(2009) 02 PAT CK 0139

Patna High Court

Case No: Or. Cr. Miscellaneous (DB) No. 4 of 2009

The State of Bihar	APPELLANT
Vs	
In the matter of Suo Motu Contempt against Dr. Suman Lal, 83, Krishna Apartment, Boring Road, P.S.-S.K. Puri, District-Patna	RESPONDENT

Date of Decision: Feb. 16, 2009

Acts Referred:

- Contempt of Courts Act, 1971 - Section 14, 14(2), 16

Citation: (2009) 1 PLJR 843 : (2010) 6 RCR(Criminal) 272

Hon'ble Judges: Chandramauli Kr. Pd., Acting C.J.; Shyam Kishore Sharma, J

Bench: Division Bench

Advocate: Niraj Kumar, Prasoon Sinha, for the Appellant;

Judgement

Prasad, A.C.J.

1. I wish to commence this judgment reminding myself to the golden words of Lord Denning in the case of Regina vs. Commissioner of Police of the Metropolis, exparte Blackburn, (1968)2 Ail ER 319 (CA). He spoke thus:-

"Let me say at once that we will never use this jurisdiction as a moans to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.

It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with ail that is done in a court of justice, they can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. AN we would ask is that those who criticise us will

remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still ''est into political controversy. We must reply on our conduct itself to be its own vindication.

Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill-done."

The words of wisdom of the Supreme Court in the case of Special Reference No. 1 of 1964, (1965)1 SCR 413 also flashes in my mind. The Supreme Court observed as follows:-

"We ought never to forget that the power to punish for contempt, large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct."

2. Memorable words of H.R. Khanna, Retired Judge of the Supreme Court, whom many scholars and jurists described to be a living legend in his lifetime, ones spoke as follows:-

"Judges should not silence criticism with threat of Contempt of Court but should remove the weakness and drawbacks that have crept into the judicial system."

3. The Supreme Court had the occasion to sound a note of caution in the case of M/s Chetak Construction Ltd. vs. Om Prakash and Others, JT 1998 (3) S.C. in the following words:-

"The corner-stone of the contempt law is the accommodation of two constitutional values-the right of free speech and the right to independent justice. The ignition of contempt action'' should be substantial and mala fide interference with fearless judicial action, not fair comment or trivial reflections on the judicial personnel," [See Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another, . Long-long ago in Queen vs. Grey 1900(2) Q.B. 36, 40 it was said that ''Judges and courts are alike open to criticism and if reasonable argument is offered against any judicial act as contrary to law or to the public good, no court could or would treat it as contempt of court''. Therefore, contempt jurisdiction has to be exercised with scrupulous care and caution, restraint and circumspection. Recourse to this jurisdiction must be had whenever it is found that something has been done which tends to affect the administration of justice or which tends to impede its course or

tends to shake public confidence in the majesty of law and to preserve and maintain the dignity of the court and the like situations. The respect for judiciary must rest on a more surer foundation than recourse to contempt jurisdiction".

4. The following words of wisdom of Prof. Harold Laski also deserves to be noted:-

"Every time an intellectual has the chance to speak out against injustices, and yet remains silent, he contributes to the moral paralysis and intellectual barrenness that grips the affluent world."

5. Dr. Suman Lal, contemnor herein, is a member of a body called Jan Chowkidar (People''s Watch). Jan Chowkidar through the contemnor and two other petitioners presented C.W.J.C. No. 702 of 2009 (Jan Chowkidar & Others vs. The State of Bihar & Others) as a Public Interest Litigation for a direction to the Government of India and Government of Bihar not to allow strikes for matters relating to service conditions like pay, enhancement of pay etc. and declare strike by Government servant illegal. This was prompted on account of ongoing strike by certain section of the employees of the State Government.

