

(2005) 09 MAD CK 0081

In the Madras High Court

Case No : Contempt Petition No. 28 of 2005

Tamilnad Mercantile Bank Shareholders Welfare Association	APPELLANT
Vs	
Mr. S. Radhakrishnan, Chairman and Chief Executive Officer Tamilnad Mercantile Bank Ltd.	RESPONDENT

Date of Decision : 28-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Companies Act, 1956 — Section 408
Constitution of India, 1950 — Article 215
Contempt of Courts Act, 1971 — Section 12
Contract Act, 1872 — Section 202
Registration Act, 1908 — Section 33

Citation : (2006) 2 LW 501

Hon'ble Judges : S. Ashok Kumar, J

Bench : Single Bench

Advocate : P.S. Raman S.C. and R. Thiagarajan, S.C. for Guptha and Ravi and M. Muthappan, for the Appellant; A.L. Somayaji, A.A.G. for R. Sankaranarayanan, for the Respondent

Judgement

S. Ashok Kumar, J.—The petitioner-Association, consists of Members of Shareholders of the Tamilnad Mercantile Bank, hereinafter called as TMB filed O.A.No:1016 of 2004 in C.S.No:981 of 2004 before this Court on 23.12.2004 against the Reserve Bank of India its nominees praying for an injunction from preventing the shareholders participating in the Annual General Meeting and voting in the election and for other reliefs. The TMB and its erstwhile Directors who sought re-election volunteered to appear and submitted their arguments and on hearing both sides a consent order was passed which reads as follows:-

"5. The following considered order is passed with consent of Mr.Venkatachalapathy, learned Senior Counsel appearing for the applicants/plaintiffs, Mr.A.L.Somayaji, learned Senior Counsel appearing for the Tamilnad Mercantile Bank Ltd., and Mr.Harikrishnan, learned Senior Counsel appearing for the existing Directors who are seeking re election:

"If any shareholder has executed a General Power of Attorney in favour of any particular person and such General Power of Attorney is duly registered and intimated to the bank as required under Article 85 of the Memorandum of Association of the Tamilnad Mercantile Bank Limited, such persons who satisfy the requirement of Article 85 of the Memorandum of Association will be permitted to vote in the place of the shareholder who has executed such Power of Attorney in favour of such person. Those shareholders who have not executed such General Power of Attorney, but whose names are found in the Register as Members of Tamilnad Mercantile bank shall be permitted to vote and the respondents/defendants should not prevent them from exercising their franchise or participating in the Annual General Meeting."

6. However, in view of the disputes between the parties, the learned Principal District Judge, Tirunelveli is appointed as an Observer to observe the entire proceedings of the annual General Meeting and file an independent report in a sealed cover before this Court.

7. The Annual General Meeting and other Agenda will go on according to the schedule in the presence of the Principal District Judge, Tirunelveli who shall act as an Observer."

2. According to the petitioner-Association on 24.12.2004, the order of this Court was violated since the Power of Attorney Holders, whose Power of Attorney was not registered as per the Registration Act were permitted to participate in the Meeting and vote. According to the petitioner, the shareholders of the petitioner-Association were prevented from exercising their right and hence this petition under Sections 10 and 12 of the Contempt of Courts Act.

3. As to what happened on 24.12.2004 in the Annual General Meeting, the learned District Judge, Tirunelveli, who was appointed as an Observer sent a report which is as follows:-

"3. The Chairman of the Bank requested the Company Secretary to read the Auditor's Report i.e., first item in the notice. The members assembled in the Hall formed into two groups and immediately a group of members objected to and demanded as follows:-

(i) Notices have been issued to 27825 members but 114 members who were issued notices are not permitted to enter into the Hall to participate in the Meeting and they are standing outside. They requested to proceed with the business only after allowing them into the Hall.

(ii) Candidates contesting for Directors should not be allowed to sit on the dais since it is against Natural Justice.

(iii) Several unqualified members have been allowed to participate and hence requested the Chairman to send them out fixing the eligibility of the members as per the orders of the Hon"ble High Court in O.A.No. 1016/2004 in C.S.No. 981/2004 and then proceed with other business.

4. The Chairman of the Bank announced that the said 114 members were not allowed to participate in the Meeting with sufficient reasons. Further, the Chairman informed that till the new Directors are elected by the Meeting the Ex-Directors are eligible to sit on the dais and rejected the demands of the group of members. However, three Directors/Candidates come down off the dais.

