

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Contempt Case (C) No. 341 of 2016**

Nand Kumar Sai S/o Late Shri Likahn Sai, Aged about 70 years, Agriculturist and Ex-Member of Parliament (Rajya Sabha) Resident of Bungalow No. 1, Officer's Colony, Devendra Nagar, Jail Road, Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. Ajit Pramod Kumar Jogi S/o Late K.P. Jogi, Politician & Ex-Chief Minister, CG aged about 70 years, R/o Anugrah Sagon Bungalow, Civil Lines, Raipur, Chhattisgarh.
2. Ashish Kumar Bhatt, aged about 53 years, Chairman, High Power Certification Scrutiny Committee, Chhattisgarh/Secretary, Admit Jati Evam Anusuchit Jati Vikas Vibhag, State of Chhattisgarh, Mantralaya, New Raipur, Chhattisgarh.
3. Rajesh Kumar Toppo, aged about 39 years, Member/Secretary, High Power Certification Scrutiny Committee, Chhattisgarh/Commissioner, Adim Jati Evam Anusuchit Jati Vikas Vibhag, State of Chhattisgarh, Mantralaya, New Raipur, Chhattisgarh.
4. G.M. Jha, aged about 58 years, Member, High Power Certification Scrutiny Committee, Chhattisgarh/Deputy Director, Anusandhan Shakha, CG Adim Jati Evam Anusuchit Jati Vikas Vibhag, State of Chhattisgarh, Mantralay New Raipur, Chhattisgarh.
5. Mahendra Kumar Mishra, aged about 57 years, Senior Deputy Superintendent of Police (Vigilance Cell) Adim Jati Anusandhan Evam Prashikshan Sansthaan, Chhattisgarh, Raipur.

---- Respondents

For Petitioner : Shri Upendra Nath Awasthy, Senior Advocate with Ms. Raksha Awasthy, Advocate.

Hon'ble Shri Deepak Gupta, Chief Justice

Order on Board

12/08/2016

1. The following short but interesting question arises in this contempt petition:

"Whether the High Court should entertain and decide a contempt petition where the allegation is that the alleged contemnors have not complied with the directions of the Supreme Court of India?"

2. Shorn off unnecessary details, the facts of this case are that the Respondent No. 1-Ajit Pramod Kumar Jogi, had filed a Writ Petition being WP(C) No. 1282 of 2013 claiming that he belongs to a tribal community known as "Kanwar", a notified scheduled tribe. It was also alleged that he has been elected to the Legislative Assembly and Parliament on many occasions on the basis of such scheduled tribe certificate issued to him. In the year 2001, a complaint was filed before the National Commission for Scheduled Caste and Scheduled Tribes (hereinafter referred to as 'the National Commission') wherein it was alleged that the Respondent No. 1 was a Christian and that he did not belong to a scheduled tribe and that he had obtained several false caste certificates showing him as belonging to 'Kanwar-scheduled tribe' and on the basis of these false certificates had contested elections from a constituency reserved for the scheduled tribes. The National Commission issued notice to the Respondent No. 1 proposing to verify his caste certificate. The matter was referred to the Chief Secretary, Government of Chhattisgarh, on 29.01.2001. The State Government replied that it had constituted a Committee for verification of the caste certificate and the reference received from the National Commission has been transmitted to the Principal Secretary, Department for Welfare of Scheduled Caste and Scheduled Tribe and Minority Welfare for necessary verification. The National Commission summoned the Chief Secretary of the State of Chhattisgarh to appear before it with all necessary documents related to the social status of the Respondent No. 1

who at that time, happened to be the Chief Minister of the State of Chhattisgarh. It is not necessary to give other facts but on 16.10.2001, the National Commission passed an order in which it expressed a view that Respondent No. 1 had been fraudulently claiming to be belonging to 'Kanwar' community for purpose of getting scheduled tribe certificate. Thereafter, the matter was again remitted to the State Government by the National Commission and the State Government was directed to submit a report to it within 30 days.

