(1999) 10 CAL CK 0047

Calcutta High Court

Case No: C.O. No. 5271 (W) and 10169 (W) of 1988

Dilip Chowdhury and Others		APPELLANT
	Vs	
The Registrar of Co-operative Societies and Others		RESPONDENT

Date of Decision: Oct. 13, 1999

Acts Referred:

- Constitution of India, 1950 - Article 239, 240
- General Clauses Act, 1897 - Section 17, 18

Citation: AIR 2000 Cal 228

Hon'ble Judges: S.B. Sinha, Acting C.J.; M.H.S. Ansari, J

Bench: Division Bench

Advocate: Tapan Kr. Mukherjee and Dipankar Ghosh, for the Appellant;Somen Ch. Bose and Bidyet Kr. Roy, for the Respondent

Judgement

P.B. Mukharji, J.

On this Rule the District Magistrate of Nadia Mr. Debabrata Bandapadhyaya, I.A.S., is standing his trial for contempt of Court, on the ground of forcibly turning out M.M. Roy, the learned Subordinate Judge, Nadia, from his residence at Circuit House and thereby compelling him to leave his station of justice and also making it impossible for him to holds his Court for four days and a half and bringing down the Judge in the estimation of the local public. The situation is unprecedented in the annals of public services in India. The facts and circumstances revealed on the record, are of momentous significance. Affidavits disclose most distressing and deplorable features in the administration, which will continue to serve as a serious warning and lesson long after the memory of this case fades away.

2. On the 22nd January, 1964, by the order of this Magistrate the learned Subordinate Judge of the district was literally driven out of his room in the Circuit House at Nadia, where he was obliged to stay for acute want of accommodation in the district. At the relevant hour and the time the learned Judge was actually conducting a sessions case and performing his judicial duties in the Court. While he was in the Court, under orders of this Magistrate, the Judge''s room was locked in his absence. Under this District Magistrate''s orders, the Judge''s personal belongings were seized, publicly inventoried before public witnesses of the place where the learned Judge was expected to administer justice and command public faith and all the Judge''s articles, bags and baggage were publicly carried away and dispatched to the Police Malkhana. Deprived of all his belongings except his wearing apparel and publicly humiliated in the station of his judicial authority ad jurisdiction, the Judge was left utterly destitute without a penny in his pocket so that he had to borrow money to purchase his railway ticket to return to Calcutta to make his administrative representation to this Court.

3. By that act of the Magistrate, the Court of the learned Judge could not and the judicial work in the district was dislocated and disrupted. In fact, the Judge could not hold his Court from 2 p.m. in the afternoon of the 22nd January, 1964, the day of the incident, and the whole of the 24th, 25th, 28th and the 29th January, 164. Under directions of this Court to finish the sessions trial which he had begun, and to keep the magisterially battered flag of justice still flying, he attended Krishnagar Court as a daily Railway passenger from Calcutta on the 30th and the 31st January, 1964 to complete the trial. He also attended as such daily passenger on the 1st and the 3rd February, 1964, and ultimately a different room was given to him again in the Circuit House on the 4th February, 1964, and his articles returned. Shorn of all details, these are the bare facts constituting the charge of contempt against this District Magistrate.

4. On the 3rd February, 1964, Mr. Ajit Kumar Dutt, a senior learned Advocate of this Court, moved this Court for a rule in contempt by producing before this Court a copy of a Bengali newspaper ''Bidyut'' dated the 24th January, 1964, published at Krishnagar drawing the attention of this Court at page 3 of that Issue of the paper under the caption "Complaint Against the District Magistrate for illegally putting lock in the room of the Subordinate Judge". Mr. Dutt filed that newspaper in this Court and called for the issue of a Rule upon the District Magistrate of Nadia and his Nazir, to show cause why they should not be dealt with for contempt of Court or such other order or further orders as this Court may deem fit and proper. This Court issued the rule on the District Magistrate and the Nazir who were ordered to be present in the Court. The Court directed service upon the District Magistrate and his Nazir of the Rule and also copy of the Newspapers publication, showing the facts constituting the contempt.

5. On the 10th February, 1964, when the rule was returned Mr. Ajit Kumar Dutt appeared for the State and made his statement about the procedure to be followed. Mr. R.C. Deb, learned Counsel for the Magistrate and the Nazir also made his statement about the procedure to be followed in this Court. Upon hearing them the Court issued the following

directions :-

(1) The Subordinate Judge will affirm an affidavit by the 14th February, 1964, placing and affirming the relevant facts before this Court;

(2) The Legal Remembrancer will make a short affidavit disclosing copies of all relevant correspondence and record in his office on the subject by the 14th February, 1964;

(3) The Registrar, Appellate Side of this Court directed to supply copies of all correspondence on this subject, in the file of this Court, one set to be given to contemnors'' Counsel and another to Mr. Dutt, by the 14th February, 1964;

(4) The contemnors were directed to file their affidavit-in-opposition by the 24th February, 1964; and

(5) The hearing of the contempt rule was fixed for the 25th February, 1964 on which date the contemnors were directed to appear in person before this Court.

6. On the 24th February, 1964, Mr. R.C. Deb, learned Counsel for the contemnors prayed for extension of time by consent of Mr. Ajit Kumar Dutt and this Court granted extension of time to the contemnors to file their affidavit in opposition by the 27th February, 1964, and the hearing of the contempt rule was adjourned to the 27th February, 1964.

7. On the 27th February, 1964 when the rule for contempt came to be heard, Mr. A.C. Mitra, the learned Standing Counsel of the Government appeared for the State informing this Court that the learned Advocate, Mr. A.K. Dutt who was till then appearing for the State had returned his brief. The reasons for such return of the brief have remained unexplained, though they may not be far to seek, but this Court does not think it necessary to seek them.

8. The District Magistrate filed his affidavit. But his Nazir did not, on the date when the rule for contempt came first to be heard on the 27th February, 1964.

