
(2010) 03 CAL CK 0098
In the Calcutta High Court
Case No : CRLCP 8, 9, 10 and 11 of 2008

The Court on its own Motion

APPELLANT

Vs

Sri Biman Bose and Others

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Constitution of India, 1950 — Article 19, 19(2), 215

Contempt of Courts Act, 1971 — Section 13, 14, 15, 15(1), 15(2)

Citation : (2010) 2 CALLT 217

Hon'ble Judges : Prasenjit Mandal, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Saktinath Mukherjee, Kashi Manta Moitra, S.P. Roy Chowdhury, Jayanta Mitra, Soumen Bose, Sardar Amjad Ali, L.K. Gupta, Pranab Dutta, A.K. Banerjee, S. Mukherjee, Tapan Mukherjee and Sajal Chel, for the Appellant; Samaraditya Pal and Mallol Bose for Respondent No. 1 and Bikash Ranjan Bhattacharjee, Subrata Mukhopadhyay, Rabi Sankar Chattopadhyay and Bhaskar Ghosh for Respondent Nos. 2 and 3, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—All these Suo Motu Rules of Criminal Contempt issued by a Division Bench of this Court presided over by the then Chief Justice were heard analogously as the points involved in these Rules are substantially the same.

2. The facts giving rise to issue of these Suo Motu Rules of criminal contempt and the subsequent proceedings till the matters appeared before this Bench may be summarized thus:

1) Four different applications for criminal contempt were filed before the Division Bench presided over by the then Chief Justice of this Court drawing attention of the Bench to the statements alleged to have been made by the three respondents in a meeting held in Kolkata on November 17, 2007 which were published in different newspapers as news-items alleging that those statements made by the respondents in the said meeting amounted to Criminal contempt

within the meaning of Section 2(c) of the Contempt of Court Act, 1971 (hereinafter referred to as the Act) and only the petitioners in one of these four matters (C.P.A.N. 1246 of 2007) prayed for taking suo motu action in terms of Section 15 of the Act read with Article 215 of the Constitution of India. Those applications were filed without seeking any permission of the learned Advocate General and as already mentioned, in only one of those applications, the prayer was made for taking suo motu action in terms of Section 15 of the Act whereas in the other three, the prayer was couched in ordinary form as made in an application for contempt.

2) The said Division Bench on November 27, 2007 passed the following order on one of those applications:

"27.11.07

C.P.A.N. 1246 of 2007

Mr. Sakti Nath Mukherjee, Mr. L.K. Gupta, Mr. B.K. Mukherjee, Mr. Tapan Kumar Mukherjee, Mr. Nilotpla Chatterjee.

....For the Petitioners.

This petition has been filed by the Bar Association, High Court Calcutta seeking initiation of appropriate contempt proceeding suo motu against (1) Shri Biman Bose, State Secretary of C.P.I. (M) and (3) Shri Shaymal Chakraborty, Member of State Committee of C.P.I. (M) and President of CITU in exercise of the powers of this Court u/s 15 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India.

We have perused the petition. We have also perused the newspaper reports together with the affidavit affirmed by one Asish Kumar Roy, the petitioner No. 2.

In view of the averments contained in the petition, we direct issue of show cause notice to the aforementioned persons.

The notice is made returnable on 8th January, 2008.

Leave is granted to the petitioner to file supplementary affidavit as also translated copies of the newspaper report.

(S.S. NIJJAR, C.J.) (PINAKE CHANDRA GHOSE, J.)

Similar orders were also recorded in the order-sheets of the other three applications.

3) On January 11, 2008 when the matters appeared before the said Division Bench, it recorded the following orders:

11.01.08

C.P.A.N. 1246 of 2007 with W.P. 8596 (W) of 2007

Mr. Sakti Nath Mukherjee, Mr. L.K. Gupta, Mr. B.K. Mukherjee, Mr. Tapan Kumar Mukherjee, Mr. Nilotpla Chatterjee.

....For the Petitioners.

Registrar General is directed to serve a copy of the order dated 27th November, 2007 to the alleged contemnors.

The matter will appear in the list two weeks hence.

(SURINDER SINGH NIJJAR, C.J.) (PINAKI CHANDRA GHOSE, J.)

4) On February 1, 2008 the matters again appeared before the said Bench when Their Lordships passed the following order:

01.02.08

C.P.A.N. 1246 of 2007 In W.P. 8596 (W) of 2007

Mr. Idris Ali.

...For the Petitioner.

Mr. Bikash Ranjan Bhattacharyya, Mr. Subrate Mukhopadhyay, Mr. Ravi Sankar Chatterjee, Mr. Kallol Basu, Mr. Bhaskar Ghosh.

...For the Contemnor.

Let affidavit-in-opposition to the writ application (sic) be filed within a period of six weeks from date, reply thereto, if any, be filed within one week thereafter.

Let the matter appear in the list eight weeks hence.

(SURINDER SINGH NIJJAR, C.J.) (PINAKI CHANDRA GHOSE, J.)

5) Ultimately, the matters appeared on July 11, 2008 when the said Division Bench after going through the affidavits filed by the respondents pursuant to the first order dated November 27, 2007 passed the following order:

11.07.08

C.P.A.N. 1246 of 2007 In W.P. 8596 (W) of 2007

Mr. Sakti Nath Mukherjee, Mr. Kashi Kanta Maitra, Mr. Jayanta Mitra, Mr. Tapan Kumar Mukherjee, Mr. Pranab Dutta, Mr. Bilwadal Bhattacharyya.

...For the Petitioners.

Mr. Bikash Ranjan Bhattacharyya, Mr. Subrata Mukhopadhyay, Mr. Rabi Sankar Chattopadhyay, Mr. Kallol Basu, Mr. Bhaskar Ghosh.

...For the Contemnor.

We have perused the affidavit filed by the alleged contemnors in Court today. Prima facie we are not satisfied with the contents of the said affidavit.

In view of the above let a Contempt Rule be issued upon the alleged contemnors.

At this stage Mr. Bhattacharyya, learned senior counsel submits that when the matter was initially moved before this Court, no cognizance of the proceedings were taken by the Court but only a notice was issued to the alleged contemnors. In normal circumstances the Court would have *ex parte* and instantaneously initiated contempt proceedings. Since that course was not adopted and the alleged contemnors were permitted to appear in Court through their counsel, there is sufficient ground that the contemnors should be exempted from appearing in Court in person. We are unable to accept the aforesaid submission. When the contempt petition was presented before the Court it was entirely for the court to decide as to which course is to be adopted. Merely because the Court adopts a cautionary approach would not lead to the conclusion that the court had automatically taken a decision that the petition was in any manner lacking in merit even *prima facie*. Since the Rule has now been issued, the contemnors would have to be present in accordance with the Rules of this Court unless exempted on a specific application being made on this behalf. Xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned Counsel for the parties on usual under taking.

(SURINDER SINGH NIJJAR, C.J.) (PINAKI CHANDRA GHOSE,J.)

6) Consequently, the office drew up the Rules in the following form as it appears from the one drawn in a separate sheet:

IN THE HIGH COURT AT CALCUTTA Special Jurisdiction (Contempt)

Re: An application for contempt being CPAN 1246 of 2007

In the matter of : The Court on its own Motion

Upon reading a petition of Bar Association, High Court, Calcutta and Ors. and their affidavit of verification thereof, dated 26th day of November, 2007 and the exhibits or annexures to the said petition and upon hearing Mr. Sakti Nath Mukherjee, learned Senior counsel on behalf of the petitioners

It is ordered that a criminal contempt rule do issue calling upon the alleged contemnors-respondents as stated in the contempt application service through the learned Chief Metropolitan Magistrate, Calcutta to show cause why they should not be committed to prison or otherwise penalized or dealt with for the acts or conduct by way of making statements which were widely published by print media and electronic media in relation to an order dated 16th November, 2007 passed by this Court in W.P. 8596 (W) of 2007, which are highly derogatory in nature and have the effect of denigrating the dignity and majesty of the Hon"ble High Court and interference with due course of judicial proceedings and the administration of justice.

