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**(2000) 07 GAU CK 0023**

**In the Gauhati High Court**

**Case No :** Contempt case (Criminal) No. 1 of 2000

Yumnam Dimbajit Singh

APPELLANT

Vs

D.S. Poonia and Another

RESPONDENT

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**Date of Decision :** 14-07-2000

**Acts Referred:**

Constitution of India, 1950 — Article 215  
Contempt of Courts Act, 1971 — Section 15, 2

**Citation :** (2001) CriLJ 546 : (2000) 3 GLT 336

**Hon'ble Judges :** N.S. Singh, J;H.K. Sema, J

**Bench :** Division Bench

**Advocate :** Mr. Ashok Potsangbam and Mr. Napoleon Singh, for the Appellant;  
Mr. R.K. Sanajaoba Singh and H. Rajeswar Singh, Mr. A. Nilamani Singh and Mr.  
A. Bimol Singh, for the Respondent

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## Judgement

H.K. Sema, J.—Crude facts leading to the filing of the present Criminal Contempt petition may be briefly recited. Respondent/contemner No. 2 herein was employed in MANITRON (Manipur Electronics Development Corporation Ltd). He was brought on deputation as Assistant Chief Electoral Officer for a period of 1 (one) year by an order dated 7.11.1997. After the expiry of the period of one year, the deputation was sought to be extended for another period of one year with effect from 12th November, 1998. This order extending the period of deputation term of the 2nd respondent/contemner for another one year has been challenged by the petitioner by filing Writ petition viz., Civil Rule No. 1187/98, inter-alia on the ground that the impugned order dated 4th November 1998 extending the deputation period of the 2nd respondent for another year with effect from 12-11-1998 as Assistant Chief Electoral Officer in the Department of Election is not permissible under the Government Memorandum dated 18th August 1992 (Annexure-11 in the writ petition) inasmuch as the MANITRON in which the 2nd respondent was serving is a Corporation and autonomous body and it is not permissible under the aforesaid office memorandum because in the office memorandum the deputation to Government Department can only be done

in the case of State services officer and not in the case of the officer belonging to a Corporation and autonomous body. After hearing the counsel on both sides at length, this Court by judgment and order dated 11.6.1999 quashed the impugned order dated 4th November 1998 extending the deputation period of the 2nd respondent for another year w.e.f. 12th November 1998 with cost of Rs. 10,000 to be paid by the 2nd respondent herein. While quashing the impugned order of extension, this court has examined the relevant file suggesting that the service of the 2nd respondent as Assistant Chief Electoral Officer is no more required in the Department of Election in view of the fact that the computerisation of electoral rolls have already been completed. It was further opined that the 2nd respondent is only B.Tech. (Electronics and Communication) and not Computer Engineer. It is also pointed out in the notesheet that the request for extension of the service of the 2nd respondent and also the request made by his wife is based neither in the public interest nor in the interest of public works. Despite the objection raised in the Office note dated 26-10-1998 the objection was over ruled by the respondent/ contemner No. 1 herein and the deputation period of the 2nd respondent was further extended for another period of one year by impugned order dated 4th November 1998 which was quashed by this Court.

2. Being aggrieved, writ appeal registered as Writ Appeal No. 108/ 99 has been preferred by the respondent No. 2. The said appeal was moved on 24-6-1999 on which date it was admitted to be heard and also passed an interim order in the following terms:-

"In the meanwhile, the impugned judgment of the learned single Judge in Civil Rule No. 1187/98 is stayed. Cut we direct that the deputation of the appellant in Writ Appeal No. 108/99, Sri W. Sudhirkumar Singh will not be extended beyond the existing period of deputation expiring on 11-11-1999. We further direct that the Draft Recruit Rules for recruitment to the post of Assistant Chief Election Officer will be finalised by the end of September, 1999 and recruitment to the post of Assistant Chief Election Officer will be completed by 11-11-1999".

3. The entire drama began after the receipt of the impugned order restraining respondent No. 1 from extending the period of deputation of the respondent No. 2 beyond 11-11-1999 by an interim order.

4. A reading of the interim order it clearly consist of 2 (two) parts. The first part prohibits the respondent No. 1 to extend the deputation period of the 2nd respondent beyond 11-11-1999. The second part deals with the finalisation of the Draft Recruitment Rules for the post of Assistant Chief Electoral Officer (ACEO) in the Election Department by the end of September 1999 and recruitment to the post shall be completed by 11-11-1999. So far with regard to the second part of the direction is concerned, it is stated that an application sought for further clarification is pending before this Court.

5. Having not complied with the interim direction of the Division Bench of this

Court, petitioner filed a Civil CONTEMPT Case No. 357/99 now re-numbered as Criminal Contempt Petition No. 2/2000. It was moved on 13-12-1999 on which date this Court directed Mr. U.K. Sanajaoba Singh, learned counsel appearing for the respondent No. 1 to obtain necessary instruction. It was further ordered to be listed on 15th December 1999. On 15.12.1999 Mr. R.K. Sanajaoba appeared on behalf of the respondent No. 1 Shri D.S. Poonia and produced an order dated 11.11.1999 passed by the respondent No. 1 purportedly in compliance with the direction of the interim order.