9. The essential facts are not in dispute. It is not disputed that the Judge was forcibly turned out of his room, that all his personal articles including even articles of food were seized, publicly inventoried and then dispatched to the Police Malkhana, all under orders of the District Magistrate. The defence of the District Magistrate is that he has the absolute authority to determine who is to be permitted to remain in the Circuit House and for how long under the Rules of the Circuit House. Therefore the District Magistrate''s defence is that he was justified in doing what he did. Secondly, the defence of the District Magistrate is that he had to turn out the Judge from the Circuit House because he thought it to be essential for the security of the Minister, Shri Fazlur Rahaman, Minister-in-Charge of the Local Self-Government and Animal Husbandry, Veterinary Department in the State who was to visit the areas in the district affected by riots and who was to reach Krishnagar on the 22nd January, 1964 at about 4 p.m. Thirdly, his defence is that his

action was not intended to obstruct administration of justice and the disruption of the Court''s work was not the direct but an incidental and remote result of the Judge being forced to leave the Circuit House. Fourthly, the District Magistrate says that he offered alternative accommodation to the Judge.

10. We shall take up the first defence of the Magistrate about his authority in respect of the Circuit House, along with his further defence of alternative accommodation.

11. Rule 1 of the Circuit House divides intended occupants in two categories of Part A and Part B. part A includes 9 classes of persons, (1) The Governor, (2) the Minister, (3) the High Court Judges, (4) the Members of the Board of Revenue, (5) Commissioners of Divisions, (6) District Judges, (7) Heads of Departments and (8) the Superintendent of Engineers and other officers mentioned in Part A of the list. These persons have the right of exclusive occupation according to their rank and seniority. Part B consists of officers of the first grade as defined in Subsidiary Rule 24 corresponding to Rule 22 of the Bengal Services Rules, Part 2 when traveling on duty away from their headquarters and other officeRs. Rule 1 provides that these other officers named in Part B are also privileged to occupy the Circuit House free of charge when traveling on duty. Rule 2 provides "Circuit Houses are under the immediate charge of the Magistrates of the districts in which they are situated and the Magistrates are responsible for their proper maintenance and for the observance of the rules regarding them." Rule 3 says "Excepting the officers named in the list appended no officer of the Government is allowed to occupy a Circuit House without the written orders of the District Magistrate."

12. Rule 4 provides "District Magistrates may allow Circuit Houses or such rooms in them as may be set apart for the purpose (when they are not required by his Excellency the Governor or any of the officers named in the list appended) to be occupied temporarily by Gazetted Officers of the Government who may be summoned on duty from outside stations or who may be posted temporarily to the station.... In all these instances previous permission must be obtained and all such cases must be forthwith reported to the Commissioner of the Division and if the occupation is to last for more than 15 days the sanction of the Commissioner must be obtained.

13. This Rule 4 continues to provide "A Magistrate-Collector, an Additional District Magistrate-Collector, or a Joint Magistrate; a District & Sessions Judge, an Additional District & Sessions Judge or an Assistant Judge.... who has to join a district in such haste as to preclude his taking his furniture with him or whose official residence is not immediately fit for occupation..... or for any other adequate reasons, may be allowed to occupy Circuit House for a period not exceeding one month with the sanction of the Commissioner of the Division.

14. Then, Rule 6 provides "Under rules 4 and 5 permission to occupy the whole of a Circuit House should rarely be given.

15. Then, Rule 7 says "It must be a well-understood and special condition for every person who may be allowed to occupy a Circuit House or part of it under rules 4 and 5 above, that he must distinctly undertake to provide accommodation for officers who are entitled to it, on the shortest notice and at whatever inconvenience to himself, when such officers make short visits to out-stations, and also to vacate altogether, if such a measure, is, at any time considered necessary by the District Magistrate or the Commissioner."

16. These are all the relevant rules required for the purpose of the case. One thing clear from these rules is that the District Magistrate is neither the ultimate nor the sole authority over the Circuit House but he is only in "immediate charge" as provided in rule 2 but subject to his superior authority, the Commissioner of the Division as provided in Rules 4, 5 and 7.

17. The relevant facts on this point may here be stated for a proper appreciation of the case and to see how far these Rules justify the District Magistrate''s defence.

18. The Judge in this case was transferred on the 19th December, 1963 by the High Court to the district of Nadia and was ordered to join and resume his duties at Krishnagar on and from the forenoon of the 2nd January, 1964. The Judge therefore wrote to the District Magistrate to make arrangements for his stay at Krishnagar for 10 days from 1.1.64 to 10.1.64. On the 23rd December, 1963 the District Magistrate wrote to the Judge reserving his accommodation in Room No. IV of the Circuit House from 1.1.64 afternoon to the afternoon of 10.1.64. The Judge arrived at Krishnagar to join his duties on the 1st January, 1964. The Judge went into occupation of Room No. II instead of Room No. IV in the Circuit House according to the instructions of the District Magistrate.

19. On the 7th January, 1964 the Judge wrote to the District Magistrate saying that despite his best efforts he had not been able to secure any rented accommodation till then and he therefore requested that his reservation in the local Circuit House might be continued for another period of 10 days from 10.1.64, when the current reservation was due to expire. The Additional District Magistrate under orders of the District Magistrate wrote on the same day by his D.O. No. 1561G that owing to unavoidable circumstances and pressure of accommodation in the Circuit House, permission to occupy the Circuit House beyond 10.1.64 could not be accorded. The Judge wrote back immediately on the 8th January, 1964 "I am sorry it will not be possible for me to vacate the Circuit House on 10.1.64 as requested. I came here on transfer from West Dinajpur under orders of the Hon''ble High Court. I have been staying in the Circuit House in the absence of any official Government quarters or any rented accommodation in the town. I am further referring your correspondence to the Hon''ble High Court soliciting its instruction. I would therefore sincerely request you that you should not disturb me with such communication until I hear from the Hon''ble Court. I assure you that I shall immediately vacate the Circuit House as soon as I shall be able to find any other alternative accommodation."

20. No alternative accommodation was offered at least in writing to the Judge on or about that date in answer to his clear assertion that he has not been able to find any alternative accommodation. It might also be stated that according to the Judge during the whole of this period he was almost a solitary resident in the Circuit House where all the three other remaining suites lay vacant most of the time, between the 8th January to 21st January, 1964.

21. On the 9th January, 1964, the Additional District Magistrate again under the orders of the District Magistrate wrote to the Judge saying that "the Circuit Houses are under the immediate charge of the Magistrates of the Districts in which they are situated. Without the permission of the Magistrate of the District no suite or room in the Circuit Houses could be occupied. Permission to occupy the Circuit House beyond 10.1.64 has not been accorded by the Magistrate of the District and therefore you will have to vacate the Circuit House on the morning of the 11th instant". It is significant that not a word is said even in this letter that any alternative accommodation has been secured or offered for the Judge. Immediately on that date the Judge wrote to the Additional District Magistrate saying that the matter had already been referred to the High Court and also to the Government and requesting him to stay his hands till intimation was received from the High Court and the Government.

22. On that date, the 9th January, 1964 on the eve of the expiry of the first period of stay at the Circuit House, the learned Judge also wrote to the Registrar of Appellate Side of this Court through the District Judge, Nadia expressly stating all the facts and stating that there was no possibility of finding any accommodation in the near future and also informing that the Collector of Nadia would not allow him to stay in the Circuit House for more than a fortnight under the rules in force. He therefore stated in that letter "I may be permitted to apply for some period of earned leave before I can rehabilitate myself in any other station where I can have a reasonable shelter or else the Government may be approached to permit me to occupy an exclusive room in the local Circuit House till a suitable accommodation is requisitioned through the Collector". The District Judge recommended the Judge"s letter for favourable consideration by Registrar of the High Court.

23. According to the learned Judge when he returned to the Circuit House from his Court on the 10th January, 1964 at about 5.30 p.m. he was informed by the Circuit House menials that his room had been allotted to another gentleman and that he also noticed that his name card had been removed from the reservation board. But according to him no one turned up. It is the Judge"s case that the District Magistrate deputed the Nazir on the 11th and 12th January, 1964 and other officials who made attempts to evict him by force.

24. Then followed some important events. On the 17th January the Registrar of the Appellate Side of this Court wrote to the Government of West Bengal requesting to allow, the Judge to stay in the Circuit House till a requisitioned house was arranged or till the

Judge found a suitable house. Copy of this recommendation of the High Court dated the 14th January, 1964 was received by the Judge on the 17th January, 1964. The Judge also informed by D.O. Nos. 22 and 23 both to the District Magistrate and his Additional on the 17th January, 1964 about the recommendation of the High Court. On that very date also i.e., 17th January, 1964 the Deputy Secretary of the Revenue Department also wrote to the District Magistrate informing the Board of Revenue''s permission to the Judge to stay in a room of the Circuit House for one month, that is, till the end of January, 1964 and the District Magistrate was also requested to find a suitable house by requisition for the Judge.

25. Notwithstanding these orders of the High Court and Board of Revenue, the District Magistrate on the 18th January, 1964, asked the Judge to vacate the room "which you are unauthorisedly occupying within 48 hours of receipt of this notice failing which the room would be locked out. "It is unthinkable how a District Magistrate could officially write such a letter to a Judge. On the 18th January, 1964 the District Magistrate says that the Judge again requested for extension which he turned down. On that day, i.e., the 18th January the Judge contacted the Judicial Secretary of this State Government over the telephone from Krishnagar and he was informed by the Secretary that the Government had already passed an order authorising his stay in the Circuit House till the end of January, 1964 and he was also in the process of communication and he was also directed by the Judicial Secretary to inform the District Magistrate about the Government order. On the 19th January, the Judge by his D.O. Nos. 26 and 27 informed the District Magistrate about the telephonic conversation of the Judicial Secretary.

26. Immediately the District Magistrate started moving to frustrate the Government''s order of permission to the Judge to stay. On the 20th January, 1964 the District Magistrate wrote to the Member, Board of Revenue, Calcutta complaining about the "Misbehaviour of Roy (the Judge)" and adding "Roy was informed that permission to stay in the Circuit House beyond 10.1.64 could not be given Communal strife broke out in this district from 9.1.64. We were in a stat of emergency. It was necessary to provide accommodation for the officers at one place. For this reason and for superior police officers mobilized on duty it was necessary to get vacant possession of the room occupied by Shri Roy (the Judge) during the period of emergency. On 11.1.64 Roy (the Judge) whose permission to occupy expired on 10.1.64 was requested to give vacant possession of his room. Instead of complying with the request Shri Roy insulted the Nazir. On 18.1.64 notice was served on Roy to vacate the room. I received a letter from Roy regarding permission of the Board of Revenue. I do not know if any such order is under issue. Roy should not be allowed to occupy the Circuit House." This letter proves that this District Magistrate was attempting to frustrate and defy the order of his superior, the Member, Board of Revenue and was determined to oust the Judge by all means.

27. When the District Magistrate had already decided that the Judge should not be allowed to occupy the Circuit House and defied the administrative direction of this Court as well as of his superior officer, the Board of Revenue, a further situation developed

which the District Magistrate immediately seized to carry out his threat to evict the Judge. According to his version, on the 21st January, 1964 the District Magistrate was asked to reserve two rooms in Circuit House for the Minister mentioned. The District Magistrate at once exploits the situation to get rid of the Judge. The Minister himself did not ask that the Judge should vacate the Circuit House. Nor did he ask for reservation of the whole Circuit House for himself, as he could have asked. He only asked for two rooms in the Circuit House. That could easily have been given without disturbing the Judge''s room. Suppressing all that fact to the Judge, on the 21st January, 164 the Nazir of the District Magistrate comes to the Judge saying "I am directed by the D.M. to request you to vacate the room by 8 a.m. tomorrow positively as it has been reserved for the stay of the Hon''ble Minister and his party." The Sheristadar wrote to the Nazir on the very same day saying that it was not possible for the Subordinate Judge to vacate the Circuit House as desired by D.M. The District Magistrate foiled so long rises to a boiling pitch on the 21st January, 1964 and sends an express telegram to the Member, Board of Revenue calling his attention to Judge''s refusal to vacate the room reserved for the Minister. All this episode shows that the District Magistrate was bent upon getting rid of the Judge from the Circuit House.

28. The District Magistrate now takes steps to clear his record. On the 21st January, 1964 he writes for the first time to the Judge stating that accommodation is available both at the District Board''s Duk Bungalow and the P.W.D. Rest House alleging that the Nazir had informed him about this on the 11th January, 1964. He repeats in this letter that the Judge must vacate the room in the Circuit House which has been reserved for the Hon''ble Minister by the morning of the 22nd instant. The Judge has denied on affidavit the suggestion of the District Magistrate that his Nazir had offered him alternative accommodation on the 11th January, 1964. This Court wholly believes the Judge and disbelieves the District Magistrate on this point first for the simple reason that even after the 11th January, 1964 many communications passed between the Judge and the District Magistrate where this specific alternative accommodation was not even hinted, although the Judge had been asking for alternative accommodation ever since the 7th January, 1964. Secondly, it is also noteworthy that the District Magistrate in his complaint to the Member, Board of Revenue even on the 10th January, 1964 never suggested that the Judge had in fact been offered or given alternative accommodation and that he had even then refused to go from the Circuit House. It is therefore plain in our opinion that the District Magistrate''s statement is untrue, if not false, that he had offered alternative accommodation to the Judge on the 11th January, 1964. Thirdly, about this alleged alternative accommodation, the District Magistrate is not the authority at all in respect thereof and neither the District Board''s permission for the P.W.D. Rest House who are the appropriate authorities regarding such accommodation, has been produced before us on any affidavit. Fourthly, this letter of the District Magistrate dated the 21st January, 1964, to the Judge was received by the Judge on the following day at 9 a.m. when he was about to go to the Court. On the 22nd January, 1964, at 1 p.m. while the Judge was engaged in Court of Sessions his servant was forced out of his room in the Circuit House

and the Judge''s room was locked up from outside leaving all his belongings in the room. Having heard this, the Judge went to the Circuit House but could not enter his room. He was not even then told that any alternative accommodation had been found and he could shift there with his belongings. For these reasons this Court overrules the fourth defence of this District Magistrate that he offered alternative accommodation to the Judge. The Judge was compelled to leave Krishnagore, his judicial station and arrived in Calcutta at 10 p.m. on 22nd January, 1964.

29. The District Magistrate then became unusually active on the 22nd January, 1964. He says that he himself left Krishnagore on that date in the forenoon and returned in the evening. But the machinery which he left behind under his orders was working with relentless speed. The Judge''s room was locked by about 1 p.m. on the 22nd January, 1964. By 5.15 p.m. on that very day under orders of the Magistrate, the process-server of the Nadia Collector illegally broke open the Judge''s room in the Circuit House. An inventory is ceremoniously prepared in the midst of notorious publicity. This inventory took about three hours'' time from 5.15 p.m. till about 8 p.m. to be completed. Two witnesses have subscribed their signatures to that inventory, one the Principal of the Krishnagar College Shri Amiya Kumar Majumdar and the other Shri R.K. Banerjee, Principal, B.P.C. Institute of Technology, Krishnagar. We will presently have occasion to come back to the fact how two busy and responsible Principals of educational institutions happened to come to the Circuit House just at that very moment and had sufficient spare time and leisure to witness for long three hours the inventory and then subscribe their signatures to it. Continuing with the events of the 22nd January, 1964, we find that the Nazir of this District Magistrate makes a petition before a First Class Magistrate in Nadia and obtains an order from him long after office hours at about 9 p.m. at night, which we were told by the Counsel for the contemnors was obtained from the 1st Class Magistrate while he was supposed to be at which is called a "Control Room". Upon that petition the order was obtained to the effect "Let the Nazir deposit the articles at Kotowali police station. The Officer-in-Charge to deliver the article to Shri Roy as soon as he is available." The Judge also made a report of this incident on that very day to the Officer-in-Charge, Krishnagar police station.

30. On the next day, the 23rd January, 1964 the Judge reported the matter to the Registrar of the Appellate Side of this Court and also the District Judge of Nadia. He also gave the same report to the Registrar. On the following day, i.e., the 24th January, 1964, the Bengali local newspaper ''Bidyut'' published the news which started the present proceedings. On the date, the 24th January, 1964, the Joint Secretary wrote to the Registrar of the Appellate Side informing him about the letter from the Board of Revenue to the District Magistrate permitting the Judge to stay in the Circuit House and enclosing a copy of that letter from the Board of Revenue to the District Magistrate. On the record there is also the letter of the Judge on the same day giving his representation to the Registrar, Appellate Side of this Court, narrating those deplorable incidents and facts and stating :- "It is not possible to resume my duties until residence in the Circuit House and

my belongings lying there are restored to me. I pray to the Hon''ble Court to grant me leave." On the next day, the 25th January, 1964, the Registrar of the Appellate Side of this Court writes to the Joint Secretary enclosing copies of letters from the Judge to the District Judge dated respectively the 23rd and the 24th January, 1964, and stating "Permit Roy to occupy his suite until other accommodation is available otherwise the Court may be kept vacant. Pending intimation from the Government, he is directed to proceed on leave. Enquire the propriety of the action taken by the District Magistrate."

31. The Board of Revenue acted promptly and sent a telegram to the District Magistrate, Nadia on the 28th January, 1964 stating "Allow this Subordinate Judge to continue his occupation in the Circuit House till the end of February, or earlier if alternative accommodation can be secured in the meantime by requisition or otherwise. Copy is sent to the Registrar."

32. On the 29th January, 1964, the Registrar of the Appellate Side of this Court wrote to the Judge enclosing the copy of the telegram of the 28th January, 1964 and stating "You are to resume your duty at Krishnagar at once." On that very date the District Magistrate wrote to the Chief Secretary of the Government of West Bengal, Shri R. Gupta, I.C.S., giving his explanation.

33. This explanation of the District Magistrate to the Chief Secretary shows not only this conduct but also his utterly deliberate and contumacious attitude in this matter throughout evincing a deliberate plan of the District Magistrate to render it, impossible for the Judge to act as a Judge and hold his Court in the district. The District Magistrate, in spite of the orders of his own superior, the Board of Revenue, makes the following astounding allegation against the Judge - "I may mention here that the behaviour of Shri Roy, Subordinate Judge, Nadia in violating the rules of the Circuit House as well as in defying the direction issued by the competent authority, was quite unbecoming of the position he holds.....instead he chose to create a scene..... In passing I may further state that the Hon''ble Shir Fazlur Rahaman has expressed his surprise that a member of the judiciary should violate the rules and defy the orders of the competent authorities regarding the occupation of the Circuit House."

34. The Chief Secretary''s reply dated the 30th January, 1964, admirably represented the great traditions of the Indian administration. This Court is of the opinion that Mr. R. Gupta, the Chief Secretary took the right and commendable view in telling the District Magistrate what he thought of the Magistrate''s acts in the following unequivocal terms:-

I have carefully gone through your letter (D.O. No. 226-C dated 29.1.64) and after taking full account of the various facts and circumstances which you have reported, I still feel that the summary eviction of the Subordinate Judge on the 22nd January, from the room so occupied in the Circuit House was neither proper nor justified. After all, a Subordinate Judge is not a private person or a clerk. He is a senior judicial officer of the Government and he was staying in the Circuit House beyond the period originally allotted to him only

because he had not up till then been able to find suitable private accommodation in the town.

I appreciate the necessity to provide for the accommodation and security of HM, ISG and AH and VS, who was coming on tour and I am also aware that the Hon''ble Ministers are entitled to occupy the whole of the Circuit House. At the same time I feel sure that the Minister himself would not have insisted on the eviction of the Subordinate Judge if he had been consulted before he was removed. The Subordinate Judge''s goods and articles were locked up in the room. Nor do I feel that the Subordinate Judge''s continued presence in another room in the Circuit House would has jeopardized the security of the Minister.

35. On the correspondence and facts stated that is the brief survey of the position.

36. Now, taking the first point in the defence, namely, that the District Magistrate has the absolute authority to determine who is to be permitted to remain in the Circuit House and for how long under the Rules of the Circuit House, it will be clear from the rules of the Circuit House set out above that the District Magistrate is not the absolute authority. He is at best in "immediate charge". Far from the learned Judge violating the Rules of the Circuit House, this Court holds that the District Magistrate was himself violating the Rules of the Circuit House in this case and was making a most unseemly exhibition of power which the Rules did not give him. In the first place, the learned Judge was one of the persons authorised to use the Circuit House under the Rules of the Circuit House. In the second place the extension of time which he asked from the 10th January, 1964 to stay in the Circuit House is governed by Rule 4 which expressly provides that where the official residence is not fit for accommodation or for any other adequate reason, the Assistant Judge may be allowed to occupy the Circuit House for a period not exceeding one month with the sanction of the Commissioner of the Division. Therefore, when the Judge asked for extension of time his request for extension should have been placed before the Commissioner. The District Magistrate without placing it before the Commissioner rejected it, which he had no authority under the rules to do. Thirdly, the Rules do not authorise the District Magistrate either to lock the room of any occupant or to forcibly drive him out and to seize his goods and articles. We have carefully analyzed the Rules and do not find anything in them which gives him a wanton power of summary and forcible eviction of the occupant and public seizure of his goods. In doing all these, we have no hesitation in holding that the District Magistrate did acts which were not only grossly illegal and outside his powers and jurisdiction but also were deliberately contumacious to bring down the position of the Judge in public estimation and hold up the judiciary to ridicule before the public eye in the very district where the Judge is expected to administer justice. Fourthly, the District Magistrate''s action in seizing the goods, making inventory of them and making a petition through his Nazir for their deposit in the Police Malkhana are wholly unwarranted. Neither the Indian Penal Code nor the Criminal Procedure Code nor the CPC nor any law of this land that we know of, authorizes the District Magistrate to take such a high-handed and illegal action. The 1st Class Magistrate

before whom the Nazir made a petition for custody of the articles was making illegal order unwarranted by the Criminal Procedure Code. It shows the danger that exists in this country due to the absence of separation of the Executive from the Judiciary. The District Magistrate could only succeed in following this wholly illegal procedure because he knew that the 1st Class Magistrate will have to obey the behest of the District Magistrate. If there was separation of the Executive from the Judiciary in this State such a situation would have been avoided. It is high time, that this State took steps to separate the Judiciary from the Executive in the public services according to the Directive Principles laid down in Article 50 of the Constitution. This Court holds for the reasons stated above that the District Magistrate''s first defence fails, and we overrule it.

37. The District Magistrate''s second line of defence that he had to turn out the Judge from the Circuit House because he thought it to be essential for the security of the Minister is baseless and groundless and is a malafide attempt to use a blameless Minister as a convenient excuse. The most fitting answer was given by the Chief Secretary of the Government of this State. It is difficult to imagine how the presence of a Judge of the land in the Circuit House in a single room could endanger the security of a Minister of the same State. The District Magistrate perhaps realised the futility of this excuse and therefore says in his affidavit before the Court and not in his numerous correspondence that although he did not for a moment regard that the Judge was a security risk in any way. "He had to consider that their presence in the Circuit House would create problems for enforcement of security measures for the safety of the Hon''ble Minister". We have no hesitation in rejecting this plea as an after-thought and also as not bonafide. If the presence of the Judge was not a security risk to the Minister in the same Circuit House then any possible visitors who could be coming to see the Judge could be controlled and the Judge need not have been forcibly evicted and locked out in the manner followed. Thirdly, the Minister himself only wanted two rooms in the Circuit House and did not want the entire Circuit House. Therefore, the Minister could have been given two rooms in the Circuit House with enough protection without the District Magistrate''s finding an excuse to drive out the Judge living in a separate room of the Circuit House. Security of the Minister is a public duty of the District Magistrate. Security of the Courts of the land and their Judges is equally as great a public duty and sacred responsibility of the District Magistrate of the area concerned. This Court will hope that no District Magistrate will in future choose one security at the cost of another and thus disgrace the fair name of public service in India. Lastly, this Court cannot help making a comment on the District Magistrate''s attitude to malign the Judge behind his back in his letter to the Chief Secretary quoted above dated the 28th January, 1964. It is astounding to find that the District Magistrate chose to quote the alleged opinion of a Minister not connected with the legal or the judicial department of the State as having expressed his surprise against a Judge violating the rules of the Circuit House. If the District Magistrate is right then he alone is responsible in poisoning the mind and ear of the Minister and telling him that the Judge had violated the Rules when in fact he did not. We would like to believe that the District Magistrate is making an incorrect statement here because the alleged opinion of

the Minister against this learned Judge has not been verified by any affidavit by the Minister and because we think it is extremely unworthy of a District Magistrate to write about a judicial officer who is not under his charge or under his department complaining against him on the plea of an alleged opinion of a Minister who has nothing to do with the legal or a judicial department. It is a very sinister practice which should stop at once.

38. For these reasons we hold that the Rules of the Circuit House and the visit of the Minister do not provide any defence for the contumacious acts and conduct of the District Magistrate in this case. The rules do not authorise the District Magistrate in the first place to refuse to grant extension beyond 10/15 days without placing the matter before the Commissioner. In refusing the extension himself the District Magistrate himself violated the Rules and acted illegally and beyond his powers. In the second place, the rules of the Circuit House do not authorise and permit the District Magistrate to make a forcible eviction, to break open the lock of the occupant, to forcibly seize his goods and personal articles, to make an inventory of them and to send them to the Police Malkhana. Such action of the District Magistrate in the facts of this case were wholly illegal and unwarranted by the Civil and Criminal Procedure Codes of this country. The case of the State of West Bengal Vs. Birendra Nath Basunia and Others, has no application to the facts of this case because (1) that was concerned with specific provisions of Section 3 of the Crown Grants Act expressly excluding the operation of not merely the Transfer of Property Act but also of all other laws which the Rules of Circuit House here cannot and could not exclude and (2) because there was in the lease by the Deputy Commissioner express power and right of re-entry, which does not exist under the Rules of the Circuit House. This Court therefore overrules these two points of defence taken on behalf of the District Magistrate.

39. The third defence of the District Magistrate that his action was not intended to obstruct the administration of justice and disruption of the Courts work was not the direct but an incidental and remote result of the Judges being forced to leave the Circuit House. This Court will now examine this defence.

40. Mr. Deb appearing for the contemnor District Magistrate relied on the classical well known but undelivered judgment of Wilmot, J. in The King v. Almon, reported in 97 English Reports 94. This was an application made to the Court by the Attorney-General for an attachment against Mr. Almon for publishing a pamphlet containing many libelous passages upon the Court and upon the Chief Justice for his conduct both in Court and outside. It charged the Court and particularly the Chief Justice with having introduced a method of proceeding to deprive the subject of the benefit of the Habeas Corpus Act. The opinion of Wilmot, J. was not delivered in Court in this case because the prosecution was dropped in consequence, as it was supposed, of the resignation of the then Attorney-General, Sri Fletcher Norton. Wilmot, J. at 103 of that Report observed as follows: -

It is conceded that an act of violence upon his (Judge''s) person when he was making such an order, would be a contempt punishable by attachment; upon what principle? For striking a Judge in walking along the streets would not be a contempt of the Court. The reason therefore must be, that he is in the exercise of his office, and discharging the function of a Judge of this Court; and if his person is under this protection, why should not his character be under the same protection? It is not for the sake of the individual, but for the sake of the public, that his person is under such protection; and in respect of the public, the imputing corruption and the perversion of justice to him in an order made by him at his Chambers, is attended with much more mischievous consequences than a blow; and therefore the reason for proceeding in this summary manner, applies with equal, if not superior, force, to one case as well as the other; there is no greater obstruction to the execution of justice from the striking a Judge, than from the abusing him, because his order lies open to be enforced or discharged, whether the Judge is struck or abused for making it.

41. Taking inspiration from this observation, Mr. Deb''s submission on this point is that any matter involving a Judge is not necessarily contempt. Undoubtedly, that is a correct proposition. The contempt is a contempt of Court. The contempt is a contempt of the administration of justice in some sense or another. For instance, if a Judge as a member of the public, walking in the street is assaulted by an individual that does not by itself make the assault a contempt of Court. For instance, again, if a Judge who is a tenant is ousted by his landlord who obtains a decree for ejectment and then by a process of execution evicts him, such eviction will not be a contempt of Court. Similarly, a Judge driving a car rashly and negligently collides with another car and is prosecuted. Such prosecution will not be contempt of Court. These instances relating to the Judge personally and individually may be cases of assault or trespass or other crimes or delicts but they are not contempt of Court. Contempt of Court is not a matter affecting the Judge personally but affecting his judicial office and judicial work and administration of justice.