5. The Chairman further informed with regard to the 3rd demand that only eligible members were permitted to participate in the Meeting and there is no need to ascertain the eligibility of the members. Thereafter, one group of members shouted against other group. Once group shouted pressing their demand regarding the eligibility of vote bay reading the following portion in the Hon"ble High Court"s direction in O.A.No. 1016/2004 in C.S.No. 981/2004:-

"If any shareholder has executed a General Power of Attorney in favour of any particular person and such General Power of Attorney is duly registered and intimated to the bank as required under Article 85 of the Memorandum of Association of the Tamilnad Mercantile Bank Limited, such persons who satisfy the requirement of Article 85 of the Memorandum of Association will be permitted to vote in the place of the shareholder who has executed such Power of Attorney in favour of such person. Those shareholders who have not executed such General Power of Attorney, but whose names are found in the Register as Members of Tamilnad Mercantile bank shall be permitted to vote and the respondents/defendants should not prevent them from exercising their franchise or participating in the Annual General Meeting."

In this connection the Chairman informed that the registration of the names on the basis of the prescribed proxy form, sent to the Bank itself is sufficient and need not be got registered in he Registrar Office and rejected the demand of allowing 114 persons standing outside, into the Hall nor sending out any members from the Hall.

6. Further, I submit that one group of members requested me to give direction to the Chairman to allow the members who were waiting outside and also to decide the eligible members in accordance with the above said orders of the Hon"ble High Court and sent out the ineligible members. Since I was appointed only as an Observer to observe the proceedings, I kept quiet.

7. I further submit that the Company Secretary, then read the Auditor"s Report in English. But, the members requested the Company Secretary to read the Report in Tamil and also requested the Chairman to conduct all the proceedings only in Tamil. The Chairman announced that if possible, the proceedings will be in Tamil and informed that since the Company Secretary belonged to other State, he will read the Report in English and then it will be translated into Tamil. But a group of members objected to read in English. But, the Company Secretary read the Auditors" Report for about 10 minutes. Then, the Chairman put the motion to vote for passing the Resolution in Item No. 1 in the notice. A group of members raised their hands in favour of the motion. But, the other group strongly objected

and demanded voting through poll-sheets.

8. In the meantime, some of the members informed that the Chairman should reject the nominations of the candidates who have not repaid the loans obtained from the Bank. The Chairman replied that already the Nomination Committee has scrutinized all the Nominations for the Post of Director and declined to reject the Nominations as demanded by one group of members. There were hue and cry against the Chairman. In the meantime, the Chairman announced that this item will be taken with other items for voting.

9. The Chairman of the bank announced to take the second item in the Notice i.e., declaration of Dividend. One group of members shouted pressing their earlier demands. But the Chairman requested the members to raise their hands who are in favour of the Resolution. Some of the members raised their hands. The Chairman without actually counting the hands, declared that this Resolution was passed.

10. Then, Items No. 3, 4 and 5 pertaining to appointment and removal of Directors were taken up for consideration at about 10.47 a.m. At that time also, one group of members continuously objected and raised slogans against the Chairman and other group of members. Hence the Chairman ordered Poll for the above said three items.

11. Amidst of nosy situation, the Chairman of the Bank has taken up the Item No. 6 i.e., appointment of M.S.Vivekananda Associates as Central Statutory Auditors to the Bank. The Chairman requested the members to raise their hands who are supporting the Resolution. Approximately half of the members raised their hands. The Chairman without counting the hands announced that this Resolution has been passed. Likewise of the item No. 6, the 7th item i.e., Resolution regarding the appointment of Branch Auditors has also been passed.

12. Then, the following items were taken up one by one for consideration:-

a) Item No:8:- Alteration of Cl.(2) of Memorandum of Associates.

b) Item No. 9:- Amendments in Cl.(3) of Memorandum of Association.

c) Item No. 10:- Alteration of Articles of Association of the Bank.

d) Item No. 11:- Appointment of Chairman.

e) Item No. 12:- Payment of sitting fees to the Members Committee.

The Chairman informed the Members to raise their hands who are supporting the Resolutions. One group of members objected and shouted that the Chairman has not asked the Members to raise their hands who are opposing the Resolutions which is against the principles of Natural Justice.

13. Then one group of members continuously shouted against the Chairman and other group and also requested me to decide and declare the eligible members to vote and then proceed with further business. At that time, I informed the

members that I was appointed only to observe the proceedings and not authorised to decide any disputes and hence I could not take any decision or give any direction in this matter. Then one group of members started to sit and observe dharna in the Hall itself against the Chairman and other group of members.

14. Then, the Chairman of the Bank ordered poll regarding Items Nos.1, 3 to 5 and 8 to 12. AT that time also, one group of members objected and shouted. Then they requested me to report to the Hon"ble High Court about the non compliance of Hon"ble High Court"s direction and also the violation of Principles of Natural Justice.

