

Reserved on: 06.12.2022

Delivered on: 16.12.2022

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 562 of 2016

Applicant :- Prashant Chandra

**Opposite Party :- Harish Gidwani Deputy Commissioner Of
Income Tax Range 2**

**Counsel for Applicant :- Mudit Agarwal, Anand Prakash
Sinha, Radhika Singh**

Counsel for Opposite Party :- Manish Mishra

Hon'ble Irshad Ali, J.

1. Heard Ms. Radhika Singh, learned counsel for applicant and Sri Manish Mishra, learned counsel for opposite parties.
2. The present contempt application under Section 12 of the Contempt of Courts Act, 1971 has been filed alleging willful and deliberate disobedience of judgment and order dated 31.03.2015 passed by a Division Bench of this Court in Writ Petition No.9525 (M/B) of 2013, whereby following direction was issued:

"A perusal of Annexure SA-3 annexed with the supplementary affidavit dated 31.3.2015 shows that in response to the notice dated 3.11.2014, the petitioner preferred written objection to the Assessing Officer bringing to his notice the pendency of the aforesaid writ petition and also apprising him that Section 127 was not even remotely attracted. Therefore, it was incumbent upon the opposite party No.2 to have waited for the outcome of the writ petition, but he proceeded with the matter which shows prejudicial and impartial attitude of the authority. It may be noted that transparency and fairness is the essence of the state action. Therefore, the authorities are expected to proceed in disciplined manner without creating any doubt in the mind of the assesseees. As averred above, it was the duty of the Assessing Officer to have referred the question of jurisdiction to the Chief Commissioner or the Commissioner as the case may be under sub-section (2) of Section 124 of the Act and not doing so, this vitiated the further proceedings.

Here, there is complete departure from the settled procedure. It comes out from the record that when the petitioner refused to submit to the jurisdiction of the said Assessing Officer at Lucknow, the authority/respondent No.2 proceeded ex parte and dispatched a demand of almost Rs.52 lacs. At the cost of repetition, we would like

to mention that in the notice dated 11.9.2013, which is computer generated clearly reveals that the Delhi address of the petitioner was scored out and in handwriting, the local address has been added. Therefore, it is incorrect to say that the Delhi Address was not in the knowledge of the respondents and we find force in the submissions of the petitioner that local address was inserted deliberately to create jurisdiction, which, in fact, legally was not vested with the opposite party No.2. Therefore, the opposite party No.2 exceeded its jurisdiction, which not only vitiates the impugned show cause notice but the entire proceedings. In these circumstances, the entire proceedings being ab initio illegal, without jurisdiction and in violation of Section 143 (1) (a) of the Income-tax Act.

For the reasons aforesaid, the writ petition is allowed and the impugned notice dated 11.9.2013 is quashed. As the notice notice has already been quashed, consequential orders, if any, are also quashed. "

3. By means of aforesaid writ petition, the applicant assailed a notice dated 11.09.2013 issued by the respondent - Deputy Commissioner of Income Tax, Range - 2, Lucknow under Section 143 (2) of Income Tax Act, 1961 in respect of assessment year 2012-13 on the ground that the said notice was *de hors* the provisions contained under Section 124 of the Act and has been issued in excess of jurisdiction conferred upon the respondent.

4. Submission of learned counsel for the applicant is that the jurisdiction to assess the petitioner at Lucknow is conspicuously absent in the income tax authorities at Lucknow and that the petitioner can only be assessed by the Assessing Officer at New Delhi, where the petitioner had filed his returns for the assessment year 2013-14 but the opposite party - contemnor has issued notices for manual scrutiny in respect of assessment year 2013-14 and in spite of objection filed by the applicant, the opposite party has threatened to finalize the proceedings ex-parte by 30.03.2015.

5. She next submitted that the cause of action for filing the contempt petition arose upon receipt of notice dated 24.06.2015

at his Delhi address and again on 15.03.2016, whereby another notice was issued to the applicant threatening to make ex-parte assessment pursuant to earlier notices sent in respect of assessment year 2013-14.