6. The writ application came up for consideration before the Division Bench on 15.1.2009. The Division Bench, of which one of us (Prasad, ACJ.) was a member, was of the opinion that no effective order on the issue of strike could be passed without hearing the Unions and the Associations, on whose call the employees have gone on strike. The Bench also thought that prayer to declare the strike illegal without hearing the Unions and the Associations would be inexpedient and hit at the root of audi alteram partem. Accordingly, we orally observed for impleading the Unions and the Associations, whose members have gone on strike as respondents. Counsel representing the petitioners readily agreed to that and prayed for two weeks time to implead the Unions and the Associations. Nothing prevented the Counsel for the petitioners to implead the Unions and the Associations on the very day the order was passed, but he did not do so. As is the practice, on the day the order is passed, the record of the case remains with the Court Master and thereafter goes to the Office and any correction in the record of the case is done when on filing of the inspection slip, the record is made available. These narrations of fact may look unnecessary but the contemnor has made grievance about that, I deem it expedient to record that the Court Master did not err in not permitting addition of parties on the following day and the Counsel was rightly asked to do by filing inspection slip.

7. After the Counsel for the petitioners added the party as directed by order dated 15.1.2009, the writ petition was listed before us on 30th of January, 2009. The defect pointed out by the Stamp Reporter as to whether writ petition is fit to be treated as Public Interest Litigation was ignored. On that day, we decided to issue show cause notice to the newly added Associations and the Unions and in order to expedite the matter observed that notices on the Unions and the Associations be served Dasti which the petitioners'' counsel undertook without any murmur. Thereafter the

matter came up before us on 4th of February, 2009 and on that day Senior Counsel representing the Associations and the Unions disclosed to the Court that they are watching the development and considering the desirability to continue with the strike and accordingly at their prayer, the case was adjourned. Counsel, who represented the petitioners on that day, was very vehement and contended that the strike itself is illegal in view of various judgments of the Supreme Court to which one of us (Prasad, ACJ.) observed that for the moment the court is not inclined to go into the larger question as to whether the Unions and the Associations have any such right or not and taking into account the sufferings of the people in general on account of strike "the court for the present would not like to go into this legal gymnastic".

8. Contemnor believes that Government servants had no right to strike and this issue involved in the writ application ought to have been decided on the very first day of its filing. The issue is not as simple as projected. It requires serious deliberation which was not possible without the assistance of the Unions and the Associations. Being "a renowned social activist" she expected the court to throw out all its procedure to wind and to wait at the gate of the court to entertain the petition and pass order. The special issue of the Journal of the Indian Law Institute (Volume 50, number 4 page 678), the Chairman, Editorial Committee whereof is Hon''ble the Chief Justice of India carries an article "Right to Civil Disobedience: Is it justification for strike by Government servants". The author, a Professor of Law K.C. Sunny in this connection has observed as follows:-

"It is submitted that the reasoning of the court is not correct. It is true that in All India Bank Employee the Supreme Court had categorically stated that right to strike is not a fundamental right. That does not mean that right to strike is neither legal nor justifiable. Speaking for a three member bench Krishna Iyer, J. had opined in Gujrath Steal Tubes that "a strike could be legal or illegal and even an illegal strike could be a justified one". In Syndicate Bank speaking for a five member bench Sawant, J. took the view that "whether there has been a breach of the relevant provisions" is the only question to be considered for determining the legality of a strike. In such a situation how can a two member bench declare that there is not even an equitable right to strike. One can argue that the observation of Krishna Iyer and Sawant, JJ. is confined to the employees coming under Industrial Disputes Act and the decision in T.K. Rangrajan is related to Government servants who do not come within the purview of Industrial Disputes Act. But such an argument is untenable considering the fact no specific reason had been stated in the judgment for adopting different standards for the strike of Government employees. It is relevant to note that in T.K. Rangrajan the question whether right to strike is a right was not raised as an issue and arguments of both sides were nor heard. In spite of this the court held that Government servants had no right to strike. So it is difficult to treat this principle as a binding precedent."

9. On the following day i.e. 5.2.2009 a fax message addressed to one of us (Prasad, ACJ.) was received. As this letter is the subject matter of contempt, I deem it expedient to reproduce the same:-

"To,

Mr. Chandramauli Kumar Prasad Honourable Acting Chief Justice Patna High Court Patna

Subject: Request to you to recluse yourself from hearing in C.W.J.C. No. 702/2009.

