

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Miscellaneous Jurisdiction Case No.1263 of 2016  
in  
Civil Writ Jurisdiction Case No. 5771 of 2013**

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Sudhanshu Kumar Singh, son of Late Paras Nath Singh, resident of Village-  
Kashipur, Police Station- Raja Pakar, District- Vaishali.

.... .... Petitioner/s

Versus

1. The State of Bihar.
2. Mr. Sudhir Kumar, Chairman, Bihar Staff Selection Commission, Veterinary College Campus, Patna-14.
3. Mr. Parmeshwar Ram, Secretary, Bihar Staff Selection Commission, Veterinary College Campus, Patna-14.
4. Mr. Jitendra Singh Gangwar, Inspector General, Economics Offences Unit, Government of Bihar, Patna.

.... .... Respondent/s

with

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**Miscellaneous Jurisdiction Case No. 2448 of 2016  
in  
Civil Writ Jurisdiction Case No. 5771 of 2013**

- =====
1. Arbind Kumar, son of Sri Chandra Deo Mahto, C/O- Sri Rajeshwari Prasad, resident of Village- Biyawani, P.O.- Maghra, District- Nalanda.
  2. Md. Shakil Khan, S/o- Md. Azimullah Khan, resident of Village + PO- Thana Chowk, Bikramganj, District- Rohtas.
  3. Niranjana Kumar, son of Late Bindeshwari Mandal, resident of P.O- Ghormara, District- Deoghar.
  4. Brajesh Kumar, S/o- Shri Binndeshwari Prasad Das, resident of Village + PO- Ishakchak (near middle School), District- Bhagalpur.
  5. Vijay Kumar Pal, C/O Deep Market resident of - Keshri Nagar, District Patna. presently resident of C/o Dr Hiralal Pal, Village- Lalapar, P.O.- Kudra, District- Kaimur.



6. Baljeet Singh, S/o Sri Kalika Singh, Resident of Village + P.O Ramalihra, District- Rohtas.
7. Rahul Kumar, S/o Ramesh Chaudhary, R/o- Shivalaya Mandir Road, P.O- Bairgania, District- Sitamarhi.
8. Shrawan Kumar, S/o Sri Yogendra Singh, R/o R.E Building Beli road Bihar Police Radio, P.S.- Shastrinagar, District- Patna. presently residing at S/o Sri Yogenra Singh, Mohalla- Shiv Nagar Colony (behind beur Jail), P.O.- P.S.- Beur, District- Patna.
9. Harinandan Prasad, S/o Sri Sita Ram Prasad, R/o Village- Chhoti Nawada, PO- Khusrupur, District- Patna.
10. Bipul Kumar Mishra Prabhat, S/o- Sri Akhileshwar Mishra, R/o- P.O orro, P.S.- Hisua, District- Nawada.
11. Viaksh Chandra, C/o Usha Medico, Gupta complex, P.S Gardani Bagh, Road no.1, District- Patna.
12. Akhilesh Pandit, S/o Sri Ram Sagar Pandit, R/o Village- Kodihara, P.O- Mouri, P.S.- Paliganj, District- Patna.
13. Sheo Shankar Kumar, S/o Aditya Prasad Choudhary, Village- Anti, P.O.- Kadirganj, Dist- Nawada.
14. Ravi Ranjan, S/o Sri Satendra Narayan, C/o C.M. Gupta, Postal Park, Road No.3 Infront of Brijbala Bhawan, Patna.
15. Munchun Kumar, S/o Shyam Manohar Sharma, R/o Village- Dhuriyari, PO- Bansibigha, PS- Ghosi, Dist- Jehanabad.
16. Ram Milan Thakur, S/o Kapildeo Thakur, C/o Deogati Singh near Dr. Shanti Rai, P.O.- Lahianagar, Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar.
2. Mr. Parmeshwar Ram, The Secretary Bihar Staff Selection Commission, Veterinary College, Patna- 800014.
3. Mr. Sudhir Kumar, The Chairman Bihar Staff Selection Commission, Veterinary College, Patna.
4. Mr. Anjani Kumar Singh, Chief Secretary, Government of Bihar, Patna.
5. Mr. Amir Subhani, Princiapal Secretary Home Department of Government of Bihar, Patna.
6. Mr. Amir Subhani, Principal Secretary General Administration Department, Government of Bihar, Patna.
7. Mr. P.K. Thakur, The Director General-cum- Inspector General of Police Bihar, Patna.
8. Mr. J.S. Gangwar, Inspector General , Economic offences Unit, Government of



Bihar, Patna.