6. Learned counsel for the petitioner submitted that vide notice dated 11.09.2013, a manual scrutiny was sought to be done in respect of the assessment year 2013-14. She submitted that address of the petitioner had been scored out and replaced by the Lucknow address, which is indicative of the fact that the respondent was endeavouring to assume jurisdiction for holding assessment proceedings against the petitioner - applicant.

7. She further submitted that during pendency of aforesaid writ petition, a notice dated 15.10.2004 under Section 143(2) of the Income Tax Act, 1961 was issued against the applicant - petitioner at the recorded address at New Delhi for a manual scrutiny of the return on income, which was followed up by another notice dated 24.06.2015 sent at Lucknow address, which was represented by the applicant - petitioner vide letter dated 05.07.2015 stating that the petitioner - applicant had been filing his returns at New Delhi and as such, the respondents did not have jurisdiction to issue such a notice.

8. She next submitted that in furtherance to notice dated 24.06.2015, a notice dated 15.03.2016 has also been issued to the petitioner - applicant at his Lucknow address, wherein petitioners representation dated 05.07.2015 has been acknowledged and as a final opportunity has been given to the objections on or before 22.03.2016, failing which necessary inference was stated to be drawn. Objection to the notice dated 15.03.2016 was given on 21.03.2016 indicating that jurisdiction to issue notice under

Section 143(2) of the Act has been questioned and assumption of the jurisdiction by the respondent was de hors to the provisions contained under Income Tax Act, 1961.

9. She further submitted that the opposite party - contemnor has been acting in an outrageously contemptuous manner and is endeavouring to proceed with the assessment proceedings for the assessment year 2013-14 in blatant disregard and violation of judgment and order dated 31.03.2015 passed in Writ Petition No.9525 (M/B) of 2013 and as such, he is liable to be hauled up, tried and punished for contempt of the order passed by the Division Bench of this Court.

10. In support of her submissions, she relied upon certain judgments, which are as under:

a) Sebastian M. Hongray Vs. Union of India; (1984) 3 SCC 82.

b) T.N. Godavarman Thirumulpad (102) through the Amicus Curiae Vs. Ashok Khot and another; (2006) 5 SCC 1.

c) Patel Rajnikant Dhulabhai and another Vs. Patel Chandrakant Dhulabhai and others; (2008) 14 SCC 561.

11. On the other hand, learned counsel for the opposite party submitted that for the assessment year 2011-12, the petitioner preferred Writ Petition No.1848 (M/B) of 2014 challenging the order dated 05.02.2014, which has been dismissed vide order dated 27.03.2014. This Court in the aforesaid writ petition has held that main place of profession of the petitioner would be at Lucknow for the assessment year 2011-12 and accordingly, the Assessing Officer has rightly exercised power under Section 142 of the Act.

12. He further submitted that the petitioner preferred another writ petition No.9525 (M/B) of 2013 for the assessment year 2012-13 challenging the notice issued under Section 143 (2) of the Income Tax Act, which has been quashed vide order dated 31.03.2015.

13. He submitted that the respondent had not proceeded against the petitioner in any manner for the assessment year 2012-13 as per mandate of judgment and order of this Court dated 31.03.2015 and submitted that the notices issued dated 15.10.2014 and 24.06.2015 under Section 143(2) are not subject matter of the aforesaid writ petition.

14. He next submitted that reply to the petitioners letter dated 05.07.2015 has been given by the opposite party on 15.03.2016 giving further opportunity indicating that no application for transfer of jurisdiction has been received by the opposite parties. He submitted that the jurisdiction of Assessing Officer cannot be changed only by change of address of assessee. In case there is a change in principal place of business, the assessee can move an application under Section 127 to the competent authority to transfer any case from one assessing officer to another, however, the petitioner has not moved any such application for transfer of his case to New Delhi.

15. He further submitted that filing of online return can be made from any corner of the entire country and a change of address in the PAN or even the return filed online does not change the jurisdiction of Assessing Officer automatically from the PAN database and therefore, the respondent has jurisdiction to assess the applicant - petitioner even if he has filed his return at Delhi address.