Sir,

I am Petitioner No.1 in the above case. I gather from the events specially since the filing of the case that you and your office is biased against our case and us. I cite a few examples:-

1. The case was being objected by the Stamp Reporter on frivolous grounds of the prayer not matching with the prayer in the first paragraph which was ridiculous as the prayer at the last of the writ only asked for granting of reliefs sought under paragraph 1.

2. When complained in writing to the Registrar (Computer and List) and orally by our lawyer to the Registrar General, no action was taken against the employee.

3. Rather, the case was sought to be delayed which cannot but be deliberate by you for 15 days under the ruse of adding the strikers.

4. No mandamus lies against a private person, Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another, by three Judge Bench relying on AIM SC 1183 who has no public duty to perform which was pointed out vehemently by our lawyer but you threatened to dismiss the case.

5. Even while directing you have written in the order sheet that the lawyer has sought to implead the parties which is untrue. You had forced the lawyer to agree to it in the open court. 1 his has been reported in all major newspapers. Even assuming that it should have been done, it should not have taken 15 days.

6. During the hearing on 4.2.09 you did not even allow my lawyer to speak stating that do not do legal gymnastic while you allowed the strikers lawyers to speak at length. This has been reported in Hindi Hindustan on the front page.

7. We first hearing was on 15.1.09. We went to add the parties on the following day but was refused by your court officer who again asked us to do it after filing inspection.

8. We filed inspection, but the records remained in your office for several days. Ultimately we did it and the case came up on 30th January when again our lawyers pleaded that there is no requirement under the law for any notice to illegal strikers.

Rather our grouse is against the Government which is hell bent on illegally helping the strikers which is creating great misery to the people of Bihar, stalling development including non-functioning of hospitals which is jeopardizing liver. Needless to state, Medicine is fundamental right under the Constitution.

9. We filed the requisites for the notice on 30th January itself. Though the bench posted the matter for 4th February, we got the notices for serving it on the parties on 2nd February at 4.30 p.m. We had kept on inquiring and urging it to given to us soon but to no avail.

10. That, we were asked to give dasti notice on the striking unions which was very dangerous. Our lawyer had pleaded for the notices to be sent through the police but it was refused by you.

11. That, all along your court officer Raman has been berating and demoralizing our lawyers and court clerk all long stating that we have been acting against his and employees interest. This also is illegal and unethical and cannot be allowed. It he is not acting on your behest then we urge you to take action against him.

12. That, the government employees are a pampered lot in compared to common people in Bihar and are holding the people to ransom against Government rules and illegally.

We have therefore lost all confidence in you about us and people of Bihar getting justice. Your attitude demonstrates partisan approach towards the strikers. We therefore request you to transfer this case to any other bench.

5.2.09

Thanking you,
Yours truly,
Sd/
Dr. Suman Lal 83 Krishna Apartment Boring Road P.S. S.K. Puri Patna-1.

COPY TO - THE CHIEF JUSTICE OF INDIA, SUPREME COURT, NEW DELHI-1."

10. I directed the letter to be placed on record of the case. Thereafter the writ petition was taken up on 6.2.2009 and the court enquired from the contemnor, who was present in court, as to whether she is the author of the letter. She admitted that the letter has been written by her. In our opinion, the contents of the letter, prima facie, showed commission of criminal contempt and accordingly we drew a proceeding for contempt against her and notice as provided under Rules was served. In response thereto, the contemnor has filed his show cause. I deem it expedient to reproduce her entire show cause:-

"The humble show cause on behalf of the opposite party namely Dr. Suman Lal

Most Respectfully Shweth,

I. This contempt proceeding has been initiated suo moto by the Patna High Court against the Opposite Party (OP) on the basis of letter written by the opposite party to the Honourable Acting Chief Justice Chandramauli Kumar Prasad for transferring CWJC No. 702/ 2009 challenging the strike of Government employee in Bihar along other things to another bench.

II. The intention of the O.P only was to uphold the majesty of justice and to keep the stream of justice pure in public interest.

