IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL SUO MOTO CONTEMPT PETITION NO. 1 OF 2018
IN
WRIT PETITION NO. 13099 OF 2017

High Court in its own Motion .. Petitioner

v/s.

1. M.N. Navale,
The President, Sinhgad Technical
Education Society, Erandwane,
Pune – 411 004

2. Mr. Sadashiv Mokashi
Tax Recovery Officer (Central),
Pune ..Respondents

Mr. J.P. Yagnik, APP for the State.
Mr. Aspi Chinoy, Senior Advocate a/w Mr. V.P. Sawant, Mr. Vijay Patil I/b Mr. Nitin Dhumal for respondent no.1
Mr. Sham Walve for respondent no.2

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.
RESERVED ON: 8th AUGUST, 2018.
PRONOUNCED ON: 28th AUGUST, 2018.

JUDGMENT (Per M.S.SANKLECHA,J.):-

1. The respondent nos. 1 and 2 were served with Notice dated 26th February, 2018 of the Suo Motu Criminal Contempt by the Registry. The above notice was to show-cause as to why action for criminal contempt under the Contempt of Courts Act, 1971 (the Act) should not

be taken against respondent nos. 1 and 2.

2. The contempt notice dated 26th February, 2018 was issued by the Registry consequent to the order dated 5th January, 2018 passed by this Court. The contempt notice, reads as under :-

> *"Criminal Suo-Motu Contempt Petition No.1 of 2018*
>
> *To,*
> *1. Mr. M.N. Navale*
> *President of Sinhgad Technical*
> *Education Soc. Off. Karve Road,*
> *Pune*
>
> *2. Mr. Sadashiv Mokashi,*
> *Tax Recovery Officer (Central)*
> *Salisbury Park, Pune*
>
> *Whereas upon considering the material before it, Hon'ble Court is satisfied that there exists a prima facie case for issuance of a notice for considering action under Contempt of Courts Act against you.*
>
> *AND WHEREAS the same having been registered in this Court as Suo-Motu Contempt Petition No.1 of 2018.*
>
> *AND UPON hearing Adv. Mr. Nitin Dhumal for the petitioner, Adv. Mr. Sham Walve, for the Respondents present in the Court and the Court (Coram : M.S. SANKLECHA & MR. RIYAZ I. CHAGLA, JJ) has on 05.01.2017 passed the following order in Writ Petition No.13099 of 2017.*
>
> *TAKE THEREFORE NOTICE that the aforesaid suo-motu contempt petition has been fixed for hearing on the 05.03.2018 on which date you shall appear in person before this Court and shall continue to remain present during hearing on all subsequent dates on which this Court may seem convenient to fix the matter, till the proceeding is finally disposed off by the order of the Court, and to Show Cause as to why the action under Contempt of Court Act*

should not be initiated against you.

In case of your failure to appear as directed above and to show cause, this Court shall proceed to pass such orders as may deem fit and proper.

Witness Smt. V.K. Tahilramani, Chief Justice at Bombay, Aforesaid this 05th day of January, 2018.

By the Court,
Sd/-
For. Registrar (Judl). and Sealer
SEAL *B.D. Cr.No.: CR06 01990*
Dated : 26-2-18

that this Notice may please be returned duly served on or before 05.03.2018.

HIGH COURT, APPELLATE SIDE.
BOMBAY, 2018 *Sd/- 26.12.18*
For Registrar (Judl.-I)

Encl – Copy of the Criminal Suo Moto Contempt Petition No.1 of 2018."

3. The Criminal Suo Moto Petition No.1 of 2018 is the order dated 5th January, 2018, passed by this Court as under :-

"1. This Petition under Article 226 of the Constitution of India challenges the order dated 10th November 2017 passed by the Income Tax Appellate Tribunal, Pune (Tribunal) on an application for stay under Section 254(2A) of the Income Tax Act, 1961(Act).

2. By the impugned order the Petitioner's application for stay of recovery of demand aggregating to Rs.142.98 Crores was granted on the condition of the Petitioner depositing Rs.18 Crores in three instalments

i.e. Rs.6 Crores each on 30th November 2017, 30th December 2017 and 15th January 2018 pending the disposal of the Petitioner Appeals for

Assessment Years 2009 – 2010 to 2014 – 2015 by the Tribunal. The impugned order dated 10th November 2017 also granted an out of turn hearing on 18th January 2018 subject to the payment of Rs.18 Crores. However impugned order further records that in the absence of complying with the condition of deposit, the stay would stand vacated and the appeals would be heard in the normal course and not on an expeditious basis on 18th January 2018 as a stay granted matter.

3. This Petition was first mentioned on 28th November 2017 seeking an ad-interim relief from depositing the sum of Rs.18Crores in three instalment as ordered by the Tribunal and a stay of recovery proceedings. However, at that time the Petitioner informed the Court that they are in no position to deposit any amount. Thus this court by order dated 28th November 2017 refused to grant any ad-interim relief and the Petition was directed to be placed on board for admission in its own turn.

4.. On 18th December 2017 at 5.00 p.m. this petition was mentioned by the Petitioner for variation of the order dated 28th November 2017 in view of events subsequent to the filing of the Petition viz. the threat of the teaching staff of the Petitioner institution going on strike for non-payment of its salaries. The consequent apprehension of the petitioner that the ongoing Pune University examination in the Engineering courses at which its students are appearing would be affected by the strike resulting in jeopardizing the career of the a large number of its students. In view of the above, we directed the petitioner to serve notice upon the Respondent-Revenue and placed the petition for consideration on board on 19th December, 2017.