16. He further submitted that since the opposite party was the Assessing Officer and the PAN database was showing his jurisdiction in the assessment year 2013-14, against which no order or direction has been passed by this Court in the judgment and order dated 31.03.2015 in Writ Petition No.9525 (M/B) of 2013, wherein the order has been passed only for assessment year 2012-13 and no order has been passed by the higher authority under Section 127 of Income Tax Act, 1961 and the applicant - petitioner did not submit any objection to the first notice dated 20.09.2014 for assessment year 2013-14 within 30 days, as required under Section 124(3) of Income Tax Act, 1961, the notice was valid.

17. He further submitted that the objection was raised only after lapse of a period of 30 days which was barred by limitation. He further submitted that new notice issued is also valid as per para 6 of AST Instruction No.115 of Directorate of Income Tax, Systems, New Delhi circulated vide letter F. No.DIT(S)-II/CASS/2014 dated 02.08.2013, which categorically says that in all cases under compulsory scrutiny, notice under Section 143(2) will be generated from the system only by the officer having PAN in his / her jurisdiction.

18. He next submitted that in order to get the jurisdiction changed, an order under Section 127 of Income Tax Act, 1961 issued by the competent authority is required and the assessee was requested to file copy of application under Section 127 of Income Tax Act, 1961 before the competent authority, which was not complied with.

19. He further submitted that for the assessment year 2011-12, the objection was filed with delay by the applicant - petitioner,

therefore, the same was not considered by this Court in Writ Petition No.1848 (M/B) of 2014 and the same was dismissed and it has been denied that for assessment year 2012-13, the petitioner was assessed at New Delhi, as there was no assessment made by any Assessing Officer for 2012-13.

20. He next submitted that in the order dated 31.03.2015 passed in Writ Petition No.9525 (M/B) of 2013, the Court has not recorded any finding that the assessment for the assessment year 2012-13 has been done at New Delhi and once this Court has held that for the assessment year 2012-13, the Assessing Officer at Lucknow has no jurisdiction, the concerned Assessing Officer, at that time and thereafter, has never proceeded against the applicant - petitioner for the assessment year 2012-13.

21. He further submitted that merely changing the principal place of profession or residential address in PAN does not automatically change the jurisdiction of the Assessing Officer. He submitted that while passing the assessment order for assessment year 2013-14, the Assessing Officer had given opportunity to the applicant - petitioner during course of assessment proceedings to provide any such letter or application for transfer of jurisdiction but no reply was submitted by him. He submitted that the opposite party has not violated the direction given by this Court vide judgment and order dated 31.03.2015 and no further proceedings for the assessment year were initiated by the opposite party against the petitioner and as such, no contempt has been committed by the opposite party and has submitted that if the opposite party has inadvertently violated orders of this Court, then he renders unconditional apology to this Court.

22. In support of his submissions, he placed reliance upon certain judgments, which are as under:

a) Sudhir Vasudeva, Chairman & MD, ONGC & Ors. Vs. M. George Ravishekarana & Ors.; Special Leave Petition (C) No.23272 of 2012.

b) V. Senthur and Another Vs. M. Vijayakumar, IAS, Secretary, Tamil Nadu Public Service Commission and Another; Civil Appeal No.4954 of 2016.

c) Badri Vishal Pandey and Ors. Vs. Rajesh Mittal and Ors.; 2019 Law Suit(SC) 7.

23. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

24. To resolve the controversy involved in the matter, the judgments relied upon by learned counsel for the parties are being quoted below:

a) Judgments relied upon by learned counsel for the applicant:

i) Sebastian M. Hongray (Supra):

6. Civil contempt is punishable with imprisonment as well as fine. In a given case, the court may also penalise the party in contempt by ordering him to pay the costs of the application. (2) A fine can also be imposed upon the contemnor.

7. Now in the facts and circumstances of the case, we do not propose to impose imprisonment nor any amount as and by way of fine but keeping in view the torture, the agony and the mental oppression through which Mrs. C. Thingkhula, wife of Shri C. Daniel and Mrs. C. Vangamla, wife of Shri C. Paul had to pass and they being the proper applicants, the formal application being by Sebastian M. Hongray, we direct that as a measure of exem-

plary costs as is permissible in such cases, respondents Nos. 1 and 2 shall pay Rs 1 lac to each of the

aforementioned two women within a period of four weeks from today.