III. Writing a letter to the Honourable Acting Chief Justice for transfer of the case C.W.J.C. No. 702/09 from one bench to another which is no contempt. It just happened that the Judge in question was also Mr. Chandramauli Kumar Prasad, the Acting Chief Justice Had there been regular Chief Justice, the letter for transfer from his bench would have been addressed to him/her for transfer from the bench presided by Justice Chandramauli Kumar Prasad.

IV. The show cause issued to the petitioner has not laid out how, by what and under which provision of law criminal contempt has been committed for which show cause has been asked to be submitted and she is being hauled. No charge has been framed. In the one page notice asking to file show cause, there was no document, and specification as directed by the apex court in Dr. Prodip Kumar Biswas Vs. Subrata Das and Others,

V. In the notice, there is reference to a petition dated 5.2.2009 of the notice Dr. Suman Lal while she has not filed any petition. Rather it was just a letter to the head of judiciary to uphold the majesty of law in public interest.

VI. The petitioner is a renowned social activist working for the poor and the marginalized women and has been moved by the plight of the sufferings of the people which has made her file this PIL so that resources of the State is better utilized and those denied their basic human rights like medicare etc. gets access to them. It is totally unfair that the State spends 16,000 crore on payment of salaries and pension for less than 1% of the populace who are Government servants whilst spends only 13,000 crore on development, law the rest 99%.

VII. When Justice Krishna Iyer was issued a notice of contempt for writing a letter in contempt proceeding to the Judges trying a contempt case and criticizing them, a Division Bench of the Kerala High Court consisting of Justice Cyriac Joseph (now Judge of the Supreme Court and Justice AK Basheer of the Kerala High Court held that writing letter to Judge in public interest is no contempt and dropped the proceeding.

VII. The petitioner did not publish it or made it public so the question of scandalizing does not arise. She wrote in public interest to the head of judiciary in the State. Newspaper report, the utterances of the Union leaders, the conduct of the Court Officer mentioned and not allowing her lawyers to speak, together, were creating

this apprehension of bias in the mind of the petitioner and unfortunately more in the mind of the public whose interest she was espousing.

IX. It was very important that the general public should not have such an impression as it was the rule of law at stake in a volatile and poor State where the average income of the person is around Rs. 10 per day (Rs. 3600 per annum) and all public servant including the Judge is paid several times more from the public purse and all of them are/or have befitted more the question which is under challenge before the court.

X. It was the Acting Chief Justice who made the document public and thus can be said to have published in according to Aiyer Law Lexicon as well as Black.

XI. If anyone has brought the judiciary to disrepute it is the Acting Chief Justice himself vide Section 16 of the Contempt of Courts Act, 1971 as he made the complaint letter public.

XII. All law dictionaries are agreed on the definition of publication and publish-it means "to make known to the people in general".

XIII. That she has not committed any contempt in the face of the court.

XIV. She has not interfered with any administration of justice, neither has she scandalized, nor obstructed it.

XV. The Acting Chief Justice may or may not have taken action to transfer the case and as such there was no obstruction/interference with the administration of justice.

XVI. Asking a Judge to rescues himself in case is normal affair worldwide. Had the petitioner made it public then it could be said that the petitioner had tried to influence the course of justice/force him or malign him.

XVII. Asking for change of bias in court is a very normal affair. A copy of the judgment passed by US Supreme Court in L.W. Holt vs. Commonwealth of Virginia in Case No. 464 decided on May 17, 1965 81 U.S. 131 and delivered by the renowned Judge Justice Black who shaped the American judiciary in the 50s and 60s clearly demonstrates this which ruled against Virginia Supreme Court of Appeals, which had held that the motion for change of venue was "a vehicle to heap insult upon the court, a studied attempt to smear the Judge". The Supreme Court held that if the charges were "insulting" it was inherent in the issue of bias raised. In the judgment it is observed that the right to be heard necessarily embody a right to file motions and pleadings IT also so observes that a fair trial in a fair tribunal is basic requirement of due process. It adds that it was vital to escape the possibility of a constitutionally unfair trial.

A copy of the above judgment is attached as

Annexure-1

XVIII. Professor Garry Slapper writing in the The Times Online has quoted a judgment of the court of appeals of UK in Locobail (UK) Ltd. vs. Bayfield Properties Ltd. (2000) set out guidelines about when a Judge should recuse himself for reasons of apparent bias.

