

(1981) 07 CAL CK 0035**Calcutta High Court****Case No:** C. R. No. 5917 (W) of 1980

Samarendra Nath Bhattacherjee

APPELLANT

Vs

Sourendra Nath Ray and Others

RESPONDENT

Date of Decision: July 30, 1981**Citation:** 86 CWN 401**Hon'ble Judges:** M.N. Roy, J**Bench:** Single Bench**Advocate:** Somendra Chandra Bose and Birendra Chandra Chakravarty, for the Appellant; Umesh Chandra Banerjee and Prabir Roy Chowdhuri, for the Respondent**Judgement**

M.N. Roy, J.

Paraffin wax (hereinafter referred to as the said product) at all material times was and still is a controlled com. modify and the supply and distribution of same is done by or under Paraffin wax (Supply, Distribution and price Fixation) order, 1972 (hereinafter referred to as the said order). The petitioner was and still is a manufacturer of candles and proprietor of Messrs. Monjula Candle Works. Since he was carrying on his business in Small Scale he has been" registered under the Cottage and Small Scale Industries Department; Government of West Bengal as Small Scale Industrial Unit or S. S. I Unit It is true that the sole dealer viz the West Bengal Small Industries Corporation Ltd, as appointed by the State of West Bengal, receives. the supply of Paraffin wax from the primary producers and from them the S. S. I. Units, in terms of the quota, as allotted. It is also an admitted position that such allotment-of Paraffin Wax, is made subject to the conditions of (i) renewal of Small Scale Industries Registration Certificate, (ii- proper maintenance of relevant records and (Hi) keeping of those records and documents ready for inspection. The petitioner obtained Civil Rule No. 66 (W) of 1978, claiming inter alia amongst others that the Director, Cottage and Small Scale Industries, on the basis of his requirements of the concerned product and on due and necessary enquiry, allotted a regular monthly quota of 23 bags of Paraffin Wax with effect from April 1975, but

such quota of allotment was received up to October 1976 and thereafter the same or the supply has been revoked. The said action, was claimed to be bad and void, apart from being irregular and against principles of natural justice, as before such can collation or withholding of the allotted quota, he was not given due and necessary opportunities; It would however appear that thereafter, by memo dated 9th May 1977, on review, the allotment to the petitioner, at a reduced supply of seven bags of the product for three months was made. The petitioner had claimed, that such review was made neither on his asking nor with notice to him. But in any event, he claimed such fixation of supply at a reduced rate to be void, arbitrary, illegal and irregular. He further alleged that although seven bags as mentioned above, was allotted, yet he was allowed to lift four bags only, and be, after lifting such allotment, duly protested. It would also appear that thereafter, by a communication dated 12th July 1977, the petitioner was informed that further allocation of Paraffin Wax would not be possible, due to in adequate supply and availability of the same The petitioner had also asserted that all his representations for larger supply of the product failed and proved to be futile. He also alleged, with some particulars, that although his quota was curtailed or affected, yet others were getting their usual supply.

2. It was also claimed by the petitioner that his claim for the necessary allotment as made earlier or initially, was found to be due and justified on scrutiny, apart from the fact that the authorities concerned, were satisfied with the bonafides of such claim. It was also claimed by the petitioner that on receipt of the initial quota, he made large investments or had acted to his detriment, on the assurance of receiving such initial quota. It was also claimed that the petitioner althroughout continued with the performance necessary for receiving the allotment. He also claimed not to have received on account of his arrear quota. He also claimed the order as impeached to be bad and improper, apart from being illegal and irregular, as the same was not a speaking one and the same was passed mechanically and without the due application of mind.

3. The Respondents in that Civil Rule contended that the dealers as mentioned hereinbefore, have some recognised rights under the said order, but the allotment to them, was under the exclusive control of the Director. Cottage and Small Scale Industries. Government of West Bengal. It was also the case of the Respondents, that certain preconditions were necessary and relevant for obtaining the quota or allotment of Paraffin Wax and discontinuance of business or not fulfilment of those conditions, would be enough for suspension or withholding or cancellation and even reduction of quota as allotted. It was claimed that the maintenance of the records and documents or possession of Small Scale Industry Certificate, would not be enough or sufficient to have the allotment as made continued. In any event, it was claimed that the petitioner had not fulfilled or were not fulfilling his obligations duly. The Respondents in their return have also stated that the Inspectors concerned, in accordance with the usual practice, inspected the factory premises of

