



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CONT. PETITION NO. 577 OF 2024

SWARAJSSINGH SHIVPALSINGH PARIHAR

VERSUS

**DILIP DATTATRAY WALSE PATIL (MINISTER OF CO-OP. DEPT
MANTRALAYA MUMBAI) THROUGH ITS SECRETARY**

WITH

**905 CIVIL APPLICATION NO. 7574 OF 2024
IN CP/577/2024**

**DILIP DATTATRAY WALSE PATIL (MINISTER OF CO-OP. DEPT
MANTRALAYA MUMBAI)**

VERSUS

**SWARAJSSINGH SHIVPALSINGH PARIHAR AND OTHERS
AND**

**CONT. PETITION NO. 587 OF 2024
IN WP/1651/2024**

SWARAJSSINGH SHIVPALSINGH PARIHAR

VERSUS

**THE STATE OF MAHARASHTRA THROUGH ITS ADDITIONAL
PRINCIPAL SECERTARY ANOOP KUMAR**

WITH

**906 CIVIL APPLICATION NO. 7575 OF 2024
IN CP/587/2024**

**DILIP DATTATRAYA WALSE PATIL MINISTER OF COOPERATIVE
DEPARTMENT**

VERSUS

SWARAJSSINGH SHIVPALSINGH PARIHAR AND OTHERS

...

Mr. Vishal Bagal h/for Mr. K. T. Taur, Advocate for the Contempt
Petitioner.

Mr. A. B. Girase, Government Pleader for the Applicant/Respondents

**CORAM : RAVINDRA V. GHUGE &
Y. G. KHOBRAGADE, JJ.**

DATE : 6th August, 2024

ORDER (Per : Ravindra V Ghuge, J)

1. The Petitioner in both these two Petitions, has put forth paragraph Nos. 1 to 14 (wrongly mentioned as 12) in Contempt Petition No. 577/2024, as under:

1. The petitioner is the original complainant before Resp. No. 2. The petitioner has filed complaint / application dated 24.05.2028 against Resp. No.5 for seeking disqualification for the post of Director of Resp. No.4 Bank on the ground that, Resp. No.5 is the representative and Director of defaulter society i.e. the Member society of Resp. No.4 Bank, therefore, the Resp. No.5 is covered under the disqualification prescribed U/Section 73 (c) (a)(f) (2) of M.C.S, Act, 1960.

2. That, the Resp. No.5 is the M.L.A. of ruling party, therefore, the above mentioned complaint has not been decided by the Resp. No.2. considering this aspect, the petitioner has filed W. P. No. 10061/2023 before this Hon'ble Court for seeking direction against the Resp. No.2. to decide the complaint filed by the petitioner. This Hon'ble Court by its order dated 19.08.2023 directed to Resp. No.2 to decide the complaint/application filed by the Petitioner within a 12 weeks from the date of order.

3. That, the Resp. No.3 has submitted detail inquiry report dated 05/09/2023 alongwith all the evidential documents before Resp. No.2. The said inquiry report clearly reveals that, the Resp. No.5 is the representative and director of the defaulter society - the Member society of Resp. No.4 Bank.

4. That, the Resp. No.2 has granted satisfactory opportunity of hearing to the Resp. No.5 thereby considering each and every documents alongwith the inquiry report which is self explanatory and enough documents to clarify the Resp. No.5 is the representative and director of defaulter society, therefore, the Resp. No.2 have rightly passed order dated 08.12.2023, thereby the Resp. No.5 has been disqualified from the post of Director of Resp. No.4 Bank.

5. That, the petitioner has filed caveat before Resp. No.1. Accordingly, the Resp. No.5 has filed revision application No.672/2023, thereby the disqualification order dated 08.12.2023 passed by Respondent No.2 has been challenged by the Respondent No.5.

6. That, the petitioner has filed application on 13.12.2023 on the date of hearing thereby requesting to supply the copies of revision and stay petition and to grant time for filing reply to the same. Thereafter, the Resp. No.1 has granted stay to the order of disqualification by its order dated 15.12.2023. In the stay order, the next date of hearing has been mentioned on 10.01.2024.