5. On 19th December 2017, when the petition was taken up after notice to the Respondent- Revenue, one Mr. Prakash Patil, Constituted Attorney of the Petitioner filed a further affidavit in support of the petition dated 19th December 2017. The affidavit indicated that an amount of Rs.81 Crores is payable to the teaching and other staff of the petitioner institution. The Affidavit further points out although the teaching staff had gone on strike on 18th December 2017, this has not yet affected the Engineering examination being conducted by Pune University which had already commenced. It is further pointed out that the Petitioner is unable to pay the amounts due to its staff as all its bank accounts had been attached under Section 226 (3) of the Act. It further points out that the amount of Rs.9.27 Crores is expected to be received from the Social Welfare Department, Pune, State of Maharashtra before 22nd December 2017 and the Petitioner is desirous of paying the sum of Rs.8 Crores out of Rs.9.27 Crores to be received from the State Government to its staff in its efforts to persuade them to end the strike.

The amount of Rs.1.27 Crores was sought to be kept by it to meet essential expenses such as electricity, telephone, water, etc. charges. At that time, Mr. Walve, the learned counsel for the Respondent – Revenue informed the petitioner that he would inform his officers not to withdraw an amount of Rs.9.27 Crores which is expected to be received from the Social Welfare Department, State of Maharashtra in the attached Bank accounts. This he stated only to ensure that the students of the Petitioner institution do not suffer, particularly in view of the fact that the examination of Pune University of the Engineering course had already commenced. On that date, therefore there was no occasion to pass any order as the amounts had not yet been received by the petitioner in its accounts. Therefore all that the Petitioner requested was to place the Petition today for admission high on Board. This was granted.

6. Today, when the petition was called out Mr. Mistry the learned Senior Counsel who was appearing for the petitioner informed us that he is not appearing and the Petitioner has briefed another Advocate to appear for it. However as an officer of the Court he desired to bring to the notice of the Court the following three communications addressed after the petition had been adjourned on 19th December, 2017:

(a) Letter dated 20 December 2017 addressed by one Mr. M. N. Navale the President of the petitioner society to the Tax Recovery Officer;

(b) Letter dated 21 December 2017 addressed by one Mr. M. N. Navale the President of the petitioner society to the Branch Manager, Punjab National Bank, Nana Peth, Pune; and

(c) Letter dated 21 December 2017 addressed by one Mr. M. N. Mokashi the Tax Recovery Officer(Central) Pune to the Branch Manager, Punjab National Bank, Nana Peth, Pune;

All the above three communications are taken on record and marked A, B and C respectively for identification.

7. Mr. Dhumal for the petitioner and Mr. Walve for the Respondent-Revenue do not dispute in any manner the above three letters which have been marked as A, B and C for identification.

8. The letter dated 20th December 2017 by the Petitioner addressed to the Tax Recovery Officer, Central Pune, reads as under:-

To,
Tax Recovery Officer
Central – Pune
Bodhi Tower, Salisbury Park,
Pune.

Dear Sir,

Sub.: Writ Petition No. 13099 of 2017.

The above writ petition came up for urgent hearing before Hon'ble Bombay High Court yesterday i.e. on 19.12.2017. At the time of hearing Shri Sham V. Walve, Pleader for Income Tax Department was also present.

Shri J.D. Mistri, Senior Counsel appeared on behalf of our Society and pointed out that in view of delay in payment of salaries some staff members of our Engineering and Pharmacy Colleges have commenced strike. He also elaborated on the contents of the affidavit filed by our Society in view of instructions of the Hon'ble Bench on 18.12.2017.

After hearing both the parties, Hon'ble Bench gave following oral directions:-

1. That the amount of which is to be received by our Society from Social Welfare Department in all the bank accounts mentioned in the Affidavit will not be appropriated by Income Tax Department towards its dues till further orders from the Court.

2. That our Society, after receipt of the amounts from Social Welfare Department, should file an affidavit indicating the names of the employees, amounts to be paid to each of them etc. to whom the salary dues will be paid out of the amounts received in the aforesaid accounts.

3. It instructed your pleader to communicate these directions to your honour.

It posted the matter to 05.01.2018 for further hearing on merits of the case.
This is for your information please.

Thanking you,

Yours faithfully

M.N. Navale
Principal.

9. The letter dated 21st December 2017 by the Petitioner addressed to the Branch Manager, Punjab National Bank, Nana Peth, Pune (wherein its bank accounts have been attached) reads as under :-

To,
The Branch Manager
Punjab National Bank
Nane Peth, Pune

Madam,
***Sub.:- Attachment of bank accounts**.*

Income Tax Department has issued notices to your Bank under Section 226(3) of Income Tax Act and attached our Bank accounts with your Bank. We have already filed writ petition before the Hon'ble Bombay High Court seeking directions for stay of demand raised by Income Tax Department. The matter was heard on 18/12/2017 and 19/12/2017 and accordingly we have filed affidavit specifying the details of Bank accounts with your branch where the amounts are likely to be received from Social Welfare Department.

The Hon'ble Court orally directed that the amounts which are to be received in these accounts as per the affidavit are not to be withdrawn by Income Tax Department till further instructions. The advocate of the department who was present in the Court agreed to this.