8. *A query was posed to the learned Attorney General about the further step to be taken. It was made clear that further adjourning the matter to enable the respondents to trace or locate the two missing persons is to shut the eyes to the reality and to pursue a mirage. As we are inclined to direct registration of an offence and an investigation, we express no opinion as to what fate has befallen to Shri C. Daniel and Shri C. Paul, the missing two persons in respect of whom the writ of habeas corpus was issued save and except saying that they have not met their tragic end in an encounter as is usually claimed and the only possible inference that can be drawn from circumstance already discussed is that both of them must have met an unnatural death. Prima facie, it would be an offence of murder. Who is individually or collectively the perpetrator of the crime or is responsible for their disappearance will have to be determined by a proper, thorough and responsible police investigation. It is not necessary to start casting a doubt on anyone or any particular person. But prima facie there is material on record to reach an affirmative conclusion that both Shri C. Daniel and Shri C. Paul are not alive and have met an unnatural death. And the Union of India cannot disown the responsibility in this behalf. If this inference is permissible which we consider reasonable in the facts and circumstances of the case, we direct that the Registrar (Judicial) shall forward all the papers of the case accompanied by a writ of mandamus to the Superintendent of Police, Ukhrul, Manipur State to be treated as information of a cognizable offence and to commence investigation as prescribed by the relevant provisions of the Code of Criminal Procedure.*

ii) **T.N. Godavarman Thirumulpad (102) through the Amicus Curiae (supra):**

5. *Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.*

7. *On the basis of submissions made by learned Amicus Curiae, proceedings were initiated against them. It was highlighted by learned Amicus Curiae that the respondents have acted in brazen defiance of the orders of this Court and their conduct constitutes the contempt by way of (a) wilful dis- obedience of directions issued by this Court, (b) the manner in which contemnors have conducted themselves clearly tends to lower the authority of this Court and obstructs the administration of justice (c) as their conduct falls both under the definition of Civil contempt, as well as seeing dimensions of the matters, under criminal contempt.*

20. *In B.M. Bhattacharjee (Major General) v. Russel Estate Corpn. it was observed by this Court that "all of the officers of the Government must be presumed to know that under the constitutional scheme obtaining in this country, orders of the courts have to be obeyed implicitly and that orders of the apex court-for that matter any court- should not be trifled with".*

21. *Any country or society professing rule of law as its basic feature or characteristic does not distinguish between high or low, weak or mighty. Only monarchies and even some democracies have adopted the age old principle that the king cannot be sued in his own courts.*

22. *Professor Dicey's words in relation to England are equally applicable to any nation in the world. He said as follows:*

"When we speak of the rule of law as a characteristic of our country, not only that with us no man is above the law but that every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. In England the idea of legal equality, or the universal subjection of all classes to one law administered by the ordinary courts, has been pushed to its utmost limit. With us every official, from Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done with legal justification as any other citizen. The reports abound with cases in which officials have been brought before the courts, and made, in their personal capacity, liable to punishment, or to the payment of damages, for acts done in their official character but in excess of their lawful authority. A colonial governor, a secretary of State, a military officer, and all subordinates, though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorize as is a private and unofficial person. (See Introduction to the Study of the Law of the Constitution, 10th Edn. 1965, pp. 193-194).

23. *Respect should always be shown to the Court. If any party is aggrieved by the order which is in its opinion is*

wrong or against rules or implementation is neither practicable nor feasible, it should approach the Court. This had been done and this Court after consideration had rejected the I.A. long before.

26. It is thus crystal clear that the applications of those eligible for grant of licenses were required to be sent to CEC, who was then required to submit a report to this Court. Thereafter, this Court would have decided on the question of entitlement for license. The procedure mandated by this Court was not followed. Instead of that by their impugned actions, the contemnors permitted resumption of operations by the unit holders. There was absolutely no confusion or scope for entertaining doubt as claimed by the contemnors.

28. The explanations of the contemnors are clearly unacceptable. Mens rea is writ large.

29. The inevitable conclusion is that both the contemnors 1 and 2 deliberately flouted the orders of this Court in a brazen manner. It cannot be said by any stretch of imagination that there was no mens rea involved. The fact situation clearly shows to the contrary.

30. Learned counsel appearing for contemnor No.1 and 2 stated that they have tendered unconditional apology which should be accepted.

31. Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward.

32. Apology is not a weapon of defence to purge the guilty of their offence, nor is it intended to operate as universal panacea, but it is intended to be evidence of real contriteness. As was noted in L.D. Jaikwal v. State of U.P. (SCC p. 406, para 1)

"We are sorry to say we cannot subscribe to the 'slap-say sorry-and forget' school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slapper taken the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to 'say' sorry-it is another to 'feel' sorry.

33. Proceedings for contempt are essentially personal and punitive. This does not mean that it is not open to the Court, as a matter of law to make a finding of contempt against any official of the Government say Home Secretary or a Minister.

34. *While contempt proceedings usually have these characteristics and contempt proceedings against a Government department or a minister in an official capacity would not be either personal or punitive (it would clearly not be appropriate to fine or sequester the assets of the Crown or a Government department or an officer of the Crown acting in his official capacity), this does not mean that a finding of contempt against a Government department or minister would be pointless. The very fact of making such a finding would vindicate the requirements of justice. In addition an order for costs could be made to underline the significance of a contempt. A purpose of the court's powers to make findings of contempt is to ensure the orders of the court are obeyed. This jurisdiction is required to be co-extensive with the courts' jurisdiction to make the orders which need the protection which the jurisdiction to make findings of contempt provides. In civil proceedings the court can now make orders (other than injunctions or for specific performance) against authorized Government departments or the Attorney General. On applications for judicial review orders can be made against ministers. In consequence such orders must be taken not to offend the theory that the Crown can supposedly do no wrong. Equally, if such orders are made and not obeyed, the body against whom the orders were made can be found guilty of contempt without offending that theory, which could be the only justifiable impediment against making a finding of contempt.*

35. *This is a case where not only right from the beginning attempt has been made to overreach the orders of this Court but also to draw red-herrings. Still worse is the accepted position of inserting a note in the official file with oblique motives. That makes the situation worse. In this case the contemnors deserve severe punishment. This will set an example for those who have propensity of disregarding the court's orders because of their money power, social status or posts held. Exemplary sentences are called for in respect of both the contemnors. Custodial sentence of one month simple imprisonment in each case would meet the ends of justice. It is to be noted that in Re: Sri Pravakar Behera (Suo Motu C.P. 301/2003 dated 19.12.2003) (2003 (10) SCALE 1126), this Court had imposed costs of Rs.50,000/- on a D.F.O. on the ground that renewal of license was not impermissible in cases where licenses were issued prior to this Court's order dated 4.3.1997. That was the case of an officer in the lower rung. Considering the high positions held by the contemnors more stringent punishment is called for, and, therefore, we are compressing custodial sentence.*

iii) **Patel Rajnikant Dhulabhai and another (supra):**

58. *The provisions of the Contempt of Courts Act, 1971 have also been invoked. Section 2 of the Act is a definition clause. Clause (a) enacts that contempt of court means 'civil contempt or criminal contempt'. Clause (b) defines 'civil contempt' thus;*

2. (b) 'civil contempt' means wilful disobedience to any judgement, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.

Reading of the above clause makes it clear that the following conditions must be satisfied before a person can be held to have committed a civil contempt;

(i) there must be a judgment, decree, direction, order, writ or other process of a Court (or an undertaking given to a Court);

(ii) there must be disobedience to such judgment, decree, direction, order, writ or other process of a Court (or breach of undertaking given to a Court); and

(iii) such disobedience of judgment, decree, direction, order, writ or other process of a Court (or breach of undertaking) must be wilful.

59. *Section 12 provides punishment for contempt of Court. The relevant part of the provision reads thus;*

"12 - Punishment for contempt of court--(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation.--An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any Contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of

sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

60. *In Ashok Paper Kamgar Union v. Dharam Godha & Ors., (2003) 11 SCC 1, this Court had an occasion to consider the concept of 'wilful disobedience' of an order of the Court. It was stated that 'wilful' means an act or omission which is done voluntarily and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. According to the Court, it signifies the act done with evil intent or with a bad motive for the purpose. It was observed that the act or omission has to be judged having regard to the facts and circumstances of each case.*

61. *In Kapildeo Prasad Sah & Ors. v. State of Bihar & Ors., (1999) 7 SCC 569, it was held that for holding a person to have committed contempt, it must be shown that there was wilful disobedience of the judgment or order of the Court. But it was indicated that even negligence and carelessness may amount to contempt. It was further observed that issuance of notice for contempt of Court and power to punish are having far reaching consequences, and as such, they should be resorted to only when a clear case of wilful disobedience of the court's order is made out. A petitioner who complains breach of Court's order must allege deliberate or contumacious disobedience of the Court's order and if such allegation is proved, contempt can be said to have been made out, not otherwise. The Court noted that power to punish for contempt is intended to maintain effective legal system. It is exercised to prevent perversion of the course of justice.*

62. *In the celebrated decision of Attorney General v. Times Newspaper Ltd.; 1974 AC 273 : (1973) 3 All ER 54 : (1973) 3 WLR 298; Lord Diplock stated:*

"There is an element of public policy in punishing civil contempt, since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity."

63. *In Anil Ratan Sarkar & Ors. v. Hirak Ghosh & Ors., (2002) 4 SCC 21, this Court held that the Contempt of Courts Act has been introduced in the statute-book for securing confidence of people in*

the administration of justice. If an order passed by a competent Court is clear and unambiguous and not capable of more than one interpretation, disobedience or breach of such order would amount to contempt of Court. There can be no laxity in such a situation because otherwise the Court orders would become the subject of mockery. Misunderstanding or own understanding of the Court's order would not be a permissible defence.

B) Judgments relied upon by learned counsel for the opposite party:

i) Sudhir Vasudeva, Chairman & MD, ONGC & Ors. (Supra):

15. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened; nor the plea of equities can be considered. Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the bar, namely, Jhareswar Prasad Paul and Another vs. Tarak Nath Ganguly and Others[3], V.M.Manohar Prasad vs. N. Ratnam Raju and Another[4], Bihar Finance Service House Construction Cooperative Society Ltd. vs. Gautam Goswami

and Others[5] and Union of India and Others vs. Subedar Devassy PV[6].

16. Applying the above settled principles to the case before us, it is clear that the direction of the High Court for creation of supernumerary posts of Marine Assistant Radio Operator cannot be countenanced. Not only the Courts must act with utmost restraint before compelling the executive to create additional posts, the impugned direction virtually amounts to supplementing the directions contained in the order of the High Court dated 02.8.2006. The alterative direction i.e. to grant parity of pay could very well have been occasioned by the stand taken by the Corporation with regard to the necessity of keeping in existence the cadre itself in view of the operational needs of the Corporation. If despite the specific stand taken by the Corporation in this regard the High Court was of the view that the respondents should be absorbed as Marine Assistant Radio Operator nothing prevented the High Court from issuing a specific direction to create supernumerary posts of Marine Assistant Radio Operator. The same was not done. If that be so, the direction to create supernumerary posts at the stage of exercise of the contempt jurisdiction has to be understood to be an addition to the initial order passed in the Writ Petition. The argument that such a direction is implicit in the order dated 02.08.2006 is self defeating. Neither, is such a course of action open to balance the equities, i.e. not to foreclose the promotional avenues of the petitioners, as vehemently urged by Shri Rao. The issue is one of jurisdiction and not of justification. Whether the direction issued would be justified by way of review or in exercise of any other jurisdiction is an aspect that does not concern us in the present case. Of relevance is the fact that an alternative direction had been issued by the High Court by its order dated 02.08.2006 and the appellants, as officers of the Corporation, have complied with the same. They cannot be, therefore, understood to have acted in willful disobedience of the said order of the Court. All that was required in terms of the second direction having been complied with by the appellants, we are of the view that the order dated 02.08.2006 passed in W.P. No. 21518 of 2000 stands duly implemented. Consequently, we set aside the Order dated 19.01.2012 passed in Contempt Petition No. 161 of 2010, as well as the impugned order dated 11.07.2012 passed in Contempt Appeal No.2 of 2012 and allow the present appeal.

ii) ***V. Senthur and Another (Supra):***

13. Shri Vaidyanathan relied on the following judgments of this Court in support of his submissions that, in contempt proceedings, the Court cannot travel beyond the original judgment and order.

Jhareswar Prasad Paul and Another v. Tarak Nath Ganguly and others, Midnapore People's Coop. Bank Limited and others v. Chunilal Nanda and Others 4, V.M. Manohar Prasad v. N. Ratnam Raju and Another⁵ and Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited and others v. M. George Ravishekar and others.

14. There can be no quarrel with the proposition that in a contempt jurisdiction, the court will not travel beyond the original judgment and direction; neither would it be permissible for the court to issue any supplementary or incidental directions, which are not to be found in the original judgment 3 (2002) 5 SCC 352 4 (2006) 5 SCC 399 5 (2004) 13 SCC 610 6 (2014) 3 SCC 373 and order. The court is only concerned with the wilful or deliberate non-compliance of the directions issued in the original judgment and order.

iii) ***Badri Vishal Pandey and Ors. (Supra):***

25. Still further there is no direction in the order passed by this Court to reinstate the petitioners or to place them in minimum or regular pay scale. The contempt jurisdiction cannot be invoked on the basis of impressions, when the order of the Court does not contain any direction for reinstatement or for grant of regular pay scale. The contempt would be made out when there is wilful disobedience to the orders of this Court. Since the Order of this Court is not of reinstatement, the petitioners under the garb of the contempt petition cannot seek reinstatement, when nothing was granted by this Court.

25. Vide order of this Court dated 28.09.2022, a show cause notice was issued to the opposite party - Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-2, Lucknow that why he should not be tried and punished under Section 12 of Contempt of Courts Act, 1971 for willful and deliberate disobedience of the order dated 31.03.2015 passed in Writ Petition No.9525 (M/B) of 2013. In pursuance to the same, the opposite party filed his reply.

26. In the present contempt application, vide judgment and order dated 31.03.2015, passed by a division bench of this Court in Writ Petition No.9525 (M/B) of 2013, notice issued to the petitioner - applicant for the assessment year 2012-13 dated

03.11.2014 was quashed on the ground of jurisdictional error and the opposite party was to delete all the outstanding amount from the web portal showing the dues to be paid.

27. The Assessing Officer in spite of direction issued for consequential action, permitted to continue the outstanding amount for a period of seven months on the web portal and when this Court made query in the present contempt application in regard to consequential benefits granted to the applicant - petitioner, only then it was deleted from the web portal. This fact has been admitted by the opposite party in his affidavit dated 05.12.2022. This clearly amounts violation of the judgment and order passed by the division bench of this Court on 31.03.2015.

28. Civil contempt is punishable with imprisonment as well as fine. In a given case, the court may also penalise the party in contempt by ordering him to pay the costs of the application and a fine can also be imposed upon the contemnor.

29. Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court's orders are to be followed and complied with.

30. On the basis of submissions advanced by Ms. Radhika Singh, learned counsel for the applicant, proceedings were initiated against the opposite party. It was highlighted by learned counsel for the applicant that the opposite party has acted in defiance of the order passed by this Court and his conduct construe contempt by way of willful disobedience of direction issued by this Court. The manner, in which the contemnor has acted, itself clearly tends to lower the authority of this Court and obstructs the administration of justice, as his conduct falls both under the definition of Civil contempt, as well as seeing dimensions of the matters, under criminal contempt.

31. On perusal of judgment and order dated 31.03.2015, it is crystal clear that notice issued by the Assessing Officer was quashed on the ground of jurisdiction as well as consequential orders were also directed to be set-aside. Meaning thereby, the Assessing Officer has to take care that the entry existing on the web portal was to be deleted immediately after passing of the judgment and order dated 31.03.2015 but deliberately and intentionally the outstanding of notice of assessment year 2011-12 became operative on the web portal till seven months, which ruined the reputation of the applicant and this act of the Income Tax authority was in deliberate and willful disobedience of the judgment and order dated 31.03.2015.