But, there is no hearing has been taken by the Resp. No.1. Therefore, the petitioner has filed requesting application before Resp. No.1, thereby the petitioner has requested to fix the date of hearing in the revision petition filed by Resp. No.5.

7. That, the Resp. No.1 have not granted or fix the date of hearing in the revision petition filed by Resp. No.5 therein the petitioner is the original complainant. Therefore, the petitioner has filed Writ petition No.1599/2024 before this Hon'ble Court for seeking direction against Resp. No.1 to decide the revision petition No.671/2023 within a stipulated period. A copy of memo of Writ petition No.1599/2024 dated 22.01.2024 is annexed herewith and marked EXHIBIT-"A-1".

8. That, the AGP submits that, revision petition is pending before the Hon'ble Minister and the hearing has been fixed on 21.02.2024 at 3.00 p.m. The petitioner is undertaking, that, he would be remain present for hearing. Therefore, considering the above mentioned facts and circumstances of the instant case, this Hon'ble Court by its order dated 09.02.2024 directed to Resp. No.1 to decide the Revision Petition No.67 /2023 be decide as expeditiously as possible not more than two months from today. A copy of order dated 09.02.2024 passed by this Hon'ble Court in W. P. No. 1599/2024 is annexed herewith and marked as EXHIBIT "A-2".

9. That, as per the above mentioned order of this Hon'ble Court, the petitioner is appeared before Resp. No.1 on 21.02.2024 and submit affidavit in reply alongwith this Hon'ble Court. But, there is no hearing has been taken by Resp. No.1 as well as there is no any next date has been informed by the Resp. No. 1. A copy of affidavit in reply filed by petitioner before Resp. No.1 dated 21.02.2024 is annexed herewith and marked as EXHIBIT- "A-3".

10. That, as per the order of this Hon'ble Court, the time period granted by this Hon'ble Court by its order dated 09.02.2024 has been expired on 08.04.2024, therefore, the petitioner has requested to Resp. No. 1 to decide the revision petition filed by Resp. No.5.

Thereafter, the Resp. No.1 has fixed the hearing on 22.04.2024 in the revision petition filed by Resp. No.5. Accordingly, on the said date 22.04.2024, the revision petition filed by Resp. No.5 has been reserve/close for order.

11. That, the petitioner various requested to the Resp. No.1 to pass the order or to decide the revision petition filed by Resp. No.5 thereby to comply the order of this Hon'ble Court. But, till today there is no any positive step has been taken by the Resp. No.1 for passing order or deciding the revision petition filed by Resp. No.5.

12. That, the Resp. No. 5 is the MLA of ruling party, therefore, the Resp. no.1 is not deciding revision petition, though the directions has been issued by this Hon'ble Court. On the contrary, the Respondent No.5 is holding the post of Director of Resp. No.4 due to the stay granted by the Resp. No.1.

13. That, the provision itself mandate to decide revision petition within a three months, therefore, it is crystal clear that, the intention of Resp. No. 1 is willful and malafide disobedience of the Order of the Hon'ble Court, the present

Resp. No.1 needs to be punished as per the provisions of Contempt of Court Act.

12. That, thus the Respondent No.1 has committed breach of order of this Hon'ble Court, which amounts to contempt of Court's Order and therefore, he is liable to be punished under the provisions of the said Act. Hence, this Contempt Petition."

2. The Writ Court (Coram: Vibha Kankanwadi and S. G. Chapalgaonkar, JJ.), vide order dated 9th February, 2024 in Writ Petition Nos. 1599 of 2024 and 1651 of 2024, specifically directed Respondent No. 1, Shri Dilip Dattatraya Walse-Patil, Cabinet Minister, Cooperation (Government of Maharashtra), to decide the Revision Application Nos. 172 of 2023 and 671 of 2023, within two months from the date of the order.