We are enclosing herewith photocopies of letter no.247 and 250 dated 20.12.2017 by which the copy of the affidavit and the court directions were was forwarded to the Tax Recovery Officer and the Assessing Officer. The letters are self-explanatory.

In view of the above circumstances you are requested not to remit the amounts to be received in these accounts to Income Tax Department till further directions of the Hon'ble Court.

Thanking you,
Yours faithfully,

M.N. Navale

President

Encl.:- as above.

10. Consequent to the aforesaid communication dated 20th December 2017 to the Tax Recovery Officer from the Petitioner's, a letter dated 21st December 2017 was addressed by the Tax Recovery Officer to the Punjab National Bank, Nana Peth, Pune (where the bank accounts of the Petitioner had been attached) reads as under:-

To,
The Branch Manager,
Punjab National Bank,
Nana Peth, Pune.

Sir / Madam,

Sub.:- Bank attachment made in the case Sinhgad Technical Education Society in order to recover the outstanding tax demand-reg.

Kindly refer to the above

1. In this regard, it is intimated that the undersigned has put a restraint on withdrawals from the following bank accounts held by the respective institutions of Sinhgad Technical Education Society (The Assessee) by issue of notice u/s. 226(3) of the Act as per the annexure attached. Now, the assessee, Sinhgad Technical Education Society has approached the Hon'ble High Court stating that it is in dire need of funds receivable from Social Welfare Department to run the educational institutions and to pay the salary of agitating employees.

2. <u>The Hon'ble High Court was pleased to pass oral orders directing the department to allow the assessee to withdraw the funds received by the assessee from Social Welfare Department</u>.

3. <u>In view of the above facts, you are requested to allow the assessee to withdraw the amounts received from the Social Welfare Department only. The restraint put on withdrawal in respect of funds receivable from Social Welfare Department stands withdrawn.</u> However, the restraint to withdraw any other amounts credited is still in force till further orders. The amounts expected to be received also mentioned in the annexure. Kindly take a note of the same."

Yours faithfully
Sd/-
(Sadashiv Mokashi)
Tax Recovery Officer (Central),
Pune.

11. Both Mr. Dhumal the learned Advocate for the Petitioner and Mr. Walve the learned Advocate for the Respondent Revenue who were both present and participants at the hearing held on 19 December 2017 agreed that no oral instructions were given by this Court on 19 December 2017. In fact at no time did we give any oral directions as claimed in the above communications. These oral communications as claimed by the petitioners would in effect vary a written order dated 28 November 2017 of this Court, which can never be done by oral directions.

12. Mr. Dhumal, the learned counsel appearing for the Petitioner states that an amount of Rs. 9.24 Crores which were released by the Social Welfare department of the State Government was received by the Petitioner between 22nd to 26th December 2017 in the attached bank accounts at Punjab National Bank, Nana Peth, Pune. Further on instructions he states that an amount of Rs.9.18 Crores has been withdrawn between 28th December 2017 to 2nd January 2018 by the Petitioner from the attached Bank accounts at Punjab National Bank, Nana Peth, Pune.

13. At this stage Mr. Dhumal, the learned counsel appearing for the Petitioner seeks two days time so as to brief a new counsel to appear for the Petitioner. However, we decline to grant any adjournment in view of the above conduct of misrepresenting of facts by the Petitioner. This conduct disentitles the Petitioner from any prerogative writ under Article 226 of the Constitution being issued in its favour by our exercising our extraordinary jurisdiction.

14. It is undisputed, rather an agreed position between the Advocates of the parties that on 19th December 2017 no oral directions were given by this Court. In fact we passed no order on that date i.e. 19 December 2017 and only adjourned the petition at the instance of the parties to today. All that happened on 19 December 2017 was that Mr. Walve, the learned counsel for the Respondent – Revenue had after hearing the Petitioner's counsel stated that he would instruct his officers not to withdraw the amount of Rs.9.27 Crores which is likely to come into the Petitioner’s attached bank accounts from the State Government. There was no mention by Mr. Walve, the Advocate for the Respondent- revenue, *that the petitioner would be allowed to withdraw the amounts. Nor did we pass any oral directions as stated in the letters or even otherwise. Thus the communication dated 20th December 2017 to the Tax Recovery Officer as reproduced hereinabove as also the communication dated 21 December 2017 of the Petitioner to the Branch Manager, Punjab National Bank, misrepresent that on 19 December 2017 the Court had given oral directions. This coupled with the withdrawal of an amount of Rs. 9.18 Crores from the attached bank accounts without any order/direction from the Court establishes an attempt to overreach the court and disentitles the petitioner to any relief. In fact Mr. Dhumal the learned Advocate for the petitioner submitted that neither of its two letters i.e. letter dated 20th December 2017 to the Tax Recovery Officer or letter dated 21st December 2017 to the Punjab National Bank speaks about allowing the petitioner to withdraw the amount. This is of no solace as by withdrawing the amount of Rs.9.14Crores without any order of the Court, the petitioner's wrongful conduct stands exposed.*

15. It is axiomatic that the extraordinary writ jurisdiction of issuing prerogative writs would not be exercised when the conduct of the petitioner is not clean. A petitioner seeking an extra ordinary relief from the Court is not only expected to come with clean hands but so keep it, till the disposal of the petition. In the above facts we are of the view that the conduct of the petitioner during the pendency of the petition disentitles it to any relief under Article 226 of the Constitution of India. Therefore we dismiss the petition.

