Sharma. The Bhatnagar Committee Report was submitted to the State Government on 19th August, 2011 and on 11th September, 2011, the State Government, in exercise of its powers under the proviso to Article 309 of the Constitution of India and on the basis of the Bhatnagar Committee Report, framed a Rule with retrospective effect from 1st April, 1997, so that the vacuum which had been created could be filled up. The Rule also provided for roster-based promotion based on the posts available and also preserved the rights of the general category candidates who had earned promotions between the period 1st April, 1997 to 28th December, 2002, or the promotions which had actually been given effect to in terms of the repealed Notification dated 1st April, 1997.

15. Appearing for the appellants, the learned Attorney General pointed out that the Notification issued by the State Government on 11th September, 2011, had been declared void by the High Court by holding that the same did not amount to valid compliance and the Notification dated 1st April, 1997, should be given effect to. The learned Attorney General submitted that since by the Notification dated 11th September, 2011, the earlier Notification dated 1st April, 1997 had been withdrawn, the same could not be given effect to without first declaring the Notification dated 11th September, 2011, to be ultra vires.

16. The learned Attorney General submitted that the Notification dated 11th September, 2011, could not have been declared ultra vires in the absence of a substantive writ petition challenging the same, and, in any event, it could not be questioned in a contempt proceeding or be declared ultra vires therein, particularly, when the Bhatnagar Committee had been appointed in terms of the order passed by this Court in M. Nagaraj's case (supra) and the Notification dated 11th September, 2011, was issued in pursuance of the Report of the said Committee.

17. The learned Attorney General urged that by the order passed by the Division Bench of the High Court in D.B. Civil Writ Petition No. 8104 of 2008, the Notifications dated 28th December, 2002, and 25th April, 2008, were declared to be ultra vires the Constitution. As a result, the consequential orders passed by the State, including preparation of the seniority list of the Super-time Scale Officers and the Selection Scale of the Rajasthan Administrative Service Officers,

passed on the basis of the aforesaid Notifications, were quashed. Aggrieved by the said order, the State of Rajasthan and Shri Suraj Bhan Meena filed separate Special Leave Petitions before this Court which were disposed of on 7th December, 2010. This Court allowed the claim of Suraj Bhan Meena (SC/ST candidates), subject to the conditions laid down in M. Nagaraj's case (supra).

18. While the various above-mentioned proceedings were being pursued, Writ Petition No. 13491 of 2009 was filed challenging the vires of the 2008 Act. A prayer was also made to review the ceiling limit in favour of SC, ST and OBC candidates of 16%, 12% and 21%, respectively. The Notification dated 25th August, 2009, was also questioned. The subject matter of the Writ Petition was focused on reservation to special backward classes and economically backward classes. By an order dated 22nd December, 2010, passed in the said Writ Petition, a Division Bench of the Rajasthan High Court stayed the operation of Sections 3 and 4 of the Act along with Notification dated 25th August, 2009, and the matter was referred to the Rajasthan State Backward Classes Commission, before whom the State Government was directed to place the quantifiable data within a period of one year. The stay granted was directed to continue till the matter was decided afresh.

19. Subsequently, contempt proceedings were taken, being No. 359 of 2011, challenging the letter dated 14th February, 2011, issued by the State of Rajasthan to the Heads of all Departments asking for information regarding representation of SC/ST employees. Ultimately, by the order impugned in these appeals, the High Court held the appellants herein to be guilty of contempt of Court, inasmuch as, despite sufficient time having been given to the respondents to comply with the order dated 5th February, 2010, the appellants failed to do so even after a lapse of 14 months after their Special Leave Petitions were dismissed by this Court. The High Court also took note of the fact that the appellant No. 1 herein, Shri Salauddin Ahmed, did not even reply to the show-cause notice issued to him, which the High Court interpreted to mean that the said appellant had nothing to say in his defence regarding the allegation of contempt of Court made against him. The High Court further noted that on several occasions time was sought for by the State to comply with the order passed on 5th February, 2010, but nothing was done in the matter. Giving the appellants 3 days' time to purge themselves of the contempt and to comply with the orders passed by the Court, the Court further directed the appellants to be present in person before the Court for the purpose of sentencing in case of non-compliance.

20. Aggrieved by the order of the Division Bench of the Rajasthan High Court, the State Government filed Civil Appeal Nos. 2504-2505 of 2011 and on 27th February, 2012, this Court issued notice and stayed further proceedings before the High Court.