the petitioner on diverse dates and discovered that the petitioner was not continuing with the business and there were violations of other requirements under the said order. Such statement" was sought to be corroborated by an affidavit of the Assistant Field Officer concerned. It was also and the further case of the Respondents that on such inspection irregularities and steps taken contrary to the said order, were found and for those reasons, the allotment of the petitioner's were withheld temporarily and the petitioner was asked it") appear and explain the irregularities. It was also asserted that in such enquiry also, the petitioner could not satisfactorily or duly explain the conduct and irregularities. The Respondents have also stated that on representation, further inspection were held and in pursuance to the declared Policy of the State Government, the concerned Unit was given further opportunities of having some reduced quota on ad hoc basis and that too without any commitment.

4. The Respondents have also stated that due to the drastic reduction of State quota of the said product. the allotment to their allotted were curtailed on pro rata basis and such curtailment was done with the due sanction of the Raw Materials Allocation Committee and it was also stated that for regulation of quota, the matter was placed before the said Committee and they had been decided that by reasons of drastic reduction of State quota, it would not be possible to meet the requirements of temporary allottees and those cases were kept pending until further consideration by that Committee. Thereafter, the said Committee, decided that such temporary allottees, who have fulfilled and are fulfilling the requirements under the said order, may be given allotments and as such, all temporary allottees were directed to produce relevant papers and documents in regard to their respective units. Such, in fact was the general background, which was applied in the case of the petitioner, so far allocation or reduction of the said product was concerned. The Respondents in the concerned Civil Rule have stated that the petitioner furnished details alid in pursuance thereof, the Committee concerned, decided to allot the existing quota. But, by reasons of the drastic reduction in the State quota, the petitioner was allotted only four bags per month. It was stated that minimum four bag's of the said product to allottees, why, manufactured candles, were given. It was further stated that at the time of inspection, it was found that there were neither any workman present in the factory of the petitioner nor the petitioner himself was present there. The withholding of quota was" claimed to be due and proper apart from being justified in the facts and circumstances of the case, arid that too in terms of the policy duly framed for meeting the exigence.

5. In the circumstances as above and. as prevailing, the Respondents in the Rule, contended that the release of arrear quota was not possible and the quota was claimed to be released on the basis of availability and that too on following the policy as mentioned above. The withholding of quota was further "claimed to be after due and necessary opportunities and communication to the petitioner. It was also claimed by the Respondents that the allotments on ad hoc basis, as made, were

in respect of permanent allottees and there was no malafide intention or arbitrary exercise of power in the same. It was their case that the supply of the said product to others, in the facts and circumstances as disclosed, was not possible. It was also stated by the Respondents that the re -view as was done, was made in exercise of powers and on the basis of the policy as mentioned above and the restrictions as imposed, were also claimed to be due, bonafide and justified.

6. In those facts, circumstances and backgrounds, the said Civil Rule No. 66 (W) of 1978, in which the present, application for contempt was made, was made absolute, after hearing the parties on 16th May 1979. Whereby, the allotment of quota of the said product in favour of the petitioner, including the supply of arrear quota of the same and also the supply of the said product to him. was required to be made regularly after quashing the order of suspension and those withheld the monthly quota of allotment. In fact, the prayer of the petitioner in the said Civil Rule No. 63 (W) of 1978 was for the issue of a writ in the nature of mandamus commanding the Director, Cottage and Small Scale" Industries, Government of West Bengal, to the above effect apart from commanding him to cancel or withholding the order of cancellation or withholding of such product, if any, and also two memoranda's dated 13th October 1976 and 12th July 1977 respectively.

7. it should be noted here that after the Rule was made absolute, the answering Respondents therein, made an application for clarification of the judgment and order as passed on 16th May 1979 and on 25th March 1980, after hearing the learned Advocates appearing, the said application was not entertained, as it was found that no order was required to be made on the same, as no clarification or explanation of the order dated 16th May 1979, was at all required, whereby the Rule was made absolute.

8. In this application for contempt the petitioner has stated that after the Rule as mentioned above, was made absolute, writs on being duly drawn up and as prepared by the office were sent to the learned Advocate for the Respondents and it had been stated that the said learned Advocate, did not find any am bigotry in the prayers made in the concerned writ petition and also the judgment and order as passed. It has also been stated that there having some delay in making the application for drawing up the writs, the matter was placed in the list on 5th December 1979 for orders when the delay in filing application for drawing up the writ, was condoned. It has also been stated that the writs as drawn up, having received, were duly served on the Respondents, including the contemnor opposite parties herein viz Sarbashree Sourendra Nath Roy and Arijit Kumar Guha. on or about 11th December 1979.