6. Replying on the order dated 11.11.1999 passed by the respondent No. 1, this Court on 15.12.1999 closed the Civil Contempt Case No. 357/99 now re-numbered as Criminal Contempt Petition No. 2/2000, in so far with regard to respondent No. 1.

7. Despite the order dated 11.11.1999 passed by the respondent No. 1 produced at the time of hearing of the Civil Contempt Petition No. 357/99 and obtaining a favourable order in respect of the respondent No. 1, the respondent No. 2 was still functioning as Assistant Chief Electoral Officer, Manipur as would appear in the order dated 30.11.1999 marked as Annexure-X/5 in Criminal Contempt petition No. 1/2000.

8. Further, by Annexure-X/8 he has received goods supplied by MANITRON on 13.12.1999 as Assistant Chief Electoral Officer, Manipur, leading to the filing of the present contempt petition which was originally registered as Contempt Case (Civil) No. 4/2000. On 3.2.2000 when the conduct of other contemner/respondent No. 2 was brought to the notice of this Court, Mr. R.K. Sanajaoba appearing for the respondent No. 1 submits that the respondent No. 2 has acted on his own and the respondent No. 1 has not entrusted such work to him. In fact, the Contempt Petition (C) No. 4/2000 was finally heard and judgment was reserved on 2.6.2000. However, considering the gravity of the offence that the Court's order dated 15.12.1999 has been obtained by the contemner No. 1 by practising fraud, this Court was of the opinion that the conduct of the contemner No. 1 comes within the purview of the definition of criminal contempt as defined u/s 2(c) of the Contempt of Courts Act, 1971 and by an order dated 6.6.2000 converted Civil Contempt into Criminal Contempt in exercise of power under Article 215 of the Constitution of India read with section 15 of the Contempt of Courts Act after hearing counsel on both sides. Further, on 9.6.2000 after hearing counsel on both sides, this Court allowed the Contemnors 1 and 2 to file further affidavit, if any, and this is how the original Civil Contempt petition No. 4/2000 has been converted into Criminal Contempt Petition No. 1/2000 and is being heard by the Division Bench in accordance with the High Court Rules.

9. We have heard Mr. Asok Potsangbam, learned senior counsel for the petitioner, Mr. A. Nilamani Singh, learned senior counsel for the contemner No. 2 and Mr. R.K. Sanajaoba, learned senior counsel for the contemner No. 1.

10. The main thrust of the argument of Mr. Asok Potsangbam, learned counsel

for the petitioner is that a part from civil contempt, the respondents/contemnors 1 and 2 are liable for criminal contempt inasmuch as the favourable order of the Court was obtained on 15-12-1999 in Civil Contempt Case No. 357/99 by practising fraud upon the Court. I shall be dealing with the counter of the contemnors 1 and 2 at the appropriate time.

11. Civil Contempt Petition No. 357/99 now re-numbered as Criminal Contempt Petition No. 2/2000 was closed by this Court on 15-12-1999 basing on the order dated 11.11.1999 passed by the contemner No. 1. The contempt petition was disposed of in the following terms:-

"Upon hearing the learned counsel for the parties present here, I am of the view that no case of contempt is made out as against the respondent No. 1 Shri D.S. Poonia, Commissioner, Election Department-cum-Chief Electoral Officer, Manipur keeping in view of the related order issued by him on 11th November, 1999 bearing No. 6/54/97-Election (Pt), a copy of which has been produced by Mr. R.K. Sanajaoba, learned senior counsel for the respondents and marked as "X" for identification. It is made clear that after proper application of my mind in this matter, this Court in exercising its power conferred upon it under Article 215 of the Constitution of India made the following order.

If the newly impleaded respondent No.3 is working as Assistant Chief Electoral Officer, Imphal till today, the authority concerned/ competent authority shall not allow him to discharge or function as Assistant Chief Electoral Officer, Imphal forthwith failing which a fresh contempt of Court's proceeding shall be taken up against those responsible officers/authority concerned suo motu. The petitioner is at liberty to obtain a copy of this order and submit the same before the appropriate authority for doing the needful as per order of this Court. The Registry is directed to allow the parties to obtain certified copy of this order within 48 hours."

12. The aforesaid order has been passed acting on the order dated 11.11.1999 passed by the contemner No. 1 produced at the time of hearing. The order is self-explanatory. It reads:-

"GOVERNMENT OF MANIPUR SECRETARIAT ELECTION DEPARTMENT ORDERS  
Imphal, 11th November, 1999

No. 6/54/97-Election (Pt)- Whereas the Hon"ble Writ Appellate Court has been pleased to pass in Writ Appeal No. 108 of 1999, interim orders dated 24-6-1999 as reproduced hereunder.

"..... In the meanwhile, the impugned judgment of the Ld. single Judge in Civil Rule No. 1187/98 is stayed. But we direct that the deputation of the appellant in Writ Appeal No. 108/99, Shri W. Sudhir Kumar Singh will not be extended beyond the existing period of deputation expiring on 11.11.1999."