16. In view of the facts stated hereinabove, we prima facie find that the conduct of the President of the Petitioner viz, Prof. M.N. Navale, who is author of the letters dated 20th and 21st December 2017 to the Tax Recovery Officer and to the Branch Manager, Punjab National Bank, which are reproduced hereinabove (particularly the underlined portion) would amount to wilful disobedience of the order dated 28th November 2017 of this Court in as much as its application for ad interim relief restraining the Respondent - Revenue from adopting any recovery proceedings(prayer clause (d) of the petition) was rejected. Thus prima facie a civil contempt under Section 2(b) of the Contempt of Courts Act 1971. Further the above two letters dated 20th December 2017 and 21st December 2017 are letters which prima facie interfere or tend to interfere with the due course in judicial proceedings and / or interfere with the administration of justice, Therefore, prima facie a criminal contempt under Section 2 (c) (ii) and (iii) of the Contempt of Courts Act, 1971. We thus take suo moto notice of contempt and direct the Registry to issue two separate notices under the Contempt of Courts Act, 1971 read with Appellate Side Rules one for Civil Contempt and the other for Criminal

Contempt to Mr. M.N Navale the President of the Petitioner Society returnable after 8 weeks on 5 March 2018, to show cause why action for civil and criminal contempt under the Contempt of Courts Act, 1971 should not be taken.

17. We also find prima facie that the letter dated 21st December 2017 addressed by Mr. Sadashiv Mokashi, the Tax Recovery Officer to the Branch Manager, Punjab National Bank, Nana Peth, Pune as reproduced hereinabove (particularly the underlined portion) would amount to willful disobedience of the order dated 28th November 2017 of this Court in as much as its application for ad interim relief restraining the Respondent- Revenue from adopting any recovery proceedings (prayer clause (d) of the petition) was rejected. Thus prima facie a civil contempt under Section 2 (b) of the Contempt of Courts Act 1971. Further the above communication dated 21 December 2017 (particularly the underlined portion) prima facie misrepresenting the order of the Court, interferes or tend to interfere with the due course of judicial proceedings and / or interfere with the administration of justice. Therefore, prima facie a criminal contempt under Section 2 (c) (ii) and (iii) of the Contempt of Courts Act, 1971. We thus take suo moto notice of contempt and direct the Registry to issue two notices under the Contempt of Courts Act, 1971 read with Appellate Side Rules one for Civil Contempt and the other for Criminal Contempt to Mr. Sadashiv Mokashi the Tax Recovery Officer, (Central) Pune returnable after 8 weeks on 5 March 2018 to show cause why action for civil and criminal contempt under the Contempt of Courts Act, 1971 should not be taken.

18. Before parting we would like to place on record our appreciation of Mr. Mistry, the learned Senior Counsel who has as an officer of the Court brought to our notice the above facts. This is particularly so as the Revenue has not filed any affidavit bringing the above facts to the notice of this Court."

4. On 31st July 2018, both respondent no.1 Mr. M.N. Navale and respondent no.2 Mr. Sadashiv Mokashi filed their affidavits-in-reply dated 31st July, 2018 to the notice for the criminal contempt issued to each of them.

5. Mr. M.N. Navale – respondent no.1 in his affidavit-in-reply offers an unconditional, unqualified apology to this Court while submitting that there was no intention on his part to disregard the process of this Court and / or over reach the orders of this Court. The affidavit states that letter dated 20th December, 2017 addressed to the Tax Recovery Officer (TRO) and letter dated 21st December, 2017 addressed to the Branch Manager of Punjab National Bank (PNB) were written in good faith on the basis of the information provided to him by the representative of the petitioner Society who were present in Court at the hearing on 19th December, 2017. It is pointed out that the teaching staff of twelve colleges run by the petitioner had gone on strike w.e.f. 28th December, 2017 due to non-payment of salaries. This non-payment was on account of the fact that the Bank Accounts of the petitioner were attached by the Income Tax Department under Section 226(3) of the Income Tax Act, 1961. However, as funds were expected to the extent of Rs.9.27 crores from the Social Welfare Department of the State of Maharashtra, an application was made to the Court on 19th December, 2018 to be allowed to make use of Rs. 8 crores out of the above amounts to pay to the staff its salaries so as to end the strike. At that time (as recorded in the order dated 5th January, 2018 of this Court), the learned Counsel for the respondent Department made a

statement in Court to the effect that he would inform the officers of the Revenue not to withdraw the amount of Rs.9.27 crores which were expected to be received by the petitioners from the Social Welfare Department, State of Maharashtra in the attached accounts. It is stated in the affidavit that both the letters dated 20th and 21st December, 2017 addressed to the TRO (Respondent No.2) and the Branch Manager of PNB, correctly reflect the proceedings which took place in the Court on 19th December, 2017. However, they incorrectly attributed the statement made by the advocate for the respondent as directions of this Court. The aforesaid letters did not in any manner, even remotely indicate that the Court had directed the Income Tax Department to permit the petitioners to withdraw the funds received from the Social Welfare Department, State of Maharashtra. It is stated the subsequent withdrawal of Rs.9.14 crores from the attached bank accounts was in no way related to his letters dated 20th and 21st December, 2017. It was only when on 21st December, 2017 when the TRO addressed a communication to the Bank Manager, PNB (with a copy of the same being given to the petitioner) that it was stated therein that the Court had directed the petitioners to withdraw the amount to be received in the attached accounts from the Social Welfare Department, State of Maharashtra for making payment to the Teachers of the 12 Colleges. Thus, the attachment by the TRO had been varied by the TRO. The affidavit states that it was only in view of its dire need of funds and the tremendous pressure that the stand of the TRO was accepted and the amount of Rs.9.18 crores which were credited in the attached bank accounts at PNB and Rs.26.96 lakhs from Shri. Anand Co-operative Bank Ltd. were withdrawn to make payments to the striking teachers of the petitioner's colleges. It is thereafter stated in the affidavit-in-reply that Rs.9.53 crores has now been deposited on 26th March, 2018 by the petitioner's in the attached bank account with Punjab National Bank. In the aforesaid circumstances, it is prayed that his unconditional apology to this Court be accepted and the contempt proceedings be dropped.