15. In the meantime, the Chairman of the Bank announced to distribute the Poll Sheets to the members/voters. Three colours of Poll Sheets were distributed to every member i.e., (a) White Colour Poll Sheets for Resolution of Items No. 1, 8 to 12, (b) Rose Colour Poll Sheets for appointment of Directors and (C) Green Colour Poll Sheets for removal of Directors i.e., Items No. 3 to 5.

16. Immediately one group of members received the Poll sheets, tore them into pieces and threw, in air in the Hall itself. The other group of Members/voters filled up the poll sheets and put them in eight boxes (Six boxes for shareholders and two boxes for proxies).

17. All the sealed eight boxes were brought to Tamilnad Mercantile Bank Head Office. After lunch time at about 2.30 pm., the sealed boxes were opened one by one and poll sheets were taken. They were counted. The number of poll sheets were as follows:-

- 1) 187 White Colour
- 2) 602 Rose Colour
- 3) 240 Green Colour

Thereafter, all the poll sheets were verified with regard to the signature of the shareholders and proxies and it was found that 87 white colour poll Sheets, 283 Rose colour Poll Sheets and 87 Green colour poll sheets were invalid as the signature of the shareholders or proxies were not found available in the poll sheets.

18. Then, each and every poll sheet was put in the Computer for verification of the signature of the shareholders found in the poll sheets and also in the Proxy forms with the signatures available in the Bank. After the counting process was over, the Chairman and the Executive Officer of the Bank Thiru S.Radhakrishnan declared the results of the poll. Xerox copy of the details of the votes and result of the poll announced by the Chairman is annexed herewith.

19. I submit that I noticed mainly the following during the Meeting:

- (a) 114 Members to whom Notices were said to have been issued, were not

allowed to participate in the Annual General Meeting and the reason therefore was not explained in the Meeting.

(b) Objections of one group and the reply of the Chairman revealed that the persons having Power of Attorney duly not registered and intimated to the Bank as required in the orders of the Hon"ble High Court stated supra were allowed to participate and vote in the Poll as Proxies of the shareholders. But according to the Chairman, the registration of the names on the basis of the prescribed proxy form sent to the Bank is sufficient and need not be registered in the Registrar Office.

(C) The Resolutions No. 2,6 and 7 were passed without actually counting exact number of the raised hands.

(d) The Election results pertaining to Resolutions No. 1, 3 to 5 and 8 5o 12 were announced on due counting of the votes poled, with aid of Computers."

4. The learned Principal District Judge has also enclosed some letters given by the members objecting the way in which the Annual General Meeting was conducted and also boycotting the election. A perusal of the above report would show that the Annual General Meeting was an one side affair.

5. The respondent, Chairman and Executive Officer of TMB has filed a detailed counter narrating several earlier proceedings and his defence is threefold. They are (i) The Plaint itself is not maintainable, and this Court has no jurisdiction; (ii) The respondent is not a party to the suit and hence he cannot be punished for contempt; and (iii) There was an earlier order of this court, wherein Justice C.Govardhan has held that power of attorneys entered in the Register maintained by the Bank were entitled to take part in the proceedings.

6. As regards the first point that the Plaint itself is not maintainable and this Court has no jurisdiction and therefore no contempt would arise, such a defence cannot be taken by a party. The party against whom an order has been passed should either obey the order or go on appeal. In Nalla Senapathi Sarkarai Manradiar. Vs. Sri Ambal Mills (P) Ltd. and Others, , a Division Bench of this Court has held as follows:-

"The question whether a court has territorial jurisdiction or not, when one defendant indisputably resides within such jurisdiction and the other ex facie does not, is primarily one of fact for the court to decide. Even if such jurisdiction were altogether absent, the defect can easily be cured u/s 20(b) Civil P.C., by an order of special leave of court, or by the acquiescence of the concerned party. Where none of these elements is available, it may be assumed that prima facie the court lacks territorial jurisdiction to exercise its powers over the concerned defendant, including a power to inhibit the acts of the defendant by an interim injunction. But a lack of jurisdiction which does not go to the root of the powers of court must be distinguished by a lack of jurisdiction which is basic to the very organisation of court or to the scope of its powers. A mere absence of territorial

or pecuniary jurisdiction, does not go to the root of the matter of jurisdiction. It is capable of being cured by acquiescence or by order of court, or, in other respects as provided for by law.

The flouting an order of court, lacking in territorial or pecuniary jurisdiction, which the knowledge of the order and deliberately, would render the party to the order liable for contempt. Even a person who is not a party on record in the order might commit contempt of court, in respect of the order."

