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**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**W.P.(C) 6278/2017**

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**Reserved on : 9<sup>th</sup> August, 2017**

**Date of decision : 23<sup>rd</sup> August, 2017**

JUSTICE C.S. KARNAN . .... Petitioner

Through : Mr. Mathews J. Nedumpara, Adv.

versus

THE HONBLE SUPREME  
COURT OF INDIA & ORS

..... Respondents

Through : Mr. Sanjay Jain, Sr. Adv. with Mr.  
Gaurang Kanth, CGSC for UOI along  
with Ms. Biji Rajesh, Mr. Pushkar  
Taimni, Ms. Eshita, Ms. Shipra Garg  
and Ms. Shantala Sankrit, Advs.  
Mr. Preet Pal Singh and Ms. Priyam  
Mehta, Advs. for R-7.

**CORAM:**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**JUDGMENT**

**GITA MITTAL, ACTING CHIEF JUSTICE**

*“A Judge is required to maintain decorum and sanctity which are inherent in judicial discipline and restraint. A Judge functioning at any level has dignity in the eyes of public and credibility of the entire system is dependent on the use of dignified language and sustained restraint, moderation and sobriety. It is not to be forgotten that independence of the Judiciary has an insegregable and inseparable link with its credibility. ...”*

*Dipak Misra, J. in  
Amar Pal Singh v. State of U.P.,  
(2012) 6 SCC 491 (para 27)*

1. The instant writ petition has been instituted by a former Judge of the High Court of Calcutta who stands convicted for criminal contempt of court by an order dated 9<sup>th</sup> May, 2017 by a seven Judge Bench of the Supreme Court of India and sentenced to undergo imprisonment for a period of six months. Before discussing the challenge laid by the petitioner, we may usefully notice the proceedings undertaken by the Supreme Court against him.

2. On the 8<sup>th</sup> of February 2017, a seven Judge Bench comprising of senior most members of the Supreme Court, taking note of the correspondence addressed by the petitioner to the highest echelons of judicial authorities, instituted *suo motu* contempt against him and directed issuance of notice to show cause to the petitioner as to why proceedings be not initiated against him and directed him to remain personally present in court on the next date of hearing. The notice was issued, returnable on 13<sup>th</sup> February, 2017. While issuing notice, the petitioner was *inter alia* restrained from handling any judicial or administrative work, as may have been assigned to him in furtherance of the office held by him.

3. In response to the order, the petitioner addressed a letter dated 10<sup>th</sup> of February 2017 to the Secretary General of the Supreme Court *inter alia* contending that the *suo motu* proceedings registered as *Suo Motu Cont.Pet.(C)No.1/2017* against a sitting judge of the High Court were not maintainable. At the same time, the petitioner made further serious allegations in the said communication.

4. On the 13<sup>th</sup> of February 2017, the communication dated 10<sup>th</sup> February, 2017 was placed before the Bench which noted that every

page of the communication bore the petitioner's signatures and the same was taken on record. The Supreme Court noted that despite due notice, neither the petitioner was present nor was he represented by anybody authorized by him to do so. The court had refrained from proceeding in the matter and deferred the hearing to 10<sup>th</sup> of March 2017, once again directing the petitioner to remain present in person on the next date.

Notice in terms thereof was duly received by the petitioner on 15<sup>th</sup> February, 2017.

5. On the 10<sup>th</sup> of March 2017, instead of appearing in person, as directed, the petitioner sent a fax dated 8<sup>th</sup> of March 2017 seeking a meeting with the Chief Justice of India and other Judges of the Supreme Court to discuss administrative issues expressed therein. The court, on the 10<sup>th</sup> of March 2017, observed that *"the above fax message, dated 08.03.2017, cannot be considered as a response of Shri Justice C.S. Karnan, either to the contempt petition, or to the notice served upon him."*

In view thereof, the court observed that it had no alternative and directed securing the presence of the petitioner by issuance of bailable warrants in the sum of Rs.10,000/- to the satisfaction of the arresting officer, returnable for the 31<sup>st</sup> of March 2017.

6. It was only in answer to the bailable warrants, that the petitioner appeared before the Bench on the 31<sup>st</sup> of March 2017. The petitioner handed over a letter dated 25<sup>th</sup> of March 2017 to the court. The petitioner was given another opportunity to orally respond to his communications which were on record, in any manner. The court also

observed that it would proceed in the matter only after receipt of his written response by way of an affidavit. The petitioner was given a second opportunity of four weeks to file a response to the notice to show cause to respond to the factual assertions made in his correspondence. The court directed the petitioner to remain present on the next date of hearing as well. We extract hereunder the relevant portion of the order dated 31<sup>st</sup> March, 2017 which reads as follows :

*“1. Shri Justice C.S. Karnan has entered appearance in Court in person. He was repeatedly asked, whether he affirms the contents of the letters, written by him, as are available on the record of the case. He was also asked whether he would like to withdraw the allegations. The instant latter query was made on the basis of a letter dated 25.03.2017, which Shri Justice C.S.Karnan personally handed over to us, in Court today. He has not responded, in any affirmative manner, one way or the other. We would therefore proceed with the matter only after receipt of his written response. Shri Justice C.S.Karnan is hereby called upon to respond to the factual position indicated in the various letters, addressed by him to this Court, within four weeks from today. His response shall be filed by way of an affidavit. Shri Justice C.S.Karnan is directed to appear in Court in person on the next date of hearing.*