21. The learned Attorney General submitted that the order dated 5th February, 2010, was in two parts. While one part dealt with quashing of the Notifications

dated 28th December, 2002 and 25th April, 2008," the other part was with regard to the directions given in M. Nagaraj and Others Vs. Union of India (UOI) and Others, for the collection of quantifiable data. It was further submitted that the State of Rajasthan had consistently acted as per the directions given in paragraph 68 of the judgment rendered in Suraj Bhan Meena and Another Vs. State of Rajasthan and Others, whereby it was directed that the claim of the petitioners, Suraj Bhan Meena and Sriram Chordia, in SLP (C) No. 6385 of 2010, would be subject to the conditions laid down in M. Nagaraj's case (supra).

22. The learned Attorney General submitted that pursuant to the directions given in Suraj Bhan Meena's case (supra), the State of Rajasthan issued a letter to all the Departments on 14th February, 2011, to ensure compliance of the judgment dated 7th December, 2010. In addition, the State Government sought information with regard to representation of SC/ST employees in public employment from 1.4.1997 to 1.4.2010 on a year-wise basis. The learned Attorney General contended that on 8th March, 2011, one more contempt petition was filed, viz., Contempt Petition No. 359 of 2011, in relation to the letter dated 14th February, 2011, referred to hereinabove. It was submitted that the State cannot collect data with retrospective effect in pursuance of the decision in M. Nagaraj's case (supra) and the judgment dated 7th December, 2010. It was also submitted that the State of Rajasthan was not required to collect the quantifiable data to comply with the judgment dated 5th February, 2010.

23. It was also contended that the contempt petitioner had misunderstood the import of the judgment dated 5th February, 2010, passed by the Division Bench of the High Court in relation to the judgment of this Court dated 7th December, 2010. The learned Attorney General submitted that it was on account of the confusion in the mind of the petitioner that a prayer had been made in the Contempt Petition for suitable directions upon the contemnors to implement the judgment dated 5th February, 2010, passed in D.B. Civil Writ Petition No. 8104 of 2008 and to allow the petitioners to regain their accrued and vested seniority given to them in pursuance of the seniority list of 26.6.2000. It was submitted that the seniority list of 26.6.2000 had already been quashed by the High Court in a dispute between direct recruits and promotees and the said matter is pending in this Court by way of a Special Leave Petition.

24. The learned Attorney General submitted that the constitution of the Bhatnagar Committee in pursuance of the order passed by this Court on 7th December, 2010, was challenged by filing of interlocutory applications, both before this Court and also before the High Court. All the interlocutory applications were taken up for consideration and disposed of by this Court on 20th July, 2011. The learned Attorney General submitted that in the said order, this Court had recorded the fact that Mr. M.L. Lahoti, learned counsel appearing for the Respondents, did not challenge the formation of the Committee, but contended that its findings should have prospective operation and could not

affect the case of the writ petitioners, Suraj Bhan Meena and others. It was also emphasized that this Court took cognizance of the constitution of the Bhatnagar Committee, but did not pass any restraint orders with regard to its functioning. On the other hand, while disposing of the several interlocutory applications, this Court also observed that the parties would be free to make their submissions with regard to the action taken by the State Government in the matter pending before the High Court. The learned Attorney General urged that the High Court had noticed the order passed by this Court on 7th December, 2010, but had not considered the directions contained therein.

25. The learned Attorney General submitted that the Bhatnagar Committee Report had been submitted on 19th August, 2011, and after due consideration of the Report, a Notification was issued on 11th September, 2011. However, it was also noticed by the High Court that the constitution of the Bhatnagar Committee, as also the Notification issued on 11th September, 2011, was not in conformity with the judgment rendered by the High Court on 5th February, 2010, without noticing that the same was in compliance of the directions contained in paragraph 68 of the judgment delivered by this Court on 7th December, 2010. The learned Attorney General submitted that the directions contained in the aforesaid judgment dated 7th December, 2010, recognizing the rights of the reserved category (petitioners therein) and directing the determination of such rights, be undertaken after completion of the exercise laid down in M. Nagaraj's case (supra).

26. On maintainability, it was contended that it was beyond the powers of this Court to declare a law ultra vires in the contempt jurisdiction. It was also contended that in view of the decision of this Court in State of U.P. and Others Vs. Hirendra Pal Singh etc., a judicial order could not be passed to give effect to a repealed law or a law which was no longer in existence, as has been done in the instant case. The learned Attorney General reiterated that the High Court had erroneously declared the Notification dated 11th September, 2011, to be ultra vires without any challenge being made to such Notification.