7. As regards the second contention that the respondent is not a party to the suit and hence he cannot be punished for contempt, such a plea is not possible as even a stranger to the proceedings can be convicted for contempt provided he had knowledge about the order made by the court.

8. In *Vidya Charan Shukla Vs. Tamil Nadu Olympic Association and another*, the Full Bench of this Court has held as follows:-

"45. A Division Bench of this Court in *Nalla Senapathi Sarkarai Manradiator. Vs. Sri Ambal Mills (P) Ltd. and Others*, has stated the law in a case wherein an objection was taken to the territorial jurisdiction of the Court of District Munsif, Coimbatore in issuing an order of injunction against the first respondent company. Under the aid order, holding an extraordinary general meeting of the company was inhibited. However, several persons were brought in the contempt proceedings including the 1st respondent company, Managing Director of the company, another director of the company and an advocate, who was the legal adviser of the company. It appears that the notice of the orders of injunction had been served telegraphically to respondents 1 and 2 informing them of prohibitory orders. Petitioner himself went to the notified place of meeting at 9.30 a.m., on 14.12.1964. He found the shareholders and directors present including the respondents. Petitioner informed those persons of the ex parte interim injunction and pointed out that holding and passing the contemplated resolution would amount to flouting the orders of the Court and to contempt of court. IN spite of this, apparently due to an earlier written legal opinion furnished by the 11th respondent concerning the validity and legal effect of the interim orders of injunction the meeting was actually held and the resolution was passed. The Bench said (Paras 7 and 9)

"We have been at some pains to examine the law on this aspect of the flouting of an order of Court, which may be passed without territorial jurisdiction, for, it seems to us that this is of some importance and cases might arise frequently in actual judicial administration. It seems to be abundantly clear that the question whether a court has territorial jurisdiction or not, when one defendant indisputably resides within such jurisdiction and the other ex facie does not, is primarily a question of a fact for the court to decide. For instance, it may depend on such a matter of evidence as the location of a particular milestone in relation to a house of business, or the house of a private individual. Even if such jurisdiction were altogether lacking, it could easily be cured u/s 20(b) of the Code of

Civil Procedure, either by an order of special leave of court, or by the acquiescence of the concerned party. Where neither of these elements is available, we may assume that Prima facie, the court has no territorial jurisdiction to exercise its powers over the concerned defendant including a power to inhibit the acts of the defendant by an interim injunction. But we do think that it is very important that a distinction should be made between a lack of jurisdiction which does not go to the root of the powers of Court, such as an absence of territorial or pecuniary jurisdiction or an alleged absence in these respects, and a lack of jurisdiction which is basic to the very organization of Court or to the scope of its powers. Authorities are available for the view that a mere absence of territorial or pecuniary jurisdiction does not proceed to the root of the matter of jurisdiction and its capable of cure by acquiescence by order of Court, or in other respects as provided for by law. An order irregularly obtained cannot be treated as a nullity, but must be implicitly obeyed until by a proper application, it is discharged. It is sufficient to refer here to Halsbury's Laws of England, 3rd Edition, Volume 8 Part I Section 3, Sub-section 39 (also see Oswald on Contempt 1910 Edition 106 which runs thus):

"A stranger to an action who aids and abets the breach of a prohibitory order obstructs the course of justice and this contempt is punishable by committal or attachment".

There are several English cases cited in the books in support of this authority. Hence as far as these other respondents are concerned, they are undoubtedly guilty of contempt, whether they were parties to the order or otherwise so long as it was brought to their notice that the meeting was prohibited and nevertheless they participated in it.

46. We can see thus clearly that the Courts in India invariably accepted the law applied in England and found (1) a party to the suit if he had notice or knowledge of the order of the court and (2) a third party or a stranger if he had aided or abetted the violation with notice or knowledge of the order of injunction guilty of civil contempt and otherwise found a third party guilty of criminal contempt if he has been found knowingly obstructing implementation of its order of direction, if it is found in the instant suit that Sri Shukla was directly or indirectly a party defendant in the suit and the order of the learned Single Judge was directed to his conduct also and he violated the order after notice or knowledge, he shall be guilty of civil contempt, He can still be found guilty of civil contempt if he is found to have aided and abetted the violation of the order of the court. Even otherwise, it is found that he obstructed or attempted to obstruct the implementation of the Court's injunction/direction, he may be found guilty of criminal contempt provided he had the notice or the knowledge of the order of the Court. It will be only after a determination of the nature of the disobedience that it will be possible for the court to say whether the procedure applied to a civil contempt shall be applied to the contempt proceeding in his case or the procedure applied to a criminal contempt will be applied to it. In the former case,