9. The petitioner has alleged that after that, by a memo dated 29th December 1979, addressed to the Managing Director, West Bengal Small Scaler industries Corporation Ltd., he was allotted ad hoc allotment of 10 bags of the said product, towards his claim prior to January 1978 and the contemnor opposite party No. 2,

Shri Arijit Kumar Guha, issued the same memo. It has been alleged that the said memo was issued by the said Shri Guha without any authority and only for the purpose of prejudicing the case of the petitioner and such memo has also been alleged to have been issued, having full knowledge of the purport of the judgment and order as mentioned above, with the deliberate and utter disregard to the same. It has also been alleged that by such act or actions, the said contemnor opposite party no.2, has wilfully interfered with the judgment and order passed by the Court and as such, such action on his part, would amount to gross contempt of this Hon'ble High Court. It was the further case of the petitioner that on receipt of the said memo dated 29th December 1979, he without prejudice deposited the value of the 10 bags of the said product and by letter of 30th January 1980, requested the contemnor opposite party No. 1. Shri Sourendra Nath Roy, to release the rest of 780 bags of the said product as accumulated on account of arrears up to December 1979. The petitioner has also stated that by a letter of his learned Advocate dated 11th January 1980, he requested the contemnor opposite parties to honour and respect the order as passed by this Court and to carry out the same without interference or creating any hindrance. It has also been stated that it was made clearly by the said letter that the contemnor opposite parties were deliberated and wilfully interfering with the order as made by this Court, only to harass, the petitioner. The petitioner has further stated that thereafter, he by a memo dated 1st December 1980, from the contemnor opposite party No 1, was informed in connection with the letter as mentioned above, that an application for clarification as mentioned above was made and it was also intimated that on receipt of the clarification or the order on the same from this Court, necessary action would be taken. The particulars of the application for clarification and the order as made, have been stated hereinbefore.

10. The petitioner has further stated that there being adequate supply of the said product, received from the Central Government, the contemnor opposite party no. 1, enhanced the monthly quota of all allottees on pro rata basis only to the exclusion of the petitioner and such prorata enhancement of monthly quota was effected since April 1979. That being so, the petitioner has claimed that he was entitled to 28 bags of the said product per month with effect from April 1979 against his original quota of allotment of 23 bags. In fact, he has stated to have requested the authorities concerned, to restore his original quota of allotment and to enhance the same on pro rata basis like others. It was the case of the petitioner, but unfortunately, in spite of the Rule as aforesaid being made absolute, neither his original quota of allotment nor the pro rata enhancement was effected and the arrears have not been released.

11. It was the case of the petitioner that after the disposal of the clarification application of the Respondents in Civil Rule No. 66 (W) of 1978, the petitioner, by a letter of 26th April 1980, requested the contemnor opposite party no. 1, to release all arrears of the said product, apart from releasing the monthly quota at the rate of

28 bags since pro rata enhancement was effected in respect of all allottees with effect from April 1979. The petitioner has stated that he also pointed out that the prayers in the original writ petition being clear and unambiguous, no clarification was required and in fact, no such clarification was made as such. It has been categorically asserted by the petitioner that in spite of the Rule being made absolute in the manner as indicated above, his original quota of allotment has not even been restored and he was given at the rate of 8 bags of the said product per month, against his monthly quota of 23 bags, excluding the pro rata enhancement.

12. Under the above circumstances, the petitioner has stated that he through his letter dated 7th May 1980, requested the contemnor opposite party No. 1 again, to release all arrears of the said product and to restore monthly quota of allotment at the rate of 28 bags of the said product since there was an inherent on the pro rata basis and further requested the contemnor opposite parties, to carry out and honour the order as made by this Court and not to further disrespect, disregard or deliberately flout the same and thus the dignity and authority of this court. It has been alleged by the petitioner that unfortunately, inspite of such requests, the contemnor opposite party no. 1 has deliberately and wilfully neglected and is neglecting to carry out the orders made by this Court. The text where of, is also known to him and as such, he has not only exposed himself to coa-tempt, but has shown his utter disrespect to this court and the order as made of it.