A copy of the article is attached herewith as

Annexure-2

XIX. Honourable Justice David of Australia speaking at a seminar organized by the National Judicial College, Bejing on Judicial Bias states that when "Public confidence in the administration of justice requires that where there is the possibility of an appearance of bias, the Judge must withdraw from the case. It is a duty of the Judges to be impartial. He states that judicial

impartiality and neutrality is embodied by the Goddess Themis with sword, scales and blindfold. Justice means each person must receive, in the scale, that which is due to him no more and no less. The blindfold goddess illustrates that notion that Judges must decide cases solely by reference to the evidence that is led before him. Ho goes on to add that the system depends upon Judges being independent and impartial.

A full copy of the above article is annexed herewith as

Annexure-3

XX. Despite the Acting Chief Justice threatening all wraths repeatedly in the open court in full view, the petitioner remained cool and humble in the court.

XXL If at all the petitioner is still charged with contempt, in all fairness, this may be heard by another bench, specially as the letter stated the Acting Chief Justice and his court officer of bias and as such she fears she cannot get any justice from this bench and it is settled that nobody can be a Judge in his own cause.

XXII. A member of Jan Chowkidar has also complained to the Chief Justice of India, the President and the Prime Minister about Justice Chandramauli Kumar Prasad, the details of which we do not elaborate to save the judiciary from embarrassment.

XXIII. It is a settled axiom in law-Justice has not only to be done, but also seem to be done.

XXIV. The motto of our republic is Satyamev Jayte-let the truth prevail. As is clear from the above judgment of the US Supreme Court the allegation of bias was germane for the transfer of case and justice, which the OP reiterates was not made public by her.

XXV. That the Opposite Party has a great respect for Rule of Law and has done this only to uphold the majesty of law in sincere public interest as she has nothing personally to gain by the case except to bring relief to the suffering crores of people

of Bihar whose daily average income is approximately Rs. 10 only.

It is therefore prayed that the show cause be accepted as no contempt is made out and drop the instant proceedings and discharge the Rule in the light of above averments.

Or

To be punished if the court thinks that espousing the cause of the suffering billions in the country who are victim to the most organized group of usurpers of peoples wealth- the Government servants-is a crime

As

The OP wants blind justice nothing more and nothing less as the Goddess Themis depicts.

And for this the Opposite Party shall ever pray."

11. Ultimately the writ petition was heard on 9.2.2009, when we passed the following order:-

"We have heard the matter on several dates with only object of getting the strike called off.

Mr. Advocate General, appearing on behalf of the State states that demands of the respondents-Unions i.e. Bihar Rajya Arajpatrit Karmachari Mahasangh (Gope Gut), Bihar Sachivalya Seva Sangh, Bihar Rajya Arajpatrit Karmachari Mahasangh, Bihar Agriculture Service Association, Bihar Agriculture Graduate Service Association and other groups of employees laid earlier or to be laid by 16th of February, 2009 shall be considered with open mind in consultation with the representatives of respective associations and final decision in regard thereto shall be taken by the State Government by 31st of March, 2009 and appropriate notification in regard thereto shall be issued before the said date.

He also states that none of the employees shall be penalized only for participating in the strike.

In view of aforesaid, Mr. Indu Shekhar Prasad Sinha, Senior Advocate, representing respondent No. 5, Mr. Vinod Kumar Kanth, Senior Advocate, representing respondent No. 6, Mr. Shyama Prasad Mukherjee, Senior Advocate, representing respondent No. 7 and Mr. Chitranjan Sinha, Senior Advocate, appearing on behalf of Bihar Agriculture Service Association and Bihar Agriculture Graduate Service Association state that respective Unions/Associations shall call off the strike from today.

We are glad to record the aforesaid assurances of the Advocate General as also the Counsel representing the Associations.

List it on 6th of April, 2009.