3. Respondent No. 1 filed Writ Petition No. 2080 of 2001 (reported in AIR 2007 Chh 90) before this Court. The writ petition filed by him was allowed and it was held that the complaint of the original complainant was politically motivated. Reliance was placed on the judgment of the Madhya Pradesh High Court in Writ Petition No. 1417 of 1998 and Writ Petition No. 1039 of 2001 wherein challenge to the caste certificate of Respondent No. 1 had been rejected. The Court also held that the National Commission had violated the principles of natural justice. The State of Chhattisgarh challenged the said judgment passed by this Court by filing Civil Appeal No. 4082 of 2008 before the Supreme Court.. The Collector, Bilaspur filed Civil Appeal No. 069 of 2008 and the original complainant S.K.Netam filed Civil Appeal No. 4079 of 2008. These cases were disposed off by judgment dated 13.10.2011, by the Apex Court, reported in AIR 2012 SC 44. The Apex Court, dealing with the order of the National Commission held as follows:

"16. It is only after recording the said findings, the Commission directed the State government to verify the genuineness of the ST certificate obtained by first respondent and initiate action for cancellation of the certificate and also initiate criminal action. All these were unwarranted. As noticed above, the power under clause 5(b) of Article 338 (or under any of the other sub-clauses of clause 5 of Article 338) did not entitle the Commission to hold an inquiry in regard to the caste status of any particular individual, summon documents, and record a finding that his caste certificate is bogus or false. If such a complaint was received about the deprivation of the rights and safeguards, it will have to refer the matter to the State Government or the authority concerned with verification of caste/tribal status, to take necessary action. It can

certainly follow up the matter with the State Government or such authority dealing with the matter to ensure that the complaint is inquired into and appropriate decision is taken. If the State Government or the authorities did not take action, the Commission could either itself or through the affected persons, initiate legal action to ensure that there is a proper verification of the caste certificate, but it cannot undertake the exercise itself, as has been done in this case. The contention that there was sufficient material to reach such a conclusion is not relevant. The scope of the duties of the Commission as noticed above, did not involve inquiry or adjudication in regard to the rights of parties or caste status of the parties. The same is the position even under Article 338A (which was subsequently inserted) providing for a separate Commission for Scheduled Tribes with identical duties. The order of the Commission cannot therefore be sustained. The High Court was justified in setting aside the said order dated 16.10.2001."

4. It is thus obvious that the Apex Court upheld the judgment of the High Court of Chhattisgarh in so far as it set aside the order of the National Commission. However, the Apex Court went on to hold that this does not mean that the caste certificate of Respondent No. 1 are not to be verified and set aside the judgment of this High Court with regard to that portion of the judgment of this Court which had taken the view that in view of the disposal of the earlier writ petition, the dispute relating to tribal status of Respondent No. 1 has attained some kind of finality. The Apex Court also held that the High Court was not justified to term the complaint filed by the original complainant to the National Commission as politically motivated. It was also held that the High Court was not justified in directing the State Government and the National Commission to calculate and recover the actual expenses incurred in regard to the inquiry. The concluding portion of the judgment reads as follows:

"19. We therefore allow these appeals in part as under :

- (i) The order of the High Court dated 15.12.2006 to the extent it quashes the order dated 16.10.2001 of the Commission, is upheld.
- (ii) The adverse observations by the High Court about the complaint by the sixth respondent, the inquiry by the Commission, and the stand of the State Government and the Collector before the High Court, being politically motivated, are set aside.

(iii) The direction to the State Government and the Commission to calculate the actual cost incurred in prosecuting the writ petition and directing the sixth respondent to pay the actual costs plus Rs.10,000 is set aside.

(iv) In terms of the direction of the Commission, the State Government through a duly constituted Scrutiny Committee shall now undertake the verification/scrutiny of the social status (tribal) certificates issued to the first respondent showing him as belonging to 'Kanwar' Scheduled Tribe and decide the matter after giving due opportunity to the first respondent, uninfluenced by any observations by the Commission, High Court or this Court. The State Government/concerned authorities shall be entitled to take consequential action on the basis of the order/report of the Scrutiny Committee."

5. In this contempt petition, the Petitioner has prayed for the following reliefs:

- "1. The contemnors may suitably dealt with for gross and contumacious contempt and non-compliance of Hon'ble Apex Court decisions in Madhuri Patil's case & Collector Bilaspur v. Ajit P.K.Jogi case.
2. Hon'ble the Apex Court judgments, aforesaid, may be enforced without any further delay, in the ends of justice;
3. Such other relief(s) may be granted as Hon'ble Court may deem fit."