*2. The repeated requests of Shri Justice C.S.Karnan, that he should be permitted to discharge judicial and administrative duties, are declined.”*

7. In the next hearing, on the 1<sup>st</sup> of May 2017, the court observed thus :

*“2. Ever since the initiation of these proceedings, he has been **expressing further disrespect to this Court**, he has also*

*been making press statements with abject impunity. However, after the last order dated 31.3.2017, he is stated to have issued orders (purported to be judicial) against the members of this Bench, as also, another Hon'ble Judge of this Court. Those orders have been received in the Registry of this Court, and are part of the present compilation. ...”*

*(Emphasis by us)*

The court therefore, took cognizance of the orders passed by the petitioner and prohibited all courts, tribunals, commissions and authorities from taking cognizance thereof which had been passed after the 8<sup>th</sup> of February 2017.

8. It is noteworthy that the court also made observations on the medical condition of the petitioner in para 3 of the order observing thus :

*“3. The tenor of the press briefings, as also, the purported judicial orders passed by Shri Justice C.S. Karnan, prima facie suggest, that he may not be in a fit medical condition, to defend himself, in the present proceedings. We therefore consider it appropriate, to require him to be medically examined, before proceeding further. ...”*

9. It must also be noted that yet another, a third, opportunity was also granted by the court to the petitioners to furnish his response to the notice dated 8<sup>th</sup> February, 2017. The Supreme Court Bar Association was permitted to intervene in the matter also. The case was adjourned to 9<sup>th</sup> of May 2017.

10. The petitioner chose not to appear before the Supreme Court on the 9<sup>th</sup> of May 2017 whence the court heard the ld. Senior Counsels who were present and passed the following short order :

*“2. On merits, we are of the considered view, that Sri*

*Justice C.S. Karnan, has committed contempt of the judiciary. His actions constitute contempt of this Court, and of the judiciary of the gravest nature. Having found him guilty of committing contempt, we convict him accordingly. We are satisfied to punish him by sentencing him to imprisonment for six months. As a consequence, the contemnor shall not perform any administrative or judicial functions.*

3. *Detailed order to follow.*

4. *The sentence of six months imposed by this Court on Sri Justice C.S. Karnan, shall be executed forthwith, by the Director General of Police, West Bengal, or through a team constituted by*

5. *Since the incident of contempt includes public statements and publication of orders made by the contemnor, which were highlighted by the electronic and print media, we are of the view, that no further statements made by him should be published hereafter. Ordered accordingly.*

6. *Disposed of in the aforesaid terms.”*  
*(Emphasis supplied)*

11. The above order could be executed with difficulty. The writ petitioner states that as on date he stands arrested and as on date is undergoing the sentence awarded to him.

12. The petitioner thereafter instituted a substantive writ petition under Article 32 of the Constitution of India *inter alia* seeking a declaration that the entire proceedings at the Supreme Court culminating in the order dated 9<sup>th</sup> of May 2017 were unconstitutional and void. Additionally, the petitioner had also filed an application seeking recall of the order dated 9<sup>th</sup> of May 2017, contending that the order was rendered *void ab initio*. In the writ petition, it was contended that despite approaching several Advocate on Records (AORs), the petitioner was unable to secure services of an AOR for

the purposes of filing his writ petition. Consequently, the matter was mentioned on the 11<sup>th</sup> of May 2017 before the court of the Chief Justice of India and oral directions were made to the Registry to accept the petitioner's writ petition. The petitioner makes a grievance that the Registry refused to accept the same as also the Registrar General of the Supreme Court of India. It is submitted that the matter was accepted by the Registry only after it had to be mentioned three times before the court.

13. The petitioner submits that his writ petition was still not listed and that, by the letter bearing No.D.No.2427/2017/x dated 15<sup>th</sup> of May 2017 addressed by the Assistant Registrar (Judicial), the decision dated 12<sup>th</sup> of May 2017 of the Registrar (J-I) declining registration of the writ petition invoking Order XV Rule 5 of the Supreme Court Rules, 2013 was conveyed to him.

14. The petitioner has consequently, filed the present writ petition *inter alia* seeking a declaration that the respondent no.5 – Registrar (Judicial) of the Supreme Court of India, who declined registration of the writ petition of the petitioner, was not competent to entertain and adjudicate the writ petition.

15. As Annexure 'B', the petitioner has annexed a copy of the writ petition which was filed by him in the Supreme Court. We find that the prayers made by the petitioner in the present writ petition from prayers (a) to (g) are identical to the prayers made at prayers (a) to (g) in the writ petition before the Supreme Court of India. These prayers read as follows :

“a. Declare that the notice dated 08/02/2017 issued against

*the Petitioner to show cause as to why proceedings under the Contempt of Courts Act, 1971 should not be initiated against him and all further proceedings in furtherance thereof, culminating in the order dated 9<sup>th</sup> May, 2017 (Annexure D at pages 60 to 63), are unconstitutional and void inasmuch as they are against the principles of natural justice;*