the learned single Judge shall be competent to proceed. In the latter case, it shall be before a Division Bench and subject to such conditions as are envisaged under the Contempt of Courts Act, 1971. WE have however no hesitation, in view of the principles of law noticed by us that this Court's power as the Court of Record will extend not only to the determination of the contempt but also the determination whether on the allegations brought before it, a civil contempt is made out or a criminal contempt is made out and instead of any action of committal for contempt, the Court should make any such order which would be in the administration of justice or not. We have already noticed that there are provisions in Order XXXIX Rule 2A of the CPC as a remedy for the violation of temporary or interim injunction. Besides what is contemplated under Order XXXIX Rule 2A of the Code of Civil Procedure, Courts have found another source of power in Section 151 of the CPC and if that is also ignored for a moment, this Court's power as a Court of Record and a Court of Special Jurisdiction is preserved under Articles 215 and 225 of the Constitution of India. There have been cases before several Courts in which when faced with situations that some order or direction was violated and the violation resulted in grave and serious injury, the Courts took the view that the CPC is not exhaustive. There are cases which say that if remedy to do justice is not provided for in the Code or any other Act, the High Court must not fold its hands and allow injustice to be done."

9. The next contention of the respondent is that in Contempt Application No:331 of 1993 and *Suo Motu* Contempt Application No:513 of 1995, on 22.4.1996, Justice C.Govardhan has passed the following order which was followed by the respondent. The order is as follows:-

"The learned counsel appearing for the respondents would argue that in the order passed by this court in O.A.No. 183/1995, there is no direction to register the power of attorney and therefore, even if the power is returned on the ground that it is not in compliance with Article 85 of the Articles of Association, it would not amount to any disobedience of the order of this court, resulting in committing contempt. But, I am of opinion that this argument of the learned counsel appearing for the respondents cannot be accepted at all. The power of attorney amounts to equitable assessment of all rights, under a contract may constitute an agency coupled with the interest within Section 202 of the Contract Act. The shareholders' right to participate in the meeting of the shareholders will be deprived to the plaintiff if the power of attorney is not registered in the books of the Bank. In the injunction application, it was not the case of the respondents that the power of attorney is not in compliance of Articles 85 and 86 of the Articles of Association and therefore, the plaintiff can rely upon the same. On the other hand, it is the case of the respondents in the injunction application viz., O.A.No. 183/1995, that this power of attorney has been cancelled and therefore it cannot be acted upon. After observing that power of attorney once issued cannot be cancelled, in the order passed on 16.3.1993, this court has observed as follows: "The non-registration of the name of the plaintiff not being in accordance with the Articles of Association, there appears to be no impediment on

the second defendant to permit the applicant to act in accordance with the power of attorney". This court has specifically stated that the non-registration of the name of plaintiff is not in accordance with the Articles of Association and there is no impediment for the second defendant to permit the applicant to act in accordance with the power of attorney."

10. A perusal of the above order would show that non compliance of Articles 85 and 86 of the Articles of Association of the TMB with regard to power of attorney was not the case of the respondents in the Injunction Application. On the other hand, the power of Attorney itself has been cancelled. The learned Judge convicted the Chairman by imposing a fine of Rs. 1500/= and convicted the officer by imposing a fine of Rs. 1000/=. On appeal, the First Bench affirmed the conviction on the ground that in the order it has been stated that this court has passed the order to the effect that there is no impediment on the second defendant to permit the applicant to act in accordance with power of attorneys, yet the order of the Court was disobeyed by attempting a novel method of getting legal opinion for that purpose. On the basis of the order of this Court in the Contempt Application mentioned above, there was a meeting of the Board of Directors on 22.6.1996 wherein under Item IMP-5, it was resolved that "the powers of attorney issued by various parties in favour of (1) M/s. Gopal Rao (2) M.K.Srinivasan and (3) R.P.Sarathi and lodged with the Bank be and are hereby authorized to be registered with the Bank". In pursuance of such Resolution, the power of attorneys register was opened on 9.7.1996. In the Report of the 75th Annual General Body Meeting of the TMB it is mentioned by the Chairman of the Meeting that "I also had discussion with the Committee of Directors comprising the Government nominees and RBI nominees, Senior Counsel Shri. A.L.Somayaji, and the counsel for the Bank, Shri R.Sankaranarayanan and the two Company Secretaries appointed by the Company Law Board to assist me, in connection with the light to exercise of votes by the proxies appointed by the Power of Attorney holder vis-?-vis the proxies lodged by the original vendors. After hearing their views, I took a decision, as the original shareholders (114 persons holding in the aggregate 95,418 shares) have already sold heir shares and have received full consideration and with the sale of the shares all their rights attached on those shares including the right to appoint proxies extinguished. They have executed irrevocable power of attorney in favour of 3 persons to execute severally all the rights attached to the shares. The said Power of Attorney was also registered with the Bank. There exists also an order from the District Court of Tuticor5in directing the Bank not to interfere with the rights of the said plaintiff in the suit, who are the power of attorney holders at the AGMs and the decree of the District Court is still in force. Considering all these facts and circumstances, I took a decision that only the power of attorney holders whose power is registered with the Bank are eligible to exercise their voting right either by attending in person or through proxy and the proxies executed by the power of attorney holder alone shall be treated as valid."