27. The learned Attorney General submitted that the Bhatnagar Committee had been formed pursuant to the directions given by this Court in Suraj Bhan Meena's case (supra) and this Court while disposing of the Special Leave Petitions filed by Suraj Bhan Meena and others categorically indicated that the impugned order of the High Court was, in fact, based on the decision in M. Nagaraj's case (supra) as no exercise had been undertaken in terms of Article 16(4-A) to acquire quantifiable data regarding the inadequacy of representation of the Scheduled Castes and Scheduled Tribes communities in public service and that the Rajasthan High Court had rightly quashed the notifications dated 28th December, 2002 and 25th April, 2008, issued by the State of Rajasthan providing for consequential seniority and promotion to the members of the Scheduled Castes and Scheduled Tribes communities. The Special Leave Petitions were, therefore, disposed of by observing that the claim of the petitioners, Suraj Bhan

Meena and Sriram Chordia in SLP (C) No. 6385 of 2010, would be subject to the conditions laid down in M. Nagaraj's case (supra). The Special Leave Petitions filed by the State of Rajasthan were consequently dismissed. The learned Attorney General urged that this Court had, in fact, directed that the parties would be free to make their submissions with regard to the action taken by the State Government in the matter pending before the High Court.

28. The learned Attorney General concluded on the note that as recently observed by this Court in Dinesh Kumar Gupta Vs. United India Insurance Co. Ltd. and Others, in order to establish that a civil contempt had been committed, it would have to be shown that the concerned authority had willfully and deliberately disobeyed the orders passed by the High Court without any reasonable or rational interpretation of the order. It was also observed that it would not also be correct to hold that a contempt had been committed when the disobedience was neither deliberate nor wilful, but the steps taken were on account of the ignorance of the correct legal position and the action taken was in good faith without any mala fide motive to defeat or defy the Court's order.

29. The learned Attorney General submitted that in this case, in compliance with the decision in Suraj Bhan Meena's case (supra) and the directions given both in M. Nagaraj's case (supra) and in Suraj Bhan Meena's case (supra), the concerned authorities had appointed the Bhatnagar Committee to enter into a fact finding exercise in accordance with the provisions of Article 16(4-A) of the Constitution. It could not be said that there was any wilful or deliberate intention or mala fide motive on the part of the concerned authorities in not complying with the directions contained in the judgment of the High Court dated 5th February, 2010. The Contempt Petition was, therefore, liable to be dismissed.

30. Mr. C.S. Vaidyanathan, learned Senior Advocate, who had appeared for the second contemnor, Khemraj Chaudhary, while adopting the submissions made by the learned Attorney General, submitted that the steps taken by the respondents were in keeping with the directions given both in M. Nagaraj and Others Vs. Union of India (UOI) and Others, and in Suraj Bhan Meena and Another Vs. State of Rajasthan and Others, for identifying such members of the SC/ST communities who would be entitled to the benefits provided under Article 16(4-A) of the Constitution. Mr. Vaidyanathan reiterated the submissions made before the High Court that the Contempt Petitions were, in fact, not maintainable as the orders out of which the same had arisen had merged in the order of this Court when the Special Leave Petitions were dismissed by a reasoned judgment. Accordingly, by virtue of the doctrine of merger, the said orders do not exist and, if any contempt is alleged, it would be with regard to the orders passed by this Court and the High Court had no jurisdiction to entertain the matter.

31. Mr. Vaidyanathan further submitted that on account of non-compliance with the three requirements indicated in M. Nagaraj's case (supra), the notification dated 28th December, 2002, stood vitiated. However, with the quashing of the said notification dated 28th December, 2002, the notification dated 1st April,

1997, which stood deleted by notification dated 28th December, 2002, stood revived and continued to be in operation.