6. By means of this contempt petition, it is alleged that the the State Government has violated direction No. 4 issued by the Apex Court. A careful reading of the direction No. 4 clearly indicates that what the Apex Court held was that in terms of the direction of the National Commission, the State Government through a duly constituted Scrutiny Committee shall undertake the verification/scrutiny of the social status (tribal certificate) issued to the Respondent No. 1. What the Apex Court held is that the judgment of the National Commission directing the State Government to hold such enquiry was a direction within the power of the National Commission.

7. I am clearly of the view that this contempt petition is not maintainable for the following reasons:

- (i) This Court is of the considered opinion that there is no direction of the Apex Court. The reason for holding this is that the original directions were

given by the National Commission and not by the Apex Court. This Court, in Writ Petition No. 2080 of 2001 quashed the order of the National Commission in entirety. The Apex Court upheld a part of the judgment of this Court but set aside a part of the judgment of this Court thereby upholding the order of the National Commission directing the State to enquire into the matter. Therefore, this cannot be termed as a direction of the Supreme Court but it was a direction of the National Commission.

(ii) Assuming for the sake of argument that this is a direction of the Apex Court, I am of the considered view that then also, this Court will not have jurisdiction to entertain the contempt petition. Article 129 of the Constitution of India reads as follows:

"129. Supreme Court to be a court of record. -The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."

A bare reading of the aforesaid Article makes it amply clear that it is the Apex Court which has the power to punish for contempt of itself. The High Court cannot entertain a contempt petition wherein the contempt alleged is of violation of the directions given by the Apex Court. While taking this view, reference may be made to Article 215 of the Constitution of India, which is *pari materia* and reads as follows:

"215. High Courts to be courts of record. - Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."

The High Court, under the Constitution, only has the power to punish a party which has committed contempt of the High Court itself. Under Section 10 of the Contempt of Courts Act, the High Court is empowered to punish for contempts of subordinate courts. The High Court is subordinate in the hierarchy but the Supreme Court is not subordinate to the High Court. Therefore, Section 10 of the Contempt of

Courts Act cannot be used to initiate the proceedings for contempt of the orders of the Supreme Court. Section 12 of the Contempt of Courts Act deals with civil contempt and this again gives a Court a power to initiate proceedings where contempt is committed of that Court. Therefore, the High Court, in my humble view, has jurisdiction only to punish for contempt of the orders passed by the High Court or by the Courts subordinate to it. Reference may also be made to Section 14 of the Contempt of Courts Act which clearly deals with the contempt in the face of the Supreme Court or High Court and it is the Supreme Court which will deal with the contempt of Supreme Court and the High Court will deal with the contempt of High Court. Reference may also be made to Section 15 of the Contempt of Courts Act which deals with cognizance of contempt in criminal cases. Section 15(1) makes it absolutely clear that the Supreme Court or the High Court may take action on its own motion or at a motion made by the Advocate General in the case of the State or Attorney General or Solicitor General in case of Union of India. All these provisions clearly indicate that if the contempt complained of is of the orders of the Apex Court then the Apex Court alone would have the jurisdiction to deal with the matter.

8. It has been urged by learned Senior Counsel appearing for the Petitioner that the order of this Court has merged in the order of the Supreme Court. There can be no quarrel with this proposition. A part of the judgment of the High Court was upheld and a part was set aside. The Apex Court upheld the directions given by the National Commission that some enquiry into the caste certificate of Shri Jogi should be conducted. Assuming that these are directions of the Apex Court, can it be urged that these directions should be treated as directions of the High Court and therefore, this High Court should entertain the present contempt petition. On behalf of the Petitioner, reference has been made to Article 144 of the

Constitution of India which reads as follows:

"144. Civil and judicial authorities to act in aid of the Supreme Court - All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court."