2. Whereas, In pursuance of the above-mentioned interim orders, and on expiry of the period of deputation of Shri W. Sudhir Kumar Singh as Asstt. Chief

Electoral Officer in the Election Department, Government of Manipur on 11 November, 1999, he is repatriated to his parent organisation, viz., Manipur Electronics Development Corporation Ltd., Takyelpat.

3. Therefore, the services of Shri W. Sudhir Kumar Singh are placed at the disposal of the Manipur Electronics Development Corporation Ltd., Takyelpat w.e.f. 12.11.1999. Shri W. Sudhir Kumar Singh is directed to report to the Managing Director, Manipur Electronics Development Corporation Ltd. for further orders.

By orders & in the name of Governor, Sd/- D.S. Poonia Commissioner (Election) to the Govt. of Manipur."

13. However, despite of the aforesaid order, contemner No. 2 still function as Assistant Chief Electoral Officer (ACEO), Manipur in the letter dated 30th November 1999. The letter dated 30th November 1999 is self-explanatory. It reads:-

"OFFICE OF THE CHIEF ELECTORAL OFFICER, MANIPUR

No.2/Elec-151-97/11233 Imphal, 30th November, 1999

To

M/s Sagolsem Mani Singh & Sons Laxmi Narayan Bhavan Khoyathong Road, Imphal.

Sub :- Supply Order No. 2/Elec-151/97 dtd. 25.11.1999.

Dear Sir,

In inviting reference to our above supply order and letter dtd. 27.11.1999 and your letter dtd. 29.11.1999, I am directed to affirm the following points for early execution of the order:

1. Payment: As mentioned earlier 90% of payment will be made within 30 days of the complete delivery of all items and balance 10% on successful installation of the computers. Software & Peripherals. Further, the condition of imposing interest @ 24% p.a. on the overdue amount is acceptable to us.

2. Delivery Schedule: The delivery schedule as given in the supply order may be strictly adhered, counting from the date of the order and under no circumstances it can be extended.

Kindly confirm acceptance of the order by forenoon of 2nd December, 1999.

Yours faithfully, Sd/- W. Sudhirkumar Singh Asstt. Chief Electoral Officer, Manipur".

14. At the risk of repetition the interim direction of the Division Bench of this Court passed in Writ Appeal No. 108/99 as quoted above directs that the deputation period of contemner No. 2 should not be extended beyond

11.11.1999.

15. Further, the contemner No. 2 received goods supplied by MANITRON on 13-12-1999 as Asstt. Chief Electoral Officer (Annexure-X/8).

16. Again, that the repatriation order dated 11.11.1999 purportedly passed by the contemner No. 1 has never reached the office of MANITRON and the contemner No. 2 Sudhirkumar Singh has not reported to the Corporation is confirmed by a letter dated 21st December 1999 written by the Manager (Administration), MANITRON addressed to the counsel for the petitioner. The letter is self-explanatory. It reads:-

"MANIPUR ELECTRONICS DEVELOPMENT CORPORATION LTD. (A Government of Manipur Undertaking)

No. 1/2/06: 964 Imphal, the 21st December 1999

Shri S. Nepolean Singh, advocate (One of the conducting counsels for the petitioner).

Subject :- A humble request for furnishing the following information which have become relevant in view of the statement and document made/submitted by Shri D.S. Poonia, Commissioner (Election) Before the Hon''ble Gauhati High Court in connection with Contempt Case (C) No. 357 of 1999.

Sir,

Kindly refer to your letter dtd. 20th December, 1999 on the above subject.

As per record of the related file and receipt register maintained by this Corporation the following facts are produced below:

(i) The order copy for repatriation of Shri W. Sudhirkumar Singh dtd. 11.11.1999 has not been formally received by this Office except a copy enclosed in your letter No. and date mentioned above.

(ii) Shri W. Sudhirkumar Singh has not reported to this Corporation till date.

Yours faithfully, Sd/- Irabot Singh Manager (Admn.)"

17. Again, as would appear from the Annexure-D/9 of the counter of contemner No.2, he was engaged as an Officer on Special Duty (OSD) in the Election Deptt. on contract basis for a period of one year by an order dated 16th December 1999 passed by the contemner No. 1, What cannot be done through the front door cannot be done through the back door. Engaging contemner No.2 as OSD in the Election Department on contract basis is a deliberate ploy to circumvent the Court's direction by another method. What the Court forbids is the continuation of the contemner No.2 in the Election Department of deputation.

18. In the counter affidavit of the respondent No.2, he has annexed a letter dated 6-1-2000 addressed to contemner No. 1 marked as Annexure-D/10. It

reads:-

"To

The Commissioner (Election) Govt. of Manipur, Imphal.

Sub : Request for issuance of an appropriate order formalising my service for the period from 12-11-1999 to 15-12-1999.

Sir,

Kindly refer to the Govt., order No. 6/106/99-Elec dated 16.12.1998, engaging the undersigned as Officer on Special Duty in the Election Department for one year with immediate effect.

