

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

MISC. APPLICATION NO.173 OF 2015
IN
CONTEMPT APPLICATION NO.1 TO 14 OF 2012 &
118/2014
IN
ORIGINAL APPLICATION NOS.787/1995, 968/1996, 388 &
389/1999, 307/1995, 466/1995, 796/1995, 967/1996, 972/2000,
700/1999, 975/1996-a & 66/1999-A

DISTRICT : MUMBAI

Sujata Manoj Sounik & Ors.)
Principal Secretary, Public Health Dept.,)
M.S, Mantralaya, Mumbai.)...Applicants
(Ori. Respondents)

Versus

Shri Kakasaheb Suryakant Shelke.)
R/at, Building No.23, Anand Nagar,)
Kotala Colony, Aurangabad.)...Respondent
(Ori. Applicant)

Shri S.K. Nair, learned Special Counsel with Shri N.K. Rajpurohit, the learned Chief Presenting Officer and Mrs. K.S. Gaikwad, Presenting Officer for the Applicants of the MA and Respondents of the CA.

Shri M.D. Lonkar, Amicus Curie.

Original Applicants absent.



CORAM : **RAJIV AGARWAL (VICE-CHAIRMAN)**
R.B. MALIK (MEMBER-JUDICIAL)

DATE : **19.08.2016**

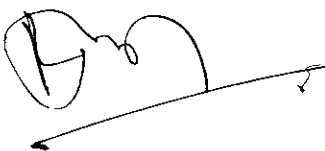
PER : **R.B. MALIK (MEMBER-JUDICIAL)**

ORDER

1. The Aurangabad Bench of this Tribunal in disposing of the six Original Application Nos.360/1998, 66/1999, 787/1995, 347/1999, 700/1999 and 891/1999 by a common oral order dated 04.07.2011 gave the following directions in Para 6.

“6. We, therefore, dispose of all six original applications with directions to the respondents that cases of six applicants may be considered for regularization / appointment as MPHWs in the light of GR dated 27.5.1997 and 17.9.1997 as also interpretation of the GRs as indicated by this Tribunal in its order dated 13.6.2011 while disposing of original application no.848 of 2004 as also in the present order.

The decision should be taken within a period of four months from today and communicated to the applicants in writing. In case applicants are



aggrieved by decision, they are at liberty to approach this Tribunal.

Original Applications are disposed of.

Authenticated copies allowed for the use of either party on request.

Sd/-
Member (J)

Sd/-
Vice Chairman (A)

That order has become final and conclusive.

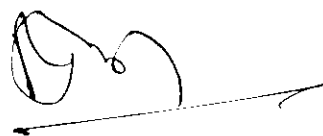
2. The above directions having allegedly not complied with the original Applicants initiated contempt proceedings against the Respondents. These matters came to be transferred to this Principal Bench. The present Principal Secretary, Public Health Department - Smt. Sujata Manoj Saunik to be hereinafter called the Respondent to the CA, the Joint Director, Health Services (M & F), Dr. Kanchan V. Jagtap and the In-charge District Malaria Officer, Aurangabad Shri Avinash Kulkarni were also named in the said Contempt Applications (CA). The events so happened that the Bench of the Hon'ble Chairman (Ist Bench) issued bailable warrant against the Principal Secretary (P.H) vide the order of 4.3.2015. She in turn made a Miscellaneous Application (M.A) seeking recall



thereof and for disposing off the CAs in view of what was claimed as compliance with the order in the OAs. The CAs and the MA are being decided by this common order.

3. The record shows that though belatedly, the order in the OAs was complied with by the G.R. dated 31.03.2015 (Exh. 'R-2' to the Affidavit in support of the MA). The original Applicants then apparently developed cold feet but the CAs remained pending. By the order dated 20.04.2015, the 1st Bench appointed Shri M.D. Lonkar, the learned Advocate practicing in this Tribunal as amicus curie. Shri S.K. Nair, the learned Special Counsel appeared for the Respondent and Shri N.K. Rajpurohit, the learned Chief Presenting Officer (CPO) and Mrs. K.S. Gaikwad, the learned Presenting Officer (PO) appeared for the Respondents State. These matters came to be assigned to this Bench by the order of 21.03.2016 by the Hon'ble Chairman. We have perused the record and proceedings and heard the learned Advocate, P.O. and *amicus*.

4. The scope of the order in the OA was clear from the above quoted Para 6 thereof. The State did not get spurred and stirred till the heat of the CAs was felt. The main action really began in 2014 and as already mentioned, it was by the G.R. dated 31.03.2015 that the



compliance was made by the State (Exh. 'R-2' to MA). Therefore, any further discussion about that particular order in the OAs will now be made only if it is relevant for deciding the CAs and the MA.