3. Both these Contempt Petitions were filed before this Court on 20th June, 2024, alleging disobedience of the order of this Court dated 9th February, 2024. When we heard these matters on 3rd July, 2024, the two months' time granted by this Court had expired on 9th April, 2024 and no order was passed by the concerned Minister. Hence, we issued notice under the Contempt of Courts Act in the form prescribed, returnable on 29th July, 2024. The matters were then listed yesterday.

4. We have heard the learned Advocate for the Petitioner and the learned Government Pleader. The learned Advocate for the

Petitioner has received the affidavit in reply filed by the concerned Minister, dated 24th July, 2024.

5. The Government Pleader has presented both these Civil Applications, which are filed personally by the said Minister, seeking exemption from appearance in the proceedings before the Court. An unconditional apology has been tendered. Both these Civil Applications are filed seeking recalling of our order dated 3rd July, 2024. These matters were listed yesterday, before the Co-ordinate Bench of this Court. It was opined that the matters would lie to this Bench. This is the submission of the learned Government Pleader and which is confirmed by the learned Advocate for the original Petitioner. Hence, these matters were mentioned at 2.30 p.m. yesterday and were called out at 6.00 p.m., for hearing. We have, therefore, heard the learned advocates in both these Petitions along with the Civil Applications, yesterday and today.

6. There is no dispute that the timeline granted by the Writ Court has been crossed by Respondent No.1. It is equally undisputed that the matters were heard by Shri Anup Kumar and were closed for orders on 22nd April, 2024. They were decided by the Principal Secretary (Additional Chief Secretary) Shri Anup Kumar, on 5th July, 2024.

7. Before we deal with the facts of this case, it will be apposite to refer to Section 12 of the Contempt of Courts Act, 1971 and Rules 9 and 20 below Chapter XXXIV of the Bombay High Court Appellate Side Rules, 1960. Section 12 and Rules 9 and 20 read as under:

"12. Punishment for contempt of court.—(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

Explanation.—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation.—For the purpose of sub-sections (4) and (5),—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm."

Rule 9. (1) Notice to the person charged shall be in form I. The person charged shall, unless otherwise order, appear in person before the Court as directed on the date fixed for hearing of the proceedings, and shall continue to remain present during hearing till the proceeding is finally disposed off by Order of the Court.

(2) When action is initiated on a Petition or a Reference, a copy of the Petition or the Reference along with the annexures and Affidavits shall be served upon the person charged.

Rule 20: Whenever the High Court or Designated Court issues a notice, it may dispense with the personal attendance of the person charged with the contempt and permit him to appear through an Advocate and in its discretion, at any stage of the proceeding, direct the personal attendance of such person, and, if necessary, enforce such attendance in the matter herein above provided."

8. The first proviso, below Sub Section 1 of Section 12 provides that an accused may be discharged or the punishment awarded may be remitted, on an apology being made to the satisfaction of the Court. The explanation there below indicates that an apology shall not be rejected merely on the ground that it is qualified or conditional, if the accused makes it bona fide. Sub Section 3 provides that if a person is found guilty of a civil contempt, the Court, if opines that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary, shall, instead of sentencing him to simple imprisonment,

direct that he be detained in a civil prison for such period not exceeding six months, as it may think fit. The proviso below Sub Section 4, purports that nothing contained in sub-section 4 would render any person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

9. As we turn to the facts of this case, it is undisputed that the order of this Court dated 9th February, 2024 was conveyed to the Respondent Minister, by the Office of the Government Pleader via E-mail, on 20th February, 2024. Thereafter, the Model Code of Conduct, in view of the general elections to the Parliament, was declared on 16th March, 2024.