The Rule is made returnable on 8th August, 2008.

On the returnable date IT IS ORDERED the alleged contemnors aforesaid shall

appear personally before this Court at 10-30 A.M. and shall not leave the Court without permission.

Let the Rule be served personally on the alleged contemnors-respondents.

(SURINDER SINGH NIJJAR, C.J.) (PINAKI CHANDRA GHOSE, J.)

7) It further appears from the order of the Division Bench recorded on July 18, 2008 that on mentioning by the learned Advocate for the applicants, the said Division Bench withdrew the Rule earlier drawn up and directed the office to draw up a fresh Rule in form No. 2 by passing the following order:

18.7.08

(Mentioned)

Mr. Sakti Nath Mukherjee, Mr. Jayanta Mitra, Mr. S.P. Roychowdhury, Mr. Tapan Kr. Mukherjee.

...For the Petitioner

On being mentioned by the Learned Counsel for the petitioner, the earlier Rule drawn on 11th July, 2008 is withdrawn and substituted by the Rule drawn in terms of Form No. 2.

(Surinder Singh Nijjar, C.J.) (Pinaki Chandra Ghose, J.)

8) Consequently, a new Rule was drawn up as quoted below:

IN THE HIGH COURT AT CALCUTTA Special Jurisdiction (Contempt) Appellate Side

CRLCP No. 8 of 2008

In the matter of an application of contempt being CPAN 1246 of 2007 for violation of the Court's order dated 16.11.2007 passed by this Court in W.P. No. 8596 (W) of 2007.

And in the matter of:

Bar Association High Court, Calcutta and Ors. Petitioners v. 1. Sri Biman Bose, State Secretary of C.P.I. (M) and Chairman of the Left Front having its office at 37, Alimuddin Street, Calcutta, 700017.

2. Sri Binoy Konar, Member of Central committee of C.P.I. (M), having its office at 37, Alimuddin Stree, Calcutta, 700017.

3. Sri Shyamal Chakraborty, Member of State Committee of C.P.I. (M) and President of CITU, 37, Alimuddin Street, Calcutta, 700017.

Opposite Parties/Contemnors

To, 1. Sri Biman Bose, State Secretary of C.P.I.(M) and Chairman of the Left Front having its office at 37, Alimuddin Street, Calcutta, 700017.

2. Sri Binoy Konar, Member of Central committee of C.P.I. (M), having its office at 37, Alimuddin Stree, Calcutta, 700017.

3. Sri Shyamal Chakraborty, Member of State Committee of C.P.I. (M) and President of CITU, 37, Alimuddin Street, Calcutta, 700017.

Notice is hereby given to you that an application supported by an affidavit (Copy whereof with the Court's order dated 11.07.2008 thereon is enclosed) presented and a rule has been issued on 11.07.2008 which will be heard by the Hon''ble Court on Friday, the 8th day of August 2008 at 10.30 a.m. in the High Court at Calcutta and you are directed to show cause why you should not be committed to prison or otherwise penalized or dealt with for the acts or conduct by way of making statements which were widely published by print media and electronic media in relation to an order dated 16th November, 2007 passed by this Court in W.P. No. 8596 (W) of 2007 which are highly derogatory in nature and have the effect of denigrating the dignity and majesty of the Hon''ble High Court and interference with due course of judicial proceeding and the administration of justice and you are hereby informed that you shall appear personally before this Court on Friday, the 8th day of August 2008 at 10.30 a.m.

By order of the High Court. Sd/ dt. 25.7.08

Assistant Registrar, High Court, Appellate Side, Calcutta."

S U B P O E N A

IN THE HIGH COURT AT CALCUTTA Special Jurisdiction (Contempt) Appellate Side

CRLCP No. 9 of 2008

In the matter of an application of contempt being AST 3114 of 2007 for violation of the Court's order dated 16.11.2007 passed by this Court in W.P. No. 8596 (W) of 2007.

And in the matter of:

Bar Library Club, High Court, Calcutta and Ors. Petitioners v. 1. Biman Bose

2. Binoy Konar

3. Shyamal Chakraborty,

All of 33, Alimuddin Street, Calcutta - 700 016

Opposite Parties/Contemners

To, 1. Biman Bose

2. Binoy Konar

3. Shyamal Chakraborty,

All of 33, Alimuddin Street, Calcutta - 700 016

Greeting: We command you, that laying all matters aside and notwithstanding and excuse, you personally appear before the court of the Hon''ble Justice Surinder Singh Nijjar, Chief Justice and the Hon''ble Justice Pinaki Chandra Ghose on Friday, the 8th day of August 2008 at 10.30 a.m. in the High Court at Calcutta and so on the like manner from day to until you have leave to depart the Court and herein fail not at your peril.

Witness: Hon''ble Justice Surinder Singh Nijjar, Chief Justice at Calcutta, aforesaid the 11th July, 2008.

Registrar (Administration) High Court, Appellate Side, Calcutta

11.07.2008

CRLCP No. 9 of 2008

IN THE HIGH COURT AT CALCUTTA Special Jurisdiction (Contempt)

Re: An Application for contempt being A.S.T. 3114 of 2007

In the matter of : The Court on its own Motion

Upon reading a petition of Bar Library Club and Ors. and their affidavit of verification thereof, dated 27th day of November, 2007 and the exhibits or annexures to the said petition and upon hearing Mr. Sakti Nath Mukherjee, learned Senior counsel on behalf of the petitioners.

It is order that a criminal contempt rule do issue calling upon the alleged contemnors-respondents as stated in the contempt application service through the learned Chief Metropolitan Magistrate, Calcutta to show cause why they should not be committed to prison or otherwise penalized or dealt with for the acts or conduct by way of making statements which were widely published by print media and electronic media in relation to an order dated 16th November, 2007 passed by this Court in W.P. 8596 (W) of 2007, which are highly derogatory in nature and have the effect of denigrating the dignity and majesty of the Hon''ble High Court and interference with due course of judicial proceedings and the administration of justice.

The Rule is made returnable on 8th August, 2008.

On the returnable date IT IS ORDERED the alleged contemnors aforesaid shall appear personally before this Court at 10-30 A.M. and shall not leave the Court without permission.

Let the Rule be served personally on the alleged contemnors-respondents.

(SURINDER SINGH NIJJAR, C.J.) (PINAKI CHANDRA GHOSE, J.)

S U B P O E N A

IN THE HIGH COURT AT CALCUTTA Special Jurisdiction (Contempt) Appellate Side

CRLCP No. 10 of 2008

In the matter of an application of contempt being CPAN 1252 of 2007 for making statements which are highly derogatory in nature etc. in relation to an order dated 16.11.2007 passed by this Court in W.P. No. 24456 (W) of 2007.

And in the matter of:

1. Rahul Sinha son of Bhupendra Kumar Sinha, General Secretary of West Bengal State Unit of the Bharatiya Janata Party
2. Bhakti Nath Mandal son of Kishori Mohan Mandal, Genral Secretary of the Legal & Legislative Cell of the West Bengal State Unit of the Bharatiya Janata Party,

Both of 6, Muralidhar Sen Lane, Kolkata - 700 073 Petitioners Vs. Biman Bose son of Late Dr. R.L. Basu residing at 171/2B, A.J.C. Bose Road, Police Station - Entally, Kolkata - 700 014 being Secretary of the West Bengal State Unit of the Commissioner Party of India (Marxist) having office at 33, Alimuddin Street, Police Station - Taltala, Kolkata - 700 016 and 5 others.