*b. declare that the Contempt of Courts Act, 1971, and in particular Sections 2(c), 12, 14(3), 15 and 17(5) thereof, is unconstitutional and void inasmuch as the said Act and the said Sections thereof are violative of Part III of the Constitution, particular Articles 14, 19, 20 and 21 thereof; so too the principles of natural justice, presumption of innocence and the principles contained in the maxims nemo tenebatur prodere seipsum “evidence against a subject ought not to be wrung out of him but the offence has to be proved against him by other men and means”, accusare nemo se debet nisi coramdeo, “nobody is bound to incriminate himself” and nemo tenetur seipsum accusare “no one shall be compelled to bear witness against himself”.*

*c. In the alternative and without prejudice to prayer (a) above, declare that the elementary principles of criminal jurisprudence, namely, that presumption of innocence and the principles contained in the maxims nemo tenebatur prodere seipsum “evidence against a subject ought not to be wrung out of him but the offence has to be proved against him by other men and means”, accusare nemo se debet nisi coramdeo, “nobody is bound to incriminate himself” and nemo tenetur seipsum accusare “no one shall be compelled to bear witness against himself”, be read into the statute;*

*d. declare that Clause (b) of Section 13 of the Contempt of Courts Act, 1971, which provides that “the court may permit, in any proceedings for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide”, is unconstitutional and void inasmuch as it does not provide*

*justification by truth as an absolute defence and the person who relies on the said defence is all likely to be proceeded against for aggravated contempt, for, the truth which he pleads in defence of his innocence offers no protection from being not constituting to be an offence of contempt/aggravated contempt;*

*e. declare that the law declared by the Supreme Court shall be binding on all courts within the territory of India, nay, the judgments of the Supreme Court which constitute to be precedents and thus often described as the law of the land in terms of Article 141 of the Constitution constitute to be law of the land only where they are in consonance with Part III of the Constitution and not binding precedents where such “law declared by the Supreme Court of India” is in violation of Part III of the Constitution and thus null and void; so too declare that the Supreme Court and the High Courts fall within the ambit of the word “State” as defined in Article 12 of the Constitution;*

*f. Declare that the right to life within the meaning of Article 21 of the Constitution of India takes within its ambit a right of appeal, which will invest in a person convicted for a criminal offence, a right to seek complete re-appreciation of the case, both on facts and law, by a superior Court or Tribunal and where the conviction is at the hands of the Supreme Court as a fact-finding body, then an intra-Court appeal to a larger Bench of the very same Court itself;*

*g. declare as a corollary to prayer (g) above that the Contempt of Courts Act, 1971, in so far as it does not provide for an intra-Court appeal against a conviction and sentence at the hands of the Supreme Court of India as a fact-finding Court, is unconstitutional and void inasmuch as the said Act does not provide for a provision of appeal against its own order of conviction and sentence;”*

16. The only additional prayers made before this court are contained in paras (h) to (k) which read as follows :

*“h. To declare that Respondent No.5, Registrar (Judicial-I), Supreme Court of India, who has passed the impugned order dated 12<sup>th</sup> May, 2017 declining registration of the Writ Petition at the hands of the Petitioner under Article 32 of the Constitution through his counsel is residing/situate within the jurisdiction of this Hon’ble Court and this Hon’ble Court is competent to entertain and adjudicate the instant Writ Petition;*

*i. To declare that Order XV Rule 5 of the Supreme Court Rules, 2013 is unconstitutional and void inasmuch as it has meant substitution of the Supreme Court by its Respondent No.5, Registrar (Judicial-I), the Registrar (J-I) acting as if he is the Supreme Court;*

*j. To declare that Order-V, Rule (b) and Rule-7(c) of the Supreme Court Rules, 2013, which permits registration of applications/petitions only at the hands of an Advocate on Record of the Supreme Court is ultra vires section 30 of the Advocates Act, 1961, unconstitutional and void and, at any rate, where no Advocate on Record is forthcoming to be on record, an application/petition through any Advocate who is a member of a State Bar Council deserves to be entertained;*

*k. To declare that Section 30 of the Advocates Act, 1961, which came into effect from 15/06/2011, which invest a right in every Advocate enrolled with a State Bar Council, to practice in any Court or Tribunal in India, including the Supreme Court of India, will supervene Order-V, Rule 1(b) and Rule-7(c) of the Supreme Court Rules, 2013, which provides that applications/petitions can be filed only through an Advocate on Record of the Supreme Court;”*

17. It is noteworthy that during the submissions made before us, the petitioner has not pressed the prayers made at (i), (j) and (k) and has therefore, not pressed the challenge to the constitutionality of Rule 1(b) and Rule 7(c) of Order IV (*wrongly typed as Order V in the writ petition*) of the Supreme Court Rules, 2013 or the *vires* of Section 30 of the Advocates Act, 1961. Even otherwise, the grounds on which this challenge is premised are no longer *res integra* and stand authoritatively decided by judicial pronouncements of this court and affirmed by the Supreme Court which we shall notice hereafter.

18. We have heard Mr. Mathews J. Nedumpara, Id. counsel for the petitioner at length in support of the challenge laid by him and Mr. Sanjay Jain, Id. ASG for the UOI.