32. Mr. Harish Salve, learned Senior Advocate, who also appeared for the respondents, contended that Civil Appeal No. 171, of 2002, filed by the State of Rajasthan against Hanuman Singh Bhati & Ors., was pending before this Court, but this Court had not stayed the operation of the orders either of the single Bench or the Division Bench. As a result, even by sheer inaction in carrying out the directions contained in the judgment of this Court dated 7th December, 2010, the contemnors had violated the orders of this Court, as there was no justification for the contemnors not to give effect to the directions contained in the said order. Mr. Salve submitted that in *Maninderjit Singh Bitta Vs. Union of India (UOI) and Others*, , this Court had held that even inaction to implement the orders of the Court amounts to disobedience within the meaning of civil contempt. Mr. Salve urged that in the absence of any stay, the contemnors ought not to have sat over the matter, but should have taken steps to implement the directions contained in the said order. Mr. Salve submitted that so long as the catch up principle in terms of the Notification dated 1st April, 1997, continued to be in existence, no change could be made in matters of promotion, unless the requirements set out in *M. Nagaraj's* case were fully satisfied. Mr. Salve urged that in the facts and circumstances of this case, contempt was writ large on account of inaction of the contemnors in giving effect to the directions contained in the judgment dated 5th February, 2010.

33. Dr. Rajeev Dhawan, learned Senior Advocate, who also appeared for the respondents, approached the matter from a slightly different angle. Arguing that the doctrine of merger could not be applied to a contempt proceeding, *Kunhayammed and Others Vs. State of Kerala and Another*, Dr. Dhawan urged that the doctrine of merger depends on the facts of each case. Dr. Dhawan submitted that even in *Suraj Bhan Meena's* case (supra), this Court upheld the judgment of the High Court dated 5th February, 2010, without making any changes, which could have altered the purport of the said judgment. Dr. Dhawan also contended that so long as the "catch-up" doctrine continued to be in force under the Notification dated 1st April, 1997, which stood revived on account of the quashing of the Notifications dated 28th December, 2002 and 25th February, 2008, it could not be contended that by appointing the Bhatnagar Committee, the alleged contemnors had not wilfully violated the directions given by this Court in *Suraj Bhan Meena's* case (supra).

34. Dr. Dhawan fairly conceded that an order may be violated without any wilful intent to disobey the same. Referring to paragraph 459 of *Halsbury's Laws of England*, dealing with "unintentional disabilities", Dr. Dhawan pointed out that sometimes it may so happen that an order of Court is breached without any intention on the part of the offender to do so. Dr. Dhawan submitted that this could be such a case and, accordingly, the contemnors could be directed to purge themselves of the contempt by withdrawing all the Notifications, including the

Notification dated 11th September, 2011, and implementing the order dated 5th February, 2010, and also to punish the contemnors without sentence.

35. In order to establish that a person had deliberately and willfully committed contempt of Court, two essential ingredients have to be proved. Firstly, it has to be established that an order has been passed by the Court which either directs certain things to be done by a person or to restrain such person or persons from doing certain acts and that the person or persons had knowledge of the said order. Secondly, it has to be established that despite having knowledge of such order, the person concerned deliberately and willfully violated the same with the intention of lowering the dignity and image of the Court. We have to see whether in the facts of this case the said two tests are satisfied.

36. Admittedly, Civil Writ Petition No. 8104 of 2008, along with several other writ petitions, were disposed of by the Division Bench by its judgment and order dated 5th February, 2010, by quashing the Notifications dated 25th April, 2008 and 28th December, 2002, issued by the State Government without following the exercise indicated in M. Nagaraj's case (supra). As has been mentioned hereinbefore, by its Notification dated 25th April, 2008, the Government of Rajasthan in exercise of its powers conferred by the proviso to Article 309 of the Constitution of India, amended the Rajasthan Various Service Rules, as mentioned in the Schedule appended therewith, with effect from 28th December 2002. By such amendment, the existing proviso to the Rule providing that a candidate, who had got the benefit of the proviso inserted vide Notification dated 1st April, 1997, on promotion to an immediate higher post, would not be reverted and his seniority would remain unaffected, subject to the final decision of this Court in Writ Petition (C) No. 234/2002, was deleted. For the sake of record, it may be indicated that before the Division Bench of the High Court it had been conceded by the learned Advocate General that the exercise as contemplated in M. Nagaraj's case (supra), had not been undertaken by the State before issuing the Notifications dated 25th April, 2008 and 28th December, 2002. It is on that basis that the said two Notifications and all consequential orders or actions taken by the Respondent State, including preparation of seniority list of Super Time Scale and Selection Scale Officers of the Rajasthan Administrative Service, on the basis thereof, were also quashed and set aside. While quashing the said Notifications, the Division Bench took note of the observations made in M. Nagaraj's case (supra) that Clause (4-A) of Article 16 was only an enabling provision and the State was not bound to make reservations of Scheduled Castes and Scheduled Tribes in the matter of promotion, but if they did wish to exercise their discretion in that regard, the State had to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment, in addition to compliance with Article 335. The same not having been done, the said Notifications were quashed.