.... .... Respondent/s

with

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**Miscellaneous Jurisdiction Case No. 43 of 2017**  
**IN**  
**Civil Writ Jurisdiction Case No. 5771 of 2013**

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- 1. Ranjan Kumar, Son of Sri Devi Prasad, Resident of Nala Road, Dinkar Chawk, P.S. Kadamkuan, Districgt- Patna, Bihar.
- 2. Dilip Kumar Singh, Son of Shri Baleshwar Prasad Singh, Resident of Village+ P.O. Ekahari, P.S. Ladania, District- Madhubani.
- 3. Raj Kumar, Son of Ramji Prasad Singh, Resident of Prakash Bhawan, South Chandmari Road, P.S. Kankarbagh, District Patna.

.... .... Petitioner/s

Versus

- 1. The State of Bihar
- 2. Mr. Parmeshwar Ram, the Secretary, Bihar Staff Selection Commission, Veterinary College, Patna- 800014.
- 3. Mr. Sudhir Kumar, the Chairman, Bihar Staff Selection Commission, Veterinary College, Patna- 800014. null null
- 4. Mr. Anjani Singh, the Chief Secretary, Government of Bihar, Patna. null null
- 5. Mr. Aamir Subhani, the Principal Secretary, Home Department, Government of Bihar, Patna.
- 6. Mr. Aamir Subhani, the Principal Secretary, General Administration Department, Government of Bihar, Patna.
- 7. Mr. J.S. Gangwar, Inspector General, Economic Offences Unit, Government of Bihar, Patna.

.... .... Respondent/s

with

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**Miscellaneous Jurisdiction Case No. 731 of 2017**  
**IN**  
**Civil Writ Jurisdiction Case No. 5771 of 2013**

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Amod Kumar, Son of Shiv Nandan Yadav, Resident of Village- Dumairal, Police Station- Saharsa, District- Saharsa.

.... .... Petitioner/s

Versus

- 1. The State of Bihar
- 2. Mr. Parmeshwar Ram, the Secretary, Bihar Staff Selection Commission, Veterinary College, Patna- 800014
- 3. Mr. Sudhir Kumar, the Chairman, Bihar Staff Selection Commission, Veterinary College, Patna- 800014
- 4. Mr. Anjani Singh, the Chief Secretary, Government of Bihar, Patna.
- 5. Mr. Aamir Subhani, the Principal Secretary, Home Department, Government of



- Bihar, Patna.
6. Mr. Aamir Subhani, the Principal Secretary, General Administration Department, Government of Bihar, Patna.
7. Mr. J.S. Gangwar, Inspector General, Economic Offices Unit, Government of Bihar, Patna.

.... .... Respondent/s

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|--------------------------|--------------------------------------------------------------------------------|
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| <b>Appearance :</b>      |                                                                                |
| (In MJC No.1263 of 2016) |                                                                                |
| For the Petitioner/s     | : Mr. Vinod Kanth, Sr. Advocate<br>Mr. Prashant Sinha<br>Mr. Ashok Kumar Verma |
| For BSSC                 | : Mr. Lalit Kishore, Sr. Advocate<br>Mr. Prahlad Kumar                         |
| For the State            | : Mr. P K Verma                                                                |
| (In MJC No.2448 of 2016) |                                                                                |
| For the Petitioner/s     | : Mr. Ramakant Sharma<br>Sr. Advocate<br>Mr. Alok Ranjan                       |
| For the Respondent/s     | : Mr.                                                                          |
| (In MJC No.43 of 2017)   |                                                                                |
| For the Petitioner/s     | : Mrs. Alka Verma                                                              |
| For the Respondent/s     | : Mr.                                                                          |
| (In MJC No.731 of 2016)  |                                                                                |
| For the Petitioner/s     | : Mr. Niranjana Kumar<br>Mr. Santosh Kumar                                     |
| For the State            | : Mr. P K Verma, AAG 3                                                         |
| For the Commission       | : Mr. Lalit Kishore, Sr. Advocate                                              |
| =====                    |                                                                                |

**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**ORAL JUDGMENT**  
**Date: 10-11-2017**

As all these contempt applications have been filed complaining breach of a common order passed on 19.02.2015 in CWJC No. 5771 of 2013 and various other cases, they are being disposed of by this common judgment. Before advertizing to consider the issues which were canvassed before me, it would be appropriate to consider the facts which led to filing of these contempt applications.