Opposite Parties/Contemners

To, Biman Bose son of Late Dr. R.L. Basu residing at 1 71/2B, A.J.C. Bose Road, Police Station - Entally, Kolkata - 700 014 being Secretary of the West Bengal State Unit of the Commissioner Party of India (Marxist) having office at 33, Alimuddin Street, Police Station - Taltala, Kolkata - 700 016

Greeting: We command you, that laying all matters aside and notwithstanding and excuse, you personally appear before the court of the Hon"ble Justice Surinder Singh Nijjar, Chief Justice and the Hon"ble Justice Pinaki Chandra Ghose on Friday, the 8th day of August 2008 at 10.30 a.m. in the High Court at Calcutta and so on the like manner from day to until you have leave to depart the Court and herein fail not at your peril.

Witness: Hon"ble Justice Surinder Singh Nijjar, Chief Justice at Calcutta, aforesaid the 11th July, 2008.

Registrar (Administration) High Court, Appellate Side, Calcutta

11.07.2008

CRLCP No. 10 of 2008

IN THE HIGH COURT AT CALCUTTA Special Jurisdiction (Contempt)

Re: An Application for contempt being A.S.T. 3114 of 2007

In the matter of : The Court on its own Motion

Upon reading a petition of Rahul Sinha and Anr. and their affidavit of verification thereof, dated 23rd day of November, 2007 and the exhibits or annexures to the said petition and upon hearing Mr. Sakti Nath Mukherjee, learned Senior counsel on behalf of the petitioners.

It is order that a criminal contempt rule do issue calling upon the alleged contemnor-respondent No. 1 as stated in the contempt application service through the learned Chief Metropolitan Magistrate, Calcutta to show cause why they should not be committed to prison or otherwise penalized or dealt with for the acts or conduct by way of making statements which were widely published by print media and electronic media in relation to an order dated 16th November, 2007 passed by this Court in W.P. 24456 (W) of 2007, which are highly derogatory in nature and have the effect of denigrating the dignity and majesty of the Hon'ble High Court and interference with due course of judicial proceedings and the administration of justice.

The Rule is made returnable on 8th August, 2008.

On the returnable date IT IS ORDERED the alleged contemnors aforesaid shall appear personally before this Court at 10-30 A.M. and shall not leave the Court without permission.

Let the Rule be served personally on the alleged contemnors-respondents.

(SURINDER SINGH NIJJAR, C.J.) (PINAKI CHANDRA GHOSE, J.)"

S U B P O E N A

IN THE HIGH COURT AT CALCUTTA Special Jurisdiction (Contempt) Appellate Side

CRLCP No. 11 of 2008

In the matter of an application of contempt being CPAN 1276 of 2007 (AST 3089 of 2007) for making statements which are highly derogatory in nature etc. in relation to an order dated 16.11.2007 passed by this Court in W.P. No. 24456 (W) of 2007.

And in the matter of:

Sri Idrish Ali, son of Late Abdul Aziz residing at 5, Ripon Lane, Kolkata - 700 016, a practising Advocate of the Hon'ble High Court at Calcutta and the President of the All India Minority Forum Petitioner v. 1. Biman Bose, father name not known of 33, Alimuddin Street, Kolkata

2. Binoy Konar son of Head Quarter of CPIM Political Party of 33, Alimuddin Street, Kolkata, Police Station - Taltala.

Respondents /(Contemners)

To, 1. Biman Bose father name not known of 33, Alimuddin Street, Kolkata

2. Binoy Konar son of Head Quarter of CPIM Political Party of 33, Alimuddin Street, Kolkata, Police Station - Taltala.

Greeting: We command you, that laying all matters aside and notwithstanding and excuse, you personally appear before the court of the Hon''ble Justice Surinder Singh Nijjar, Chief Justice and the Hon''ble Justice Pinaki Chandra Ghose on Friday, the 8th day of August 2008 at 10.30 a.m. in the High Court at Calcutta and so on the like manner from day to until you have leave to depart the Court and herein fail not at your peril.

Witness: Hon''ble Justice Surinder Singh Nijjar, Chief Justice at Calcutta, aforesaid the 11th July, 2008.

Registrar (Administration) High Court, Appellate Side, Calcutta

11.07.2008

CRLCP No. 11 of 2008

IN THE HIGH COURT AT CALCUTTA Special Jurisdiction (Contempt)

Re: An Application for contempt being CPAN 1276 of 2007

In the matter of : The Court on its own Motion

Upon reading a petition of Idris Ali and his affidavit of verification thereof, dated 20th day of November, 2007 and the exhibits or annexures to the said petition and upon hearing Mr. Sakti Nath Mukherjee, learned Senior counsel on behalf of the petitioner.

It is order that a criminal contempt rule do issue calling upon the alleged contemnors-respondents as stated in the contempt application service through the learned Chief Metropolitan Magistrate, Calcutta to show cause why they should not be committed to prison or otherwise penalized or dealt with for the acts or conduct by way of making statements which were widely published by print media and electronic media in relation to an order dated 16th November, 2007 passed by this Court in W.P. 24456 (W) of 2007, which are highly derogatory in nature and have the effect of denigrating the dignity and majesty of the Hon''ble High Court and interference with due course of judicial proceedings and the administration of justice.

The Rule is made returnable on 8th August, 2008.

On the returnable date IT IS ORDERED the alleged contemnors aforesaid shall appear personally before this Court at 10-30 A.M. and shall not leave the Court without permission.

Let the Rule be served personally on the alleged contemnors-respondents.

(SURINDER SINGH NIJJAR, C.J.) (PINAKI CHANDRA GHOSE, J.)

9) Ultimately, on August 5, 2008, the Rule appeared on the returnable day when

the Division Bench passed the following order:

05.08.08

C.P.A.N. 1246 of 2007 In W.P. 8596 (W) of 2007 + C.R.L.C.P. 8 of 2008

Mr. Bimal Kumar Chatterjee, Mr. Jayanta Mitra, Mr. S.P. Mukherjee, Mr. Tapan Kumar Mukherjee, Mr. Pranab Dutta, Mr. Bilwadal Bhattacharyya.

....For the Petitioners.

Mr. Bikash Ranjan Bhattacharyya, Mr. Subrata Mukhopadhyay, Mr. R.S. Chattopadhyay, Mr. Kallol Basu, Mr. Bhaskar Ghosh.

....For the Contemnors.

Pursuant to the order dated 11th July, 2008 all the contemnors are present in Court today. An application has been made for exemption from personal appearance of the contemnors.

We have considered the submissions made by the learned Counsel. An unconditional undertaking has been given by the contemnors to remain present in Court as and when directed by the Court. In view of the above, the contemnors are hereby granted exemption from personal appearance with a direction to remain present as and when directed as undertaken by them in Court today.

Let affidavit-in-opposition to the Contempt application be filed within a period of eight weeks from date, reply thereto, if any, be filed within one week after the Puja Vacation.

Let the matter be listed for hearing on 6th November, 2008.

(SURINDER SINGH NIJJAR, C.J.) (PINAKI CHANDRA GHOSE, J.)

10) Subsequently, when the matter appeared on November 27, 2008 on the prayer of the original petitioner, the time to file affidavit-in-reply was extended till further two weeks by passing the following order:

27.11.08 C.R.L.C.P. 8 of 2008

C.P.A.N. 1246 of 2007 In W.P. 8596 (W) of 2007

Mr. Sakti Nath Mukherjee, Mr. Kashi Kanta Maitra, Mr. Jayanta Mitra, Mr. Tapan Kumar Mukherjee, Mr. Pranab Datta, Mr. Bilwadal Bhattacharyya.