9. There can be no quarrel with the proposition that the Apex Court is the highest judicial body in the country. The law laid down by the Supreme Court under Article 141 is the law for the entire country. Each and every authority and the citizen is bound to obey the law laid down by the Supreme Court. Under Article 142, the Supreme Court is empowered to pass any decree or order which it feels is necessary to do complete justice in any cause or matter pending before it. The issue is if any such directions are passed and violated, who will take cognizance of those directions. The judgment passed by the Apex Court are applicable all over the country. Can different High Courts start entertaining contempt petitions in case of violation of the orders of the Apex Court? In my view, the High Court is powerless to do so.

10. Reference has been made by learned Senior Counsel to the judgment of the Apex Court in *Tirupati Balaji Developers Pvt. Ltd. & Others v. State of Bihar & Others* (AIR 2004 SC 2351), especially to the following portions of the judgment:

7. A few questions arise. Could not this Court exercising appellate jurisdiction under Article 136 of the Constitution, have directed a communication being addressed to the High Court calling for information with the object of (i) ascertaining the facts, (ii) securing compliance with the direction contained in the order dated 28.10.2002? Whether the Division Bench of the High Court is justified - in law and on considerations of propriety - to make all those observations as have been extracted and reproduced hereinabove? Is it proper for the High Court to issue a direction to the Registrar General of Supreme Court of India to place its communication for consideration before a particular Bench of this Court? These delicate questions have provided as an opportunity for some consideration and in exploring into finding out what is the relationship of Supreme Court with High Courts as two august judicial institutions functioning under the Constitution.

8. Under the constitutional scheme as framed for the judiciary, the Supreme Court and the High Courts both are courts of record. The High Court is not a court 'subordinate' to the Supreme Court. In a way the canvass of judicial powers

vesting in the High Court is wider inasmuch as it has jurisdiction to issue all prerogative writs conferred by Article 226 of the Constitution for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose while the original jurisdiction of Supreme Court to issue prerogative writs remains confined to the enforcement of fundamental rights and to deal with some such matters, such as Presidential election or inter-state disputes which the Constitution does not envisage being heard and determined by High Courts. The High Court exercises power of superintendence under Article 227 of the Constitution over all subordinate courts and tribunals; the Supreme Court has not been conferred with any power of superintendence. If the Supreme Court and the High Courts both were to be thought of as brothers in the administration of justice, the High Court has larger jurisdiction but the Supreme Court still remains the elder brother. There are a few provisions which give an edge, and assign a superior place in the hierarchy, to Supreme Court over High Courts. So far as the appellate jurisdiction is concerned, in all civil and criminal matters, the Supreme Court is the highest and the ultimate court of appeal. It is the final interpreter of the law. Under Article 139-A, the Supreme Court may transfer any case pending before one High Court to another High Court or may withdraw the case to itself. Under Article 141 the law declared by the Supreme Court shall be binding on all courts, including High Courts, within the territory of India. Under Article 144 all authorities, civil and judicial, in the territory of India - and that would include High Court as well - shall act in aid of the Supreme Court.

9. In a unified hierarchical judicial system which India has accepted under its Constitution, vertically the Supreme Court is placed over the High Courts. The very fact that the Constitution confers an appellate power on the Supreme Court over the High Courts, certain consequence naturally flow and follow. Appeal implies in its natural and ordinary meaning the removal of a cause from any inferior court or tribunal to a superior one for the purpose of testing, the soundness of decision and proceedings of the inferior court or tribunal. The superior forum shall have jurisdiction to reverse, confirm, annul or modify the decree or order of the forum appealed against and in the event of a remand the lower forum shall have to re-hear the matter and comply with such directions as may accompany the order of remand. The appellate jurisdiction inherently carries with it a power to issue corrective directions binding on the forum below and failure on the part of latter to carry out such directions or show disrespect to or to question the propriety of such directions would - it is obvious - be destructive of the hierarchical system in administration of justice. The seekers of justice and the society would lose faith in both.