**Challenge to the order dated 12<sup>th</sup> of May, 2017 of the Registrar (Judicial-I) of the Supreme Court of India**

19. In the order dated 12<sup>th</sup> of May 2017, the Registrar (Judicial-I) of the Supreme Court has noted that the challenge in the writ petition, which was substantially laid to the order dated 9<sup>th</sup> May, 2017, holding the petitioner guilty of contempt, was a nullity. The Registrar (Judicial-I) has noted that the petitioner was seeking a declaration that the entire proceedings of the court against the petitioner were *void ab initio*.

20. Placing reliance on the pronouncements of the Supreme Court in *(1966) 3 SCR 744 (page 129), Naresh Shridhar Mirajkar & Ors. v. State of Maharashtra & Anr.; (1988) 2 SCC 602, A.R. Antulay v. R.S. Nayak; (2001) 5 SCC 42, Ajit Kumar Barat v. Secretary, Indian*

***Tea Association & Ors.***, the Registrar (Judicial-I) of the Supreme Court observed that it was fairly well settled that the judicial proceedings of the court were not amenable to writ jurisdiction under Article 32 of the Constitution of India. It was therefore, held that the writ petition was not maintainable and the relief lay somewhere else. For this reason, the registration under provisions of Order XV Rule 5 of the Supreme Court Rules, 2013 was denied to the petitioner.

**Alternative remedy not availed**

21. Proceedings before the Supreme Court are governed by the Supreme Court Rules, 2013. We may usefully extract Order XV Rule 5 of the Supreme Court Rules, 2013 which provides a remedy to a person aggrieved by an order passed by the Registrar and reads as follows :

*“5. The Registrar may refuse to receive a petition on the ground that it discloses no reasonable cause or is frivolous or contains scandalous matter but the petitioner may within fifteen days of the making of such order, appeal by way of motion, from such refusal to the Court.”*

22. The Supreme Court Rules therefore, have envisaged a remedy being an appeal within 15 days of the making of the order of refusal by the Registrar to receive a petition on the ground that it discloses no reasonable cause. The petitioner therefore, had an efficacious alternate remedy available to him by way of an appeal prescribed under the Rules and has admittedly failed to invoke the same.

**Maintainability of the writ petition**

23. Before us Mr. Nedumpara, Id. counsel for the petitioner submits that the proceedings before the Supreme Court of India were a nullity *inter alia* for the reason that the orders were passed in violation of principles of natural justice and that the petitioner has a legal right to seek issuance of a declaration to this effect, under Article 226 of the Constitution of India. Mr. Nedumpara also sets up a contradictory plea that he was not seeking an issuance of a writ against the Supreme Court but only seeking issuance of a writ against the Registrar of the court.

24. It is not disputed that the proceedings, which commenced upon the passing of the order dated 8<sup>th</sup> of February 2017 and culminated in the final order dated 9<sup>th</sup> of May 2017, were judicial proceedings initiated *suo motu* by the court.

25. It is also to be noted that the petitioner has chosen not to file or challenge the detailed order dated 9<sup>th</sup> of May 2017 passed by the Supreme Court of India recording its reasons for conviction of the petitioner as well as the sentence. The petitioner has not even annexed this order with the writ petition. No ground of challenge thereto is laid in the writ petition. No objection thereto is pressed orally.

26. So far as the challenge to judicial orders by way of writ petition is concerned, we may usefully refer to the pronouncement of the Supreme Court reported at ***AIR 1967 SC 1 : 1996 (3) SCR 744, Naresh Shridhar Mirajkar & Ors. v.. State of Maharashtra & Anr.*** wherein the Supreme Court was concerned with the challenge to

orders passed under Order XXXV Rule 12 and Order XXXIX Rule 1 of the CPC in a defamation case forbidding publication of the evidence, first under Article 226 of the Constitution of India and then before the Supreme Court of India under Article 32 of the Constitution of India for enforcement of fundamental rights under Article 19(1)(a) and (g) of the Constitution. On this challenge, the majority of the Supreme Court speaking through *Gajendragadkar, C.J., inter alia* observed as follows :

*“122. I may dispose of a few results which it was suggested, might flow from my view that this Court can issue a high prerogative writ to the High Court for enforcement of fundamental rights. It was suggested that the High Courts might issue writs to this Court and to other High Courts and one Judge or Bench in the High Court and the Supreme Court might issue a writ to another Judge or Bench in the same Court. This is an erroneous assumption. To begin with the High Courts cannot issue a writ to the Supreme Court because the writ goes down and not up. Similarly, a High Court cannot issue a writ to another High Court. The writ does not go to a court placed on an equal footing in the matter of jurisdiction. ...”*

*(Emphasis by us)*

27. Reference may also be made to the pronouncement of the Supreme Court reported at (2015) 9 SCC 461, *Riju Prasad Sarma & Ors. v. State of Assam & Ors.* Taking note of the pronouncement in *Mirajkar*, it was observed as follows :

*“68. Hence, in accordance with such judgments holding that the judgments of the High Court and the Supreme Court cannot be subjected to writ jurisdiction and for want of*

*requisite governmental control, judiciary cannot be a State under Article 12, we also hold that while acting on the judicial side the courts are not included in the definition of the State. ...”*

*(Emphasis supplied)*

28. We may at this stage, notice a complete mis-statement made by Mr. Nedumpara, Id. counsel for the petitioner in the writ petition. In para 19 of the writ petition, the petitioner has placed reliance on the pronouncement of the Supreme Court reported at **(1988) 2 SCC 602, A.R. Antulay v. R.S. Nayak** and wrongly asserted that the Supreme Court has, “*while declining a writ of certiorari at the hands of a Bench of two Judges against an order of a Bench of five Judges made it clear that the order of the Five-Judge Bench, which was one rendered without jurisdiction, could be challenged before the High Court*”.