10. It is stated by Respondent No.1 that he deemed it proper not to take up the matters because of the introduction of the Code of Conduct and, therefore, a meeting was scheduled on 2nd April, 2024 with the Principal Secretary of the said Department. With due consultation, the file was transferred to the Principal Secretary on 10th April, 2024. It is undisputed amongst the parties that such delegation of authority is permissible for enabling the Principal Secretary to decide the proceedings, if the Minister, for any reason whatsoever, is unable to take up the matter or deal with the same. The record also reveals, and which is undisputed that, the Principal Secretary heard the parties and

closed the matter for orders on 22nd April, 2024. It is also undisputed that the Nation went to the Polls and insofar as the State of Maharashtra is concerned, the polling was held in five phases as under:

Activities	Phases				
	I	II	III	IV	V
Notification	20.03.2024	28.03.2024	12.04.2024	18.04.2024	26.04.2024
Nomination	27.03.2024	04.04.2024	19.04.2024	25.04.2024	03.05.2024
Scrutiny	28.03.2024	05.04.2024	20.04.2024	26.04.2024	04.05.2024
Last date for withdrawal	30.03.2024	08.04.2024	22.04.2024	29.04.2024	06.05.2024
Poll Date	19.04.2024	26.04.2024	07.05.2024	13.05.2024	20.05.2024
Results declared on 04.06.2024					

11. The Principal Secretary, who was dealing with the said file was also the Additional Chief Secretary for the State of Maharashtra and the learned Government Pleader submits that the entire Government machinery was fully engrossed and occupied in the general election. The order in these two matters, was passed on 5th July, 2024.

12. The learned Advocate for the Original Petitioner had stated yesterday that, he will file his affidavit in Reply to the Civil Applications filed by the first Respondent seeking exemption. However, today, he has decided to proceed to address the Court, orally, without a reply, on the basis of his pleadings in the Contempt Petitions.

13. The learned Advocate for the Original Petitioner submits that Respondent No.5 in both the Petitions, is an MLA from the ruling party to which the Respondent No. 1 Minister belongs. The Revision was filed by Respondent No.5, on 13th December, 2023. The Petitioner had filed a caveat. Hearing was conducted on the interim application on 15th December, 2023 and an interim order was passed on the same day. Thereafter, the matters were posted on 12th January, 2024 along with various other matters. Only these two matters were adjourned by Respondent No.1 Minister, by continuing the interim order. The contention is that this happened only because Respondent No.5 is an MLA. Thereafter, the Petitioner visited the office of the Hon'ble Minister on two to three occasions. However, there was no hearing conducted. Hence, the Petitioner approached this Court by filing two Writ Petitions in which the order dated 9th February, 2024 was passed and Respondent No. 1 Minister was granted 60 days time to decide the pending proceedings.

14. The learned Advocate further submits that on 21st February, 2024, the matter was not on Board. The Petitioner tendered a reply in the office. No hearing was conducted. Thereafter, a hearing was arranged on 22nd April, 2024 and the Principal Secretary closed the proceedings for orders. An order was passed on 5th July, 2024, after this Court passed an order issuing contempt notice, on 3rd July, 2024.

15. We are informed that the proceedings before the Minister, were allowed in favour of the present Petitioner and an adverse order was passed against Respondent No.5, MLA. It is further informed that the said Respondent No.5 has approached the learned Single Judge of this Court, in Writ Petition No. 7751 of 2024. By a speaking order dated 25th July, 2024, the order of Respondent No.1 Minister has been stayed by the learned Single Judge of this Court.

16. Yesterday, when these matters were heard at length, the learned Government Pleader informed us that, as the Model Code of Conduct was declared on 16th March, 2024, the concerned Minister deemed it appropriate not to hear the matter. The allegation that the appellant before the Minister is an MLA of the ruling party, also weighed on his mind. Due to the enforcement of the Model Code of Conduct, the Department of Co-operation issued a communication dated 26th March, 2024 to the Election Commission of India, to seek a clarification, as to whether Respondent No.1 Minister could hear and decide the proceedings. The file to obtain guidelines, was submitted to the Committee under the Chairmanship of the Chief Secretary of the Government of Maharashtra, which was constituted by GR dated 28th February, 2024. Thereafter, the meeting of the committee was held on 2nd April, 2024 and it was decided by the Chief Secretary that the Principal Secretary (Cooperation and Marketing), would be the

authority to decide the said proceedings. The parties to the said proceedings appeared before the Principal Secretary on 22nd April, 2024 and addressed him on all the grounds raised by each of them.