...For the Petitioners.

Mr. Bikash Ranjan Bhattacharyya, Mr. Subrata Mukhopadhyay, Mr. Rabi Sankar Chattopadhyay, Mr. Kallol Basu, Mr. Bhaskar Ghosh.

...For the Contemnor.

As prayed for, time to file affidavit-in-reply is extended by two weeks.

Let the matter appear in the list after X'mas vacation.

(SURINDER SINGH NIJJAR, C.J.) (PINAKI CHANDRA GHOSE, J.)

11) Thereafter, the matter appeared before the said Division Bench presided over by the then Chief Justice on different dates but the matter was adjourned and ultimately went out of list. Subsequently, the matter appeared before this Bench and on December 14, 2009 the hearing of the Rules commenced before us.

3. Before we enter into the merit of the Rules, it will be appropriate to refer to the alleged statements made by the three respondents as would appear from the averments made in paragraph 4 of the application of the Bar Association, High Court and also from the Annexures being "D", "E", and "F" to the application where the English translated versions of the statements allegedly made by the Respondents have been quoted. The entire paragraph 4 and those three Annexures are quoted below:

4. Your petitioners state that immediately after delivery of the said judgment on 16.11.2007 there was a public meeting at Rani Rashmoni Road, Calcutta - 700 013 on 17.11.2007, where the said judgment was really denounced in the most filthy and abusive manner, both by words and by physical gesture. Sri Biman Bose, State Secretary of C.P.I.(M) inter alia stated in the said meeting that "If the Court decides everything, what is the use of the executive or the legislature in a democracy? What is the use of spending millions for elections?" In that case, "raising judges salary would ensure the functioning of democracy. Spending crores on election can be done away with".

Sri Binoy Konar, Member of Central Committee of C.P.I.(M) stated in the said meeting that - "It is not the police's job to paint or act. The "Hon"ble Judge" must be aware that Policemen escorting him carry revolvers too It's part of their job".

Sri Shyamal Chakraborty, Member of the State Committee of C.P.I.(M) and President of CITU also stated inter alia in the said meeting that - "The Governor's heart did not bleed when 27 of our party activists were killed over the past 11 months in Nandigram. This is but biased mindset". "What is the point of such a probe if the High Court has already made up its mind". The said statements were published in the Sunday Statesman dated 18th November, 2007.

Xerox copy of the Sunday "Statesman" dated 18th November, 2007 published from Calcutta is annexed hereto and marked with the letter "A". All the statements quoted and referred to hereinbefore were made by speakers from the same platform on the same date in the said meeting on Rani Rashmoni Road.

The statements made in the public meeting were also reported in the daily Telegraph dated 18.11.2007 wherein it was stated - "The High Court said the Police firing was unconstitutional What is the police's job? Are they supposed to teach and draw pictures, act in films and make films"? he said "My Lord (the Chief Justice), excuse me, there is a police escort when you move around. The

police are posted at your home. What do they carry, revolvers or gangajal". Sri Konar said the "intellectuals criticising the government had "embarked on a suicidal movement".

A paper cutting of the said "The Telegraph" dated 18th November, 2007 and the "Indian Express" dated 18.11.2007 are annexed hereto marked with the letter "B" & "C".

Your petitioners crave leave to refer to the other newspapers publication published in the Calcutta at the time of hearing.

Annexure - "D"

SPEECH OF SHRI BIMAN BASU:

17th November, 2007, Meeting at Rani Rashmoni Road, Kolkata.

All that I want to say is that all on a sudden the Court has become overzealous. What is the extent of such zeal? What the Executive will do or not to is being determined by the Court. Can you even think about it? The Court is determining what the State will do or not do. But we know, those of us who know about the Constitution of India albeit know, Indian democracy is resting on three pillars. One being the Executive, the second being the Legislature and finally the Judiciary i.e. the judicial system. But as I had said yesterday while I was at Dubrajpur, if the Court decides and determines everything then what is the necessity of the Executive as well as the Legislature. What is the use of spending thousands of crores of rupees for elections? Some more hike in the salary of those Judges and strengthening the judiciary more, the democracy will run.

Democracy is reduced to rubbles when any one among those three pillars exceeds its exclusive domain, when it exceeds its authority. These three pillars may always be calculative and stay within their parameters. But, alas, the answer is in the negative! Why? Much of the reasons you have heard from Comrade Shyamal Chakraborty. West Bengal under the leadership of CPI(M), where 9 political parties have assembled to form the Left Front and the Left Front Government, the Left Front Government is continuing for the past 31 years. Can you people answer whether those who cannot tolerate the Communists and the Leftists can accept such fact easily? Can they accept it? That is why all the forces have assembled to create anarchy in West Bengal.

Comrades and friends, so far as my sight is providing everywhere I can see human heads. The problem is that if any Judge passes through this street and is restrained due to such human beings. Kindly, even painfully make way for these Hon"ble Judges because if that is not done then again such issue will steal the limelight and create a havoc.

Annexure - "E"

SPEECH OF SHRI BINOY KONGAR:

17th November, 2007, Meeting at Rani Rashmoni Road, Kolkata.

The police fire bullets. High Court is not saying that the condition prevalent at that point of time did not warrant firing. If they said so, rational opinion could have been formed. He is uttering "unconstitutional". Then what is the work of the police? The police are not meant to act as class-teachers, the police is not even meant to draw pictures and not even meant to act in cinemas. What does the police have in their hands? They have lathis, revolvers. Hon"ble Judge pardon me but to say whenever you travel, the police escorts you. Whenever you stay at home you are guarded by the police. What do they have with them - Gangajal or revolvers. You kindly answer.

The instant case is a result of the remark of the Governor. We have seen many Governors. We have seen many Dharamveers, we have seen Dias, we have seen Dhawan, we have seen Seshan. We have seen that Dhawan Saheb had gone in that huge gathering at Burdwan. Dhawan Saheb had gone to Sain bari who were the terrors of Burdwan in order to wipe their tears. Then also Jyoti Basu said the same thing to Dhawan Saheb. We have also seen those days. In our childhood days we had learnt in our school which we still remember the quote by Dickens, a passage from David Copperfield - there the Lord said that one was made captive and Captain had captured him. He was disrespected in a way as if respect was being given to him. Then the Lord commented - I can endure brutality but not the hypocrisy. We would say to His Excellency, the Governor do not behave like that. Where is the objection, you are also a citizen, you have every right to participate in politics. There is no bar for you to work under the flag of Trinamool. Who will stop you? No one has any right. Kindly do not behave like that while sitting in the Rajbhavan. Kindly do some research about it. You are an intellectual. Such behaviour is not justified.

Annexure - "E"

By our correspondent : The way the CPM leaders like Biman Basu and Benoy Kongar attacked the High Court Judge and the Governor Gopal Krishna Gandhi in harsh language, offended the retired Judges very much. They raised questions about the sense of limit of the political leaders regarding use of languages and decency. They think that it was because of the conceit about their posts that some leaders used such words. They are not feeling it necessary at all to give any importance to their outrage against the judiciary. As a reason they told that till now the court is the most dependable place for most of the people of state and it was for that reason that the general people of Nandigram and the people of this state welcomed the order of the High Court.

According to the retired Judges, the three pillars of democracy are the judiciary, the legislature and the executive. There is no conflict between these three. But whenever the legislature or the executive act in violation of the constitution, it becomes necessary for the judiciary to intervene. They think that the way the CPM leaders spoke of enhancing the salary of the Judges regarding the order

passed by the High Court over the Nandigram issue shows that they did it losing their sense of proportion.