5. Let us quote Section 17 of the Administrative Tribunals Act, 1985. It reads as follows.

“17. Power to punish for contempt.- A Tribunal shall, have and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 (70 of 1971), shall have effect subject to the modifications that-

(a) the references therein to a High Court shall be construed as including a reference to such Tribunal;

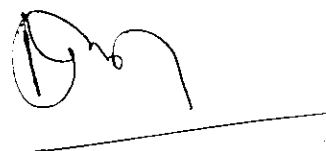
(b) the references to the Advocate-General in Section 15 of the said Act shall be construed,-

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- (i) in relation to the Central Administrative Tribunal, as a reference to the Attorney-General or the Solicitor General or the Additional Solicitor- General; and
- (ii) in relation to an Administrative Tribunal for a State or Joint Administrative Tribunal for two or more States, as a reference to the Advocate- General of the State or any of the States for which such Tribunal has been established.”

The scope, ambit and the sweep of the above quoted provision as far as Contempt matters are concerned, are quite explicit and clear. No elaboration is necessary.

6. The MA sets out the facts inter-alia that the Additional Chief Secretary Mr. T.C. Benjamin, Deputy Secretary Mr. D.L. Sul, Section Officer Mr. R.P. Gote and the Respondent to the CA have filed Affidavits herein from time to time. The various orders made on the Farad from time to time by the 1st Bench would show that Mr. Sul, Deputy Secretary appeared on a number of dates and the Respondent to the CAs was reported to be either on her way or busy with some other work which on the priority

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aspect took precedence over the hearing hereof. On 2.12.2015, an Additional Affidavit of the Respondent to the CAs was taken on record. A few dates thereafter were taken to file another Affidavit after the learned Special Counsel was satisfied about its quality.

7. The order dated 04.03.2015 made by the 1st Bench is of great significance. A reproduction thereof will obviate the necessity to narrate the facts and events in detail. That would give a clear background and surrounding to the facts at issue crucial herefor. It would clearly show as to what the significance was of the presence of the Respondent to the CA in the matter of compliance with the order in the Original Application. It will also disclose how much latitude was given to the Respondent to the CAs. Mr. Nair, the learned Special Counsel was in our view a little worked up at the coercive measure adopted to secure the presence of his client. He relied upon **R.S. Singh Vs. Uttar Pradesh Malaria Nirikshak Sangh and Ors, (2011) 4 SCC 281 (R.S. Singh's case)**. We are quite sure that the mere perusal of the order dated 04.03.2015 which we are just about to reproduce will make it absolutely clear that the said order fully accords with the mandate and requirement of **R.S.**



Singh (supra). So, let us now reproduce the Order dated 04.03.2015 (Exh. 'R-1 M to the MA).


“C.A.No.118 of 2014
(C.A.No.1 of 2014 in O.A.66 of 2009 A'bad)
to C.A.131 of 2014
(C.A.No.141 of 2014 in O.A.No.975 of 1996
A'bad)

1. None for the Applicants. Heard Shri A.J. Chougule, the learned Presenting Officer for the Respondents.

2. It is seen that the order passed by this Tribunal in O.A.No.66 of 2009 and other connected Original Applications are decided on 4.7.2011 is awaiting compliance.

3. The learned P.O. has sought by various adjournments and made various statements. The case was on board on various occasions as follows:-

(1) 13.02.2014, (2) 6.3.2014, (3) 19.6.2014, (4) 10.7.10`4, (5) 1.8.2014, (6) 11.9.2014, (7) 22.9.2014, (8) 10.10.2014, (9) 13.11.2014, (10) 26.11.2014, (11) 23.12.2014, (12)



2.2.2015, (13) 6.2.2015, (14) 16.1.2015, (15)
18.2.2015, (16) 24.2.2015, (17) 2.3.2015.

4. In order to understand the exact stage, as to where the implementation of the order is held up, this Tribunal expected that the contemnor No.1 shall file an affidavit. Therefore, on 11.09.2014, when the case was on board, considering the representation made before us, we had recorded thus:-

“3. Learned CPO has tendered copy of letter received by him from Principal Secretary, Public Health Department, Mantralaya, Mumbai considering that the order passed in O.A. is of July 2011, and now asking time of six months without specifying any reasons for complying the same, and how much time is required and for what purpose. Oral request cannot be considered. Let the Officer concerned i.e. the Respondent No.1 submit suitable application giving all details. In the event, any such application is not filed within 10 days, the Tribunal would proceed to hear the contempt.”