13. It was in fact and in shore, the categorical assertions and allegations of the petitioner that the purported suspensions of quota of allotment of the said product, having been quashed in the mantra as indicated above, the contemnor opposite parties have deliberately violate or are violating such order and have shown or are showing utter disrespect to such order and to this Court, by not carrying out the order as made and such deliberate, violation was resorted to by the condemner opposite parties in their collusive act or action and attempt to nullify the order as made by this Court.. "While

14. The contemnor opposite party no. 1 in the instant case was Shri Sourendra Nath Roy, Director Cottage and Small Scale Industries, Government of West Bengal and contemnor opposite party No. 2 was the Deputy Director of Industries (Ancillary) Directorate of Cottage and Small Scale Industries Government of West Bengal, Raw Materials Division.

15. The affidavit in the instant case which was dated 2nd September was filed by the contemnor opposite party No. 1. Before dealing with the material allegations of the application, he has stated that at any point of time, he had no and still he has no intention to show any disrespect or to disobey any order passed by this Court and he has in the instant case, acted in accordance with law and in compliance with the order as made by this Court. He has stated that initially an allotment of 23 bags of said product per month, was made to the petitioners; from April 1975 and since it transpired from inspection that the petitioners manufacturing unit was not

functioning, on or September 1976, the petitioner was given an opportunity of hearing, where lie appeared and submitted necessary particulars. It has been stated those particulars varied with the particulars collected at the investigation and in that view of the matter, the petitioner's case and representation was rejected. It has been stated that after such inspection, the petitioner's unit was found to be functioning with four workmen only and after considering the relevant facts, an allotment of 7 bags were made to him, but actual delivery was made of 4 bags per month, due to introduction of general reduction from May 1977, in regard to allotment of Wax to all Wax based units. The deponent has stated that there was no arbitrary reduction of the petitioner's monthly allotment or there was no discrimination among the units placed and belonging to the same category. He has also stated that as the order made in Civil Rule No 66 (W) of 1978, caused some confusion in his mind, an application for clarification, the particulars whereof have been mentioned hereinbefore, was made. The parlied fars of the order, which was made on the said application has also been mentioned hereinbefore. In fact, the said deponent has quoted the said order dated 5th March 1980 as in Annexure "A" to his affidavit in opposition. It was also stated by him that since allotments are made on the availability of the said product-, so allotment in the case of the petitioner was made duly on the basis of such availability and after long wing the necessary verifications and in the matter of such allotment to the petitioner, there has not only been any illegality or irregularity but there was no mtuande intention or ill-will and collusion as alleged. The particulars of steps which were taken, for assessing the quota, which could be made available to the petitioner, on the basis of the availability of the said product, have been mentioned in the affidavit, and on such defence, the deponent stated that he not only acted duly and bonafide, but he had as mentioned hereinbefore, no intention to show any disregard to the order passed by this Court or any intention to interfere with the judgment as made by this Court. He has categorically stated that the allotment in the case of the -petitioner, was made strictly in accordance with the existing policy of the Government and in accordance with the said order. These apart the deponent has claimed the application for contempt, to be not maintainable, harassive and speculative too.

16. The other affidavit-in-opposition was filed by the contemnor opposite party no. 2. Apart from denying the mate-rail allegations and pleading the same defence as was pleaded by the contemnor opposite party No. 1, in justification of the action as taken, this deponent has also stated that he had no intention to flout, disobey or disregard and willfully neglect or show any disrespect to the order as made by this court and without prejudice to such statements as also, like the "contemnor opposite party, tendered his unconditional apology for the act of contempt, if any. He has stated furthter that he had nothing to do with the allotments, except to forward the allotment order to the petitioner. He has also stated that the competent authority had allotted 15 bags of the said product towards the petitioner s claim for arrear allotments, after considering the availability of raw materials and other

relevant factors. it was his case that after the clarification sought for and the order as made. the respondents had acted in terms of the order as made by this Court, subject to the conditions as mentioned herein before viz. availability of the said product and fulfilment of the necessary requirements and qualifications for the necessary allotment. He has stated that for few months since December 1979, the supply of raw materials to this State were very much irregular and in some months, the total stock became alarmingly disproportionate to the total consumption and demand of the same.