Chittotosh Mukhopadhyay, the retired Chief Justice of Calcutta and Mumbai High Court told on Sunday, "The Court never delivers judgment to anyone's liking. The court stands by what is just. If anyone dislikes any High Court order, he is at liberty to prefer an appeal in the Supreme Court. But the language being used against the Judges is certainly condemnable. Without naming Biman Babu he told, "Even before this, the person made such remarks also spoke against a Judge and the court took action against him. Has he forgotten it all?" Chittotosh Babu said, "I'm not a political person and don't want to make any comment on politics. But there is something called just and unjust over and above law and judging on this the general people will say how bad in taste such remarks are."

In the context of the remarks made by the CPM leaders regarding the Governor, Chittotosh Babu said it was not possible for the Governor holding a constitutional post, to counter such indecent remarks. So he told meaning the CPM leaders, "Make such comments only against them who can reply to it." Can the court take any action against such leaders? He replied that it was at the discretion of the Court. Any action taken against them would make them heroes. It would be better if they are ignored.

Remarks of Biman Basu and Benoy Kongar also offended the Ex-Acting Chief Justice of the Orissa High Court Susanta Chattopadhyay. He told, "It is because of the conceit about their posts that some of the political leaders are crossing the limit of decency. When this pride reaches sky-high, even a mosquito-bite seems unbearable. It is at that time that the ruling party makes such remarks. Conceit and pride are only revealed through these remarks." Mocking at Biman Basu, Sushanta Babu said, "It is better to concentrate on establishing law and order in the State than to increase the salary of the Judges and in that event at least the High Court will not require to say that the Government acted "unconstitutionally"."

He stated further, "If they are so much annoyed with the Court, why they are going to Supreme Court for their defence? Are there no Judges in the Supreme Court?" Sushanta Babu said, "The party in power always considers the Court is against progress. Again, when that very party loses power, the Court becomes their only dependable place".

Bhagabati Prasad Bandopadhyay - the another retired Judge of the Calcutta High Court - told, "Some people are talking rubbish. It is nothing but frivolity. Am I expected to reply to their words? The Judges are not so insignificant that they have to give importance on what these people are saying." Bhagabati Prasad Babu thought that not replying to what Biman Basu said was the best reply.

Dilip Basu, the retired Judge of the Calcutta High Court and the Chairman of National Committee for Legal Aid Services, said, "These remarks are very bad in taste and objectionable. If someone does not like a High Court order, he may go

to the apex court. But it are of the three main pillars of democracy is attacked in this manner, it is at lest not decent.

4. At the very outset, Mr. Saktinath Mukherjee, the learned Senior Advocate appearing on behalf of the Bar Association, High Court, Calcutta made it clear that in this proceeding, a Suo Motu Rule of criminal contempt having been issued by the Court, it is for the Court to decide the merit of the same after hearing the Respondents and as such, his clients have no independent right of hearing at this stage unless the Court decides to hear him. Mr. Mukherjee, however, submitted that since the Rules were issued after his clients drew the attention of the Court to the statements made by the Respondents, he merely wanted to point out that by the statements made by the Respondents in respect of pending judicial proceedings, the plea of absence of "intention to commit contempt" is not available to the respondents and that the statements made by the Respondents clearly come within the purview of "criminal contempt" as provided in Section 2(c) of the Act and in support of such contention, Mr. Mukherjee referred to various decisions of the Supreme Court and also of other Courts. Mr. Mukherjee further submitted that the Respondents did not deny that those statements were made by them. The learned Counsel appearing on behalf of the other petitioners who drew the attention of this Court to the aforesaid conduct of the Respondents adopted the submissions of Mr. Mukherjee.

5. Mr. Samaraditya Pal, the learned Senior Advocator appears on behalf of the Respondent No. 1 and Mr Bikash Ranjan Bhattacharya, the learned Senior Advocate defended the other two Respondents by making separate submissions.

6. Mr. Pal in defending his client has not only raised the question of maintainability of the application filed without taking consent of the learned Advocate General of the State but also has submitted that in the absence of the Editor, Printer and the Publisher of the newspapers and also the persons in charge of the electronic media which televised the statements made by his client, the Rule should be discharged. Mr. Pal submits that the Bench issuing the Rules has not disclosed any reason why those Editors, Publishers or the Printers should not be held to be guilty of the Criminal Contempt for publishing the statements made by his client when the Bench decided to issue a Rule against his client for making such statement. According to Mr. Pal if the Court was prima facie satisfied that the statements made by his client were "highly derogatory in nature and have the effect of denigrating the dignity and majesty of the Hon'ble High Court and interference with due course of judicial proceeding and the administration of justice" as noted in the version of the Rule, there is no reason why the persons who are responsible for publishing such statements should not be held guilty. Mr. Pal in this connection, points out that except in the petition filed by Sri Rahul Sinha, in the other three applications, there was even no prayer of issuing any Rule upon those Editors, Publishers and Printers and on that ground Mr. Pal imputes tainted motive of the Bar Association and two others in moving the application with the sole object of harassing his client. In other

words, Mr. Pal contends that if the real intention of the Bar Association and the other two petitioners was to uphold the majesty of this Court, the prayer should have been made for issuing Rule also against the person associated with the media who are responsible for such publication. Mr. Pal, however, points out that although in one of the contempt applications, viz. the one filed by Rahul Shiha, there was specific prayer for issuing Rule also against those Editors, Publisher and Printers yet in spite of such prayer, the Division Bench found it fit not to issue any such Rule against those persons without assigning any reason.

7. Mr. Pal next contends that his client had neither any intention of denigrating the dignity and majesty of this High Court nor did he do anything which amounted to interference with due course of judicial proceeding and the administration of justice. According to Mr. Pal, his client as a political entity has every right to address the people on the question judicial activism and also to express his opinion against a particular verdict given by Court if he bona fide believes that such verdict is not in conformity with the spirit of the Constitution of India. Mr. Pal further submits that his client's right to express his opinion on a particular subject of law i.e. Judicial Activism, or even on a particular judicial decision is guaranteed by Article 19 of the Constitution and by merely expressing his sincere opinion on such subject, he has not committed any offence. Mr. Pal strenuously contended before us that the comment made by his client on the day following the delivery of judgment in "Nandigram case" could not be said to be one made in a pending matter as the points involved in that litigation had already been decided by the High Court and the matter is pending in the High Court only for submission of report by the CBI and nothing else.

8. Mr. Pal next contends that even if it is assumed for the sake of argument that the observation of his client should be treated to be one in connection with a pending judicial proceeding, this Rule should be discharged without awarding any punishment as the statements made by his client has not substantially interfered with or even does not tend substantially to interfere with due course of justice as provided in Section 13(a) of the Act. According to Mr. Pal, for the statements made by his client in that meeting, it cannot be said that there has been any impediment with due course of justice. Mr. Pal in this connection strongly relied upon the following observations of v. R. Krishna Ayer, J. in the case of In Re: S. Mulgaokar,

The first rule in this branch of contempt power is a wise economy of use by the Court of this branch of its jurisdiction. The Court will act with seriousness and severity where justice is jeopardized by a gross and/or unfounded attack on the judges, where the attack is calculated to obstruct or destroy the judicial process. The court is willing to ignore, by a majestic liberalism, trifling and venial offenses - the dogs may bark, the caravan will pass. The court will not be prompted to act as a result of an easy irritability. Much rather, it shall take a noetic look at the conspectus of features and be guided by a constellation of constitutional and other considerations when it chooses to use, or desist from using, its power of

contempt.