17. In the light of the facts recorded above and on perusal of Rules 9 and 20 of the Bombay High Court Appellate Side Rules, 1960, the discretion is with the Court. Taking into account the above factors which indicate that Respondent No.1 Minister showed due diligence and even the Chief Secretary of the State, being the Chief Election Commissioner of the State of Maharashtra, constituted a Committee to take a decision. The matter was referred to the Principal Secretary. This consumed time. Their bona-fides are evident.

18. Insofar as the issue as to whether Respondent No.1 deserves to be punished for contempt, we have revisited the facts as recorded herein above. It is apparent that after this Court passed the order dated 9th February, 2024, the Government Pleader communicated the order to the Respondent No.1 vide E-mail dated 20th February, 2024. The Code of Conduct was enforced on 16th March, 2024. The Department of Cooperation immediately moved a communication to the State Election Commissioner dated 26th March, 2024 for seeking guidelines. Considering that the order of the High court was at issue, the Chief Secretary constituted a Committee in terms of the GR dated

28th February, 2024 and conducted a meeting on 2nd April, 2024. A decision was taken to let the Principal Secretary decide the matter, instead of Respondent No.1 Minister. Hearing was also held on 22nd April, 2024 and the order was delivered on 5th July, 2024.

19. As such, the issue is as to whether, there has been an intentional, deliberate and willful disobedience of the order of the High Court, by Respondent No.1 or the Principal Secretary. We have considered the law on this issue.

20. In **BALWANTBHAI SOMABHAI BHANDARI VS. HIRALAL SOMABHAI CONTRACTOR, 2023 SCC online SC 1139**, it is held that,

An unconditional apology not enough to evade punishment for contempt of court if conduct damages dignity of institution –

(i) We hold that an assurance in the form of an undertaking given by a counsel / advocate on behalf of his client to the court; the willful breach or disobedience of the same would amount to “civil contempt” as defined under Section 2(b) of the Act 1971.

(ii) There exists a distinction between an undertaking given to a party to the lis and the undertaking given to a court. The undertaking given to a court attracts the provisions of the Act 1971 whereas an undertaking given to a party to the lis by way of an agreement of settlement or otherwise would not

attract the provisions of the Act 1971. In the facts of the present case, we hold that the undertaking was given to the High Court and the breach or disobedience would definitely attract the provisions of the Act 1971.

(iii) Although the transfer of the suit property pendente lite may not be termed as void ab initio, yet, when the court is looking into such transfers in contempt proceedings the court can definitely declare such transactions to be void in order to maintain the majesty of law. Apart from punishing the contemnor, for his contumacious conduct, the majesty of law may demand that appropriate directions be issued by the court so that any advantage secured as a result of such contumacious conduct, is completely nullified. This may include issue of directions either for reversal of the transactions by declaring such transactions to be void or passing appropriate directions to the concerned authorities to ensure that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or any one claiming under him.

(iv) The beneficiaries of any contumacious transaction have no right or locus to be heard in the contempt proceedings on the ground that they are bona fide purchasers of the property for value without notice and therefore, are necessary parties. Contempt is between the court and the contemnor and no third party can involve itself into the same.

(v) The apology tendered should not be accepted as a matter of course and the court is not bound to accept the same. The apology may be unconditional, unqualified and bona fide, still if the conduct is serious, which has caused damage to the

dignity of the institution, the same should not be accepted. There ought not to be a tendency by courts, to show compassion when disobedience of an undertaking or an order is with impunity and with total consciousness.

21. In **COURT ON IT'S OWN MOTION VS. AMAR SINGH BHALLA, 2023 SCC Online Del 5740**, it was held that,

Contemnor had willfully disobeyed his own undertaking and also disobeyed the directions passed by the court and accordingly sentenced him for six months simple imprisonment -

50. This court has taken note of the fact that the mere imposition of the fine would neither serve the purpose of maintaining the dignity of this court nor would be appropriate in the facts and circumstances of the present matter. Even in these contempt proceedings, this court had to issue NBW several times to ensure the presence of the contemnor as he was evading appearance. Therefore, this court is constrained to impose the maximum sentence as the contemnor has repeatedly breached his own undertakings.