11. In the petition filed under Sections 397, 398, 401, 402, 403 and 408 of the

Companies Act, in C.P.No:15 of 2003, C.A.No. 46, 80 and 81 of 2004, the Company Law Board has held as follows:-

"When there was a subsisting decree of the District Munsif, the question of allowing the shareholders personally present or proxies obtained directly from them being allowed to vote did not arise. Therefore, there was no illegality in permitting the proxies of the powers of attorney holders to exercise voting in respect of the impugned shares. As far as non compliance with the provisions of Section 257 and 263 of the Act is concerned, there is no violation. As a matter of fact, during the meeting, none of the applicants raised any objection that the provisions of these Sections had not been not complied and as such they cannot raise this issue after the meeting was over. In so far as Article 85 of the Articles of Association of the Bank is concerned, registration of the powers of attorney was necessary only with the Bank and not with Registration Authority as contended by the applicants. This has been so held by the Madras High Court in the Contempt Application No. 331 of 1995 when the Bank required the powers of attorney holders to register the power of attorney first with the Registering Authority and file a copy of the same with the Bank. The court held that this Article only meant registration with the bank and not with the Registering Authority. In the present case, all the powers of attorney had been registered with the Bank and as such there is no violation of the provisions of Article 85."

12. As against the said order of the Company Law Board, CMA.No:55 of 2004 was filed before this Court and the Division Bench has held as follows:-

"27. We direct the Reserve Bank of India to complete the process within two weeks from today so that thereafter, in the event of the transfer being approved, notice of the AGM can be sent to the purchasers after bringing their names on record in the Register of Members, and in the event of permission being refused, notice of the meeting can be sent to persons in whose names those shares presently stand in the Register of Members.

28. The Company Law Board shall fix the date for holding the annual general meeting after giving sufficient time for the dispatch of notice and that meeting shall as far as possible be held before the end of February, 2004, and in any event not later than 15th March, 2004.

xx xx xx xx xx 8. Under such circumstances, we do not see any error or illegality in the order of the Company Law Board made in C.P.No. 15 of 2003 and C.A.No. 46 of 2004."

13. From the facts narrated above, it could be seen that the order dated 22.4.1996 by C.Govardhan,J., was never challenged on the factual aspects. What Justice C.Govardhan has passed in his order is that his earlier injunction order has been violated by the Bank on the basis of the legal opinion given by the Bank's advocate, as the power of attorneys must be registered with the Sub-registrar as required under Article 85 of the Articles of Association of the TMB and in the absence of such registration, the power of attorney holders shall not

be permitted to attend the meeting. The scope of Article 85 with regard to registration of the power of attorneys was never gone into detail by Justice C.Govardhan and the Company Law Board also simply held that registration with the Bank is enough as held by the Madras High Court. None of the parties have brought the same to the notice of the Division Bench when an appeal was filed against the order of the Company Law Board with regard to certain mistakes on factual basis. Justice C.Govardhan while passing the order has presumed that there is a register maintained by the Bank for the Power of Attorney Holders wherein the execution of power of attorneys are entered into by the Bank. In the Companies Act and the Rules, nowhere there is a mention about the maintenance of power of attorney register. The order was passed by the learned Judge on 22.4.1996. After passing of the order there was a Board of Directors Meeting on 22.6.1996 in which it was resolved that the power of attorney register will be maintained by the bank wherein the power of attorneys will be entered into. In pursuance of the said resolution dated 22.6.1996, the power of attorneys register was maintained from 9.7.1996. Therefore, it is clear that on 22.4.1996 when the order was passed by Justice C.Govardhan, there was no power of attorney register maintained by the Bank. A perusal of the power of attorneys register maintained by the Bank would show that such a register can be manipulated or manufactured at any time at the will and pleasure of the Bank. For the reasons best known to the Bank, pages 1 to 3 of the Register are not filled up and the entries start only from page 4 and all the entries have been made on 9.7.1996 i.e., one and the same day. It is not the case of the Bank that these power of attorneys were executed on 9.7.1996. On the other hand, they were executed 1994 itself i.e., 22.12.1994 and all the three attempts made by the power of attorney holders to transfer the 1,89,000 shares has been rejected thrice by the Reserve Bank of India. The register does not contain the signatures of the transferors or transferees. From Item 294 to 298, the entries are made on 10.10.1996 whereas the other 293 items are purported to have been made on 9.7.1996. Even the register maintained in a petty cycle hire shop would contain all particulars, whereas this register maintained by the Bank is bereft of several particulars and there is no explanation as to why page 1, 2 and 3 have been left blank. It is unfortunate that such a register is being maintained by the Bank which can be manipulated or manufactured at any time at the instance of the Bank.