28. The second principle must be to harmonize the constitutional values of free criticism, the fourth estate included, and the need for a fearless curial process and its presiding functionary, the judge. A happy balance has to be struck, the benefit of the doubt being given generously against the judge, slurring over marginal deviations but severely proving the supremacy of the law over pugnacious, vicious, unrepentant and malignant condemners, be they the powerful press, gang-up of vested interests, veteran columnists or olympian establishmentarians. Not because the judge, the human symbol of a high value, is personally armored by a regal privilege but because "be you - the condemner - ever so high, the law - the People's expression of Justice - is above you. Curial courage overpowers arrogant might even as judicial benignity forgives errant or exaggerated critics. Indeed, to criticise the judge fairly, albeit fiercely, is no crime but a necessary right, twice blessed in a democracy. For, it blesseth him that gives and him that takes. Where freedom of expression, fairly exercised, subserves public interest in reasonable measure, public justice cannot gag it or manacle it, constitutionally speaking. A free people are the ultimate guarantors of fearless justice. Such is the cornerstone of our Constitution; such is the touchstone of our Contempt power, oriented on the confluence of free speech and fair justice which is the scriptural essence of our Fundamental Law. Speaking of the social philosophy and philosophy of law in an integrated manner as applicable to contempt of court, there is no conceptual polarity but a delicate balance, and judicial "sapience" draws the line. As it happens, our Constitution-makers foresaw the need for balancing all these competing interests. Section 2(1) (c) of the Contempt of Courts Act, 1971 provides:

Criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which-

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court.

This is an extremely wide definition. But, it cannot be read apart from the conspectus of the constitutional provisions within which the Founding Fathers of the Constitution intended all past and future statutes to have meaning. All laws relating to contempt of court had, according to the provisions of Article 19(2), to be "reasonable restrictions" on the exercise of the right of free speech. The courts were given the power - and, indeed the responsibility - to harmonize conflicting aims, interests and values. This is in sharp contrast to the Phillimore Committee report on Contempt of Court in the United Kingdom (1974) bund. 5794 prs. 143-5 pp. 61-2) which did not recommend the defence of public interest in contempt cases.

29. The third principle is to avoid confusion between personal protection of a libelled judge and prevention of obstruction of public justice and the

community's confidence in that great process. The former is not contempt, the latter is, although overlapping spaces abound.

30. Because the law of contempt exists to protect public confidence in the administration of justice, the offence will not be committed by attacks upon the personal reputation of individual judges as such. As Professor Goodhart has put it:

Scandalising the court means any hostile criticism of the judge as judge; any personal attack upon him, unconnected with the office he holds, is dealt with under the ordinary rules of slander and libel.

(See "Newspapers and Contempt of Court" (1935) 48, Harv LR 885, 898). Similarly, Griffith, C. J. has said in the Australian case of *Nicholls* (1911) 12 CLR 280, 285) that:

In one sense, no doubt, every defamatory publication concerning a judge may be said to bring him into contempt as that term is used in the law of libel, but it does not follow that everything said of a Judge calculated to bring him into contempt in that sense amounts to contempt of Court." Thus In the matter of a Special Reference from the Bahama Islands ((1893) AC 138) the Privy Council advised that a contempt had not been committed through a publication in the *Nassau Guardian* concerning the resident Chief Justice, who had himself previously criticised local sanitary conditions. Though couched in highly sarcastic terms the publication did not refer to the Chief Justice in his official, as opposed to personal, capacity. Thus while it might have been a libel it was not a contempt.

31. The fourth functional canon which channels discretionary exercise of the contempt power is that the Fourth estate which is an indispensable intermediary between the State and the people and necessary instrumentality in strengthening the forces of democracy, should be given free play within responsible limits even when the focus of its critical attention is the court, including the highest Court.

32. The fifth normative guideline for the judges to observe in this jurisdiction is not to be hypersensitive even where distortions and criticisms overstep the limits, but to deflate vulgar denunciation by dignified bearing condescending indifference and repudiation by judicial rectitude.

33. The sixth consideration is that, after evaluating the totality of factors, if the court considers the attack on the judge or judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the rule of law by fouling its source and stream."

9. Mr. Pal, therefore, prays for discharge of the Rules with a finding that there has been no criminal contempt on the part of his client. In support of his submissions, Mr. Pal relied upon the various authorities which are enumerated below by either taking support from those or by distinguishing those from the facts of the present case:

1. E.M. Sankaran Namboodripad Vs. T. Narayanan Nambiar,
2. In Re: S. Mulgaokar,
3. Dr. D.C. Saxena, Contemnor Vs. Hon"ble the Chief Justice of India,
4. Bal Thackrey Vs. Harish Pimpalkhute and Others,
5. Contempt of Court : The need for a Fresh Look by : Justice Markandey Katju, Judge, Supreme Court of India reported in AIR 2007 page 33;
6. In Re: Arundhati Roy,
7. State of Jammu & Kashmir Vs. Mohd. Yaqoob Khan and Others,
8. J.R. Parashar, Advocate and Others Vs. Prasant Bhushan, Advocate and Others,
9. Advocate General of Tamil Nadu, Chennai Vs. Shri M. Karunanidhi, Founder and Editor, Murasoli, Chennai,
10. All India Anna Dravida Munnetra Kazhagam Vs. L.K. Tripathi and Others,
11. P.N. Dua Vs. P. Shiv Shanker and Others,
12. (1993) 3 SCC 151 S.A. Khan v. CH. Bhajan Lal and Anr.
13. In Re: P.C. Sen,
14. Common Cause (A Regd. Society) Vs. Union of India (UOI) and Others,
15. State of U.P. and Others Vs. Jeet S. Bisht and Another,
16. Regina v. Commissioner of Police of the Metropolis reported in Q.B (1968) 150.
17. E.V. Ramaswami, Leader, Dravida Kazhagam v. Jawaharlal Nehru reported in AIR 1958 Mad 558 (V 45 C 196).
18. AIR 1943 202 (Privy Council)
19. AIR 1936 322 (Privy Council)
20. Ananta Lal Singh and Others Vs. Alfred Henry Watson and Others,
21. In the matter of a Special Reference from the Bahama Islands reported in AIR (1893) PC 138.
22. Kallol Guha Thakurata and Another Vs. Biman Basu, Chairman, Left Front and Others,
23. Association for Protection of Democratic Rights Vs. State of West Bengal and Others,
24. Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh,
10. Mr. Bhattacharya, the learned Senior Advocate appearing on behalf of the

Respondent Nos. 2 and 3 has adopted the entire argument advanced by Mr. Pal and in addition to those submissions, mainly focused on the question of maintainability of these Rules in the absence of consent of the learned Advocate General and also on the ground that having regard to the various orders passed by the Division Bench issuing the Rules, those cannot be said to be a Suo Motu Rule within the ambit of the Contempt Rules framed by this Court. Mr. Bhattacharya further contends that these Rules should fail for non-compliance of the mandate of the Contempt Rules framed by this Court which provide that the specific allegation of contemptuous act or acts allegedly committed by the Respondent should be disclosed in the Rule so that the Respondent may specifically deal with such allegations. Mr. Bhattacharya points out that the Rules which have been served upon his client do not disclose any specific act allegedly committed by his clients so that such activities can be branded as "highly derogatory in nature and have the effect of denigrating the dignity and majesty of the Hon"ble High Court and interference with due course of judicial proceeding and the administration of justice" as mentioned in the Rules. Mr. Bhattacharya submits that in the absence of specific charges made against his clients in the Rules, they are unable to effectively deal with the actual allegations which weighed with the Court while issuing the Rules. Mr. Bhattacharya points out that in the Rules served upon his clients, there is no reference to the particulars of the alleged statements made by his clients which the Court found contumacious and at the same time, even there is even no reference to the names of the newspapers where those were published.