2. However, this order does not cover the period from 12-11-1999 to 15-12-1999, as a result of which there is fear of a break in my service. But during this period I continued to give service to the Election Department as a computer professional in the Computerisation of the department.

3. Therefore, it is to request you good-office to kindly formalise my service in the Election Department by issuing an appropriate order to cover the period from 12-11-1999 to 15-12-1999.

4. I shall ever remain thankful to you for your early consideration in this regard.

Thanking you.

Yours faithfully,

Imphal, Dated 6 Jan 2000

Sd/- W. Sudhirkumar Singh Officer on Special Duty (C) CEO's Office, Manipur."

It would be crystal clear that despite of the order dated 11.11.1999 purported to have been repatriated the contemner No. 2 to his parent department (MANITRON) and obtain a favourable order of this Court, in fact he was also along continuing in the Election Deptt. There is an element of deceit.

19. The conspectus of the crude facts as alluded above would clearly show that the contemnors 1 and 2 in collusion obtained favourable order on 15.12.1999 by filing fabricated documents with an oblique motive of deceiving or defrauding the Court and committed a criminal contempt as defined u/s 2(c) of the Contempt of Courts Act, 1971.

20. Section 2(c) of the Contempt of Courts Act, 1971 (in short the Act) defines criminal contempt. It reads:-

"2(c) "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; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes, or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"

21. The Apex Court had occasion to consider as to whether practising fraud on Court by filing forged and fabricated documents with oblique motive of deceiving or defrauding the Court amounts to interference with the administration of justice and amounts to criminal contempt of Court. It has been held by the Apex Court that any act which interferes or tends to interfere with, or obstruct or tends to obstruct the administration of justice would come within the purview of criminal contempt as defined u/s 2(c) of the Act. It was further pointed out that the word "interfere", means in the context of the subject, any action which checks or hampers the functioning or hinders or tends to prevent the performance of duty. Obstruction of justice is to interpose obstacles or impediments, or to hinder, impede or in any manner interrupt or prevent the administration of justice. If recourse to falsehood is taken with oblique motive, the same would definitely hinder, hamper or impede even flow of justice and would prevent the courts from performing their legal duties as they are supposed to do. (See Chandra Shashi, petitioner v. Anil Kumar Verma, respondent (1995) 1 SC 421 .

22. In another case the Supreme Court held that any party giving undertaking to court based on implications or assumptions which are false to its knowledge is guilty of misconduct amounting to Criminal contempt. (See Dr. (Mrs.) Roshan Sam Joyce Vs. S.R. Cotton Mills Ltd. and others,

23. In the instant case, the first contemner produced an order dated 11.11.1999, as quoted above purportedly passed pursuant to the interim direction of the Court thereby repatriating the 2nd respondent to his parent Deptt. (MANITRON) and obtained a favourable order dated 15.12.1999. Dropping the contempt petition in respect of Contemner No. 1 by fraudulent representation of facts and at the same time allowing the contemner No. 2 to continue as ACEO upto 13.12.1999 and thereafter, allowing the contemner No. 2 to continue on contract basis as OSD in the Election Department by an order dated 16.12.1999, we are, clearly of the view that the sequence of deliberate actions of the contemnors 1 and 2 are contumacious and they are being guilty of both criminal and civil contempt. The order dated 16.11.1999 engaging the contemner No. 2 on contract basis w.e.f. 12.11.1999 for a period of one year has again been made in deliberate disobedience of observation made by this Court on 15.12.1999 depreciating the proposal for engagement of contemner No. 2 Shri Sudhir Kumar Singh on contract basis in the following terms:-

"Apart from it, Mr. R.K. Sanajaoba Singh, learned senior counsel has drawn my attention to the Government letter dated 19th October, 1999 as in Annexure-C/7

to this contempt petition wherein the respondent No. 2 requested the Managing Director, MANITRON, Imphal to the proposal of re-appointment of newly impleaded respondent No. 3 Shri W. Sudhuirkumar Singh in Election Department on contract basis with effect from 12.11.1999 for a period of one year under the terms of contract which will include protection of his existing pay and allowances including the deputation allowance which may be re-named as Special Contract Allowance. On perusal of the document marked as Annexure-C/7, I am of the view that this is bad type of order or letter issued by the respondent No.2 while exercising its power and jurisdiction vested upon him by law and rule."

24. Before we advert further on the contention raised by the respondent, at this stage, we may dispose of one argument of Mr. R.K. Sanajaoba. When the aforesaid act of the Contemner No. 1 was brought to the notice of this Court on 3.2.2000, Mr. R.K. Sanajaoba appearing for the contemner No. 1 stated at the bar that the contemner No. 2 has acted on his own and contemner No. 1 has not entrusted such work to him. Who will believe this statement? In the service hierarchy, can anybody continue in the Department without permission of the Head of the Department, that too when the contemner No. 2 is stated to have been repatriated to his parent Department by an order dated 11.11.1999? This apart, contemner No. 2 has filed further affidavit on 13th June, 2000. In paragraph 3 of the counter the contemner No. 2 states as under:-

"3. I humbly submit that I do not know the implications of law as I am not trained in the study of law. In the instant case, from the date of deputation of myself from MANITRON to Election Department, Government of Manipur, to the date of cancellation of engagement of myself in the Election Department any my rejoining MANITRON, I had, as an employee, simply obeyed my employer's orders and instruction and I had done nothing independently."