12. We have heard the contemnor in person as also her Counsel and she states that she has written what she felt. We have heard her Counsel also. In order to do complete justice though no prayer was made for filing written submission, but we did grant her time to file written submission if she so desires. Contemnor has not chosen to file any written submission but has filed another show cause which is full of sermon as to how a Judge should behave and is in a collusion course as if the conduct of the Judge is the subject matter of proceeding. This "renowned social activist" approach seems to holier than thou and she believes that she has monopoly on all virtues.

13. It is relevant here to state that Government Advocate No. 3, appearing on behalf of the State states that the contents of the letter as also the show cause clearly show that it is not written by the contemnor, but dictated by the Counsel. I am not inclined to go into this question as the contemnor had in unequivocal terms states that she had attended the Court on each and every day and the contents of the letter and the show cause are her views.

14. Before I enter into the merit of the case, I deem ii expedient to consider the oral prayer of the petitioner as also the prayer made in the show cause for transfer of the case to another Bench. Although no provision of law has been pointed out in this regard, perhaps the contemnor has in mind Section 14(2) of the Contempt of Courts Act. Section 14(2) of the Contempt of Courts Act (hereinafter referred to as the ''Act'') reads as follows:-

"14. Procedure where contempt is in the face of the Supreme Court or a High Court.-

X X X X

(2) Notwithstanding anything contained in sub-section (1) where person charged with contempt under that subsection applies, whether orally or in writing, to have the charge against him tried by some Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of the opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

X X X X

15. Ordinarily we would have transferred the case before another Bench even in the absence of any legal provision but in my opinion if such prayer is allowed, it may encourage persons like the contemnor to coerce and pressurize the Bench. Here in the present case, the proceeding has not been drawn on the ground that the contempt has been committed in face of the Court. In my opinion Section 14 prescribes for procedure where contempt is in the face of the Supreme Court or a

High Court. Further Section 14(2) gives discretion to the court to transfer or not to transfer the case and the legislature left it to the wisdom of the Judges. The often quoted maxim that justice must not only be done but must be seen to be done by all concerned and more particularly a contemnor should always be adhered as far as possible. But this maxim cannot be applied in the facts of the present case. Threat, coercion and pressure do not deflect the Court from protecting the course of justice. Her conduct shows that she is not interested in getting the strike called of but to prove to the world that it is she who got the strike called of to gain publicity. This Court would not give this handle to the contemnor. As it is well settled, public interest litigation is not an adversary litigation and the Court lends its hand in the public interest litigation to minimize the sufferings of the citizens. Accordingly, we reject the prayer for transfer of the case and to give ''the renowned social activist'' the taste of victory.

16. Silence is not an option when things are ill-done. Recourse to this jurisdiction deserves to be invoked whenever it is found that something has been done which tends to browbeat a Judge, or which tends to impede its course or tends to shake public confidence in the majesty of law and to preserve and maintain the dignity of the Court. No litigant, not even a contemnor, claiming to be "a renowned social activist" can be allowed to browbeat a Judge and deflect the course of justice. The Constitution and the legislature had given contempt jurisdiction to the superior courts as they rightly thought that a time may come when the Judges would have to exercise this jurisdiction to prevent pollution in the course of justice from unwanted quarter.

17. The contemnor in her letter has alleged bias against one of us (Prasad, ACJ.). She has also alleged that "the case was sought to be delayed which cannot but be deliberate by you for 15 days under the ruce of adding the strikers". The question is as to whether writing a letter asking a Judge to recluse from hearing of a pending matter on the unfounded allegation of bias, partisan attitude and adding a party constitutes criminal contempt or not. There cannot be a more grave insinuation to a Judge than to say that he is ''biased'' ''partisan'' and ''under the ruse of adding the strikers''. It is not the case of the contemnor that the Court had bias on the subject matter but according to her the conduct of the Judge is biased and partisan. The foundation of this conclusion is the objections raised by the Stamp Reporter, which in the opinion of the contemnor were frivolous and refusal to take action against the Stamp Reporter (employee) by the Registrar. As the contempt action is ignited only when it interferes with fearless judicial action, not fair comment, it is necessary to narrate the sequence of events. The writ petition challenging the strike was presented on 13.1.2009. As usual the Registry of the Court scrutinized the petition on 13.1.2009 and made following objections:-

"(i) The subject may be stated at Index page as stated on the synopsis page.