We have repeatedly queried Mr. Nedumpara, Id. counsel for the petitioner to point out from the pronouncement in **A.R. Antulay** where the Supreme Court has so held. He was unable to do so.

29. In this regard, we may usefully also advert to the pronouncement of the Supreme Court reported at **(2002) 4 SCC 388, Rupa Ashok Hurra v. Ashok Hurra** wherein *SSM Quadri, J.*, speaking for the majority had occasion to consider the pronouncement in **A.R. Antulay** and held thus:

*“10. On the question whether a writ of certiorari under Article 32 of the Constitution could be issued to correct an earlier order of this Court, Mukharji and Natarajan, JJ. concluded that the powers of review could be exercised under either Article 136 or Article 32 if there had been deprivation of fundamental rights. Ranganath Misra, J. (as he then was) opined that no writ of certiorari was permissible as the*

***Benches of the Supreme Court are not subordinate to the larger Benches of this Court. To the same effect is the view expressed by Oza, Ray, Venkatachaliah and Ranganathan, JJ. Thus, in that case by a majority of 5:2 it was held that an order of the Supreme Court was not amenable to correction by issuance of a writ of certiorari under Article 32 of the Constitution.”***

*(Emphasis by us)*

A reading of the judgment shows that the above assertion by the petitioner and counsel is a complete mis-statement of the principle laid down by the court in ***A.R. Antulay***.

30. In view of the above well settled legal position, the writ petition challenging the orders passed by the Supreme Court in Cont.Pet.(C)No.1/2017 is completely misdirected and untenable. The writ petition laying such challenge before us is misconceived for the same reason and has to be rejected.

***Constitutionality of the Contempt of Courts Act***

31. So far as the challenge to the constitutionality of the Contempt of Courts Act is concerned, it has been pointed out, and rightly so, by Mr. Sanjay Jain, Id. Senior Counsel for the UOI that the Supreme Court of India has not exercised jurisdiction in exercise of powers under the Contempt of Courts Act but has invoked its inherent jurisdiction under Article 129 of the Constitution of India when it has *suo motu* initiated the contempt proceedings against the petitioner. In this regard, the initial order dated 8<sup>th</sup> of February 2017 and the final order dated 9<sup>th</sup> of May 2017 may be adverted to. There is no substance in the contention of Mr. Nedumpara, Id. counsel for the

petitioner that powers under Article 129 of the Constitution of India cannot be invoked without recourse to the Contempt of Courts Act.

32. In the pronouncement of the Supreme Court reported at (2001) 1 SCC 516, ***T. Sudhakar Prasad v. Govt. of A.P. & Ors.***, the court considered the nature and extent of power under Article 129 by the Supreme Court and under Article 215 by the High Court in the following terms :

*“9. Articles 129 and 215 of the Constitution of India declare the Supreme Court and every High Court to be a court of record having all the powers of such a court including the power to punish for contempt of itself. These articles do not confer any new jurisdiction or status on the Supreme Court and the High Courts. They merely recognise a **pre-existing situation that the Supreme Court and the High Courts are courts of record and by virtue of being courts of record have inherent jurisdiction to punish for contempt of themselves. Such inherent power to punish for contempt is summary. It is not governed or limited by any rules of procedure excepting the principles of natural justice. The jurisdiction contemplated by Articles 129 and 215 is inalienable. It cannot be taken away or whittled down by any legislative enactment subordinate to the Constitution. The provisions of the Contempt of Courts Act, 1971 are in addition to and not in derogation of Articles 129 and 215 of the Constitution. The provisions of the Contempt of Courts Act, 1971 cannot be used for limiting or regulating the exercise of jurisdiction contemplated by the said two articles.**”*

*(Emphasis by us)*

33. Reference may also be made to judicial precedents in the pronouncements of the Supreme Court reported at (1993) Supp (1) SCC 529 : AIR 1992 SC 904, ***Pritam Pal v. High Court of Madhya Pradesh, Jabalpur Through Registrar.*** Elaborate discussion by the

Supreme Court, in paras 15 to 24 of this pronouncement on this issue and consideration of the several binding judicial precedents on the subject may usefully be extracted and reads thus :

*“15. Prior to the Contempt of Courts Act, 1971, it was held that the High Court has inherent power to deal with a contempt of itself summarily and to adopt its own procedure, provided that it gives a fair and reasonable opportunity to the contemnor to defend himself. But the procedure has now been prescribed by Section 15 of the Act in exercise of the powers conferred by Entry 14, List III of the Seventh Schedule of the Constitution. Though the contempt jurisdiction of the Supreme Court and the High Court can be regulated by legislation by appropriate legislature under Entry 77 of List I and Entry 14 of List III in exercise of which the Parliament has enacted the Act of 1971, the contempt jurisdiction of the Supreme Court and the High Court is given a constitutional foundation by declaring to be ‘Courts of Record’ under Articles 129 and 215 of the Constitution and, therefore, the **inherent power of the Supreme Court and the High Court cannot be taken away by any legislation short of constitutional amendment.** In fact, Section 22 of the Act lays down that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law relating to contempt of courts. It necessarily follows that the constitutional jurisdiction of the Supreme Court and the High Court under Articles 129 and 215 cannot be curtailed by anything in the Act of 1971. The above position of law has been well settled by this Court in Sukhdev Singh Sodhi v. Chief Justice and Judges of the PEPSU High Court [1954 SCR 454 : AIR 1954 SC 186 : 1954 Cri LJ 460] holding thus: (SCR p. 463)*