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(quoted from order dated 11.09.2014 in C.A.No.118 of 2014 in O.A.No.66/09 (A'bad Bench)

5. M.A.No.459 of 2014 was filed, seeking six months time, order dated 11.9.2014.

6. On 10.10.2014, we recorded as follows :-

1. Heard Shri V.G. Pingle, the learned Advocate for the applicant in C.A.No.118 of 2014 and Shri A.J. Chougule, the learned Presenting Officer for the Respondent-Government.

2. The learned Presenting Officer on instructions from Shri Dnyandeo L. Sul, Deputy Secretary, Public Health Department states as follows :-

(1) That approval for one time regularization of 167 employees amongst whom the applicants are granted by the Law and Judiciary as well as by G.A.D.

(2) The Deputy Secretary would put up the file and take the same to the Finance



Department and report the action of the Finance Department on the next date.

3. S.O. to 13.10.2014.”

(quoted from order dated 10.10.2014 in C.A.No.118 of 2014 in O.A.No.66/09 (A'bad Bench).

7. On 13.11.2014, we recorded thus :-

“**2.** Learned P.O. states that:-

(a) Sanction from the Finance Department is required for grant of benefit ordered in various O.A.s subject matter of present C.As. At present case is pending with the Finance Department since 13.10.2014.

(b) At present, the matter for consideration and sanction of grant of benefit of absorption.

3. The Respondent No.1 is directed to file Affidavit stating that what efforts she has personally taken to secure the sanction and



concurrence from the Finance Department and also states time frame within which Finance Department is likely to decide the issue.

4. Affidavit be filed on or before 26.11.2014
5. Steno copy and Hamdast is allowed.
6. S.O. to 26.11.2014.”

(quoted from order dated 13.11.2014 in C.A.No.118 of 2014 in O.A.No.66 of 2009 (A'bad Bench).

8. On 26.11.2015, and on two dates thereafter Shri Dyanadeo Laxman Sul, Deputy Secretary has filed affidavit, however Respondent No.1 has failed to explain what special efforts are taken by contemnors to appear before cabinet or appraise Hon'ble Chief Minister about urgency of matter and to impress upon him as to the need for expeditious decision on the subject.



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9. Every time the Deputy Secretary Shri D.L. Sul has filed the affidavit and expressed one or other excuses which exhibited total lack of sincerity and urge in resolution of the matters, though it pertains to sizeable number of employees who had been toiling in ad hoc/ temporary services for years and were continued in service by way of various orders of protection granted by this Tribunal.

10. Thereafter, the contemnor no.1 was asked/ directed to remain present. The contemnor no.1 has reported through the Deputy Secretary Shri D.L. Sul that the Contemnor no.1 is unable to spare time to appear before this Tribunal on account of her extremely busy schedule, one minute to minute engagements.

11. Therefore, order dated 24.2.2015, we had directed the contemnor no.1 to file an affidavit giving a date convenient to the contemnor no.1 for enabling this Tribunal to fix a date for contemnor's appearance and to avoid inconvenience/hindrance in the business and the functions of the Government. We had fixed

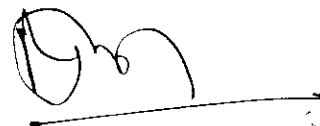
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27.2.2014 as a date for filing such an affidavit answering the query and informing a convenient date. The contemnor No.1 has not filed affidavit as directed in our order dated 24.2.2015, even till today, though case has been on board for about three dates, since last order.

12. Today, the learned P.O. has tendered a communication dated 4.3.2015, received by him from the Deputy Secretary Shri D.L. Sul stating that the contemnor no.1 will not be in position to attend the Tribunal till end of the budget session of the Assembly which is going to commence on 9.3.2015, and on account of the fact that the contemnor is engaged and is busy in various meetings.

13. Even the letter sent to P.O. referred to in the foregoing paragraph, does not contain any date which is convenient to the contemnor to appear even after Budget Session of the Assembly is over. Text of letter ad verbatim, as seen in Paragraph No.2 reads as follows:-

“Para 2: चालू आठवड्यात पूर्वनियोजित कार्यक्रमांमुळे प्रधान सचिव मा. न्यायाधिकरणात उपस्थित राहू शकत नाही. तसेच विधान मंडळाचे



अर्थसंकल्पीय अधिवेशन दि.९.३.२०१५ पासून सुरु होत असून विधान मंडळात उपस्थित होणा-या लक्षवेधी सूचना, तारांकीत प्रश्न आणि इतर कामकाजाचा व्याप विचारात घेता त्यांना अधिवेशन संपेपर्यंत मा. न्यायाधिकरणात उपस्थित राहणे शक्य होणार नाही. सदर बाब मा. न्यायाधिकरणाच्या निदर्शनास आणण्यात यावी ही विनंती''