(j) The subject should be stated as per the relief claimed."

18. Counsel for the writ petitioners claimed to have removed alt the defects on 14.1.2009. The Registry though functions under the direct control of the Chief Justice but in a routine course Stamp Reporter points out such defects, which in its opinion is not in accordance with the Rules and procedure of the Court. The petitioner had not given the ''subject'' of the writ petition in its index but gave it in the synopsis and hence Stamp Reporter rightly pointed out the said defect. Every writ application filed as Public Interest Litigation is required to be listed before the Court under the heading "for orders" for determination as to whether it is fit to be entertained as such and subject matter given correct. Therefore, the Stamp Reporter did not err in making objection. Alleging bias and further allegation of adding the strikers by the Chief Justice is beyond anybody''s comprehension.

19. She has also alleged loss of confidence of the contemnor and "people of Bihar getting justice". Allegation has also been levelled that the Judge threatened to dismiss the case and "forced the lawyer to agree" to an order. Statement in the show cause that a member of Jan Chowkidar has also complained to the Chief Justice of India, the President and the Prime Minister about one of us (Prasad, ACJ.), the details of which the contemnor did not elaborate the same to save the judiciary from embarrassment. The reason and circumstances which weighed with the Bench while passing the orders have been spelt in preceding paragraphs of the judgment.

20. These conduct of the petitioner is nothing but an act of browbeating the Judge. It is on an unfounded allegation that she is demanding the Judge to recluse from hearing of the writ petition. The allegation made scandalizes the court to discharge its judicial function and thereby substantially interferes or tends to interfere with the due course of justice. She has recklessly imputed motives and lack of good faith. The tone, tenor and contents of the letter as also the show cause notice in imputing the allegation of bias and partisan attitude for the strikers tends to tower the authority of the court and tends to interfere with the course of justice. Unfounded imputation of mala fide, bias, prejudice or ridiculing the performance of the Judge are nothing but scandalizing the court in lowering its authority by bringing the Judge and his office into disrespect and disrepute. The contemnor has not only done this but in order to browbeat the Judge and toe her line made statements though not necessary that a member of the petitioner society had also complained to the Chief Justice of India, the President and the Prime Minister about one of us (Prasad, ACJ.). It is nothing but browbeating and ridiculing the Judge. She is unreluctant and not adopted even obliquely any attitude of contrition or a pretence of remorse.

21. I am not unmindful that fair and reasonable criticism of a Judge concerned with administration of justice would not constitute contempt. In fact, such fair and reasonable criticism must be encouraged because, after all no one, much less, Judges, can claim infallibility. A fair and reasonable comment as the Supreme Court had observed in the case of Rama Dayal Markarha Vs. State of Madhya Pradesh, , would even be helpful to the Judge concerned because he will be able to see his own

shortcomings, limitations or imperfections in his work. The society at large is interested in the administration of justice because, in the words of Bengamin N. Cardozo,-"The great tides and currents which engulf the rest men do not turn aside in their course and pass the Judges by."

22. I am conscious and mindful of the famous words of Lord Atkin spoken about three decades ago in the case of Ambard vs. Attorney General for Trinidad and Tobago, (1936) 1 All ER 704--"Justice is not a cloistered virtue, she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men." Judgments can be criticized and the observations of the court even termed to be foolish but that has to be fair and reasonable and in the garb of freedom nobody can be permitted to scandalize the court. What I have stated above finds its footage in the judgment of the Supreme Court in the case of Narmada Bachao Andolan vs. Union of India & Ors., JT 1999(8) SC 354, in which it has been observed as follows:-

"We wish to emphasise that under the cover of freedom of speech and expression no party can be given a licence to misrepresent the proceedings and orders of the Court and deliberately paint absolutely wrong and incomplete picture which has the tendency to scandalize the Court and bring it into disrepute or ridicule. The right of criticizing, in good faith in private or public, a judgment of the Court cannot be exercised with malice or by attempting to impair the administration of justice. Indeed, freedom of speech and expression is "life blood of democracy" but this freedom is subject to certain qualifications. An offence of scandalizing the Court per so is one such qualification, since that offence exists to protect the administration of justice and is reasonably justified and necessary in a democratic society. It is not only an offence under the Contempt of Courts Act but is sui generis. Courts are not unduly sensitive to fair comment or even outspoken comments being made regarding their judgments and orders made objectively, fairly and without any malice, but no one can be permitted to distort orders of the courts and deliberately give a slant to its proceedings, which have the tendency to scandalize the Court or bring it to ridicule, in the larger interest of protecting administration of justice."