*“In any case, so far as contempt of a High Court itself is concerned, as distinct from one of a subordinate court, the Constitution vests these rights in every High Court, so no Act of a legislature could take away that jurisdiction and confer it afresh by virtue of its own authority.”*

**16. It has been further observed: (SCR pp. 463-64)**

*“The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that, the contemnor is made aware of the charge against him and given a fair and reasonable opportunity to defend himself.”*

*17. In R.L. Kapur v. State of Madras [(1972) 1 SCC 651 : 1972 SCC (Cri) 380] a question arose did the power of the High Court of Madras to punish contempt of itself arise under the Contempt of Courts Act, 1952 so that under Section 25 of the General Clauses Act, 1897, Sections 63 to 70 of the Penal Code and the relevant provisions of the Code of Criminal Procedure would apply. This question was answered by this Court in the following words: (SCC p. 654, para 5)*

*“The answer to such a question is furnished by Article 215 of the Constitution and the provisions of the Contempt of Courts Act, 1952 themselves. Article 215 declares that every High Court shall be a court of record and shall have all powers of such a court including the power to punish for contempt of itself. Whether Article 215 declares the power of the High Court already existing in it by reason of its being a court of record, or whether the article confers the power as inherent in a court of record, the jurisdiction is a special one, not arising or derived from the Contempt of Courts Act, 1952, and therefore, not within the purview of either the Penal Code or the Code of Criminal Procedure.”*

*18. After giving the above answer to the query raised, this Court has reiterated the view held in the case of Sukhdev Singh Sodhi [1954 SCR 454 : AIR 1954 SC 186 : 1954 Cri LJ 460] .*

*19. The view expressed in Sukhdev Singh Sodhi [1954 SCR 454 : AIR 1954 SC 186 : 1954 Cri LJ 460] and followed in R.L. Kapur [(1972) 1 SCC 651 : 1972 SCC (Cri) 380] has been referred with approval in a recent decision in Delhi Judicial Service Association v. State of Gujarat [(1991) 4*

*SCC 406] holding that the view of this Court in Sukhdev Singh Sodhi [1954 SCR 454 : AIR 1954 SC 186 : 1954 Cri LJ 460] is “that even after the codification of the law of contempt in India, the High Court's jurisdiction as a Court of Record to initiate proceedings and take seisin of the matter remained unaffected by the Contempt of Courts Act, 1926.”*

*20. Beg, C.J. in S. Mulgaokar, Re [(1978) 3 SCC 339 : 1978 SCC (Cri) 402] has explained the special power of the Supreme Court under Article 129 stating, “This Court is armed, by Article 129 of the Constitution, with very wide and special powers, as a Court of Record, to punish its contempts”. (SCC p. 344, para 6)*

*21. In Delhi Judicial Service Association case [(1991) 4 SCC 406] , it has been pointed out as follows: (SCC p. 437, para 19)*

*“Article 129 provides that 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. Article 215 contains similar provision in respect of High Court. Both the Supreme Court as well as High Courts are courts of record having powers to punish for contempt including the power to punish for contempt of itself.”*

*22. Yet another question whether the provisions of the Code of Criminal Procedure are applicable to such proceedings, has been negatively answered by this Court in Sukhdev Singh Sodhi case [1954 SCR 454 : AIR 1954 SC 186 : 1954 Cri LJ 460] stating thus: (SCR pp. 463-64)*

*“We hold therefore that the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemnor is made aware of the charge against him and given a fair and reasonable opportunity to defend himself.”*

23. See also *Brahma Prakash Sharma v. State of U.P.* [1953 SCR 1169 : AIR 1954 SC 10 : 1954 Cri LJ 238]

*24. From the above judicial pronouncements of this Court, it is manifestly clear that the **power of the Supreme Court and the High Court being the Courts of Record as embodied under Articles 129 and 215 respectively cannot be restricted and trammelled by any ordinary legislation including the provisions of the Contempt of Courts Act and their inherent power is elastic, unfettered and not subjected to any limit. It would be appropriate, in this connection, to refer certain English authorities dealing with the power of the superior court as Courts of Record.***

*(Emphasis by us)*

34. The challenge to the constitutionality of the Contempt of Courts Act in the present case does not lie inasmuch as the Supreme Court has not exercised power under the Contempt of Courts Act but invoked its inherent jurisdiction under Article 129 of the Constitution of India.

**Compliance with principles of natural justice**

35. Mr. Nedumpara, Id. counsel for the petitioner urged at length that the proceedings before the Supreme Court are *void ab initio* and illegal for the reason that principles of natural justice were not complied with.