On 04.08.2007, the Bihar Staff Selection Commission,



Patna (hereinafter referred to as 'the Commission') issued an advertisement bearing No. 2407 inviting applications from eligible candidates for filling up 570 posts of Auditors. All the petitioners herein who are in fact Interveners in CWJC No. 5771 of 2013 along with many other eligible candidates applied. A written test was conducted on 07.10.2012 by way of objection type questions papers through OMR Answer Sheet along with carbon copy; result was published on 22.02.2013 declaring 400 candidates successful. However, in the meanwhile, it transpires that on 24.10.2012, considering a complaint made to the effect that the Strong Room where the OMR Sheets were kept had been broken open and tampering on OMR Sheets was done, as a consequence thereof, the Economic Offences Wing registered PS Case No. 23/2012.

After the result was declared in the year 2013, and nothing was done the candidates who were unsuccessful filed various writ petitions being CWJC No. 5771 of 2013 and other case, and it was their case that in view of the filing the criminal case and the happening that has come on record, the entire selection process should be cancelled and the process conducted afresh, prayer was also made for initiating an enquiry by the Central Bureau of Investigation (CBI in short).

However, in the meanwhile, interlocutory application was



filed and a prayer was made that in view of certain interim order passed on 09.04.2013, the successful candidates may be appointed on the post. The successful candidates who are Interveners in I A No. 3223 of 2014 are the petitioners before this Court now in these contempt proceedings.

When the matter was so pending, the Commission filed counter affidavit wherein it sought for approval of the Court to undertake a process of verification of the original OMR Answer Sheets of the successful candidates with their carbon copy to be produced by them in presence of the officers of Economic Offences Wing to find out the truth and the extent of interpolation as alleged. Accordingly, the interim order passed on 09.04.2013 was modified and by order dated 28.04.2014 the Writ Court accepted the proposal of the Commission for verification of the original OMR Answer Sheets with the carbon copies in the presence of the representatives of the Economic Offences Wing. The Court also observed that suspicion would never be taken the place of proof and granted time to submit a report after the exercise was conducted.

Accordingly, a supplementary counter affidavit was filed by the Commission pointing out that in the process of verification conducted, out of 400 candidates who are successful 355 turned up in the venue as fixed; out of these 31 did not produce their carbon copies



of the OMR Answer Sheets. Therefore, no action was taken in that case. The carbon copies of OMR were produced by the remaining 324 candidates which were compared with the original OMR in presence of the representatives of the Economic Offences Wing and after careful scrutiny it was found that in case of 15 candidates there were major discrepancies. In case of 43 candidates, there were minor discrepancies and in case of 266 candidates there were no deficiency and their cases were clear. The Commission sought permission from the Court to recommend the names of 266 candidates for appointment and, if found feasible, the 43 candidates also in whose cases minor discrepancies were found.

The Economic Offences Wing also filed separate counter affidavit based on verification done and gave a report that major discrepancies were found in case of about 20 cases and in the case of 43 candidates minor deficiencies were found. They also agreed with the case of 266 candidates. After the aforesaid report, the learned Writ Court heard the matter *in extenso*, went into various judgments of the Supreme Court including the judgment in the case of **Joginder Pal & Ors. v. State of Punjab [(2014) 6 SCC 644]** found that when the entire selection process is not tainted, and there is possibility of vetting out the tainted from the non-tainted candidates, benefit can be granted to the non-tainted candidates.



After taking note of all the issues involved the learned Writ Court directed the Commission to appoint the 266 candidates and in whose cases there was no infirmity and whose OMR were found to be untainted. However, it was observed that their appointment would be subject to final outcome of the case initiated by the Economic Offences Wing. As far as the remaining candidates are concerned, the direction issued in the writ petition as under:-

*“The cases of remaining candidates including the 31 candidates, who have failed to produce the carbon copies of their OMR answer sheets, in spite of specific direction of the Commission in that regard, to retain the same, as disclosed from the notice dated 05.10.2012 (Annexure-G to the second supplementary counter affidavit of the Commission), cannot at this stage be placed in the same category with certitude, as the trace of blemish in these cases, cannot be ruled out altogether. The Commission is therefore directed to take appropriate decision in these cases after the completion of investigation in Economic Offence Wing PS Case No. 23 of 2012 in accordance with law. The respondent-Economic Offence Unit is directed to expedite the investigation and complete the same without further delay.*

*These four writ applications are accordingly dismissed with aforesaid directions.”*