11. Strong reliance has been placed on this judgment by the learned Senior Counsel to urge that in terms of Article 144 of the Constitution, this Court is bound to assist the Supreme Court. As I have already stated above, there is no quarrel

with that proposition. The issue is whether this Court can punish a contemnor for having disobeyed the orders of the Supreme Court. What the Petitioner has filed is a contempt petition and in my view, the power to punish the contemnor lies only with the Supreme Court. A perusal of para 7 to 9 of *Tirupati Balaji Developers Pvt. Ltd.* (supra) clearly indicates that the Supreme Court is the highest judicial authority in the country. There can be no manner of doubt that this Court is bound to obey any order passed by the Supreme Court. There is also no quarrel with the proposition that this Court has to assist the Supreme Court in the implementation of the orders passed by the Apex Court. However, assisting and punishing are totally two different concepts. In fact, in my considered view, if the High Court takes upon the jurisdiction of punishing an alleged contemnor for the contempt of the orders passed by the Supreme Court, the High Court would be transgressing its jurisdiction and would in fact be interfering and encroaching upon the jurisdiction of the Supreme Court. In a country, where the rule of law is the golden thread which runs through our Constitution, it is the Supreme Court which is the highest authority and if there is violation of the orders of the Supreme Court, then the Supreme Court alone can punish the contemnor and not the High Court or any other authority.

12. It has also been urged that since contempt has taken place within the State of Chhattisgarh, the power to punish will lie with this Court. This submission has been made only to be brushed aside. It is without any merit whatsoever. If the contempt is of the orders of the Apex Court then whether contempt has taken place within Chhattisgarh or not is immaterial. In fact the law is well settled that contempt jurisdiction is one jurisdiction where a Court can punish a person even beyond its own territorial jurisdiction. Therefore, territorial jurisdiction in contempt matters is virtually immaterial. Supposing the orders of this Court are disobeyed outside the territorial jurisdiction of the State of Chhattisgarh, then this does not mean that this Court is powerless to punish the contemnor.

13. Reliance has been placed by learned Senior Counsel on the judgment of the Apex Court in *Priya Gupta v. State of Chhattisgarh & Others* (AIR 2012 SC 2413) wherein the Apex Court has given certain directions in relation to the medical colleges in para 31 of the judgment which reads as follows:

"31. All these directions shall be complied with by all concerned, including Union of India, Medical Council of India, Dental Council of India, State Governments, Universities and Medical and dental colleges and the management of the respective universities or dental and medical colleges. Any default in compliance with these conditions or attempt to overreach these directions shall, without fail, invite the following consequences and penal actions:-

(a) Every body, officer or authority who disobeys or avoids or fails to strictly comply with these directions *stricto sensu* shall be liable for action under the provisions of the Contempt of Courts Act. Liberty is granted to an interested party to take out the contempt proceedings before the High Court having jurisdiction over such Institution/State, etc."

14. Relying upon the directions given in para 31(a), it is submitted that since the Apex Court in that case had given liberty to any interested party to initiate the contempt proceedings before the High Court having jurisdiction over such Institution/State etc, it is urged that this High Court can entertain the present contempt petition also. I am unable to accept this argument and the reason is that the directions given in the aforesaid para 31 are in the nature of directions under Article 142 of the Constitution of India where the Apex Court can issue any direction as it feels necessary in the facts and circumstances of the case. If the Supreme Court decides that the High Court should entertain a contempt petition even with regard to the violation of the orders of the Supreme Court, then the High Court is bound to follow the same. If the Apex Court delegates its power to the High Court, the High Court may entertain such petition. However, the High Court without any such direction from the Supreme Court, cannot entertain any such contempt petition and that is why, in *Priya Gupta* (supra), specific directions were given in this regard.

15. In this contempt petition, a prayer has been made to this Court to deal with the Respondents for contempt and non-compliance of the judgment of the Apex Court passed in *Madhuri Patil's* case and *Collector Bilaspur v. Ajit P.K.Jogi* case. It is lastly urged that there has been contempt of the order passed in *Ku. Madhuri Patil v. Additional Secretary* {(1994) 6 SCC 241}.

16. For the reasons already given above, these directions were given by the Supreme Court and not by this Court and the contempt petition, if any, will lie before the Apex Court alone.

17. In view of the reasons stated hereinabove, this petition is dismissed as not maintainable before this Court. The prayer for leave to appeal made under Article 136 of the Constitution of India is also rejected. It is made clear that this Court has not gone into merits of the case since this petition has been rejected only on the ground that the same cannot be entertained by this High Court.

Sd/-
(Deepak Gupta)
CHIEF JUSTICE