23. I confess that even after giving extreme leverage and rope to the contemnor, I have not been able to persuade myself that what has been written by the contemnor by any stretch of imagination be termed as fair and reasonable. There cannot be a more grave insinuation to a Judge than to say that he is prejudiced and biased. The object and tenor of the letter and the show cause is to browbeat, coerce and ridicule the Judge, I am of the firm opinion that it tends to bring administration of justice into ridicule, scandalizes the court and deflects the course of justice.

24. Contemnor seems to be under a wrong notion that as she had not published the letter and had the contempt proceeding not drawn, nobody would not have known that and "the Acting Chief Justice may or may not have taken the action to transfer the case and taking into consideration the facts and circumstances of the case, there was no obstruction interference with the administration of justice". According to the

contemnor, "if any one has brought the judiciary to disrepute it is the Acting Chief Justice himself". According to her, "asking the Judge to recluse himself in a case in a normal affair worldwide. The very act of the contemnor to write a letter in the pending proceeding and alleging bias on unfounded ground and alleging prejudice were nothing but an act to interfere with the course of administration of justice. It is of no consequence as to whether it is published or not. In my opinion the letter was intended to browbeat, coerce and pressurize the Judge. Act of writing to the Chief Justice of India, President of India and Prime Minister of India which is not at all germane to the present proceeding is nothing but calculated attempt to ridicule the Judge and thereby to interfere with the course of justice.

25. Generally speaking court is reluctant to resort to the provisions of Contempt of Courts Act as we are committed to the Rule of Law. In matters involving allegation of criminal contempt, the court acts both as a Prosecutor and a Judge and it acts in order to uphold the authority of law and not in defence of a particular Judge. Order punishing a person for such contempt is likely to create an impression in the mind of lay observes that the Judges have acted in defence of themselves. I would not have liked to create such an impression but the oath of office which I have taken reminds me not to deter from that and uphold the law. Our Dharma Shastras and Smritis with one voice laid down that dispensation of Justice is the highest Dharma of Judges. Manu Smriti cautions the Judge as follows:-

"In a case where Dharma (Justice) has been injured or made to suffer at the hands of Adharma and still the Judges fail to remove the injustice, such Judges are sure to suffer for their act or omission which is Adharma."

26. On objective assessment of what has been written, I am firmly of the opinion that same has interfered with the administration of justice and thus criminal contempt. An allegation of bias and prejudice and an uncalled for allegation of mala fide intended to browbeat a Judge tends to interfere with the fearless judicial action and is so reprehensible that it would be a travesty of justice if the courts allow gross contempt of court to go unpunished. While granting time to file written submissions though not asked for by order dated 11.2.2009, we thought that the contemnor shall show an attitude of contrition and remorse but instead of that filed second show cause containing sermons and not at all introspecting about her own conduct. Being a "renowned social activist" she seems to be under an impression that she is law unto herself and can breach it with impunity and because of her activist status nobody will dare to question her. She seems to have forgotten that long arms of the Court do not make difference between poor and rich, mighty and weak, common person and renowned person, it is high time that all those under this impression must be told and told loudly that it. does not happen in Court of Law and assure the sovereign (people) of this Country that it shall never happen.

27. Although the contempt committed is grave and serious and deserves to be punished with severe punishment, but the Judges as they are, benevolent and

tampers justice with mercy, taking into account the fact that the contemnor is a woman, I award simple imprisonment for 15 days.

28. Contemnor shall be lodged in Adarsh Central Jail, Beur. Rule issued is made absolute.

Shyam Kishore Sharma, J.

29. I agree.