51. Considering the facts of the instant case and the rule of law laid down in the foregoing decisions, it is deemed appropriate to punish the contemnor with simple imprisonment for a term of six months, commencing from 14.09.2023

22. In **RAMA KISHAN VS. TARUN BAJAJ, (2014) 16 SCC 204**, the Hon'ble Supreme Court held as under:-

"Willfully disobeyed his own undertaking and also the directions passed by the court –

12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is “willful”. The word “willful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. “Willful” means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Willful act does not encompass involuntarily or negligent actions. The act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Willful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but, such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. “Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct.”

23. In **RAMA NARANG VS RAMESH NARANG, 2021 SCC Online SC 29**, it was concluded that,

Willful disobedience or willful breach – are these necessary requisites for bringing in action for civil contempt? – not like an execution proceeding under CPC.

It is quasi – criminal in nature and standard of proof required is in the same manner as in the other criminal cases.

24. In **INDIAN AIRPORTS EMPLOYEES UNION VS. RANJAN CHATTERJEE AND OTHERS**, 1999 (2) SCC 537, it was held that,

It is well settled that disobedience of orders of Court, in order to amount to 'Civil Contempt' under section 2(b) of the Contempt of Courts' Act, 1971 must be 'willful' and proof of mere disobedience is not sufficient. [S.S.Roy vs. State of Orissa & Others AIR 1960 SC 190]. Where there is no deliberate flouting of the orders of the Court, but, a mere misinterpretation of the executive instructions, it would not be a case of Civil Contempt [Ashok Kumar Singh & Others vs. State of Bihar & Others AIR 1992 SC 407]. In this contempt case, we do not propose to decide whether these six sweepers do fall within the scope of the notification dated 9.12.1976 or the judgment of this Court dated 11.4.1997. That is a question to be decided in appropriate proceedings.

It is true that these six sweepers' names are shown in the annexure to the W.P. No.2362 of 1990, in the High Court. But, the question is whether there is willful disobedience to the orders of this Court. In the counter affidavit of the respondents, it is stated that there is no specific direction in the judgment of this Court for absorption of these sweepers, if any, working in the Car Park area, and that the directions given in the judgment were in relation to the sweeper working at the 'International Airport, National Airport Cargo Complex and Import Warehouse'. It is

stated that the cleaners employed by the licensee in charge of Maintenance of the Car Park area do not, on a proper interpretation of the order, come within the sweep of these directions. It is contended that even assuming that they were included in the category of sweepers working at the 'International Airport', inasmuch as, they were not employed for the purpose of cleaning, dusting and watching the buildings, as mentioned in the notification abolishing contract labour, they were not covered by the judgment. It is also contended that the case of such sweepers at the Car Park area was not even referred to the Advisory Board under section 10 of the Contract Labour (Prohibition) Act and it was highly doubtful if they were covered by the notification.

In our view, these rival contentions involve an interpretation of the order of this Court, the notification and other relevant documents. We are not deciding in this contempt case whether the interpretation put forward by the respondents or the petitioners is correct. That question has to be decided in appropriate proceedings. For the purpose of this contempt case, it is sufficient to say that the non-absorption of these six sweepers was bonafide and was based on an interpretation of the above orders and notification etc. and cannot be said to amount to 'willful disobedience' of the orders of this Court".