14. As already held, on 22.4.1996 when Justice C.Govardhan passed the order in the contempt application, there was no power of attorney register and the order has been passed on a mistaken fact that the bank is maintaining such a register and the names of those applicants already found place in such a Register.

15. Article 85 of the Articles of Association of the TMB reads as follows:-

"The instrument appointing a proxy shall be in writing and be signed by the appointer, or if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it. A person holding a general

power of attorney from a shareholder shall be entitled to attend and vote in respect of the shares of his principal to the same extent and in the same manner as his principal could vote and provide that such general power of attorney be duly registered and a true copy thereof be left with the Bank."

16. According to this Article of the Bank, two conditions are to be fulfilled. One is that the General Power of Attorney must be registered. The second condition is that a true copy of such document should be left with the Bank. If the contention of the respondent that Power of Attorney must be registered with the Bank and not in the Registrar's office, then there is no purpose in leaving a true copy with the Bank. In the normal course power of attorney need not be registered. u/s 33 of the Registration Act, certain powers have to be registered. But the power of attorney with regard to shares, registration is not mandatory. However, it is open to a party to have any document registered. Registration is a proof of identity of the execution and prima facie proof of validity of the document. I think, it is for this reason that Article 85 and Article 86 of the Articles of Association contemplated such a requirement of registration of the document and a true copy of the same to be left with the Bank. If it is to be held that registration with the Bank is enough, as already held there is no purpose for the latter condition that true copy of the same to be left with the Bank and this latter condition is only redundant. It was for this reason when the Injunction was granted by Justice C.Govardhan, the learned counsel for the Bank gave opinion that the power of attorney of the petitioners therein did not satisfy the requirement of Article 85 of the Articles of Association of the TMB and therefore did not permit them to take part in the proceedings. But the learned Judge has held that there was no impediment in permitting those petitioners from participating in the meeting and that is why the contemnors were punished and the true meaning of Article 85 and Article 86 of the Articles of Association was never put into test before any Court.

17. As already stated on 22.4.1996, when the order was passed by C.Govardhan,J., there was no such power of attorney register maintained by the Bank and the order has been passed by the Court on the presumption that such a register is being maintained by the Bank. Therefore, it is clear that the order has been passed on a mistaken fact which was never taken to the knowledge of any other court. Hence, the order passed on a mistaken fact cannot be taken as a precedent and therefore, this court is not bound by the order of C.Govardhan,J., to hold that it is enough if the power of attorney is registered with the Bank.

18. It is pertinent to note that C.S.No:291 of 1995, from which the said contempt arose, in which Justice C.Govardhan passed orders, itself was withdrawn on 26.4.2005 during the pendency of the present Contempt Petition. The order dated 22.4.1996 has only arisen out of an interlocutory order, it cannot operate as res judicata even between the parties to the proceedings let alone as a building precedent to any third parties. It is very pertinent to note that in

C.S.No. 291 of 1995, the scope of Article 85 of the Articles of Associates of the Tamilnad Mercantile Bank, that is registration of the power of attorney was the question directly involved. But, for obvious reasons, the plaintiff has clandestinely withdrawn the suit itself on 26.4.2005 during the pendency of the present contempt petition so that there will be no chance to highlight the scope of Article 85.

19. On 23.12.2004, when the consent order was passed by this court, the respondent never quoted the order of Justice C.Govardhan, or the Company Law Board or the Division Bench order. But, on the other hand, simply agreed that Article 85 of the Articles of Association will be satisfied as far as power of attorney holders are concerned. If the respondent suspected any ambiguity in the consent order dated 23.12.2004, the Bank or the contemnor should have either filed an appeal or sought for clarification. But, it is not open to the respondent-contemnor to interpret the order of this court dated 23.12.2004 in the light of the earlier order dated 22.4.1996 passed in Contempt Application No. 331 of 1995. If the respondent-contemnor could have felt that the order of this court dated 23.12.2004 does not reflect the true purport of Article 85 of the Articles of Association as interpreted according to him by the earlier orders, then it should have been brought to the notice of this court at the time of passing the consent order on 23.12.2004.