(quoted from letter dated 4.3.2015 signed by Mr. D.L. Sul tendered before us)

14. The Tribunal was considerate in seeking a convenient date of the contemnor no.1 for appearance and directed the contemnor no.1 to file affidavit. The Respondent No.1 was expected to respond in a reciprocating manner, in the background of disobedience of the order passed in O.A. However, the response by way contents in Para 2 of the said letter addressed to learned P.O; quoted in foregoing Para, exhibits an irresponsible, extremely causal approach and disdain towards the directions of the Tribunal. By this recent response, the Respondent No.1 has committed additional act of contempt and committed the act of aggravation of contempt which is already a subject matter.



15. We are satisfied that on what has emerged from record that grave indifference and contemptuous neglect to the proceedings, is emerging against the contemnor no.1. These acts and omissions may not be simple apathy but acts, each of which prima facie withstands the description of act of contempt of court by contemnor no.1.

16. In the background that though a show cause notice was already issued, bonafide, sincere and earnest efforts to comply with the order of Tribunal are not shown to have been made, despite grant of numerous opportunities, contemnor needs to be dealt with in accordance with law under contempt of Court Act.

17. Therefore, it is necessary to take cognizance of the act of contempt of court committed by Respondent No.1 Smt. Sujata Sounik, IAS, Principal Secretary of Public Health Department, and try the contemnor in accordance with law.

18. We, therefore, direct issue of a bailable warrant against the contemnor no.1 Smt. Sujata

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Sounik, IAS, Principal Secretary, Health Department returnable on 27.3.2015, directing the contemnor no1 to appear on said date at 11 a.m. in person, to answer the charge of contempt of the order of Tribunal.

19. The conditions as to bail bond shall be personal bond and a sum of Rs.25,000/- as a cash security to be deposited in the form of personal cheque of contemnor No.1 drawn in the name of Registrar of M.A.T.

20. The Commissioner of Police, Mumbai is directed to cause the service of the Bailable Warrant. He may if required take assistance of the officer higher in rank than the contemnor, in Government of Maharashtra, and report service/ execution of warrant one week before due date. The Commissioner of Police Mumbai is directed to himself monitor the compliance.

21. Adjourned to 27.3.2015.

Sd/-
(M.Ramesh Kumar)
Member (A)

Sd/-
(A.H. Joshi, J.)
Chairman"



8. As we mentioned above, the above quoted order will make it quite clear as to how with all the latitude shown by the 1st Bench, the above order was required to be made when left with no other alternative. Broadly so speaking, in matters like this one, the Contempt Law has two broad perspectives. Firstly, a judicial determination like the one herein, the OA confers a certain Right on one party which herein were the original Applicants. No right, duty or obligation was cast on the Respondents to the OAs as well as CAs and the Applicant of the MA. The kind of urgency and dispatch with which the actual relief should have been given to the original Applicants were found wanting. But, though late the materialization did take place on 31.3.2015 secondly and this perspective is now more relevant, in a civilized system of public administration and justice dispensation, the majesty of law and efficacy of the justice delivery will have to be maintained at all cost. Otherwise, the public might become disillusioned with the judicial system and that has to be addressed with all the authority and power of the legal institution.

9. **R.E. Vinay Chandra Mishra, (1995) 2 SCC 584**
(I) makes the above stated position quite clear. Para 39 of



the **R.E. Vinay Chandra** (supra) will make this position quite clear. Let us quote it.

“39. The rule of law is the foundation of a democratic society. The judiciary is the guardian of the rule of law. Hence judiciary is not only the third pillar, but the central pillar of the democratic State. In a democracy like ours, where there is a written Constitution which is above all individuals and institutions and where the power of judicial review is vested in the superior courts, the judiciary has a special and additional duty to perform, viz., to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. 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,

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the very cornerstone of our constitutional scheme will give away and with it will disappear the rule of law and the civilized life in the society. It is for this purpose that the courts are entrusted with the extraordinary power of punishing those who indulge in acts whether inside or outside the courts, which tend to undermine their authority and bring them in disrepute and disrespect by scandalizing them and obstructing them from discharging their duties without fear or favour. When the court exercises this power, it does not do so to vindicate the dignity and honour of the individual judge who is personally attached or scandalized, but to uphold the majesty of the law and of the administration of justice. The foundation of the judiciary is the trust and the confidence of the foundation itself is shaken by acts which tend to create disaffection and disrespect for the authority of the court by creating distrust in its working, the edifice of the judicial system gets eroded.”

10. In **R.S. Singh** (supra), it has been held that the personal attendance of the Senior Government Officers should not be ordered at a drop of the hat. The need to

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have mutual respect for one another by the three wings viz. Legislature, Judiciary and Executive is emphasized. But there are observations to make it clear to the Government Officers that they too have to honour the process of the Court. But most significantly, one has to make a clear distinction between summoning the Officers for eliciting some information or securing compliance which can even otherwise be done without their personal presence by other legitimate and known methods which course of action must be explored without seeking personal attendance at a drop of the hat. Now here, however, this Tribunal gave a kind of opportunity to the Respondent of the CAs which would be reflected from the above quoted order dated 04.03.2015 and here, the said Respondent Mrs. Saunik is an alleged Contemnor. She had been summoned to answer contempt charge and she must attend. She has been regular in attendance ever since we got seisin over this matter. But, we completely disagree with Mr. Nair that she is in the shoes of the officers in **R.S. Singh** (Supra) who were summoned by the Hon'ble Allahabad High Court for the reason therein mentioned in **R.S. Singh** (Supra). Here she was rightly summoned and she rightly attended. In actual practice it is quite possible that the concerned judicial forum may on a particular date or dates depending upon the state and stage of the case grant exemption from


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personal appearance which move is dealt with appropriately. But an alleged contemnor cannot as a matter of right, just seek exemption as was perhaps said on her behalf. To the present facts R.S. Singh (Supra) in terms would not apply. And still the 1st bench as would become clear from the order of 04.03.2015 extended all courtesy to her. That order may only be perused again.

11. Mr. Nair, the learned Special Counsel then referred us to **Welfare Association of ACGE in PE - Vs. Arvind Verma AIR 1998 S.C. 2862**. There on facts there was a genuine doubt about the construction and effectuation of the order of which contempt was alleged. Not so here. We may, to the extent necessary deal with that aspect presently.

12. **Manubahi Pragji Vashi Vs. State of Maharashtra 1996 (2) Mh.L.J. 615** was a case where the Hon'ble High Court was moved for the alleged contempt relating to a proceeding before the Hon'ble Supreme Court.

13. Mr. Nair, the learned Special Counsel then relied upon **Union of India Vs. Satish Chandra Sharma (1980) 2 SCC 144**. A small passage from Para 13 thereof, will place the matter in proper focus and perspective.



“It is well known that the contempt power would be kept sheathed and the sword should be drawn only sparingly if the court is convinced that there has been wilful defiance or disobedience. Moderation lends dignity to power and we feel that the facts of the present case far from call for any stronger step than an admonition to comply within a realistic spell of time and stiffer action thereafter. We do not take the view that the union of India should be shown undue indulgence or its officers singular solicitude. But once there is a clear evidence of active obedience, coupled with expression of regret delayed though the compliance be due to the inevitable time lag induced by paper logged procedures, the court may be clement. Here, compliance and contrition are now present.”

(emphasis supplied)

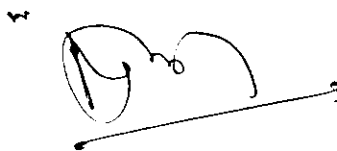
14. From the above passage, it must become quite clear that the fact at issue about contempt is fact specific. The existence and degree of defiance is again fact specific. If the degree of contempt is such as to be effectively met with admonition then a stricter action may be avoided. The contrition, remorse, regret etc. are the elements that

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aggravate or mitigate the nature of contempt depending upon the genuineness thereof.

15. Mr. Nair, the learned Special Counsel then referred us to **Kapildeo Prasad Sah Vs. State of Bihar and Others (1999) 7 SCC 569**. He laid emphasis on Para 9 thereof. Let us reproduce it fully along with Paras 10 and 11.

“9. For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the Court’s order. Since notice of contempt and punishment for contempt is of far-reaching consequence, these powers should be invoked only when a clear case of wilful disobedience of the court’s order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience

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particularly when the attention of the person is drawn to the court's orders and its implications. Disobedience of the court's order strikes at the very root of the rule of law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice.

10. In his famous passage, Lord Diplock in *Attorney General v. Times Newspapers Ltd.* said that there is also "an element of public policy in punishing civil contempt, since administration of justice would be undermined if the order of any court of law could be disregarded with impunity."

Jurisdiction to punish for contempt exists to provide ultimate sanction against the person who refuses to comply with the order of the court or disregard the order continuously. Initiation of contempt proceedings is not a substitute for execution proceedings though at times that purpose may also be achieved.