25. In **SURESH SRIKRISHANA NAIK VS. DEPARTMENT OF SOCIAL WELFARE, 2002(3) Mh.L.J 889**, this Court held as under:-

10. The reference to Bhimsen Dixit's case by the learned advocate for the petitioner was to draw attention to paras 15

and 16 thereof. It has been held by the Hon'ble Supreme Court therein that "just as the disobedience to a specific order of the Court undermines the authority and dignity of the Court in a particular case, similarly the deliberate and malafide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. "Attention is drawn to this observation by submitting that in view of the fact that the High Court in its decision had set aside the earlier decision of the respondents denying the benefits to the staff members of the institutions under the Social Department and having directed to consider the same to be extended by phased manner, the case is squarely covered by the said observation of the Apex Court. However, as already observed above, merely because the decision to grant the benefit was set aside, that itself cannot be construed as a direction to grant such benefits to the staff members of such institutions in view of the specific direction given by the Court to the respondents "to consider" such extension being granted to such staff members in a phased manner. Apparently, the Court had taken into consideration the fact of financial constraints by the Government and, therefore, it was left the matter and to see to it if such benefits can be granted in phased manner. Being so, the said observations of the Apex Court is of no help to the petitioner for the action of contempt of Court in relation to the said order dated 18th January, 2000. The decision of Bhimsen Dixit case, rather than assisting the petitioner's contention in the matter, justifies refusal of any action against the respondents. The Apex Court therein has clearly held that "Contempt of Court is disobedience to the Court, by acting in opposition to the authority, justice and

dignity thereof. It signifies a willful disregard or disobedience of the Court's order; it also signifies such conduct as tends to bring the authority of the Court and the administration of law into disrepute." Apparently before initiating action under the Contempt of Courts Act against a party, it is necessary to ascertain whether that the party has acted in willful disregard or disobedience of the Court's order. The act on the part of the respondents in disregarding or disobeying the order has necessarily to be willful. The facts disclosed in this case apparently reveal that the decision not to extend the benefit even by phased manner to the staff members of the institutions under the Social Welfare Department has been taken on account of the financial constraints by the respondents. Certainly the said decision has been taken 2002(3) Mh.L.J 889 pursuant to the direction to consider such extension in phased manner. The very fact that while setting aside the earlier decision of 8th July, 1998 denying such benefits the Court had chosen not to give any direction beyond leaving it to the discretion of the respondents to take appropriate decision of the matter, discloses that the respondents were not given any specific direction for extension of such benefits and in such circumstances if the respondents have denied or refused to grant such benefits to the staff members of the institutions in question, it cannot be said that there is any disobedience of the Court's order, much less willful disobedience.

12. The Apex Court in Chhotu Ram's case has clearly observed that the conduct in order to come within the purview of the statutory provisions must be willful and deliberate. It has been further observed that "the introduction of the Contempt of

Courts Act, 1971 in the statute-book has been for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country. It is a powerful weapon in the hands of the law Courts by reason wherefore the exercise of jurisdiction must be with due care and caution and for larger interest. Similar is a decision of the Apex Court in *Kapildeo Prasad Sah*, which has been relied upon by the petitioner, therein, it has been observed that "for holding the respondents to have committed contempt, Civil Contempt at that, it has to be shown that there has been willful disobedience of the judgment or order of the Court. Power to punish for contempt is to be resorted to when there is clear violation of the Court's order. Since notice of contempt and punishment for contempt is of far-reaching consequence, these powers should be invoked only when a clear case of willful disobedience of the Court's order has been made out. Whether disobedience is willful in a particular case depends on the facts and circumstances of that case." It has been further observed that "initiation of contempt proceedings is not a substitute for execution proceedings though at times that purpose may also be achieved." It has been further ruled that "willful would exclude the casual, accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order."

26. In **Vishram Singh Raghubanshi Vs. State of UP**, AIR 2011 SC 2275, the Hon'ble Supreme Court concluded that the contempt jurisdiction is to uphold the majesty and the dignity of the Court.

27. In **Pushpaben & Anr Vs. Narandas V. Badiani AIR 1979 SC 1536**, it was held that the Court must apply its mind properly and give special reasons for imposing punishment and imprisonment in a particular situation. Imprisonment is an exception and fine is a rule.

28. In **Balram Singh vs Bhikam Chand Jain And Ors., AIR 1985 SC 1726**, it was held that it would be a travesty of justice, if the Courts were to allow gross contempt of Court to go unpunished, if there is no mitigating circumstance.