25. Now we shall proceed to deal with the counter of the contemnors 1 and 2. Both the contemnors filed affidavit, supplementary affidavit, and further filed Affidavit-in-opposition. Contemner No. 1 filed counter affidavit on 2.2.2000, supplementary affidavit on 8.2.2000 and further affidavit on 13.6.2000. In the supplementary affidavit filed on 8.2.2000 contemner No. 1 explained the conduct of the respondent No. 2 as Assistant Chief Electoral Officer (ACEO) from 12.11.1999 upto 15.12.1999 despite the order dated 11.11.1999 passed by the contemner No. 1. It has been explained in paragraphs 6,7 and 8 of the counter. It reads:-

"6. It is humbly submitted that in compliance with Hon"ble Court's directions Shri W. Sudhir Kumar Singh was not working on deputation basis with the Election Department after 11-11-1999 but his services were utilised for unavoidable and time bound works of unfinished computer works without giving any remuneration and in public interest before his formal engagement order on contract basis was issued on 16-12-1999. It is humbly submitted that such utilisation or rendering of services by Shri W. Sudhir Kumar Singh was not prohibited by the orders of the Hon"ble Writ appellate court, dated 24-6-1999. It

is submitted that Shri W. Sudhir Kumar Singh had no appropriate designation or official status during this period. However, unwittingly and unfortunately. Shri W. Sudhir Kumar Singh continued to be addressed A.C.E.O in our office correspondence because his status was yet to be finalised by the Government. Shri W. Sudhir Kumar Singh did not get any salary as A.C.E.O. I beg to reiterate that although the nomenclature A.C.E.O. was unwitting attached to his name in dealing with official correspondence, he was not holding the post of A.C.E.O. either on deputation or otherwise or by getting any salary for his services.

7. I beg to submit that such continuation of attaching the nomenclature of A.C.E.O. to the name of Shri Sudhir Kumar Singh unwittingly was a mistake even though such nomenclature had officially no significance whatsoever. I, therefore, tender my unqualified apologies to your Lordships and pray that your Lordship be gracious enough to pardon me for such lapses on my part. I beg to state that I had never meant to dishonour or to disrespect the orders of the Hon'ble Writ appellate court adverted to hereinabove. Since, I bonafidely believed that the import of the orders passed by the Hon'ble Writ appellate court was discontinuance of the deputation and keeping the post of A.C.E.O. unfilled by Shri W. Sudhir Kumar Singh, and, such direction have already been complied with in due deference to Hon'ble Writ appellate court's order dated 24-6-1999.

8. After the notices in respect of first contempt petition being Contempt Case No. 357 of 1999, I had advised Shri W. Sudhir Kumar Singh not to use the designation and nomenclature of A.C.E.O. in office correspondence and I myself have stopped addressing/referring to him as A.C.E.O. In the relevant files and correspondence on realisation of the unpropriety of the use of this nomenclature along with the name of Shri W. Sudhir Kumar Singh. I express my deepest regrets for what had occurred during the period from 12-11-1999 and 15-12-1999 during which the nomenclature of Assistant Chief Election Officer (A.C.E.O.) was made to be attached with the name of Shri W. Sudhir Kumar Singh and I pray that your Lordships be gracious enough to pardon me."

26. A reading of the aforesaid paragraphs not only the answer to the allegation is evasive but the contemner No. 1 justifying the action. Nobody will believe that even after the contemner No. 2 has been repatriated by an order dated 11.11.1999 issued by the contemner No. 1, he has continuously functioning for a period from 12-11-1999 to 15-12-1999 as ACEO without any salary and as the nomenclature of ACEO was unwittingly attached to his name in dealing with the official correspondence but he was not holding the post of ACEO either on deputation or by getting any salary for his service. Is it believable that contemner No. 2 would function for a period from 12-11-1999 to 15-12-1999 without any salary? Apart from getting salary, the fact remains that he was functioning as ACEO in the Election Department w.e.f. 12-11-1999 to 15-12-1999 as admitted by the contemner No. 1 in paragraph 8 of its supplementary affidavit as quoted above which would show that the continuation was in utter disregard to the interim direction issued by the Division Bench of

this Court on 24-6-1999 in Writ Appeal No. 108/99. So also that the favourable order dated 15-12-1999 passed by this Court was obtained by practising fraud has also been clearly established against the contemner.

27. Specific allegation has been made by the petitioner in paragraph 6 of the petition that despite of the full knowledge of the direction issued by the Court, contemner No. 1 allowed the respondent No. 2 who happens to be the son-in-law of the cabinet minister to continue and discharge as ACEO. The allegation made in paragraph 6 of the petition has been answered in paragraph 8 of the counter No. 1 filed on 2-2-2000. The operative portion of the answer is quoted:-

"It is humbly submitted that Shri W. Sudhir Kumar Singh is a citizen of India and his right is guaranteed under Articles 14 and 16 of the Constitution of India in the context of appointment provided he is eligible and qualified for a post. Being a son-in-law of a Cabinet Minister may not be reckoned as disqualification. Manipur is a small State and having small population and small social groups therefore the Hon"ble Ministers and also big Officers have relatives seeking jobs. If such relationship be reckoned as disqualification, it would have serious adverse affect in the matter of appointments under the Govt. or instrumentality of the Govt.".