17. The first affidavit-in-opposition was replied to by the affidavit-in-reply dated 19th September 1980 and the second one was also replied on the same date. In those two replies, practically nothing new has been brought up but during the course of the present proceedings, a supplementary affidavit dated 16th July 1981 and a chart showing the list of S. S. I. Units which were regular allottees of the paid product as on 30th November 1977, with notice and production to the learned Advocate for the Respondents have filed. In the said supplementary affidavit, which was filed for one Shri Rameswar Lai Kedia, husband of Smt. Reshma Debi, petitioner in Civil Rule No. 5918 (W) of 1980, it has been stated that with effect from April 1979, allotment in respect of allottees have been made over and above the original quota of allotment. It has also been stated that the allottees, whose quota was determined at 10 bags, are being given. at the enhanced rates of 12 bags per month with effect from April 1979 and it would appear from the list, that units like Modern Candle Works and B.N C. Enterprise being in serial Nos. 675 and 677 of the list are getting more than their regular quota per month. In fact, the list of S.S.I. Units as mentioned above, was filed to substantiate the statement of the supplementary affidavit. It has also been stated in the said supplementary affidavit that Modern Candle Works and B. N C. Enterprise were given at the enhanced rates of 12 bags and Amar Jyoti Candle Works (serial No 1) was given at the rate of 15 bags with effect from April 1979.

18. The fact that the said Civil Rule No. 66 (W) of 1978 was made absolute and the impugned orders of suspensions and for withholding of monthly quota of allotment of the said product, was not required to be given effect to was not in dispute. It was also not in dispute that while making such order, it was further directed that no reduction or curtailment against monthly quota, can be done without following the principles of natural justice provided such act or action was necessitated as a general rule for allottees, owing to insufficient receipt on supply of the said product from the Central Government. It was also and further directed that save on the grounds as mentioned above no reduction should be done without giving adequate opportunities to the allottees, to be adversely affected by the necessary reduction or curtailment. It was also not in dispute that the application for clarification was not entertained.

19. On the basis of the above, it was contended by the petitioner through Mr. Chakraborty, that the contemnor opposite parties were in duty bound, not only to

allot 23 bags of the said product per month in favour of the petitioner, but also to supply the enhanced quote apart from making provision for the supply of arrear quota on the basis of such allotment and in not doing so or making such provisions for enhanced quota for some allottees excepting the petitioner, they have exposed themselves to contempt of this Court and that too, for not acting in terms of the order as made or is not honouring the same. It was claimed and contended that since some other units as mentioned above or whose particulars would be available from the supplementary affidavit, so also the chatt as filed, was given his other quota the defence of scarcity as taken or put forward, was anything but real and would not be available to the contemnor opposite parties. It was also claimed that from a reference to the application for clarification as filed in the Civil Rule and as mentioned above, it was also certain that they had due and necessary knowledge of the order as made by this Court or about the writ, which was issued.

20. Mr. Banerjee, appearing for the contemnor opposite parties stated, that in case this Court finds them to be guilty of the charges as made, they would be tendering unqualified apology and in fact, these -officials had duly and bonafide acted in the instant case, and that too without the least inclination to (lout, disobey, neglect or disrespect the order as made. In short, it has been stated that these officers have highest regards for the order as made and they have duly followed or complied with the same or still complying with the same, subject to the availability of the said product for distribution. It should be remembered that the said officers had or has no hand or control over the said product, except that they are to allot quotas of the same, subject to the availability of the same and that too in terms of the formula as evolved, taking into consideration, other relevant factors as mentioned above. In fact, those officers are to deliberate and decide on the assessment of capacity of a Unit, which depend upon various factor including the availability of raw materials. In view of such laid down formula for assessing the capacity of a Unit subject to the availability, it was claimed that the Units as mentioned by the petitioner, were no doubt allotted higher quotas but such grant, according to Mr. Banerjee would perhaps be a case for discrimination, if at all, but would not constitute deliberate or willful and negligent act of contempt. Mr. Banerjee contended that the fact that even at a lesser rate, quota has been allotted to the petitioner, would show, prove and establish, that the contemnor opposite parties, were not intending to act contrary to the order as made, but they were really acting on the basis of High Court's order, "subject to the conditions as mentioned above and the same was and still is possible and possibly. It was also contended by Mr. Banerjee that as soon as the officials concerned, felt the difficulty in understanding the scope, import and effect of the order as made on 16th May 1979, they made an application for necessary clarification and that fact alone, would go to show and establish that the attitude of the contemnor opposite parties, was not to disobey but to obey the order as made.