29. In **Abdul Jabbar Taj Vs. R.K. Karanjia, AIR 1970 BOM 48**, this Court concluded that an unreserved, clean and immediate apology tendered at the earliest opportunity, must undoubtedly be given greater weight than a belated apology. If an apology is tendered belatedly, after getting a feeling that a conviction is possible, it ceases to have the evidence of real contriteness and manly consciousness of the wrong doer and instead, indicates 'a cringing of a coward shivering at the prospect of the stern hand of justice about to descend upon his head' (quoted from the cited judgment).

30. In **Prem Surana Vs. Additional Munsif and Judicial Magistrate & Anr. 2002 SC 2956**, it was held that the judges should not be hyper-sensitive, but that does not mean and imply that they ought to maintain

angelic silence. A person occupying the chair is immaterial. It is the seat of justice whose majesty needs to be protected and nobody can be permitted to tarnish the image of the temple of justice.

31. The learned Government pleader has cited a judgment delivered by the Three Judges Bench of the Hon'ble Supreme Court, dated 05.02.2024, in **Civil Appeal Nos. 1644-1645 of 2024 /SLP (C)25880-25881/2025, Sri L. V. Subramanyam Vs. The Registrar General, High Court of Judicature at Hyderabad**, wherein the challenge to the conviction of the appellants with fine of Rs.500, was being looked into. The High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, passed an order coming to a conclusion that though the order, of which contempt was alleged, was complied with, there was a delay in compliance of the same. The High Court observed that there is no explanation for the delay. The Hon'ble Supreme Court concluded that a mere delay in complying with the order, unless there is a deliberate or willful act on the part of the alleged contemnors, would not attract the provisions of Contempt of Courts Act. Proceedings under the Contempt of Courts Act are *quasi judicial* in nature and, therefore, as the Court comes to a conclusion that the act was neither deliberate nor willful, it could not have convicted the appellants for contempt of the Court. The appeals were allowed and the impugned orders were quashed and set aside.

32. Having recorded the dates and sequence of events as above, it is apparent that there is neither a deliberate delay caused by Shri Dilip Dattatray Walse Patil, nor has the Principal Secretary Shri Anup Kumar caused a delay in the matter, intentionally or willfully or deliberately. The dates and sequence of events *'speak louder than words'*. It is obvious that Respondent No.1, in our view, pragmatically avoided to hear the matter, after the Code of Conduct was enforced on 16th March, 2023 in the face of an allegation that the appellant before the concerned Minister was an MLA of the ruling party. The Chief Secretary showed equal pragmatism in forming a committee and transferring the matter by delegation of authority to the Principal Secretary, which is neither challenged nor contradicted. After the file was transferred on 10th April, 2024, which is within eight days of the meeting and two days after the timeline of the High Court concluded, the Principal Secretary conducted the hearing, within 12 days.

33. Much ado has been made by the Petitioner that after the matter was closed for orders on 22nd April, 2024, Shri Anup Kumar should have passed an order expeditiously. In a sense, the Petitioner may be justified in saying so. But it cannot be ignored that the State of Maharashtra went to the polls, from 20th March, 2024 and it is a herculean task for the State Administration to conduct the polling in various parts of the State, in a general election or even in a State

assembly election, under the strict guidance and vigil of the National Election Commission.

34. We do not find any deliberate or willful or intentional conduct on the part of Shri Anup Kumar. The allegation of bias and prejudice is also put to rest by the fact that the final order delivered by the Principal Secretary, upholds the claim of the Petitioner and was against Respondent no. 5, MLA. It is a different issue that the said order has been subsequently stayed by the learned Single Bench of this Court.

35. In view of the above, we do not find that there is any intentional, deliberate or willful disobedience of the order of this Court dated 9th February, 2024, with the object of overbearing the majesty of law or for undermining the constitutional provision enshrined under Article 226, which vests with this Court with the Writ jurisdiction.

36. Both these Contempt Petitions are, therefore, dismissed. Both the Civil Applications, also stand disposed off.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan