

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

SUO MOTU CONTEMPT PETITION NO.11 OF 2010

High Court on its own Motion	.. Petitioner.
Vs.	
Kuntal Mukherjee, Manager (Retail Sales), Mumbai Divisional Office, Indian Oil Company	.. Respondent.

Ms. Tanmayi Gadre with Mr.Sunil Gangan and Jayesh Mestry i/b
RMG Law Associates for the Respondent.
Ms. R.M. Gandhi Addl.P.P. for the State.

CORAM : A.S. OKA & A.K. MENON, JJ.

DATED : 30TH MARCH, 2017

P.C.

1. Perused the order dated 29th October, 2010 passed by the Division Bench of this Court. A show cause notice has been issued to Shri Kuntal Mukherjee, Manager (Retail Sales), Indian Oil Corporation calling upon him to show cause as to why Contempt action under Article 215 read with Section 14 of the Contempt of Courts Act, 1971 should not be initiated against him. Paragraph 1 of the order dated 29th October, 2010 records factual aspects. In paragraph 2, it is recorded that interview call letters dated 3rd June, 2010 were signed by another officer of the Petroleum company and not by Shri Kuntal Mukherjee. In paragraph 2, the Division Bench observed that while filing affidavit-in-reply to the Writ Petition, Shri Mukherjee suppressed material facts which prima facie amounts to criminal contempt.

2. There is a reply filed by Shri Kuntal Mukherjee to the show cause notice. In paragraph 8 of the reply, he has stated that just before filing the affidavit dated 8th September, 2010 he had joined the concerned department. He has stated that while holding conference with the Advocate, he had appraised the Advocate of all the relevant facts and in fact these facts were pointed out to the Court when the matter was heard on 24th September, 2010. He specifically stated that in fact an additional affidavit affirmed on 28th September, 2010 containing the said facts was served upon the Advocate for the petitioner in the Writ Petition. However, on 29th September, 2010 the Court declined to take up the said affidavit on record.

3. In paragraph 9, he has stated that based upon perusal of the record, he had prepared parawise comments which were sent to the Advocate on record for drafting the affidavit in reply. He has stated that as the petition dealt with the facts only till the date of rejection of the application filed by the writ petitioner, in the parawise comments, he has dealt with only those facts.

4. We have perused the judgment and order dated 29th September, 2010. From paragraph 9 of the judgment, it does appear that the relevant facts were brought to notice of the Division Bench. Paragraph 9 records the submission that after canceling entire

selection process it was decided to conduct de-novo selection process by re-advertising subject vacancies. After having perused the said order and the affidavit-in-reply of Shri Mukherjee, we are of the view that the failure to disclose the relevant facts is not at all willful or intentional. In our view, Shri Mukherjee has not committed criminal contempt.

5. In our view, this is not a fit case to initiate action under the Contempt of Courts Act, 1971 or under Article 215 of the Constitution of India. No action against Shri Mukherjee for committing criminal contempt.

6. Accordingly, the notice issued under the order dated 29th October, 2011 is discharged. Contempt petition is disposed of.

(A.K. MENON, J.)

(A.S. OKA, J.)