21. To find a person, guilty of the charges as alleged, in a contempt proceedings, in my view, it must first be determined if there was any ambiguity in the order itself, which could place the person, required to follow the order, in two minds or if the order, which was required to be complied with, was capable of interpretations other than what was alleged. In case a definite finding, is, not possible, regarding the single interpretation or oneness of the order, than it would not also be safe to hold and find a person guilty of the charges of contempt as alleged, for following the other terms of the order and not the one as suggested or acting, on that basis. In this case, there could have been no such difficulty as there was no ambiguity in the order and that too at least after the application for clarification as mentioned by the officials concerned, was not entertained. They also had due notice, knowledge and intimation of the order, which are also necessary requirements and prerequisites and are to be satisfied before holding the person charged of contempt, proved. Thus, on the above aspects, the contemnor opposite parties cannot claim to be exonerated.

22. In the case" of Miller vs. Knox (1878) 4 Bing N. C. 574, Williams J, has observed that contempt of Court (which has been Inconveniently termed a "legal thumb screw" is so manifold in its aspect that it is difficult to lay down any exact destination of offence It has bean defined nr described there as to be a disobedience to the Court, as opposing or disposing the authority, justice or dignity thereof. It has been stated to be commonly consisting in a party"s doing otherwise than he was enjoyed to do, or not doing what he was Commanded or required by the process order or decree of the Court. In terms of Oswald"s Contempt of Court, Third Edition, Contempt, in the legal acceptation of the terms, primarily signifies disrespect to that which is entitled to legal regard j but as a wrong purely moral, or affecting an object not possessing a legal status, it has In the eye of law no existence.

23. It must always be remembered in considering and dealing with Contempt of Court that the same is an offence purely subgenus, and that the punishment for the same involves in most cases an exceptional interference with the liberty of the subject, and that, too, by a method of process which would in no other case be permissible, or even tolerated. Thus, it is necessary that in all cases of the nature and kind, the Court dealing with the alleged offence, should not proceed otherwise than with great caution and deliberation, and only in cases where administration of justice would be hampered by the delay in proceeding in the ordinary course of law and that when any attendant process has to be put in motion every prescribed steps and rule, however, technical, as held in the case of Mcleod Vs St. Anbyn., (1899) A G. 549, should be carefully taken, observed and insisted upon. The Jurisdicton should be exercised more carefully and with due caution in view of the fact that the person charged of the offence is usually reduced, or pretends to be reduced, to such a state of humility, in fear of more severe consequences if he shows any recalcitrancy, that he is either unable or unwilling to defend himself as he otherwise might have done. In the words of Sir. George Jensel, M. R. Hie Jurisdicton of Committing for contempt

being practically arbitrary and unlimited, should be most jealously and carefully watched and exercised. An order irregularly obtained cannot, in terms of the determinations in the case of Wood-Ward Vs. Kino. (1574) 2 Ch. Ca's 203, cannot be treated as nullity, but must be implicitly obeyed, until by a proper application, the same is discharged. Disobedience to an existing order, however, in terms of the determinations in the case of Russet Vs. East Auglion Railway Co. (1850) 3 case G 104, may not amount to a contempt, if there be something to mislead on the plan reading of the same. But in terms of the observations in the case of Lynn Vs. Goddard, (1894) 11 R.P.C. 113. a mere misinterpretation of the order by the offender will be no excuse. An order as made must be implicitly observed and every diligence must be exercised to obey the same, and any action or proceeding in breach, would tantamount to an actual breach. But disobedience, if it is to be punishable as a contempt, in terms of, the observations in the case of Shoppee vs. Nathay & Co. (1892) 1 Q B. 245, must be willful. The Jurisdiction to punish for contempt touches upon two important fundamental rights of the citizen viz (1) the right to personal liberty and (2) the right to freedom of expression.

24. Contempt of Court under the Contempt of Courts Act 1971, which has replaced the Contempt of Court Act, 1952, means Civil or Criminal Contempt. Civil Contempt again,-in terms of Section 2(b), means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court. So the allegations as made in this case, would bring the proceedings under the clause "Civil Contempt". There is a bar of limitation for actions for contempt, in section 20, which makes it clear that no Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt /s alleged to have been committed. The 1971 Act is much more comprehensive than the earlier one and lays down the law in, respect of several matters, which hitherto had been the subject of judicial exposition and review. This 1971 Act has also brought the law into the line with modern trend of thinking in other countries and requirements in this country, in respect of the powers of the Courts. In fact the 1971 Act lays" down the limits of the Courts in the matter of awarding punishments. In terms of celebrated decisions, by reason of section 13 of the 1971 Act, the Court will not initiate contempt proceedings unless the contemnor substantially interferes or tends to interfere with the due course of justice. The intention of contempt proceedings is not the enforcement of the, orders only but to see that a person, who has brought the authority and administration of law, and Justice into disrepect and disrepute, is punished. In terms of the determinations in the case exit Abdul Razack Sahib Vs. Mrs. Azizunnissa Begum and Others, while it is difficult to rigidly, define contempt in a general way contempt of Court may be said to be constituted by any conduct that tends to bring the authority and administration of law into disrespect or disregard or to interfere with or prejudice parties to the action or their witness during the litigation. For an act to amount to contempt punishable under " the