36. Before considering the petitioner's objections, we may also set down the contours of what compliance with principles of natural justice requires. In *1969 (2) SCC 262 A.K. Kraipak & Ors. v. UOI & Ors.*, the court was concerned with a challenge by the petitioners to the selections which were notified on the ground that they were

vitiated by the contravention of the principles of natural justice as the power conferred on the selection board was a quasi judicial power. Noting also that dividing line between the administrative power and quasi judicial power was being gradually obliterated, the court reiterated that principles of natural justice are not embodied rules and their application and contours depended on the facts and circumstances of the case. The observations of the court deserve to be considered in *extenso* and read as follows :

“20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely : (1) no one shall be a judge in his own case (*Nemo debet esse iudex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. xxx xxx xxx As observed by this Court in *Suresh Koshy George v. The University of Kerala and Others* the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just

*decision on the facts of that case.”*

37. In *AIR 1977 SC 965 The Chairman, Board of Mining Examination and Chief Inspector of Mines and another v. Ramjee*, the Supreme Court had observed that general observations relating to principles of natural justice must be tested on the concrete facts of each case and every minuscule violations do not spell illegality. If the totality of circumstances satisfy the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

38. In *(1977) 2 SCC 741 M/s Shrikrishnadas Tikara Vs. State Government of Madhya Pradesh & Ors.*, the Supreme Court had occasion to consider a challenge to second notice under the Mineral Concession Rules, 1960, Rule 27 (5) when the mining lease already stood cancelled after failure to comply with such earlier notice. The petitioner had set up a plea of contravention of principles of natural justice. In this regard it was held thus:

*“8. ... The lessee having been heard, natural justice has been complied with. The fact in the second notice by the Collector a personal hearing was offered, does not mean that the failure personally to hear the petitioner was a contravention of the canon of natural justice in the first case. It is well-established that the principles of natural justice cannot be petrified or fitted into rigid moulds. They are flexible and turn on the facts and circumstances of each case.”*

39. Even a duty to act fairly can be interpreted as meaning a duty to observe certain aspects of rules of natural justice. A body may be under a duty to give a fair consideration to the facts and to consider the representations, but, not to disclose to those persons details of information in its possession. Sometimes, a duty to act fairly can also be sustained without providing an opportunity for an oral hearing. It will depend on the nature of interest to be affected, the circumstances in which a power is exercised and the nature of the sanctions involved therein. It was so observed in *(1975) 1 SCC 70 Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal & Anr.*

40. In this regard, we may also usefully recollect the observations of *Krishna Iyer, J.* in the pronouncement reported at *(1977) 2 SCC 256, Chairman, Board of Mining Examination and Chief Inspector of Mines & Anr. v. Ramjee* wherein it was held thus :

***“13. ... Natural justice is no unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt — that is the conscience of the matter.”***

*(Emphasis by us)*

The petitioner's bald challenge has to be examined on the

touchstone of these established principles.

41. Mr. Nedumpara, Id. counsel for the petitioner began before us contending that the petitioner was not even served with the notice dated 8<sup>th</sup> of May 2017. This is contrary not only to the record of the court extracted above but also to the averments in the writ petition.

42. In addition, the petitioner's communication dated 10<sup>th</sup> February, 2017 challenges the authority of the court to initiate proceedings which has been placed before the court on 13<sup>th</sup> February, 2017. The record establishes that the petitioner was given more than ample opportunity to file his response. He was afforded at least three opportunities to tender his response, on the 8<sup>th</sup> of February 2017; 31<sup>st</sup> of March 2017 as well as on the 1<sup>st</sup> of May 2017.

43. Instead of availing the opportunities and doing so, the petitioner resorted to passing orders against the Judges of the Supreme Court and making further contumacious statements to the press, as have been noted in the order dated 1<sup>st</sup> May, 2017.

44. Let us also examine the consideration by the court with regard to the status of the petitioner's defence. In this regard, we extract herein paras 31 and 33 of the judgment by *J.S. Khehar, the Chief Justice of India* :

*“31. In the above view of the matter, we would have to rely on the defence tendered by him, in the form of various communications dispatched to this Court from time to time, as also, during the course of hearing, when he appeared in person on 31.3.2017. There is no other alternative with us. We had granted liberty to Justice Karnan vide our order dated 1.5.2017, to furnish his response to the show cause notice (- before 8.5.2017), with the clear indication, that if he*

*choose not to file any response, the Court would proceed with the matter by presuming, that he had nothing more to say.*

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33. We have given our thoughtful consideration to the factual position noticed hereinabove, as also, the submissions advanced by learned counsel, who assisted us during the course of hearing. We have ***carefully examined the text of the letters written by Shri Justice C.S. Karnan, from time to time. We have closely examined the suo-motu procedure adopted by him, whereby he passed orders which were derogatory to the administration of justice, before he was issued notice for contempt, by this Court. We have also carefully analysed the orders passed by Shri Justice C.S. Karnan suo-motu (in the purported exercise of the jurisdiction vested in him under Article 226 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure), even after the issuance of the contempt notice to him, by this Court. His demeanour was found to have become further aggressive, after this Court passed orders from time to time, in this case. The contents of the letters addressed by him contained scandalous material against Judges of High Courts and the Supreme Court. This correspondence was addressed to the highest constitutional authorities, in all three wings of governance – the legislature, the executive and the judiciary. His public utterances, turned the judicial system into a laughing stock. The local media, unmindful of the damage it was causing to the judicial institution, merrily rode the Karnan wave. Even the foreign media, had its dig at the Indian judiciary. None of his actions can be considered as bona fide, especially in view of the express directions issued by this Court on 8.2.2017, requiring him to refrain from discharging any judicial or administrative work. To restrain his abuse of suo-motu jurisdiction, a further order had to be passed by this Court on 1.5.2017, restraining Courts, Tribunals, Commissions and Authorities from taking cognizance of any order passed by Justice Karnan.***