(Emphasis supplied)



Now, the applicants before this Court are some of the 43 candidates in whose cases minor discrepancies were found and it is their contention that the Economic Offence Wing has concluded its enquiry and investigation into the matter. None of the applicants was implicated, charge-sheet has been filed in the court of the competent jurisdiction on 26.05.2016 and now in view of the aforesaid it is said that there should not be any impediment and all the candidates should be appointed. Learned Senior Counsel appearing for the applicants Mr. Vinod Kanth and Mr. Sharma took me through various parts of the order and indicated that the State Government and the Commission are now dillydallying the issue just to circumvent the order passed by this Court for denying appointment to the petitioners. They referred to the proceedings of the Commission's meeting held on 23.07.2016, point out a decision taken by the Chief Minister on 29.12.2015 and argued that based on the recommendation of the Chief Minister the entire examination has been cancelled along with the examination conducted for appointment on the post of Junior Engineer and various other posts in total violation of the direction issued in the writ petition and by giving a go-by in an arbitrary manner somehow to deny the benefits to the petitioners, examination has been cancelled and fresh process for filling up of the post has been undertaken. It is contended by the



learned counsel that once the enquiry by the Economic Offence Wing is concluded, the charge-sheet has been filed and the petitioners are found to be exonerated in the criminal case they have to be treated alike the 266 candidates. The undertaking given by the Commission in the report has been violated and even without referring to the direction issued in the writ petition and the undertaken given merely because some decision was communicated by the Chief Minister, that also on 29.12.2015, much before the charge-sheet was filed on 26.05.2016, the impugned action is taken.

Learned counsel invited my attention to a judgment of the Supreme Court in the case of *Anil Ratan Sarkar vs. Hirak Ghosh [(2002) 4 SCC 21]* and argued that action as taken by the officers, is in total violation of the order issued by the Court and when the officers willfully disobey the order passed by the Court which was clear in terms, incapable of any further interpretation, the act of the respondents amounts to contempt. He emphasized that in this case the respondents were required to wait for the conclusion of the enquiry by the Economic Offences Wing and thereafter take action. But, even before the enquiry was concluded, took the decision merely based on some observations and recommendations made by the Chief Minister on 29.12.2015 even without taking note of the direction issued and the undertaking given by the commission to this



Court, this amounts to willful disobedience and is to somehow curtail and prevent implementation of this Court's order and therefore the action is unassailable. He emphasized that the respondents be proceeded with and appropriate action.

Refuting the aforesaid, Mr. Lalit Kishore, learned Senior Counsel appearing for the Commission took me through the orders passed and the final direction issued by the learned Writ Court to the effect that the Commission was only directed to take an appropriate decision after completion of the investigation by the Economic Offences Wing in accordance with law. That being so, it was emphasized by the learned Sr. Counsel that the Commission was to take an appropriate decision in accordance with law and there was no mandamus in positive terms to grant appointment. He refers to the proceedings of the Commission held on 27.07.2016 Annexure R/1, the agenda that was under discussion, order passed in the writ petition bearing No. CWJC No. 5771 of 2013 and argued that taking into account the fact that not only in the case of the present incumbents but even in CWJC No. 5494 of 2016 another Bench with regard to appointment in the case of junior Engineers approved the entire cancellation, in the case of the Junior Engineers also manipulations were made by breaking open the Strong Room, submits that in the decision having been taken by the Commission,



merely because reference is made to some other examination by the Chief Minister on 29.12.2015, the action cannot be termed as amounting to contempt. Learned Counsel referred to a communication and the decision of the Chief minister Annexure-A dated 29.12.2015 and argued that it was only the opinion of the Chief Minister which was considered by the Commission and after re-evaluating the decision and the circumstances taking note of the malpractice, if action is taken, the same cannot be termed as contempt. He also refers to the judgment in the case of *Anil Ratan Sarkar* (supra) and submits that if an order is capable of being interpreted in two different ways and if the Commission exercises its discretion took an appropriate decision based on the liberty that granted by this court it will not amount to contempt.

The contention made by Mr. Lalit Kishore was refuted by Mr. Vinod Kanth. He refers to certain interim observations made in the proceeding on 27.7.2016 and tried to indicate that similar contention advanced in the earlier show cause was rejected and the Commission was directed to file further show cause, as to why after the investigation by the Economic Offences Wing benefit could not be granted to the 43 candidates. Learned Senior Counsel argued that having committed before the Court on 26.05.2017, that on receiving the response from the investigating authority the Commission is



ready to comply with the direction of this Court, now the delaying tactics adopted by the Commission is nothing but a deliberate malafide act of the Commission to deprive to the petitioners.