6. Mr. Chinoy, learned Senior Counsel appearing for respondent no.1 submits that the conduct of the respondent no.1 may be unfortunate, but would not amount to contempt. It is submitted that none of the two letters dated 20th and 21st December, 2017 addressed to the TRO and the PNB seek withdrawal of the amounts to be received from the Social Welfare Department, State of Maharashtra. It is only when the TRO stated in his letter dated 21st December, 2017 to the PNB (with a copy to the petitioner), that the petitioner be allowed to

withdraw the amounts, did the Respondent No.1 act upon it and withdrew the amount. This according to Mr. Chinoy was a mistake and for the same the respondent no.1 Mr. Navale has offered an unconditional apology. Further, he also brought back the amount withdrawn in the attached bank account. Thereafter, at the further hearing Mr. Sawant, learned Counsel appearing for respondent no.1 Mr. Navale (present in Court) on instructions states that respondent no.1 would also deposit interest @18% from the date of the withdrawal of Rs.9.18 crores till redeposit on 26th March, 2018.

7. Mr. Chinoy also places reliance upon the decision of the Supreme Court in ***R.S. Sujata Vs. State of Karnataka, 2011 (5) SCC 689*** to submit that criminal contempt proceedings are quasi criminal in nature and burden of proof required in such cases are the same as required in criminal cases. Mere probabilities, conjectures or surmises will not be sufficient. Therefore, any mistake / inadvertence / misunderstanding would not amount to a contempt. In the above view, it is submitted that criminal contempt notice be discharged while accepting the apology of respondent no.1 Mr. N.M. Navale.

8. The respondent No.2 Mr. Mokhashi, the TRO has filed an

affidavit-in-reply dated 31st July, 2018. In the affidavit he states that he mis-interpreted the letter dated 20th December, 2017 addressed to him by respondent no.1 Mr. Nawale as stating that High Court had allowed the petitioner to withdraw the amount receivable from the Social Welfare Department of the State of Maharashtra. It is further stated that he misunderstood the oral communication by Mr. Sham Walve, the learned Counsel appearing for the Revenue, directing him that the Revenue should not withdraw the amounts of Rs.9 crores which are receivable in the attached bank account from the Social Welfare Department, State of Maharashtra, to mean that the petitioner should be allowed to withdraw the same. It is submitted in the affidavit that it was a mistake on his part and it was not his intention to interfere with the due course of judicial proceedings and / or prejudice the judicial proceedings before the Court. The affidavit also points out his unblemished career, first in the Defence Services and now in the Income Tax department in support of his contention that the mistake was not intentional. Mr. Mokashi, respondent no.2 offers an unconditional apology and seeks exoneration from the contempt notice.

9. Mr. Walve, learned Counsel appearing for the Respondent No.2 relied upon the affidavit and submits that it was a mistake and it be

condoned. At this, we asked Mr. Walve whether action of allowing the petitioners to withdraw the amount of Rs.9.18 crores from the attached bank account was a decision taken by him alone or after approval from the higher authorities in the Income Tax Department. At this, Mr. Walve, on instructions, informs us that the instructions were taken from the Commissioner of Income Tax to issue the communication dated 21st December, 2017 to the Branch Manager directing the bank to allow the petitioners to withdraw the amount of Rs.9.18 crores. We directed Mr. Walve to produce the file containing the necessary endorsement leading to the aforesaid decision. This became necessary to examine whether there was active independent consideration of the issue by Senior Officers of the department in allowing the withdrawal of the amounts from the attached bank account and not on the basis of the representation that the Court has allowed the withdrawal of the amounts.

10. Mr. Walve, produced the original file and we note following endorsement made in it :-

"NOTE SHEET

Date: 21.12.2017

PUC : A letter No. STES/FIN/2017-18/250 dated 20.12.2017 of M/s. Sinhgad Technical Education Society, Pune received in this office on 21.12.2017 alongwith the copy of affidavit filed by the assessee before the

Hon'ble High Court Mumbai in the Writ Petition No. 13099/2017.

Sir,

In this regard, it is submitted that a survey action u/s 133A of the Act was carried out in the case of Sinhgad Technical Education Society on 15.12.2017. Thereafter, details of bank accounts, debtors and rents receivable by the assessee were attached. By the above mentioned PUC, the assessee has submitted a list of bank accounts held in Punjab National Bank wherein it is expected to receive on 22.12.2017, an amount of Rs. 9,27,63,563/- towards reimbursement of fees of reserve category students. The details of bank account and the amounts expected to received is as under:-

…………..
…………..
…………..