*(Emphasis by us)*

45. Reference also requires to be made to paras 12, 14 and 17 of the judgment authored by *Chelameswar, J.*:

*“12. But one thing appears to be certain. If the above mentioned conduct constitutes contempt, it surely can only be criminal contempt falling under the head of scandalising the Court.*

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*14. Unfortunately, the contemnor never allowed the inquiry in the right direction. On the other hand, he chose to question the jurisdiction of this Court to initiate contempt proceedings against him not on the ground that his activity did not constitute contempt, but on the ground that no contempt proceedings could be initiated against a Judge of a High Court. According to the contemnor the only possible legal action against a Judge of a High Court is to remove him from office in accordance with the procedure of impeachment prescribed under the Constitution – whatever be his “conduct” and “misconduct”, a stand which clearly is untenable in law. He did not stop there. He believed that the initiation of contempt proceedings by this Court against him would constitute an offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as the contemnor belongs to one of those communities falling within the sweep of the protective umbrella of that enactment. He not only believed so, but also purported to pass certain orders ostensibly in exercise of the authority vested in him by virtue of his appointment as a Judge of a High Court to initiate various actions against members of this Bench, the details of which are given in paragraphs 22 to 26. In substance, (i) he accused the members of this Bench guilty of prejudice against him, (ii) “he declared” that the initiation of contempt proceedings against him is malafide judicial action apart from constituting an offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.*

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*17. The power to punish for contempt of court has always*

*been recognized to be inherent in certain superior courts and in others it was conferred by statutes.”*  
(Emphasis by us)

46. As a final reference, it was contended by Mr. Nedumpara, ld. counsel for the petitioner that the petitioner was in law entitled to lead evidence. The record of the proceedings before the Supreme Court would show that the petitioner never sought any such opportunity.

47. The proceedings conducted before the Supreme Court would show that the petitioner was given ample opportunity to file his defence before the court but he chose not to do so.

48. Mr. Nedumpara, ld. counsel for the petitioner has contended before us that the petitioner was under no legal obligation to file a response and was entitled to maintain silence. Unfortunately, the petitioner did not remain silent. The only difference was that instead of filing a response before the court, he chose to make public declarations of his defence and issued orders against the proceedings before the Supreme Court of India. As noted above, the petitioner has not objected before us to the final judgment dated 9<sup>th</sup> of May 2017 by the Supreme Court recording reasons for the petitioner's conviction.

49. It is evident from the above that the petitioner was served with the notice to show cause. He was given repeated and adequate opportunity to present his defence. The petitioner's communications, orders and conduct establish that he had full knowledge of the orders of the court, proceedings as well as the material against him. It needs bearing in mind that the case is not concerned with an illiterate or impoverished person but with a legally trained person, an adjudicator

holding a Constitutional position. The submission that principles of natural justice were not complied with is clearly not borne out from the record.

**Challenge to Advocate on Record Rules, 2013 – not pressed**

50. In the writ petition, though the petitioner has laid a challenge to certain provisions of the Supreme Court Rules, 2013 concerning AORs, he has not pressed the same. In any case, the issue stands decided by a Division Bench pronouncement of this court reported at ***AIR 2012 Delhi 79, Balraj Singh Malik v. Supreme Court of India Thr. Its Registrar General*** wherein in para 23, the court held thus :

*“23. The aforesaid ruling clearly lays down that the words “as to the persons practicing before a Court” appearing in Article 145(i)(a) of the Constitution are comprehensive enough to include a rule not merely as to the manner of practice but also of the right to practice or the entitlement to practice and, therefore, there was no question of conflict between the legislative power of the Parliament and rule making power of the Supreme Court given under Article 145. This Constitution Bench judgment of the Supreme Court explaining the extent and scope of rule making power conferred upon it under Article 145 of the Constitution is the law of the land and has the binding effect even today.”*

*(Emphasis by us)*

51. An order dated 14<sup>th</sup> September, 2015 in ***W.P.(C)Nos.371, 292-93/2015, Arun Kumar & Ors. v. Supreme Court of India*** was passed approving the view of this court in ***Balraj Singh Malik v. Supreme Court of India*** repelling the challenge to Order IV, Rule 1, 5, 7(a)(i),

(b)(i) and 7(c) of the Supreme Court Rules.

52. It would appear that the petitioner has therefore, rightly, not pressed the challenge to the Supreme Court Rules before us.

**Result**

53. In view of the above discussion, we find no merit in this writ petition which is hereby dismissed.

**ACTING CHIEF JUSTICE**

**C.HARI SHANKAR, J**

**AUGUST 23, 2017**

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