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11. No person can defy the court's order. Wilful would exclude casual, with the terms of the order. A petitioner who complains breach of the court's order must allege deliberate or contumacious disobedience of the court's order."

The Principles deducible from the above quotes will have to be applied to the present facts. The outcome may or may not be to the liking of Mr. Nair.

16. Mr. Nair then relied upon **R.D. DEY AND OTHERS VS. BHAGYABATI PRAMANIK AND OTHERS (2000) 4 Supreme Court Cases 400 (Para 7)**. The Principle that emanates from **R.D. DEY** is that in all circumstances recourse to contempt action cannot be a substitute for the normal statutory remedy of execution of decree. In the present matter, however, an action in contempt is the only efficacious remedy. The O.As are not governed by the code of Civil Procedure. Sections 96, 100 etc. read with Order 21 of CPC are clearly inapplicable hereto.

17. Mr. Nair referred us to a few unreported judgments of the Hon'ble Bombay High Court. There on facts particular findings were entered on whether a case for

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contempt was or was not made out. We have already discussed the Judgment of the Hon'ble Supreme Court in Para 13 above **(Satish Chandra Sharma)**. It was held that the conclusions in such matters would turn on the own peculiar facts of each matter. This principle must be borne in mind. The fact that on those facts a case for contempt was or was not made out would be no guarantee to hold it similarly herein. The Principles laid down there will have to be applied hereto. With this we may now note the said unreported judgments cited by Mr. Nair **W.P.4376 of 2015 (State of Maharashtra Vs. Tukaram and one another and another W.P, 24th July, 2015), Contempt Petition No.446 of 2014 (Dr. Vijay Vs. Smt. Sujata Saunik and one another proceeding, August 27, 2014)**. In the same matters subsequently orders were made. Earlier warrant was issued against the respondent to the C.A.s by the Hon'ble High Court which was recalled.

18. The learned Amicus Curie Shri Lonkar made submissions within the ambit of his role. As we could gather, he remained within the purview of the legal principles without getting identified with even the cause far less the parties. His role was facilitatory and in our view, he did it appropriately.

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19. The Respondent to the C.A. has filed more Affidavits than one once the order which is the subject matter of the M.A. was made. As was perhaps inevitable repetitions could not be avoided. We may now read to the extent necessary her Affidavits as well as the Affidavits of Sarvashri D.L. Sul and Gote, if need be.

20. The Respondent to the CAs and Shri D.L. Sul in their affidavits have in their own way tried to explain that the official procedures take their own time into completing passing through tables and departments and delay does occasion. Delay is not caused, probably implying, it is not caused deliberately. Paras 5 and 6 of the Affidavit of the Respondent to the CAs dated 25.3.2015 in fact, needs to be fully reproduced.

“5. While working in the Government set up, whenever any order or direction of this Hon. Tribunal or for that matter of any Hon. Court or Authority is to be effectively implemented, numerous procedural formalities are required to be complied and/or met. More often than not such procedural compliances work as hurdles or road-blocks in achieving the effective implementation of such orders and directions at

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the earliest. With best of the intentions at heart and utmost genuine efforts at our hands, in reaching the ultimate goal of achieving effective implementation of these orders and directions, invariably delay occurs (not caused) which is solely on account of re-requisite of the procedural compliances. Looking at the over-all larger picture in the long run, in as much as "conduct of affairs of the Government machinery" is concerned, from the point of transparency and fairness, it is also difficult to find fault with the tedious procedure that requires taking of innumerable steps in not only taking a decision but also implementing it at various levels. If any short-cuts therein are permitted there is every possibility that each and every matter will follow the short-cut leaving the procedure only on paper, breeding illegalities and not just irregularities.

6. The aforesaid aspects assume much higher proportions and levels of difficulties increase many fold if such implementation involves financial implications, particularly when these are not in the nature of 'one time measure' but

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are a continuing in nature, like the present case. It is most humbly submitted that implementation of the decisions as the one at hand requires moving of files and papers through countless hands and numerous stages from one department to the other, not to mention about the back-references requiring the files/papers moving between the same departments more than once.

7. It is even needless to mention that all the aforesaid compliances are to be made not by a single individual but by numerous persons operating at various levels of hierarchies. Every individual handling the file/papers who has to accord his approval/sanction has his own point of view and own approach to the issue at hand, which obviously adds further layers of complications that of course is unintentional, much less deliberate.

8. I hereby emphatically submit for the kind consideration of this Hon. Tribunal that under the present set up of the Government machinery I have done my best. It may kindly be

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appreciated that I have preferred to work hard and spare more time on securing appropriate compliance with the orders of the Hon. Tribunal (of which non-compliance is alleged by the present proceedings) *albeit* within the given set up rather than personally briefing the presenting officer. In the hindsight I think that I ought to have personally briefed the presenting officer which would have enabled this Hon. Court to appreciate my efforts more effectively.”