Apart, from the answer is evasive, the contemner No. 1 is defending, the contemner No. 2 by defending and justifying his action taken. Reading the reply as a whole it is in an involved manner.

28. Further, petitioner made specific allegation in paragraph 9 of the petition as under:-

"9. That, it is submitted that by placing the order dated 11.11.1999 before the Contempt Court on 15-12-1999 in connection with the first Contempt Case 9 (C) No. 357/99, the Contempt Court was misled to believe the contents of the Annexure-X/6 and accordingly the Contempt was dropped against the respondent No. 1 whereas the above stated facts will show that the Annexure-X/6 was issued only to mislead the Court and to get rid of the Contempt petition. Further, it is submitted that the respondent No. 2 is still allowed to function and discharge his duty in the Election Department with the knowledge and protection of the respondent No. 1 without ever repatriating the respondent No. 2 in pursuance of the Annexure-X/G, in other words, the Annexure-X/6 was never implemented. The acts of the respondent Nos. 1 and 2 amount to deliberate and wilful violation of the Hon"ble Court's order and as such they are liable to be punished in accordance with the provisions of the Contempt of Court's Act, 1971 read with Article 215 of the Constitution of India."

29. The aforesaid allegation is answered in paragraph 11 of the counter. It reads:-

"11. With reference to para 9 of the contempt petition the allegations made therein are denied. The averments made therein represent the petitioners own assumption and I never mislead the Hon"ble High Court. The respondent No. 2 is

working as O.S.D. in the Department on contract basis vide Govt. Order dated 16.12.1999 at Annexure-R/8 hereto."

30. The allegation made in paragraph 9 of the petition therefore stand uncontroverted. The specific allegation that the order dated 11.11.1999 was issued only to mislead the Court and to get rid of the contempt petition and the allegation that the order dated 11.11.1999 was never implemented has not been denied.

31. Contemner No. 1 also in its counter in paragraph 3(V) filed on 2.2.2000 stated that the interim order dated 24.6.1999 pertains to extension of contemner No. 2 on deputation not beyond 11.11.1999 and the contemner has accordingly understood that the interim order relates to the non-extension of the deputation to the post of ACEO. It is also stated in paragraph 9 of the counter that the interim order relates exclusively to the holding of the post of ACEO by the contemner No. 2 on deputation basis. Mr. R.K. Sanajaoba accordingly submits that the contemner No. 1 has understood that this Court never give any direction for disallowing the contemner No. 2 to continue to work i the Election Department in other capacity. This contention is based on mis-reading of the order passed by this Court. The root cause of the dispute was bringing the contemner No. 2 to the Election Department on deputation. This has to be examined from the context of the facts. Petitioner has taken grievance in Civil Rule for bringing the contemner No. 2 to the Election Department on deputation as because according to the petitioner there is eligible candidate in the Department for the job. The interim direction of this Court on 24.6.1999 is a direction against the contemner No. 2 continuing in the Election Deptt. on deputation. Whether it is an engagement on contract basis or as OSD is on deputation to the Election department. This apart, if there is some doubt in the interpretation of the order passed by the Court, it is always open to the respondents to come with an application and seek further clarification. In the instant case, the contemner No. 1 has straight away interpreted the court's order to suit his own purpose, even without caring to clarify the matter by filing an application before this Court. In our view, there is no scope for confusion in the order any confusion is an artificial creation. The conduct of the contemner No. 1 as is evident from the aforesaid materials, establishes beyond doubt that he was tring to play with the Court and consistently flouting its order. The consistent and deliberate contumacious act of the contemner No. 1 is beyond condonable limits.

32. Even at the time of hearing of this contempt proceeding at various stages particularly on 3-2-2000, 9-2-2000, 2-6-2000, 6.6.2000. 9.6.2000, this Court disclosed its mind that the continuance of the contemner No. 2 in any capacity in the Election department beyond 11.11.1999 would be violative of the interim direction passed by the Division Bench of this Court on 24.6.1999 and would amount to contempt of Court has been repeatedly emphasised. But despite of this fact the contemner 1 in open defiance and by adapting an adamant attitude

allowed the contemner no.2 to continue in the Election Deptt. till the argument in this case has been concluded on 14.6.2000. We have given enough opportunity to both the contemnors even at this belated stage so that they can revive/repair the mistake they have done by disclosing our mind at the time of hearing at different stages that the continuance of contemner No. 2 in the Deptt. is clearly contumacious.