summary Jurisdiction of the High Court, it must fall within the principle of those cases in which the power to punish has been decided exist, the unfailing criterion being whether or not there has been an interference or a tendency to interfere with the administration of justice. Contempt Jurisdiction is reserved and exercised for what essentially brings the administration of justice into contempt or unduly weakens it, as distinguished from a wrong that might be inflicted on a private party by infringing a decretal of Court. As observed in the case of *Lai Behari vs. State etc.*, AIR 1953 A"U 153, contempt is an offence not because of its capacity to cause damage to the party but because of its adverse effects to the cause of justice itself.

25. The different categories of Contempt under the 1971 Act has been mentioned in section 2(a) to 2 (c) and as held in the case of [Bhagwan Giri Goswamy President, Dhamtari Co-op. Marketing Society Ltd. Vs. R.P. Nayak](#), performance of a thing in lawful manner, empowered by the statute during the pendency of a proceedings in a Court of law, by itself, would not amount to a Civil Contempt nor can it be said to" be a Criminal Contempt and in such a case, the question of malafides or bonafides would be irrelevant consideration. If the proceedings are ab initio void then all orders passed therein or any undertaking given, would also be void and as such, in such a case, even if there is any disobedience, there would be no case for contempt. Action in contempt would arise out of proceedings duly initiated. If a person interferes with the, due course of justice and pollutes the stream of justice in so far as it concerns parties to a cause, in terms of the determinations in the case of the *State" vs. Somnath Mahapatra*, AIR 1953 Orissa 33, that would be a case for contempt.

In the case of *Shenck vs. United States* (1919) 249 us 47, it has been pointed out that the Court must determine whether or not the act of contempt, were of such nature as to create a clear and present danger and that they would bring about substantial evils. Black J, delivering the opinion of the Court in *Bridges vs. California*, (1941) 86 Law Edn 192. observed "what finally emerges from the clear and present danger cases a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances could be punished. In India, what is needed as proof is the tendency to bring the administration of justice into contempt, to prejudice the fair trial of any cause which is the subject of Civil or Criminal proceeding, or in any way to obstruct the course and cause of justice. Such obstruction may be actual or merely a definite tendency. What the general public will feel and how the administration of justice likely to be lowered in the estimation of the public is the criterion. There is absolutely no use to apply the clear and present danger test in India and were reasonable tendency or apprehension would be sufficient. Thus the test in India is negative while the America "clear and present danger" is a positive test, When orders of Court are disobeyed, that would be a case of contempt. But such orders, whose infringement, is complained of, must be as mentioned above specific and not vague. In the case of a breach of an order of the Court, if the same is done by a private person, apparently to gain some unlawful

advantage, the presumption would be that such infringement or disobedience was wilful, but in the case of an official, if he commits a certain disobedience, there may be a presumption in his favour that he had in the ordinary circumstances done the same or acted bona-fide and unintentionally. Such presumption, as observed in the case of *Mon-harlar Vs Prem Shanker*, AIR 1950 All 261, is not irrebuttable and if there are circumstances to show that the official concerned was not acting bonafide, then his action could be treated as wilful. It is of course true that what is wilful is a question of fact and would depend upon the facts of each case and if there is any doubt as to the wilfulness, the contemnor has to be exonerated, it should also be remembered that a contempt proceedings are quasi judicial in nature, if there is some or reasonable doubt, the person charged of contempt, would be entitled to the benefit of doubt. Good motive or good intention or lack of intention to offend the court, can never be pleaded in a charge of contempt of Court. It does not matter if the contemnor intended to offend the Court or not. What matter if the act or action of the contemnor interferes or is calculated to prejudice the public or (Tie Court and to interfere with the due course of justice.