Heard learned counsel for the parties at length and have bestowed my anxious consideration to the issues involved in the matter. Before proceeding to consider the rival conditions it would be appropriate to take note of the fact that these are contempt petition and this Court is exercising its jurisdiction under Article 215 of the Constitution, and the provision of the Contempt of Court Act. In the case of *Anil Ratan Sarkar* (supra) relied upon by Shri Kanth, the Hon'ble Supreme court has held that the contempt of court Act is a powerful weapon in the hands of the Court for the purposes of imbuing confidence in the people and to ensure the due and proper administration of justice and that being the purpose, the power should be exercised cautiously in the larger interest of the sociality and when the Court is satisfied beyond doubt as to the guilt of an accused as well as the bonafides of the complainant then only action should be taken, The Court should intervene only when fairness or bonafide is lacking in the decision taken by the Government or the decision making process.

The scope and jurisdiction available to this Court and the manner in which power should be exercised has been crystallized by



the Hon'ble Supreme Court from paragraphs 13 to 15 of the judgment in the case of **Anil Rartan Sarkar** (supra) in the following manners:

*"13. Before proceeding with the matter further, certain basic statutory features ought to be noticed at this juncture. [The Contempt of Courts Act, 1971](#) has been introduced in the Statute Book for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country undoubtedly a powerful weapon in the hands of the law Courts but that by itself operates as a string of caution and unless thus otherwise satisfied beyond doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Statute. The observation as above finds support from a decision of this Court in [Chhotu Ram v. Urvashi Gulati & Anr.](#) (2001 (7) SCC 530), wherein one of us (Banerjee, J.) stated as below :-*

*"2. As regards the burden and standard of proof, the common legal phraseology "he who asserts must prove" has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the "standard of proof", be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the [Contempt of Courts Act](#) is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt."*



*“14. Similar is the situation in [Mrityunjoy Das & Anr. v. Sayed Hasibur Rahaman & Ors.](#) (2001 (3) SCC 739) and as such we need not dilate thereon further as to the burden and standard of proof vis- a-vis the [Contempt of Courts Act](#) - Suffice it to record that powers under the Act should be exercised with utmost care and caution and that too rather sparingly and in the larger interest of the society and for proper administration of the justice delivery system in the country. Exercise of power within the meaning of the Act of 1971 shall thus be a rarity and that too in a matter on which there exists no doubt as regards the initiation of the action being bona fide.*

*“15. It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a "civil contempt" within the meaning of [Section 2\(b\)](#) of the Act of 1971 the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the wilful nature of the conduct if raised, question of success in a contempt petition would not arise.”*

From the aforesaid analysis of the legal principles it is clear that action can be taken when willful disobedience is established. But at the same time, the power has to be exercised with utmost care and caution and if an order is subject to two different interpretations then contempt action should not be initiated. Even though when the writ petition was pending consideration, the Commission did make a statement with regard to appointment of



266 candidates and the 43 candidates, there is only a mandamus for appointment of 266 candidates, with regard to the remaining candidates no mandamus was issued. Instead, from the order passed and the final direction issued which is reproduced hereinabove, it would be seen that the Commission was granted liberty to take an appropriate decision after completion of the investigation in accordance with law. Once there was no mandamus or positive mandate to appoint, but the Commission was given the discretion to take an appropriate action in accordance with law, I have no iota of doubt that discretion for taking action was available with the Commission and it is only if there are other overwhelming materials available on record to show that the discretion exercised by the Commission was an arbitrary decision tainted with malafide, only to cause harm to the petitioners and denying them the benefit, can this Court record a finding of a deliberate breach or disobedience of its direction.