33. At last both the contemnors 1 and 2 filed counter on 13.6.2000. It is stated in paragraph 3 of the contemner No. 1 that contemner No. 2 engagement as OSD on contract basis for a period of one year by an order dated 16.12.1999 has been cancelled with immediate effect by an order dated 12.6.2000 with retrospective effect in compliance with the order dated 24.6.1999 passed in Writ Appeal No. 108/99. The order dated 12th June 2000 is annexed in the affidavit as Annexure-R/1. The order is effective from 12.6.2000. This is yet another order to defraud the Court.

34. Contemner No. 2 also filed counter on 13.6.2000 stating in paragraph 2 of the counter that a copy of the order dated 12.6.2000 passed by the contemner No. 1 cancelling the earlier order dated 16.12.1999 engaging him as officer on Special Duty has been received. It is also stated that the contemner No. 2 has already submitted joining report to the office of MANITRON on 12.6.2000.

35. Having regard to the aforesaid facts in the counter of the contemnors 1 and 2 as to doubt of authenticity of the order and the joining of the contemner-No. 2 in the MANITRON Deptt. has been raised by the petitioner, this Court on 14.6.2000 directed the Registry to obtain the Attendance Register of the Officers and Engineers of the MANITRON as on 14.6.2000. Accordingly, an officer was deputed and collected the Attendance Register of the Officers and Engineers of the MANITRON for the month of June, 2000 upto 14.6.2000. In the said Attendance Register the name of the contemner No. 2 Shri W. Sudhir Kumar Singh does not appear. This would show that the statement made in paragraph 2 of the counter of the contemner No.2 that he has submitted joining report to the office of MANITRON on 12.6.2000 is to mislead the Court. This is the last parting kick to the Court by both the contemnors 1 and 2.

36. Both the contemnors 1 and 2 tendered unqualified apology in the counter filed on 13.6.2000. Contemner No. 1 stated in paragraphs 4, 5 and 6 as under:-

"4. I tender my unqualified apologies for lapses that I might have committed. I did not have the slightest intention to disobey the interim order dated 24.6.1999 passed in Writ Appeal No. 108/99. Nor did I ever intend to obstruct justice or to interfere with the administration of justice in any manner, I humbly submit that I have acted in bona fide belief and in good faith that my such acts and deeds were not done by way of disobedience of the orders of this Hon'ble Writ Appellate court and also I believed that my such acts and deeds did not cause any prejudice or interference and did not tend to interfere with the due process of judicial proceedings and also I bona fide believed that such acts and deeds did

not interfere or tend to interfere with or obstruct or tend to obstruct the administration of justice. I pray that your lordships be kind and gracious enough to excuse my shortcomings.

5. I beg to submit that I feel contrite and penitent for what has taken place. I have not done anything intentionally to lower the dignity of this Hon''ble High Court. I have the highest regards for this Hon''ble High Court and for the orders passed by this Hon''ble High Court. In future, I shall always take proper care and caution while obeying and implementing the Hon''ble High Court orders.

6. I pray forgiveness and pardon. This Hon''ble High Court may be gracious enough and accept my humble submissions made herein and be kind enough to excuse me upon my tendering unqualified apologies which I hereby do."

37. Further contemner No. 2 tendered unqualified apology in paragraphs 4 and 5 of the counter filed on 13.6.2000 as under:-

"4. I express my regrets for all that have happened. I am remorseful and penitent. I have never meant to disrespect this Hon''ble Court and to disobey the orders passed by the Hon''ble Writ Appellate Court in W.A. No. 108 of 1999. I never meant to interfere with or obstruct the administration of justice in any manner nor to cause any prejudice or interference with the process of judicial proceedings.

5. I have highest esteem for this Hon''ble High Court and for its dignity and majesty. I shall be more careful in future and shall obey the orders of this Hon''ble High Court. I pray for forgiveness for what had happened."

38. A reading of the statement made in the aforesaid paragraphs tendering unqualified apology it is by way of defence to avoid the punishment on the concluding day of the argument, when both the contemnors came to know that the Court has made up its mind to send them to jail. Therefore, the unqualified apology tendered by both the contemnors are not the product of remorse or contrition. It is trite that unqualified apology tendered by the contemnors is not a weapon of defence.

The expression "for lapses that I might have committed" employed in paragraph 4 of the counter of contemner No. 1 demonstrate that unqualified apology is not a product of remorse or contrition. At the same, while tendering unqualified apology the contemnors also justified their action that it has been done in bona fide belief and in good faith.

39. Apart from what has been stated that such an unqualified apology has been filed on the day the argument was concluded although contempt petition was filed on 14th January 2000 and the contemnors have filed counter on 2-2-2000 and 8-2-2000, of court in earlier counter also they have tendered apology but not in the fashion it has been done in the counter filed on 13-6-2000. An apology Js not a weapon of defence forged to purge the guilt of the offenders not is it intended to operate as a panacea. It is intended to be evidence of real

contriteness, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrongdoer's power. Apology must be unconditional and indicative of remorse and must be tendered at the earliest opportunity. (See Delhi Development Authority, Petitioner v. Skipper Construction and another. Respondents Delhi Development Authority Vs. Skipper Construction and Another, In the instant case, the unqualified apology has been tendered merely to avoid punishment. Such apology cannot be accepted.