By filing an affidavit, the assessee has put up its case before the Hon'ble High Court, Mumbai stating that the assessee is desirous of paying an amount of Rs. 8 Crores out of the above mentioned amount to its staff in order to persuade them to end the ongoing strike so that the educational activities are not effected. Also, the amount of Rs. 1.27 crores immediately payable towards electricity, water, telephone and expenses on patients in the Hospital.

Further, the assessee has communicated to this office by the PUC that Hon'ble Bench of the High Court has heard the matter on 18.12.2017 and has given following oral directions.

(i) The amount which is to be received by the Society from the Social Welfare Department in all the Bank accounts mentioned above will not be appropriated by the Income tax Department towards its dues till further order from the Hon'ble Court.

(ii) That the Society should file an affidavit indicating the names of the employees, amounts to be paid to each of them out of the amounts to received from Social Welfare Department.

iii) The matter is posted for hearing on 05.01.2018.

iv) The pleader of the department was also present during the hearing and it is instructed to the pleader to communicate the oral order to the department.

In this regard, the undersigned is communicated telephonically by the Sr. Standing Counsel that the assessee be allowed to withdraw the amounts receivable from the Social Welfare Department in the accounts of assessee Trust held in Punjab National Bank to the extent of Rs. 9.27 crores. The next date of hearing is fixed on 05.01.2018.

In view of the above facts and circumstances, and in view of the oral directions of the Hon'ble High Court Mumbai, it is just and necessary to instruct the Branch Manager of the respective Bank to allow the assessee to withdraw the funds receivable from the Social Welfare Department as and when the said amounts are received in the bank accounts, if deemed fit.

Put up for your Honour's kind perusal and further solicitation of directions.

Sd/- 21.12.2017
TRO (Central), Pune

The Addl. CIT C.R.-2, Pune

In view of the above oral directions of the Court as communicated by the standing counsel, the proposal of the TRO may be decided on merits.

Sd/- 21.12.2017
Addl. CIT, Range 2,
Central, Pune

Pr. CIT(C), Pune

The direction of the Hon'ble High Court to be followed.

Sd/- 21.12.2017"

11. Mr. Walve, learned Counsel appearing for respondent no.2 states that it was a mistake on his part and it arose only out of the respondent no.2 misunderstanding his oral communication. Therefore, he submits that the apology of respondent no.2 be accepted as he had no intention to over reach and / or prejudice and / or interfere with the due

administration of justice. He placed reliance upon the decision of the Supreme Court in R.S. Sujata (supra) and ***T.C. Kaushik Vs. Union of India, 2006(12) SCC 387,*** wherein in almost similar circumstances, the Supreme Court had accepted the apology of the Officer of the Government of India and has exonerated the officer concerned from proceedings for contempt.

12. It is undisputed that what constitutes contempt in this case is to be decided in the context of facts, leading to the action, which is alleged to be a contempt of Court. Therefore, it is imperative to examine the conduct of respondent nos. 1 and 2 in the context of the facts and in the light of the provision of the Contempt of Courts Act, 1971.

13. We note the fact that the petition as filed challenged the order dated 10th November, 2017 passed by the Income Tax Appellate Tribunal on an application for stay of the order in appeal and early disposal of its appeal. The petitioner (of which Mr. Navale is the President) was aggrieved by the order of expedition granted for the hearing of the appeal and stay of the demand of Rs.142.98 crores on condition of deposit of Rs.18 crores. Therefore, the petition filed was first mentioned on 28th November, 2017 seeking ad-interim relief from

depositing a sum of Rs.18 crores (in three installments) as ordered by the order dated 10th November, 2017 of the Tribunal. This as they are not in position to deposit even part of the amount as directed by the Tribunal. This Court by order dated 28th November, 2017 refused to grant any ad-interim reliefs to the petitioner, after hearing the parties. On 18th December, 2017, the petition was mentioned at 5.00 p.m. stating that subsequent to the filing of the petition, the teaching staff of the petitioner's institution have threatened to go on strike for non-payment of salaries. This would affect large number of students in the on going Pune University examination for the Engineering Course. Thus, the petition was taken up for consideration on 19th December, 2017. At that time, admittedly no order was passed by this Court as the amounts had not yet been received, though Mr. Walve, learned Counsel for the respondent Revenue informed the petitioner in Court that the Revenue would not withdraw the amount of Rs.9.27 crores which were expected from Social Welfare Department, State of Maharashtra. This was till the passing of further orders by the Court as the amount from the Social Welfare Department had admittedly not been received by the petitioner. Therefore, no order was passed on that date i.e. on 19th December, 2017.

Re : Respondent No.1 :-

14. Immediately on the next date i.e. on 20th December, 2017, the respondent no.1 addressed a communication to the TRO stating that the Court has directed the Revenue not to withdraw the amounts which would be deposited in the attached bank accounts by the Social Welfare Department, State of Maharashtra till further orders of this Court. This is undoubtedly a misrepresentation of the order of this Court. This mis-interpretation by itself amounts to interfering with the due course of judicial proceedings. This was the foundation / first step in interfering with due course of justice. The plea of respondent no.1 that he had specifically not sought any permission to withdraw the amounts, as no order of the Court to that effect was passed and his letter dated 20th December, 2017, correctly reflects the facts which had transpired before the Court. The only mistake was in attributing the statement made by the advocate of the respondent Revenue to being the oral direction of the Court. It is submitted that that there was no action on the part of the respondent no.1 to prejudice and / or interfere with a due course in judicial proceedings. This submission in the context of the facts does not carry any weight. Admittedly, the respondent no.1 was aware that no order / direction was given by the Court to allow the petitioner to withdraw the amounts. Therefore, the action of Mr. Navale, in