21. Concededly, some time is bound to be taken in completing the official formalities before the object is fully achieved. This was also recognized by the Supreme Court in **Satish Chandra** (Supra). But there are two points that need to be made. Firstly the issue of which particular officer at which hierarchical level may have committed the lapse apart, it is clear that the proceedings were decided in 2011 (early). Practically next to nothing was done for about two years and more. Then the things began to move ever so slowly. But secondly the tone and tenor of the recitals of the affidavits in reply of the Respondents to the CAs and Mr. Sul and Mr. Gote tend to suggest that various departments were going into this matter. Now, if the various departments had been wondering if the order in

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the O.A.s could be implemented then they were completely wrong. If delay occurred because of such reflections and contemplations then it was inexcusable. The position which brooks no dispute is that a judicial and in the context a quasi judicial order which, as in this case, had become final and conclusive could not be questioned by those whose duty it is to implement it. The judicial determination binds them and they must implement it with dispatch, urgency and sincerity. If they were not satisfied with the decision in the O.A.s the only way open to them was to question it before the Hon'ble High Court and Hon'ble Supreme Court. No other authority howsoever highly placed could have scrutinized its judicial accuracy. G.A.D. Law and Judiciary etc are all the various organales of the same larger body i.e. the state. They are as much bound by the judicial and quasi judicial orders as any other authority.

21. If the authorities, therefore, thought that they had any option whether to or not to implement the order in the OAs, then they have to be blamed and even hauled-up for contempt. It needs to be clearly understood that a stand is never to be taken that in a conclusive and binding order, judicial or quasi-judicial order, the various departments are mulling on whether to implement it and

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how. That is quite clearly unacceptable. Once a conclusive and binding judicial or quasi-judicial order stands, then it has to be complied with and complied with expeditiously. All the various Government Departments must note this point quite carefully. Ultimately, to turn around and say that the order has anyhow been complied with, after a few years is no answer to the main question. The quote from the Affidavit of the Respondents to the CAs may be stating the fact of the matter, but we neither accept it nor in fact approve of it in so far it relates to the implementation of the judicial or quasi-judicial order.

22. We are quite clearly of the view that the Chief Secretary, State of Maharashtra must bring to the notice of all concerned under his control these observations. It must serve as a guidance to avoid delay and multiplicity of proceedings. It needs to be emphasized that the employees in whose favour the binding final judicial or quasi-judicial orders are made, after-all are not Government's adversaries. On practical aspect, the state of affairs is as discussed above. Therefore, pointless dragging of feet serves the purpose of none. The consequences of contempt action are unpleasant and unnecessary. They must be avoided. We have on a few occasions directed copies of

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our orders in other OAs to be forwarded to the Chief Secretary. But we have not got even an acknowledgement far less compliance report. But this is a momentous matter. The Chief Secretary is requested not only to comply but report compliance to us within three months from today. The Registrar of this Tribunal shall report to us the non-compliance, if any, by the Chief Secretary of our directions after the period of three months from today.

23. In Para 17 of the same Affidavit, she has in fact, mentioned that the order of 4.7.2011 has been, "substantially complied with". We do not think there was any scope for any authority to substantially comply with the said order. It had to be fully complied with and if there was any genuine difficulty and we insist that it was not a contrived or an apology of a difficulty, then unless sanctioned by the same quasi-judicial authority, there was no scope for the authorities to determine as to whether substantial compliance was within the ambit of the mandate of the said order.

24. The Respondent to the CAs has filed one more Affidavit on 1st December, 2015. From that Affidavit as well as some other Affidavits, it seems to be her case that

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she came on the scene on 13th November, 2013 when she took over as Principal Secretary of the Department of Public Health. She has detailed out the date-wise events that happened and as to how for instance, the Law and Judiciary Department gave some opinion based on **State of Karnataka and others Vs. M.L. Kesari) (2010) 9 SCC Page 247)** in relation to Para 53 of **The State of Karnataka and others Vs. Umadevi and others, AIR 2006 SC 1806.** She then mentioned that she on various dates consulted the said Department as well as GAD. As to this aspect of the matter, we have already mentioned above as to what is the true position. No Department of the State Government can claim entitlement to scrutinize the judicial or quasi-judicial order and that is it. At the most, the Respondent to the CAs can perhaps take a stand that she was not aware of this position. The post and position that she holds and the kind of experience that is there to back her up, is such that we do not think, even this could possibly have been accepted just for the asking.