42. But then these analogies have no application to the facts of the present case. This is not a case of a trespass by the District Magistrate upon the Judge or a case of landlord executing a decree of eviction against his tenant. Let this be clearly understood that the District Magistrate in this case is a public officer discharging the public duties of a public office. The Circuit House is not the private property of the District Magistrate. The District Magistrate is not the landlord of the Circuit House. The Circuit House is a public property charged with public purpose and public utility maintained by tax-payers'' money, and exists for fulfilling those public purposes. The Judge who is the victim in this case is also a public officer, a judicial officer and as the Assistant Sessions Judge was occupying a room in the Circuit House by virtue of the right of his office under the Rules of the Circuit House. The District Magistrate as a responsible public officer of the district should know that this judicial officer was performing his judicial functions from day to day and at the time when his room was locked he was, in fact, engaged in judicial duties in the Court. As an ordinary man, far less as a public officer this District Magistrate is expected to know

and did know that if the Judge lost all his personal belongings including even his provisions for food, which the District Magistrate seized, he would not be in a position to go on performing his judicial duties. The District Magistrate knew that there was acute shortage of accommodation in the district and he knew that without alternative accommodation offered to the Judge, his judicial work in the district would not be possible. The District Magistrate was made well aware of the situation in the correspondence analysed above. The District Magistrate also knew that there was enough accommodation in the Circuit House for one single room to be safely in the occupation of a Judge in the District at all relevant times. The District Magistrate also knew that the Board of Revenue''s permission had been given on the 17th January, 1964. The Board of Revenue is a superior authority over the District Magistrate. This permission was received on or about the 19th January, 1964. In fact, the District Magistrate himself admits receipt of the same on the 20th January, 1964. This District Magistrate successfully defied the order of his superior, the Board of Revenue to drive out the Judge.

43. A number of cases have been cited above on the law of contempt, but almost all of them deal with libel on Courts or Judges. The famous case is (3) In the matter of William Tayler reported in 26 C.L.J. 345 otherwise known as the "Englishman''s" Case. That was a case where the learned Chief Justice, Sir Barnes Peacock coming across those letters privately issued a rule suo motu upon the contemnor, Mr. Tayler who wrote his libellous letters to the editor of the "Englishman" to show cause why he should not be adjudged guilty of contempt of Court. The Court was not even moved in that case by any learned Advocate, as in this case.

44. In the judgment of the Division Bench in that case Sir Barnes Peacock, C.J. sitting with Dwarka Nath Mitter, J. observed as follows -

(a) "Every insult offered to a Judge in the exercise of the duty of his office is a contempt.-page 381.

(b) "I wish popularity, but it is that popularity which follows, not that which is run after. It is that popularity which sooner or later never fails to do justice to the pursuit of noble ends by noble means. I will not do that which my sense tells me is wrong, to gain the daily praise of all the papers which issue from the press. I will not avoid doing that which I think right, though it should draw upon me the whole artillery of libels, all that falsehood and malice can invent or credulity can swallow.

45. The next case cited is the first famous Amrita Bazar Patrika case reported in (4) 26 C.L.J. 459. There, Sir Ashutosh Mukherjee, J. observed :-

A criminal contempt is conduct that is directed against the dignity and authority of the Court. A civil contempt, on the other hand, is failure to do something ordered to be done by a Court in a civil action for the benefit of the opposing party therein. Consequently in the case of a criminal contempt the proceeding is for punishment of an act committed

against the majesty of the law, and, as the primary purpose of the punishment is the vindication of the public authority, the proceeding conforms, as nearly as possible, to proceedings in criminal cases.

46. Woodroffe, Chitty and Fletcher, JJ. express clearly the view that all proceedings whether in respect of criminal or civil contempts are of a criminal nature when the objective is to punish by fine or imprisonment. The procedure in such cases is not in all respects the same as an ordinary criminal case. Both the offence as also jurisdiction and procedure under which it is tried are sui generis.

47. Reliance was placed on the decision of the Privy Council (5) In the Matter of Special Reference from the Bahama Islands, reported in 1893 A.C. 138. That was also a case of libel contained in a letter published in the colonial newspaper containing criticisms of the conduct of the Chief Justice of the colony. Actually no judgment was given in that case. But a short report appears at pages 148, 149 from which it could be seen that the two tests laid down by the Privy Council were whether the act complained of was calculated to obstruct or interfere with (1) the course of justice of (2) the due administration of the law. The Privy Council in (6) Debiprasad Sharma v. The Emperor, reported in Law Reports 70 Indian Appeal 216 discussed the law of contempt although that also arose out of an editorial comment published in a newspaper. At page 224 Lord Atkin referred with approval to the two tests above laid down (5) In the Reference from the Bahama Islands.

48. The above two tests for contempt as laid down by the Privy Council were also emphasized by the High Court of Australia in (7) the King v. Nicholls, reported in 12 CLR 280, where Griffith, C.J., at page 286 observed -

The only question for us to determine here is whether these words are calculated to obstruct or interfere with the course of justice or the due administration of the law in the Court.

49. That was also a libel case. The law in our view will not be different in cases other than libel and where words are not involved the acts or conduct should be judged by the same two tests, namely, whether they are calculated to obstruct or interfere either with (1) the course of justice or (2) the due administration of the law in the Court.

50. Our Supreme Court has laid down the law in clearest possible terms in (8) Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh, , emphasizing that an act or conduct which lowers the authority of the Court and weakens the sense of confidence of people in the administration of justice is contempt. Mukherjea, J. delivering the judgment of the Supreme Court in that case observed at page 1176 of the Report as follows :-

It admits of no dispute that the summary jurisdiction exercised by superior Courts in punishing contempt of their authority exists for the purpose of preventing interference with the Courts of justice and for maintaining the authority of law as it administered in the Courts. It would be only repeating what has been stated so often by various Judges that

the object of contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individual; it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party the authority of the Court is lowered and the sense of confidence of people in the administration of justice by it is weakened.

51. Applying this test laid down by the Supreme Court we have no hesitation in finding in the facts of this case that the acts and conduct of this District Magistrate are calculated to lower the authority of the Court and weaken the sense of public confidence in the administration of justice and are therefore gross and clear contempt.