11. Mr. Bhattacharya assiduously contended that these Rules cannot, at any rate, be described as a Suo Motu Rules of Criminal Contempt as would appear from various orders passed by the Bench issuing such Rules. According to Mr. Bhattacharya, in order that a purported Rule of criminal contempt issued by the Court is justified as a suo motu one, the persons who drew to attention of the Court to the alleged contemptuous conduct of the Respondents leading to the issue of such Rule will have no further role to play after drawing the attention of the Court to the alleged conduct and thereafter, it will be an affair between the Court and the respondents. Mr. Bhattacharya points out that after the issue of the Rule when the matter appeared on the returnable day, the Division Bench not only passed direction for filing affidavit to the Respondents but also gave further direction for filing affidavit-in-reply to the petitioners on whose application the Rules were issued. Mr. Bhattacharya further submits that the Division Bench issuing the Rule not only stopped there but further passed order on the prayer of the learned Advocate for the petitioners for extension of the time of filing affidavit-in-reply and the petitioners also filed reply by taking benefit of the order of extension of time given by the Court. According to Mr. Bhattacharya, the Division Bench issuing the Rule, in this way, totally ignored the prohibition of entertainment of an application for criminal contempt without taking consent of the learned Advocate General as provided in Section 15 of the Act and thus, these Rules should be discharged on the aforesaid ground alone as these Rules

have not been treated as a *Suo Motu* Rule of contempt by the Bench which issued the Rules as would appear from the various orders passed by it. Mr. Bhattacharya, therefore, prays for discharge of these Rules not only on the aforesaid reasons but also on merit as according to him, the statements made by his clients do not come within the purview of Section 2(c) of the Act.

12. Therefore, the first question that arises for determination is whether these Rules are, in essence, *Suo Motu* Rules issued by the Court in accordance with the Rules of contempt framed by this High Court and those have been dealt with as such, because in these cases, the consent of the learned Advocate General as provided in Section 15 of the Act had not been taken.

13. After the decision of the Supreme Court in the case of *P.N. Duda v. P. Shiv Shanker and Ors.* (supra), an application for criminal contempt in terms of Section 15 of the Act or Article 215 of the Constitution of India for initiation of the proceedings of criminal contempt cannot be filed before a High Court by a person unless consented to by the learned Advocate General of the State. The law has also been made clear that the fact that simply because the learned Advocate General refused to give his consent does not stand in the way of such person in drawing the attention of the Court to the alleged contumacious act of somebody which comes within the purview of Section 2(c) of the Act and if the Court is satisfied from the materials placed before it that it is a fit case of initiation of proceedings for contempt, it can issue a *Suo Motu* Rule of contempt.

14. If, in a given situation, a question arises as to whether the proceedings were really initiated by the High Court of its own or at the instance of a person without complying the mandatory requirement of Section 15 of the Act, such question is to be answered after taking into consideration the procedure adopted by the High Court in course of the proceedings.

15. The Supreme Court in the case of *Bal Thackrey v. Harish Pimpalkhute and Anr.* (supra), had the occasion to deal with such a question and while answering the question in favour of the contemner, the court made the following observations:

21. A perusal of record including the notices issued to the appellant shows that the Court had not taken *suo motu* action against the appellant. In contempt petitions, there was no prayer for taking *suo motu* action for contempt against the appellant. The specific objection taken that though *suo motu* action could be taken u/s 15 of the Act on any information or newspaper but not on the basis of those contempt petitions which were filed in regular manner by private parties, was rejected by the High Court observing that being Court of Record it can evolve its own procedure, which means that the procedure should provide just and fair opportunity to the contemner to defend effectively and that the contemner has not expressed any prejudice or canvassed any grievance that he could not understand the charge involved in the proceeding which he had been called upon to defend. It is, however, not in dispute that the charge against the

appellant was not framed.

22. In these matters, the question is not about compliance or noncompliance of the principles of natural justice by granting adequate opportunity to the appellant but is about compliance of the mandatory requirements of Section 15 of the Act. As already noticed the procedure of Section 15 is required to be followed even when petition is filed by a party under Article 215 of the Constitution, though in these matters petitions filed were u/s 15 of the Act. From the material on record, it is not possible to accept the contention of the respondents that the Court had taken suo motu action. Of course, the Court had the power and jurisdiction to initiate contempt proceedings suo motu and for that purpose consent of the Advocate-General was not necessary. At the same time, it is also to be borne in mind that the Courts normally take suo motu action in rare cases. In the present case, it is evident that the proceedings before the High Court were initiated by the respondents by filing contempt petitions u/s 15. The petitions were vigorously pursued and strenuously argued as private petitions. The same were never treated as suo motu petitions. In absence of compliance of mandatory requirement of Section 15, the petitions were not maintainable.

16. Before proceeding further, it would be appropriate to refer to the relevant provisions of the Contempt Rules framed by this High Court dealing with the Sua Motu Rules in terms of Section 15 of the Act.

17. For the purpose of dealing with the points involved herein, the following provisions of the Rules are relevant and those are quoted below:

Rules 2(2), 20, 29, 31, Form 1 and Form 2 of Appendix I

2 (2). Proceedings in connection with a criminal contempt may be initiated-

(a) on a motion of the High Court in respect of a contempt committed upon its own view u/s 14 of the Act; or

(b) on its own motion by the High Court u/s 15(1) of the Act; or

(c) on a motion founded on a petition presented by the Advocate-General u/s 15(a) of the Act; or

(d) on a motion founded on a petition presented by any other person with the consent in writing of the Advocate-General u/s 15(1)(b) of the Act; or

(e) on a reference made to the High Court by the subordinate courts u/s 15(2) of the Act, containing the following particulars-

(a) a brief statement of the case;

(b) the particulars of the contumacious acts;

(c) name, address and particulars of the respondents along with the copies of the papers relating to contumacious acts.

20. Where a rule is issued by the Court on its own motion or on a motion made by the Advocate- General u/s 15, the rule nisi shall be drawn up, as far as may be, in the model Form No. 2, Appendix I.

29. The respondent or the contemner may file an affidavit showing cause and the petitioner may file a reply thereto within such time as may be directed by the Court. The Court may, however, in a contempt proceeding take such evidence as may be considered necessary.

31. Excepting the cases where rules have been issued by the Court on its own motion, no affidavit shall be allowed to be filed unless the same be accompanied by a receipt showing service of a copy thereof on the Advocate or Attorney appearing for the other side.

APPENDIX I FORMS OF RULE NISI Form No. 1

Upon reading a petition of...and his/their affidavit of verification thereof, dated...and the exhibits or annexures to the said petition and upon hearing..., Advocate for the said petitioner(s).

It is ordered that a rule do issue calling upon the respondent/ respondents to show cause why he/they should not be committed to prison or otherwise penalised or dealt with for having.

(set out the nature of contumacious conduct).

And it is further ordered that pending the disposal of this rule the respondent/ respondents are restrained from

(State particulars).

The rule is made returnable

On the returnable date, it is ordered, the respondent/respondents shall appear personally before this Court at a.m./ p.m. and shall not leave the Court without permission.

Form No. 2

Come to the notice of ...

Whereas it has been brought to the notice/been reported to of this Court by/by an affidavit filed by the Advocate-General, Registrar Appellate/Original Side of this Court that the respondent/respondents has/have

(Set out the nature of contumacious conduct).

It is ordered that a Rule do issue calling upon the respondent(s) to show cause why he/they should not be committed to prison or otherwise penalised or dealt with for the acts or conduct stated above.

The Rule is made returnable on ...

The contemner shall be personally present in Court at on the returnable date and shall not leave the Court without permission.