25. In the matter of appearance before the Tribunal, she has mentioned that she has always tried in the best possible manner to adjust her other commitments and to remain personally present, "I say and submit that I have always tried in a best possible manner to adjust my other

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commitments and duties by giving utmost preference to remain personally present before this Hon'ble Tribunal, whenever I have been required to remain personally present. I say that there is no reason at all as to why I should not do so. Even otherwise I am duty bound to do so". She has then given out the dates from Serial No.I to IX in trying to buttress her contention in that behalf.

26. In yet another Affidavit of 8.3.2016, she has explained as to the reason why she was not present on 4th March, 2015 before the Tribunal. It was on that date that the 1st Bench made the order fully quoted above. She has accepted that the Deputy Secretary (Mr. Sul) should have been a little more careful in the matter. According to her, she had other commitments including the budget session and her duties towards the legislature.

27. In her Affidavit earlier filed in September, 2015, she had given out the details of how the events took place in this behalf.

28. The above discussion must have made it quite clear that we have to the extent necessary read in extenso, the Affidavits on record. It is no doubt true that just like any other highly placed Government Officer, the Principal

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Secretary of the Department of Health has also got other commitments. However, if the orders in the OA were not complied with necessitating the Contempt Application to be moved, then that ipso-facto and per-se was a serious matter requiring personal attention. In our opinion, as a matter of fact, in such matters, if a final decision is taken at that level, once and for all with a strict directions to the authorities below to comply, the delay may not really occur and frequent appearances before the Tribunal may not even be necessary.

29. The above discussion is really a detailed one and it would quite clearly show as to how much accommodation the Tribunal made for the Respondents to the CAs and once the limits were crossed, then only coercive measures were adopted. In our opinion, the things would not have come to this pass had the Respondent to the CAs responded when it was still early days before this Principal Bench in Mumbai. She has every right to try and justify whatever stand she has to take, but once the facts are stated in cold letters in the Affidavits, then they are the only guiding vehicles to reach up to the mind-set. The tone and tenor of the Affidavits of the Respondents to the CAs is such that she has some regrets for whatever has come to pass, but then on the



other hand, she has been trying to defend the indefensible. Somewhat needlessly, she has tried to defend Mr. Sul as well. We are, therefore, quite clearly of the view that even as a case for a very stiff punishment is not meted out, we must place on record our disapproval of the manner in which the matter was conducted and then represented by the Respondent to the CAs – Mrs. Sujata M. Saunik and further, for all that has happened, we are so disposed as to saddle cost of Rs.5,000/- on her. This apparently is the first occasion in so far as she is concerned, and therefore, we do not propose to deal with her in a sterner manner, but we also sincerely hope that this is the last one as well.

30. Now, in so far as the MA is concerned, as already mentioned above, she wants the order issuing the bailable warrant to be recalled. The said order is already reproduced hereinabove and it is very clear that it was to secure her presence that such an order was made. In Para 19 thereof, which may be perused from the quote hereinabove, this was the purpose of asking her to execute personal bond and a cash security of Rs.25,000/-. With her appearance later on, that order worked itself out in view of the clear language thereof, and therefore, there is no question of recalling it now. It would have been a different matter, had she appeared in the interregnum and

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requested for recalling it with a promise of future appearances. However, we must make it very clear that in as much as she ultimately appeared and continuously appeared thereafter before the Tribunal, the order of issuance of warrant would cast no slur or stigma on her, either personally or from the point of view of her career. The security amount of Rs.25,000/- will now have to be refunded to her because the bail bonds shall stand cancelled and as a consequence, the amount of Rs.25,000/- will have to be refunded.

31. The Contempt Applications stand hereby disposed of recording this Bench's disapproval as detailed in the body hereof and imposing a cost of Rs.5,000/- to be deposited by the Respondent No.1 to the CAs within four weeks from today in the Office of this Tribunal. The bail-bonds are cancelled and the amount of Rs.25,000/- as security for appearance be refunded to the Respondent No.1 - Smt. Sujata Manoj Saunik, Principal Secretary, Public Health Department. The Misc. Application is disposed of accordingly.

The Registrar of this Tribunal is directed to forward to the Chief Secretary, Government of Maharashtra a copy hereof requesting him to carefully note



and comply with Para 22 herein above within the time limit fixed thereby.

Sd/-

(R.B. Malik)
Member-J
19.08.2016

Sd/-

(Rajiv Agarwal)
Vice-Chairman
19.08.2016

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Mumbai

Date : 19.08.2016

Dictation taken by :

S.K. Wamanse.

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