26. While intention is no criterion for determining the guilt, it may however be a circumstances taken into consideration for imposing the penalty and as such, in the case of *Demebai Genji Sajpal vs. Rowy Soipal*, AIR 1937 Bom. 350, it has been observed that, if the words themselves per se gravely affect contempt, the contemnor has to suffer the penalty whatever his intention, anus, wilful and intentional disobedience of an order, which was not vague or mere was no ambiguity and when the person charged, had knowledge and mumauon 01 the order, would ordinarily of a case for contempt but the person so charged, would be exonerated, 11 he can bring his case within the exceptions or special circumstances as mentioned above, from the pleadings, it appeared that the contemnor opposite parties have neither taken any steps not to obey and honour the order as made nor they of their own have flouted or disobeyed the order in respect of the grant of the quota in favour of the petitioner. Since it appeared further, for the restricted supply of the said product and the formula of distribution of the same, was followed on certain basis as indicated by other an-1 relevant authorities", the order as made, at least in respect of the grant of quota to the petitioner, could not be followed, the opposite parties cannot be held to be in contempt for any wilful or deliberate violation of the order as made, by them or on their be-hall That apart, if in the matter of the grant of quota on due compliance with" the practice and procedure or following, them, some one gets higher quota than what was directed or ordered in favour of the petitioner, that would be, if at all, a case of discrimination and not for entertaining an application for contempt. The evidence as available in this case has established that the officials concerned have not taken any steps for not following or complying with, the order as made, but they have, in fact given effect to or acted upon on the basis of such order, but while implementing the said order, the quota as mentioned for the petitioner, has been curtailed for reasons beyond their control,

rather the same was not really curtailed by them intentionally or wilfully but the said curtailment was the outcome of other factors as mentioned above, such being the position, there would not be case for wilful and intentional flouting or neglecting and not putting into operation, the order as made, for which they can be held responsible for the charges of contempt. If the position was otherwise, then there" would have been no other way but to hold the contemnor opposite party guilty of the charges as made as the subordinate authorities are bound to acquaint themselves with the decisions of High Court and in cases where orders as made, are not followed, they are liable to be proceeded with for contempt. It should also be remembered that a person charged of refusing to obey the orders as made cannot be held to be guilty of such charge, if he can establish that there was no fault on his part and as was in this case, he was unable to comply with the orders. It would also be noted that when orders are made by Courts, the State officials have got no other alternative to follow them in usual circumstances and they are not authorised or competent to judge the validity of such orders As mentioned earlier disobedience of orders of Court in order to constitute contempt or for punishing a person for that, must be wilful and such was the determinations in the case of S.S. Roy Vs. State of Orissa and Others, . Knowledge of the order of Court and the deliberate disregard of the same are thus essential elements amongst others to constitute a contempt, in terms of the determinations in the case of Tarafatullah Mandal and Others Vs. S.N. Maitra and Others, .

27. Thus, on the basis of the determinations as mentioned above and the state of law, censididered in the light of the facts of this case, the contemnor opposite parties, cannot be held to have wilfully disobeyed, disregarded or neglected the order as made or their acts and actions were intentional, so they must be exonerated of the charges of contempt. I order accordingly. As such the Rule is discharged. There will be no order as to costs.

28. Before leaving the matter. I must also have it on record that since the contumacious act or action was alleged the order dated 16th May 1979 and this Rule was obtained on 10th June 1980 i.e. after one year"s time as stipulated u/s 20 of the 1971 Act, Mr. Banerjee Initially claimed the application to be barred by time but ultimately, he in his usual fairness did not press such point as it appeared that the application for the contempt Rule was filed in Court on 15th May 1980. Section 20 would ordinarily operate as a bar to initial of a contempt proceedings after one year"s limitation and the period of limitation will not start from the date when the contempt is stated to have taken place, but would be from the date when proceedings for contempt are initialed. The exercise of the Jurisdicton to punish for contempt would commence with the initiation of the proceedings for contempt, whether suo moto or on a motion or a reference and that is why, it has been observed in the case of Barada Kanta Mishra Vs. Mr. Justice Gati Krishna Mist a, C.J. of the Orissa High Court, AIR 1974 SC 2253, the terminus a.....for the period of limitation in section 20 is the date when a proceeding for contempt is initiated by

the Court. Wilful breach or neglect of an undertaking to or an order by a Court amount to a Civil contempt and no such proceedings can ordinarily be initiated against a person after, lapse of one year.

Civil Rule No. 5918 (W) of 1980

For the view which I have expressed above. I make the same order as in Civil Rule No. 5917(W) of 1980, in Civil Rule No. 5918(W) of 1980 (RashmiDeb/Ms. Sourendra Nath Roy 8- Ors.), since the facts and points involved were the same.