37. Inasmuch as, no further action was taken by the State and its authorities

after the said Notifications were quashed, the contempt petition was filed mainly on the ground that the State and its authorities had by their inaction in complying with the requirements set out in *M. Nagaraj and Others Vs. Union of India (UOI) and Others*, committed contempt of Court and the same was accepted and the appellants herein were found guilty of having committed contempt of Court by such inaction.

38. The next thing that we are required to consider is whether such inaction was on account of any circumstances which prevented the State Government and its authorities from taking action in terms of the observations made by the Division Bench of the High Court in its judgment dated 5th February, 2010, or whether such inaction was on account of the deliberate intention of the State and its authorities not to give effect to the same.

39. The learned Attorney General, who had appeared for the State of Rajasthan and its authorities, had submitted that the Order dated 5th February, 2010, was in two parts. While one part dealt with the quashing of the two Notifications, the other was with regard to the observations made in the said order with regard to the directions given in *M. Nagaraj's* case (supra) for collection of the quantifiable data before giving effect to the provisions of Article 16(4-A) of the Constitution. The learned Attorney General has also emphasized that in order to give effect to the second part of the judgment and order of the Division Bench of the Rajasthan High Court and the direction's given in paragraph 68 of the judgment in *Suraj Bhan Meena's* case (supra), the Government of Rajasthan had appointed the Bhatnagar Committee to obtain the quantifiable data to comply with the directions given in the two aforesaid judgments. The learned Attorney General has also pointed out that directions have been given to all the different departments on 14th February, 2011, to ensure compliance with the directions contained in *Suraj Bhan Meena's* case (supra).

40. Although, it has been urged on behalf of the Respondents that there was a restraint order on the State and its authorities from giving effect to the observations made in the order passed by the Division Bench of the High Court on dated 5th February, 2010, or even in the order passed in *Suraj Bhan Meena's* case (supra), the State and its authorities remained inactive on the plea that it had appointed the Bhatnagar Committee to collect the data necessary in terms of the judgment and order passed in *M. Nagaraj's* case, which had been reiterated by this Court in *Suraj Bhan Meena's* case (supra).

41. The explanation given on behalf of the State and its authorities cannot be discounted, since in order to act in terms of the sentiments expressed by the High Court and this Court, it was necessary to collect the quantifiable data in respect of Scheduled Castes and Scheduled Tribes candidates. For collection of such data, the State appointed the Bhatnagar Committee which was entrusted with the work of obtaining such quantifiable data so that the provisions of the amended Clause (4-A) included in Article 16 of the Constitution could be given effect to in terms of the directions given in *M. Nagaraj's* case subsequently

reiterated in Suraj Bhan Meena's case.

42. The various submissions advanced by Mr. Salve, Dr. Dhawan and Mr. Sanjeev Prakash Sharma in support of the decision of the Division Bench of the High Court, holding the appellants guilty of contempt of Court and, in particular, the alleged inaction to implement the judgment and orders in M. Nagaraj's case and Suraj Bhan Meena's case are not very convincing, since in order to comply with the findings in M. Nagaraj's case and Suraj Bhan Meena's case, necessary data was required to be collected, in the absence of which it was not possible for the State and its authorities to act in terms of the observations made in M. Nagaraj's case and in Suraj Bhan Meena's case (supra).

43. Accordingly, we are of the view that despite the fact that there has been delay on the part of the State and its authorities in giving effect to the observations made in the two aforesaid cases, there was no wilful or deliberate intention on their part to defy the orders of this Court. The very fact that the Bhatnagar Committee was appointed indicates that the State and its authorities had every intention to implement the aforesaid observations, though the progress of such implementation has been tardy. Accordingly, we are unable to sustain the impugned judgment and order of the Division Bench of the High Court holding the appellants guilty of contempt of Court for purported violation of the order passed by the Division Bench of the Jaipur Bench of the Rajasthan High Court on 5th February, 2010, while disposing of the Civil Writ Petition No. 8410 of 2008. Consequently, the judgment and order under appeal has to be set aside.

44. We, accordingly, allow the appeals and set aside the aforesaid judgment, but with the further direction that the State and its authorities act in terms of the Report of the Bhatnagar Committee, in accordance with the decision rendered in M. Nagaraj and Others Vs. Union of India (UOI) and Others, and in Suraj Bhan Meena and Another Vs. State of Rajasthan and Others, within two months from the date of communication of this judgment and order. There will be no order as to costs.