40. The consistent flouting of the Court's order by both the contemnors tends to create distrust in the popular mind and impairs confidence of the people in the courts. In the instant case, the conduct of both the contemnors tends to bring the authority and majesty of law into disrespect thereby lowering the dignity of the majesty of law in the estimation of general public. It is an abuse of the process of court calculated to hamper the due course of judicial proceeding.

41. Judiciary is the bed-rock and handmaid of orderly life and civilised society. If the people would lose faith in justice imparted by the highest Court of land, woe be to orderly life. The fragment of civilised society would get broken up and crumble down. (See Delhi Development Authority (supra).

42. In a contempt proceeding Court is not an aggrieved party, the aggrieved are the public interest and the sufferers are the consumers of justice.

43. We can understand if a rustic villager fails/refuses to carry out the Court's order because of the ignorance of the consequence and it is pardonable. But not so, in the case of a person holding a high position in the Government in the rank of Commissioner and Secretary of a Department as in the case at hand. By virtue of their own position they cannot plead ignorance of law. Even otherwise, ignorance of law is no excuse (*ignorantia juris non excusat*). This maxim is applicable to a person occupying a high position with more stricter force. The gravity would be more in case of an authority who despite having a knowledge of the implications and consequences of the court's order deliberately violates the same and once it is established, they deserve no mercy.

44. Mr. A. Nilamani Singh appearing on behalf of the contemner No.2 contended that any subsequent action is subject to judicial review and not amenable to contempt inasmuch as the correctness of the decision can be entered into by exercising its judicial review. This contention has no substance in the context of the present case because, all subsequent action taken by the contemnors are in violation of the categorical direction issued by this Court and they are amenable to a contempt proceeding.

45. Lastly it is contended by Mr. R.K. Sanjaoba, learned counsel for the contemner No. 1 and Mr. A. Nilamani Singh, learned counsel for the contemner No. 2 to have mercy showered on the contemnors because if they are convicted, they will lose their job and their personal liberty would be curtailed and lowered in the estimation of the public and their family members would suffer irreparable

loss and injury. Individual liberty which is so dear to every citizen of this country must necessarily be balanced with public interest. Mercy cannot be shown to an individual at the costs of injustice to the public at large. In the facts similar to the case at hand, such prayer has been rejected by the Supreme Court.

46. In *J. Vasudevan Vs. T.R. Dhananjaya*, the plea for mercy has been rejected by the Supreme Court in the following terms in paragraph 14 of its judgment:-

"14. Coming to the mercy jurisdiction, let it be first stated that while awarding sentence on a contemner, the Court does so to uphold the majesty of law, and not with any idea of vindicating the prestige of the Court or to uphold its dignity. It is really to see that unflinching faith of the people in the Courts remain intact. But, if the order of even the highest Court of the land is allowed to be wilfully disobeyed and a person found guilty of contempt is let off by remitting sentence on plea of mercy, that would send wrong signals to everybody in the country. It has been a sad experience that due regard is not always shown even to the order of the highest Court of the country. Now, if such orders are disobeyed, the effect would be that people would lose faith in the system of administration of justice and would desist from approaching the Court, by spending time, money and energy to fight their legal battle. If in such a situation mercy is shown, the effect would be that people would not knock the door of the Courts to seek justice. but would settle score on the streets, where muscle power and money power would win, and the weak and the meek would suffer. That would be a death knell to the rule of law and social justice would receive a fatal blow. This Court cannot be a party to it and, harsh though it may look, it is duty bound to award proper punishment to uphold the rule of law, how so high a person may be. It may be stated, though it is trite, that nobody is above the law. The fact that the petitioner in an IAS Officer is of no consequence, so far as the sentence is concerned. We would indeed think that if a high officer indulges in an act of contempt, he deserves to be punished more rigorously, so that nobody would take to his head to violate Court's order. May be also say that a public officer, being a part of Government, owes higher obligation than an ordinary citizen to advance the cause of public interest, which requires maintenance of rule of law to protect which contemnors are punished."

47. Having said so, we are compelled to perform an unpleasant duty. While imposing punishment, we have to bear in mind that contemner No. 1 is the main actor in the whole show the contemner No. 2 was supporting actor acting under the shadow and protection of contemner No. 1, although it cannot be said that the consistent flouting of the Court's order was without the connivance of the contemner No. 2. In the facts and circumstances, the imposition of punishment between the contemnors 1 and 2 is distinguishable. Contemner No. 1 Shri D.S. Poonia, Commissioner & Secretary, Election Department is sentenced to 1 (one) month incarceration and a fine of Rs. 2,000 (Rupees two thousand) in default another term of incarceration for 15 (fifteen) days. Contemner No. 2 Shri W. Sudhir Kumar Singh is sentenced to 15 (fifteen) days incarceration and a fine of

Rs. 1,000 (Rupees one thousand) in default another 10 (ten) days incarceration.

Registrar of this Bench is directed to execute the order through Superintendent of Police, Imphal West after expiry of 1 (one) month from today. The Superintendent of Police, Imphal West shall execute the order after the stipulated period is over and file compliance report immediately after the expiry of one month.