18. On the plain reading of those Rules, it appears that whereas a criminal contempt proceeding is initiated on "a motion founded on a petition" as provided in Rule 2(2) (c) and 2(2) (d), in case of *Suo Motu* action by Court as provided in Rule 2(2) (a) or Rule 2(2) (b), the phrase "on a petition" is conspicuously absent. Similarly, in case of reference by the subordinate Courts, instead of any petition, a brief statement of fact made by such Court with the particulars of the contumacious acts and the names and address etc. of the respondents are required to be filed. In other words, the Rules do not provide for any regular petition by any person for drawing the attention of the Court for issuing a *Suo Motu* Rule of contempt and at the same time, there was no question of registering such petition with serial number which is provided for filing regular petition for contempt at the instance of a party. In the cases before us, all these Rules were issued based on the petitions filed by the parties and those were registered as regular contempt application as provided in the Rules for ordinary contempt application.

19. Rule 20 specifically provides that where a Rule is issued by the Court on its own motion or on a motion made by the Advocate General u/s 15 of the Act, the Rule *Nisi* should be drawn up, as far as may be in the model Form No. 2 prescribed in Appendix I.

20. The Form No. 2 does not refer to any petition. The opening sentence of the Form No. 2 is "whereas it has been brought to the notice/been reported to this Court by/by an affidavit filed by the Advocate-General, Registrar Appellate/ Original Side of this Court that the respondent/respondents has/have ". Therefore, in a *Suo Motu* Rule of contempt there is no scope of referring to any petition unlike Form No. 1. The Rules we are dealing with are drawn up in form meant for the Rules based on petition. The specific particulars of the contumacious acts have also not been indicated in the Rules and even the names of the media where the statements were published have not been mentioned. Even by the order dated August 5, 2008, the Division Bench while issuing the *Suo Motu* Rule directed the Respondents to give affidavit-inopposition to the "Contempt application".

21. Rule 29 speaks of the right of the contemner to give affidavit showing cause and the petitioner has been given right of reply to the affidavit by the contemner and Rule 31 further makes it mandatory to serve the copy of the affidavits on the other side by taking a receipt from the lawyer of the other side excepting the cases where the Rules have been issued by the court of its own motion. The conjoined effect of those two Rules is that in case of *Suo Motu* Rules, there is no right of reply and as such, there is no necessity of serving the copy of the affidavit by the contemner upon the petitioner. In the cases before us, the Division Bench issuing the Rules has not only granted the right to file affidavit-in-reply to the petitioners to the affidavit of show-cause by the contemner but also

has extended the time of filing such affidavit-in-reply on the specific prayer of the learned Advocates of the petitioners and the petitioners have availed of such benefit by actually filing the affidavit-in-reply.

22. Therefore, although in the petition filed by the Bar Association and its Secretary, the petitioners prayed for issue of *Suo Motu* Rule, in fact the Court issued the Rules as if all those Rules are founded on a petition moved by the petitioners and also referred to the allegations contained in the petitions without referring the particular acts complained of in the Rules drawn up nor was there any reference of those contumacious acts in the order issuing the Rules. The fact that right of affidavit-in-reply was given, the time of filing such reply was extended on the prayer of the petitioners and the petitioners availed of such benefit suggests that the procedure mentioned in the Rules for issuing a *Suo Motu* Rules was not followed. Even in the order passed by the Division Bench issuing the Rules, there was no reference of the contumacious act which impelled Their Lordships to issue the Rules, as would appear from the following order actually passed in support of the Rules:

We have perused the affidavit filed by the alleged contemnors in Court today. *Prima facie* we are not satisfied with the contents of the said affidavit.

In view of the above let a Contempt Rule be issued upon the alleged contemnors.

23. We, therefore, agree with Mr. Bhattacharya, the learned senior advocate Division Bench were not in conformity with the provision of *Suo Motu* Rule of criminal contempt as provided in Section 15 of the Act and the Rules framed by this High Court as was found by the Apex Court in the case of *Bal Thackrey* (*supra*), with only this difference that in that case, there was no prayer of issue of *Suo Motu* Rule whereas in this case, in only one of these four petitions (the one filed by the Bar Association), the petitioners prayed for *Suo Motu* Rule although thereafter, they availed of the benefit of the giving affidavit-in-reply and even got extension of time for filing such reply.

24. We are quite conscious of the position of law that in order to hold a person guilty of criminal contempt, Rules framed for such type of proceedings must be strictly complied with. We have already pointed out that there is no indication in the Rules as regards the nature of contumacious conduct which is required to be provided in the *Suo Motu* Rule so that the respondents can effectively answer the Rule. In their respective affidavits, the respondents have specifically asserted that the initiations of the *Suo Motu* Rules are not maintainable and that those rules are not in tune with the Rules framed under the Act. It is further asserted that the application did not specify in what manner the alleged statements were contumacious and that in the absence of specific allegations, it was very difficult to deal with the same.

25. Even if we take these objections as technical ones and curable in nature, this stage, a fresh *Suo Motu* Rule in conformity with the Rules framed by this High Court would be barred by limitation in view of the specific bar created by Section

20 of the Act. In this connection, the following observations of the threejudges-bench of the Apex Court in the case of Pallav Sheth Vs. Custodian and Others, are appropriate:

Action for contempt is divisible into two categories, namely, that initiated suo motu by the Court and that instituted otherwise than on the Court's own motion. The mode of initiation in each case would necessarily be different. While in the case of suo motu proceedings, it is the Court itself which must initiate by issuing a notice. In other cases initiation can only be by a party filing an application. In our opinion, therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the Court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed.

26. Apart from the aforesaid difficulties, we are immensely impressed by the submission of the learned Counsel for the parties that there was no justification of not issuing similar Rules against the Editor, Printer and Publisher of the newspapers and the persons in charge of the electronic media who published the alleged statements. As provided in Section 2(c) of the Act, the publication of the alleged contumacious acts also comes within the purview of criminal contempt and it is now settled law that in contempt proceedings, the Editor, Printer or the persons in charge of publication cannot exonerate themselves by taking a simple plea that they are not the author of the offensive material, because the reproduction or publication of the offensive material is by itself contemptuous and is actionable. Those persons may have other plausible defence which is not available to the authors of the offending statements. If a High Court is prima facie satisfied with the commission of criminal contempt by such publication and is inclined to protect the dignity and the majesty of the Court from the contumacious conduct of persons whose identities are brought to the notice of the Court, there is no reason why the Editor, Publisher or Printer of the newspapers or the persons in charge of the electronic media, whose publications the Court intends to rely upon as the proof of the offensive conduct of the authors thereof, should be exculpated even without issuing any Rule of contempt enabling them to disclose their defence, if any.

27. It will be a travesty of justice, if the Court decides to indict only some of the persons out of many alleged wrongdoers notwithstanding the fact that the identities of all such persons have been brought on records of the selfsame proceedings leaving the others scot-free.

28. At this stage, after the expiry of the period of limitation for initiation of the proceedings for contempt against the others, it will be unfair to enter into the merit of the allegations. Even if for the sake of argument, we intend to hold that the statements published amounted to criminal contempt, our finding will not be binding upon those persons against whom no Rule has been issued and at the same time, such finding against these three Respondents will virtually have the effect of branding the Editors, Publishers, Printers and other media-people as

guilty and it will be iniquitous on our part to pass prejudicial observations, in essence, about their conduct also, without giving those Editors and the other persons of the media any opportunity of defending themselves.

29. We, therefore, hold that these Rules are defective ab initio, first for noncompliance of the Rules framed by this High Court as indicated above, and secondly, which is really crucial, for absolving some of the alleged contemnors without indicating any reason whatsoever and at this stage, those defects cannot be cured because of the bar of limitation created by Section 20 of the Act.

30. Rules are, thus, discharged on the above grounds alone.

Prasenjit Mandal, J.

I agree.