32. In the celebrated decision of Attorney General v. Times Newspaper Ltd.; 1974 AC 273, the Hon'ble Court has held that there is an element of public policy in punishing civil contempt, since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity.

33. Here, in the present case, as per own admission of Sri Manish Mishra, learned counsel for opposite party, the outstanding amount was deleted from the web portal after seven months, which amounts deliberate and willful disobedience of the judgment and order dated 31.03.2015, for which the opposite party is liable to be punished with imprisonment as well as fine.

34. In the judgments relied upon by learned counsel for the opposite party in the case of **Sudhir Vasudeva, Chairman & MD, ONGC & Ors. (Supra)**, this Court has held that the power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution.

35. In the case of *V. Senthur and Another (Supra)*, it was held that the Court cannot travel beyond the original judgment and order. In the case of **Badri Vishal Pandey and Ors. (Supra)**, it was held that there is no direction in the order passed by this Court to reinstate the petitioners or to place them in minimum or regular pay scale. The contempt jurisdiction cannot be invoked on the basis of impressions, when the order of the Court does not contain any direction for reinstatement or for grant of regular pay scale.

36. The ratio of the judgments relied upon by learned counsel for the opposite party is not applicable to the present facts and circumstances of the case.

37. Here, in the present case, this Court has set aside the notice dated 11.09.2013 on the ground of jurisdiction with further direction that as the notice has already been quashed, consequential order, if any, are also quashed. Meaning thereby, the outstanding showing on the web portal against the applicant was to be deleted immediately after the judgment but the authorities have permitted to continue the outstanding amount on the web portal for a period of seven months, which clearly violates the judgment and order dated 31.03.2015 and this act and action of the opposite party is deliberate in nature, for which he is liable to be punished.

38. In the opinion of this Court, the action of the opposite party is not only contemptuous but is also malicious. He took care with the money of the applicant in spite of clear direction of this Court and there is no justifiable reason for the said action. If the action of Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range -2, Lucknow is considered in the background by the allegations made against him, it was his purposeful act to harass the applicant in spite of order of the writ Court. Unnecessarily *mens rea* is not required to be proved in a case of contempt but in the present case the violation is willful, deliberate and coupled with intention and motive to harass the applicant.

39. For the reasons given above, this Court finds the opposite party - Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-2, Lucknow to be guilty under Section 12 of Contempt of Courts Act, 1971.

40. On these facts, fine only would not meet the ends of justice because Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-2, Lucknow is a senior officer, who is the custodian

of assessing of the applicant and and has committed a grossly reprehensible act and in case he is not punished, it would send down a wrong signal to other officials of Income Tax Department that even such unbusiness like conduct invites only a warning or fine, as Courts are flooded with matters, where orders are passed.

41. Accordingly, a fine of Rs.25,000/- along with simple imprisonment for a period of one week is awarded to the contemnor - opposite parity i.e. Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-2, Lucknow. In case of default, he would suffer one day's further simple imprisonment.

42. The contemnor - opposite parity Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-2, Lucknow will surrender before the Senior Registrar of this Court at 03.00 p.m. on 16.12.2022, who will send him jail to serve out the sentence.

43. The Senior Registrar is directed to submit a report by 19.12.2022 to this Court in regard to compliance of the order.

44. The contempt application is finally **disposed of**.

45. All the pending applications are, accordingly, disposed of.

Order after delivery of judgment:

A. After delivery of judgment, Sri Manish Mishra, learned counsel for contemnor - opposite party requested to extend the time period of surrender of Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-2, Lucknow to surrender before the Senior Registrar of this Court.

B. Accordingly, taking into consideration the request made by learned counsel for the opposite party, the contemnor - Mr. Harish Gidwani, Deputy Commissioner of Income Tax, Range-2, Lucknow is directed to surrender before the Senior Registrar of

this Court at 03.00 p.m. on 22.12.2022, who will send him jail to serve out the sentence.

C. The Senior Registrar is directed to submit a report by 23.12.2022 to this Court in regard to compliance of the order.

Order Date :- 16.12.2022

Adarsh K Singh