withdrawing the amounts on the basis that the Court had so directed, with knowledge that the Court had not passed any such order, speaks for itself. This evidences scant regard to the pending judicial proceedings. This act of withdrawing the amounts cannot be said to be an innocent act. If one bears in mind that his letter to the TRO on 20th December, 2018, incorrectly states that the Court has passed an order directing the Revenue not to withdraw the amounts to be received from the Social Welfare Department, State of Maharashtra. This letter started the process to interfere with the due course of justice. In fact, the letter dated 20th December, 2018 by respondent no.1 misrepresenting the proceedings in Court, would itself amount to tending to interfere with the course of judicial proceedings. This more particularly with an ulterior motive / objective of withdrawing the amounts from attached bank accounts, without moving the Court in which the proceedings for *inter alia* vacating the attachment had already commenced by making an application on 19th December, 2017. The amounts were received in the attached bank account of PNB from the Social Welfare Department, State of Maharashtra between the 22nd December, 2017 to 26th December, 2017.

15. At the time when this communication dated 20th December, 2017

was addressed to the respondent no.2 by the respondent no.1, a writ petition filed by the petitioner, was pending before this Court. This petition challenged the order of the Tribunal which required the petitioners to deposit Rs.18 crores as condition precedent for grant of stay of the balance demand of Rs. 124.98 crores. The petitioner was unable to deposit the same and their application for ad-interim relief sought in the petition was refused by this Court. The attachment of the bank accounts was made by the respondent Revenue on 15th December, 2017. Admittedly, no order was passed and/or oral directions given on the application made on 19th December, 2019. Thus, the attachment remained undisturbed. However, by addressing a communication attributing certain directions to this Court and thereafter inspite of knowledge that the Court had not passed any order to the effect that the petitioner could withdraw the amounts deposited by the Social Welfare Department, State of Maharashtra in the attached bank accounts, the respondent no.1 went ahead and withdrew the amount which was deposited in the attached bank account.

16. The submission / contention on behalf of Mr. Navale that there was no intent and / or motive to commit contempt is of no avail. This is so as the Apex Court in ***DDA Vs. Skipper Constructions, 1995(3)***

SCC 507 has observed that intention or motive is not the criteria to decide whether there is a criminal contempt. These are facts which are to be taken into account while punishing / sentencing a person for contempt. In any event, in the present facts, we find that there was an intent / motive on the part of the respondent no.1 Mr. Navale to misrepresent the order of this Court so as to withdraw the amounts from the attached bank accounts, without taking the permission of the Court in which the petition was pending. Thus, the aforesaid act by respondent no.1 would amount to interference with the due course of judicial proceedings in terms of Section 2(c)(ii) of the Contempt of Courts Act, 1971.

<u>Re : Respondent No.2 :-</u>

17. On receipt of the letter dated 20th December, 2017 on 21st December, 2017, the respondent no.2 in the order sheet correctly records his understanding of the contents of the letter dated 20th December, 2017 (received on 21st December, 2017) addressed by respondent no.1 Mr. M.N. Navale. Nevertheless, in the affidavit the respondent no.2 proceeds to state that he misunderstood the letter dated 20th December, 2017 as allowing withdrawal. Further, in the Note Sheet he records that he has been informed telephonically by the

senior standing Counsel for the Revenue that the petitioner assessee be allowed to withdraw the amounts of Rs.9.27 crores receivable in the attached accounts in Punjab National Bank from the Social Welfare Department, State of Maharashtra. It was this above note which was put up for sanction before the Commissioner of Income Tax. In the above facts as presented to the Commissioner of Income Tax nothing else could be said by the Commissioner of Income Tax save that the directions of the Court be followed. The note sheet as quoted above does not record his understanding of the communication received from respondent no.1 Mr. Navale was understood by him as the Court permitting the petitioner to withdraw the amount of Rs.9.27 crores which were expected from Social Welfare Department, State of Maharashtra. However, in the affidavit dated 31st July, 2018 respondent no.2 states in paragraph 2.6 thereof that he misunderstood / erroneously interpreted letter dated 20th December, 2017 received from respondent no.1. The note sheet further records that he has been orally informed by the Senior standing Counsel for the Revenue that the petitioner assessee be allowed to withdraw the amounts receivable from the Social Welfare Department, State of Maharashtra in the attached bank accounts. This understanding he now states in the affidavit is incorrect and arose out of misunderstanding. It is pertinent to note that the respondent no.2 was otherwise entitled in exercise his powers to vary the order of attachment under Section 226(3) of the Act as provided under sub-clause (vii) of Section 226(3) of the Act. However, if the respondent no.2 was to exercise his statutory power and seek to vary the attachment, then he would necessarily have to satisfy the Commissioner of Income Tax, the basis for the variation. However, if the variation of the attachment order, is attributed to the Court then no justification to the satisfaction of the Commissioner of Income Tax is required before the petitioner can withdraw the amounts from the attached bank accounts. So far as respondent no.2 is concerned, the note-sheet prepared by him clearly points out that notwithstanding the fact that no order was passed by the Court, he obtained necessary directions / approval from his superior namely Commissioner of Income Tax on the ground that the Court directed variation of the attachment order and thus, permitted the respondent no.1 to withdraw the amount which was the subject matter of pending judicial proceedings. This would amount to interfering with the due course of judicial proceedings by respondent no.2 in terms of Section 2(c)(ii) of the Contempt of Courts Act, 1971.