That being so, at this stage it would be appropriate to take note of various facts relevant for considering the aforesaid questions. Even though at the interim hearing of the matter this Court had asked the Commission as to what action it is taking after investigation is over and the Commission had taken time; merely because some observations are made in the interim order and after



filing of the first show cause the Commission was directed to file a supplementary show cause, it cannot be said that this Court in the interim order itself ordered the Commission to grant appointment to the petitioners. On the contrary, on going through the procedure of the Commission held on 27<sup>th</sup> July, 2016, it is seen that after taking note of the order passed in CWJC No. 5571 of 2013 and other cases and taking note of the various reports and various other issues so also the order passed by Co-ordinate Benches in other writ petitions pertaining to junior engineers and by considering the opinion given by the Chief Minister so also the fact about the process of appointment being initiated in the year 2007, a decision is taken not to proceed with the process of selection any further, instead to initiate fresh process. Contention of the learned Sr. Counsel appearing for the applicants that this was a malafide decision is not correct. The opinion of the Chief Minister on 29.12.2015 may be much before the investigation was concluded, but the opinion of the Chief Minister dated 29.12.2015 is also on record and it is seen that in a meeting of the Chief Minister held for reviewing the performance of the General Administration Department various issues pertaining to working of the Commission and various other departments were undertaken and one of the issues considered was the delay in finalizing the appointment process of Accountant,



Junior Engineers, and others and taking note of all the serious infirmities the Chief Minister expressed an opinion that the Commission may conduct the selection process afresh and final decision was left to be taken by the Commission. That being so, the recommendation of the Chief Minister dated 29.12.2015 has nothing to do with the direction issued by this Court or the undertaking of the Commission, instead when the Commission met on 27.07.2016 reference to the opinion of the Chief Minister was made and it can be said that it also formed a basis for taking a decision. From the show cause filed by the Commission it is seen that they have taken action after taking note of various factors which included cancellation of the examination of the Junior Engineers wherein also identical and similar allegations were there, the process of appointment initiated in 2007 which has not been finalized till now and the effect of the charge-sheet filed by the Economic offences Wing with regard to the issue in question in the criminal court. If after taking note of all these issues cumulatively and if after considering the fact that the Court while disposing of the writ petitions gave discretion to the Commission to take an appropriate decision in accordance with law, I am of the considered view that the decision taken by the Board cannot be termed as arbitrary, willful or a decision taken with malafide.



In a contempt proceeding, to exercise jurisdiction and for punishing the contemners apart from the judgments rendered in the case of *Anil Ratan Sarkar* (supra) there are catena of judgments which all lay down similar principles, cautioning this Court not to initiate action for contempt merely on the asking and merely because some infirmity or an error is found in implementing a direction issued by this Court. The Court is required to examine the matter meticulously and can proceed only if there are materials to show beyond reasonable doubt that a mandamus issued or a direction given by the Court has been deliberately or willfully disobeyed. However, if an order is ambiguous in terms, gives room for different interpretations and also indicates that the authority has to act to judge the facts of the case in a particular manner, then there being discretion to the authority it is not appropriate to hold that the manner in which the discretion is exercised by the authority amounts to disobedience of the order passed by this Court. In this case, it may be taken note of that with regard to 43 candidates the Commission was only directed to take appropriate decision after completion of the investigation in accordance with law.

Once the discretion was bestowed with the Commission to take an appropriate decision and after evaluating the totality of the circumstances for various reasons as are indicted in the fourth show



cause filed by the Commission has taken a decision this Court cannot initiate proceeding for contempt, unless the decision is held to be illegal or unsustainable. This can be done only if the petitioners challenge the action in an appropriate forum in accordance with law and by exercising its jurisdiction the appropriate court evaluating the manner in which the decision has been taken can deal with the matter and intervene. For initiating action for contempt the decision has to be held as a willful breach or disobedience and for holding there to be willful breach or disobedience there has to be positive mandamus or direction and in the absence of the same when an order is capable of different interpretations or if the order is passed in a form which indicates availability of discretion to an authority for taking action the power of contempt cannot be utilized by holding that the discretion exercised should have been in an particular manner. In my considered view, this is not a case where it can be held that the respondents have committed willful disobedience of an order passed by this Court. On the contrary, this Court is satisfied that the respondents were granted liberty to decide the matter in accordance with law and if the Commission had taken a decision in view of the discretion given to it. I do not see any reason to proceed further in the matter for taking action for contempt. Accordingly, finding no



ground, the respondents are discharged from the proceedings and the application is disposed of.

However, liberty shall be available to the petitioners to challenge the decision in accordance with law before an appropriate court and nothing in this order or the observations made therein shall come in the way of the petitioners in doing so. It may be clarified that all of the observations made are only for the purposes of examining the question as to whether the case for initiating action for contempt is made out and for nothing more.

With the aforesaid, the Contempt Petitions are dismissed.

**(Rajendra Menon, CJ)**

mrl./-

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| AFR/NAFR          | AFR        |
| CAV DATE          | N.A.       |
| Uploading Date    | 14/11/2017 |
| Transmission Date | N.A.       |