20. In Director of Education, Uttaranchal and Others Vs. Ved Prakash Joshi and Others, , their Lordships of the Supreme Court have held as follows:-

"7. While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a court to examine the correctness of the earlier decision which had not been assailed and to take a view different than what was taken in the earlier decision. A similar view was taken in K.G.Derasari Vs. Union of India (2001 (1) SCC 496). The Court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is or the party concerned to approach the higher court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher court. The Court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order. Right or wrong the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt, the court cannot traverse beyond the order, non compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional directions or delete any direction. That would be exercising review jurisdiction while dealing with an application for

initiation of contempt proceedings...."

21. In *Prithawi Nath Ram Vs. State of Jharkhand and Others*, , their Lordships of the Supreme Court have held thus:-

"5. While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a court to examine the correctness of the earlier decision which had not been assailed and to take a view different than what was taken in the earlier decision. A similar view was taken in *K.G.Derasari Vs. Union of India* 2001 (1) SCC 496 . The Court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is or the party concerned to approach the higher court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher court. The Court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order. Though strong reliance was placed by learned counsel for the State of Bihar on a three-Judge Bench decision in *Niaz Mohammad and others, etc. etc. Vs. State of Haryana and others*, we find that the same has no application to the facts of the present case. In that case the question arose about the impossibility to obey the order. If that was the stand of the State, the least it could have done was to assail correctness of the judgment before the higher court. The state took diametrically opposite stands before this court. One was that there was no specific direction to do anything in particular and, second was what was required to be done has been done. If what was to be done has been done, it cannot certainly be said that there was impossibility to carry out the orders. In any event, the High Court has not recorded a finding that the direction given earlier was impossible to be carried out or that the direction given has been complied with.

xx xx xx xx xx 8. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt, the court cannot traverse beyond the order, non compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional directions or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible...."

22. As far as this Court is concerned, the respondent knows that the petitioner

sought the interference of this Court to see that those power of attorneys which are not registered should not have been permitted to participate in the deliberations of the Annual General Meeting. But, by voluntarily appearing and giving a consent for passing of the consent order, the respondent has flouted the court's order by relying upon the earlier order of this Court without actually inviting the attention of this Court with regard to the earlier order.

23. In *Nalla Senapathi Sarkarai Manradiar. Vs. Sri Ambal Mills (P) Ltd. and Others*, , in almost similar set of facts, a Division Bench of this Court has held as follows:-

"9...In the present case, we are satisfied on the following matters. We are satisfied that these respondents, though guilty of contempt acted bona fide in participating in the meeting; apparently because of the legal opinion tendered by the 11th respondent, and again reinforced by his presence at the meeting without the utterance of any protest. We are satisfied that these respondents had no intention or shadow of an intention, to deliberately flout the orders of court, or to show any disrespect to judicial authority. We are further satisfied that those portions of their affidavits which relate to the actual details, are explanatory of their conduct, and not a mere piece of justification in any of these cases. We are also satisfied that their apology is unconditional and sincere, and that has been reinforced by the arguments of learned counsel for these parties. In this view, we have come to the conclusion that the appropriate action, as far as these respondents are concerned, will be to accept the unconditional apology and to discharge them. No further action is called for, in the interests of justice with regard to their conduct. But, most certainly, the proceedings of the meeting were void, the meeting itself having been conducted in disobedience of the interim injunction, and that will equally apply to the resolution or resolutions passed therein. We make a record to that effect, this situation at law has not been disputed by any of the learned counsel."

24. As far as this case is concerned, though there are sufficient materials to hold that the respondent might have deliberately flouted the orders of this Court, still there is an element of scope to hold that he has been so advised by his counsel to follow the earlier order of this court and therefore acted in such a manner relying on the opinion of the counsel on the issues involved. Therefore the respondent is warned to be more careful in future in obeying the orders of this court and no further action is called for in the interests of justice with regard to the respondent's conduct. But, most certainly, the proceedings of the meeting were void, the meeting itself having been conducted in disobedience of the interim consent order, and that will equally apply to the resolution or resolutions passed therein. All proceedings held on 24.12.2004 in the Annual General Meeting are declared to be null and void and the respondent-Bank is directed to conduct a fresh Annual General Meeting within eight weeks from the date of receipt of a copy of this order by observing all legal formalities and allowing only those power of attorney holders whose power of attorneys have been registered

in the Registrar's Office to participate in the deliberations of the Annual General Meeting.

25. With the above direction, the Contempt Petition is closed.