18. We shall now consider the punishment, if any, to be given to the

respondent nos. 1 and 2. We are conscious of the fact that the power to punish for contempt is not to be exercised lightly. It is to be sparingly exercised only for the purposes of upholding the due administration of justice and not merely for technical breaches. The Rule of Law is a basic / primary requirement for having a civilized society. The Courts of law are obliged to ensure that Rule of Law is followed to settle disputes between the persons *inter se* and/ or between persons and the State. The parties are required to act in accordance with the directions of the Court in respect of the subject matter of the dispute. It is not open to any party to the dispute before the Court or even all the parties to the dispute together to misrepresent the proceedings in Court and obtain benefit on the basis of such misrepresentation by attributing certain directions to the Court which were admittedly not given. This if permitted, would hit at the very foundation of Rule of Law and render the proceedings before the Court an empty formality, as all litigants would then misrepresent the orders of the Court with impunity to obtain benefit. However, before we decide to impose any punishment/ quantum of penalty, the explanation offered by respondent nos. 1 and 2 are to be considered.

19. So far as respondent no.1 is concerned, while offering an

unconditional apology, the affidavit states that he only attributed statement made on behalf of respondent no.2 to the Court. This, the affidavit states, was a mistake. Further, the affidavit states that at no time did he states that he be allowed to withdraw the amounts. This as he was aware that no such order / direction was given by the Court on 19th December, 2017. Nevertheless, he justifies withdrawal of the amounts from the attached bank accounts only in view of the letter dated 21st December, 2017 addressed by respondent no.2 to PNB with a copy to the petitioner. This act on the part of the respondent no.2 in withdrawing the amounts from the attached bank accounts in PNB on the basis of Court's directions, inspite of knowledge that no such order is passed by the Court, is interfering with the due course of judicial proceedings. Further, the amounts withdrawn from the attached bank accounts in PNB during the period 28th December, 2017 to 2nd January, 2018 was brought back into the attached bank accounts in PNB only on 26th March, 2018. This again is evidence of the fact that the apology tendered is a paper apology even if we assume (though we do not accept) the withdrawal was a mistake. This is particularly so as a mistake in withdrawing the amounts from the attached PNB accounts would have been rectified by the respondent no.2 at the very earliest. Thus, we do not find the apology of respondent no.1 to be bona fide and/ or genuine. Therefore, not accepted.

20. So far as respondent no.2 is concerned, we note that he offers an unconditional apology and state that the letter dated 21st December, 2017 to PNB was on account of misunderstanding on his part. It is stated in the affidavit that he misinterpreted the letter dated 20th December, 2017 addressed by respondent no.1 to him to mean that the Court had directed withdrawal of the amounts by the petitioner. This stand on his part is incorrect as the Note Sheet (reproduced hereinabove) prepared by him clearly records his understanding of the letter dated 20th December, 2017 of the respondent No.1 that the Revenue will not appropriate the amounts to be received in the attached bank accounts from the Social Welfare Department, State of Maharashtra. Thus, the affidavit does not correctly reflects the fact. Besides, the affidavit states that he understood the oral communication of the Advocate for the Revenue that he should not appropriate the amounts received in the attached bank accounts in PNB from the Social Welfare Department, State of Maharashtra to mean that the petitioner should be allowed to withdraw the amounts. No further enquiry was made by the respondent no.2 from the Advocate for the Revenue, even when the communication of respondent no.1 did not indicate any

directions of the Court permitting the petitioner to withdraw any amounts from the attached bank accounts in PNB. All this is further aggravated by the fact that even on 5th January, 2018 as recorded in our order, the respondent no.2 did not bring the above facts to the notice of the Court and it was only because the learned Senior Counsel appearing for the petitioner pointing the aforesaid facts (while returning the brief), did we come to know of the fact that direction are being attributed to this Court to enable a party to enjoy a benefit which was not allowed by the Court. This apology by respondent no.2 is not bona fide and, therefore, not accepted.

21. It is submitted by the respondent no.1 that the amount of Rs.9.18 crores, which was withdrawn during the period from 28th December, 2017 to 2nd January, 2018 has been deposited on 26th March, 2018. The respondent no.1 has undertaken to deposit the interest @ 18% per annum on the amounts withdrawn till it was redeposited on 26th March, 2018. We are informed by Mr. Sawant, learned Counsel appearing for Respondent No.1 that the same has been done on 14th August, 2018.

22. Taking the above facts into account, we direct the respondent nos. 1 and 2 each to undergo simple imprisonment in civil prison for

seven days and also to pay a fine of Rs.2,000/- each within a period of four weeks from today.

23. The Criminal Suo Moto Contempt Petition is disposed of in the above terms.

(SANDEEP K. SHINDE J.) **(M.S. SANKLECHA, J.)**

1 At this stage, learned Counsel for respondent Nos.1 and 2 sought a stay of this order for a period of eight weeks. This to approach the Hon'ble the Supreme Court.

2 We do not grant the prayer for stay of this order. However, in the present facts, we direct the State Government not to execute this order against respondent Nos.1 and 2 for a period of six weeks from today.

(SANDEEP K. SHINDE J.) **(M.S. SANKLECHA, J.)**