52. We can pass by another case cited before the Court namely (9) Mcleod v. A.C. Aubyn in 1899 A.C. 549 laying down the principle that the contempt of Court may be committed by the publication of scandalous matter respecting the Court after adjudication as well as pending a case before it as that is not relevant for the present proceedings before us.

53. In (10) Regina v. Odham"s Press Limited, 1957 1 QBD 73 Lord Goddard, C.J. laid down the principle that mens rea ws not a necessary constituent of a contempt of which the Court would take cognizance and punish and that lack of intention or knowledge was only material in relation to the penalty which the Court would inflict and the test was whether the matter complained of was calculated to interfere with the Courts of justice and not whether the contemnors intended that result. In (11) Attorney-General v. Butterworth, 1963 1 QBD 696 it is laid down that contempt of Court is not confined to pending cases and that victimization of witnesses being an interference with the proper administration of justice as a continuing process in deterring potential witnesses from giving evidence in future cases, was contempt of Court whether it was done while the proceeding was still pending or even after they had finished. If interference with the witnesses can be a contempt, interference with the Judge which led not only to the disruption and the obstruction of holding the Courts but also bringing down the Judge in the estimation before the public where he has to administer justice must surely be plain contempt.

54. The Privy Council in (12) Ambard v. Attorney-General, 1936 A.C. 322 emphasized this aspect when Lord Atkin observed at page 23 of the Report "Every one will recognise the importance of maintaining the authority of Courts in restraining and punishing interference with the administration of justice, whether the interference is in particular civil or criminal cases, or take the form of attempts to depreciate the authority of the Courts themselves. It is sufficient to say that such interference, when they amount to contempt of Court, are criminal act and orders punishing them should generally speaking be treated as orders in criminal cases and leave to appeal should only be granted on the well known principles on which leave to appeal in criminal cases is given."

55. Lord Atkin in that case also approved and applied the law laid down by Lord Russel of Killowen, C.J. in (13) R. v. Gray, 1900 2 QBD 36 stating:-

Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt or lower his authority is a contempt of Court. That is one class of contempt. Further any act done or writing published calculated to obstruct or interfere with the due administration of Courts of justice or the lawful process of the Courts is a contempt of Court.

56. The learned Standing Counsel also relied on a Division Bench decision of this Court in (14) Hem Bala Dassi Vs. Sundar Shaw and Others, . He particularly relied on the observation of Chakravarty, C.J. saying that omission is specify the alleged act of contempt in the notice of motion would not entail a dismissal of the motion, even though it was desirable to give the particulars of the contempt charge in the notice of motion itself. Reference was also made to a learned single Judge''s decision reported in (15) Hari Kissen Khettry Vs. Farrukh Sayer, .

57. Arguments were advanced from the Bar both on behalf of the contemnor as well as on behalf of the State on the point how far this Court can commit for contempt of the subordinate Courts. On the basis of certain decisions such as (16) Kochappa v. Sachi Devi, ILR 26 Mad 494, it was argued that a district Court is not a Court of record and as such has no inherent power to commit for contempt. That argument is beside the point, because it is not the district Court which is trying this case for contempt, but this High Court which is trying this case for contempt of its subordinate Court.

58. In the Full Bench decision of the Allahabad High Court in (17) Re: Abdul Hasan Jankhar, ILR 48 All 711 it is laid down that the High Court as a Court of record and as the protector of public justice throughout its jurisdiction has power to deal with all contempts directed against the administration of justice, whether those contempts are committed in face of the Court or outside, and independently or whether the particular Court is sitting or not sitting, and whether those contempts relate to proceedings directly concerning itself or whether they relate to proceedings concerning inferior Courts, and in the latter case whether those proceedings might or might not at some stage come before the High Court."

59. Sulaiman, J. at pages 722-23 observed as follows :-

The real question which requires consideration is whether the High Court has jurisdiction to commit for contempt of an inferior Court. Inferior Courts in these provinces, not being King''s Courts, have no jurisdiction to commit for contempts not perpetrated in facie curiae. They cannot punish contempts committed out of Court: Kochappa v. Sachi Devi (supra). If therefore the High Court also were to have no power to punish such contempts, they would go altogether unpunished, unless in particular cases they came within the provisions of the statutory penal law. The High Court has a general superintendence over its civil Courts and watches over their proceedings, not only to prevent their exceeding their jurisdiction or otherwise acting contrary to law, but also to prevent interference with the course of justice in such Courts. It would seem at first sight that a High Court of

justice, being the highest Court in the land, and yet without power to vindicate the dignity of its subordinate Courts and to protect officers of such Courts, would be an anomaly which could hardly be permitted to exist in a civilized country. Without such protection subordinate Courts would soon lose their hold upon public respect and the maintenance of law and order would be rendered extremely difficult. The question, however, has become one of some difficulty because of a conflict of opinion that has prevailed in India.

60. There was some doubt about the jurisdiction for contempt when such contempt related to contempt of subordinate Courts. But the Contempt of Courts Act, 1926 and the present Contempt of Courts Act, 1952 have mad the position clear. Section 3 of Contempt of Courts Act, 1952 provides power to the High Court to punish contempts of its subordinate Courts and reads as follows: -

(1) Subject to the provisions of sub-section (2) every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice in respect of contempt of Courts subordinate to it as it has and exercises in respect of contempts of itself.

(2) No High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Rental Code.

61. Section 3 of the contempt of Courts Act, 1952 therefore empowers the High Court to punish for contempt of all the subordinate Courts in the same jurisdiction, powers and authority as it has in respect of contempt of itself.

62. Article 215 of the Constitution of India declares that "Every High Court shall be a Court of record and shall have all the power of such a Court including the power to punish for contempt of itself." Article of the Constitution read with Section 3 of the Contempt of Courts Act, 1952 now empowers this High Court to punish for contempt not only of itself but all contempts of Courts subordinate to the High Court, and invests the High Court, and invests the High Court with the same jurisdiction powers and authority in accordance with the same procedure and practice.

63. This position was recognised by the Supreme Court in (18) Bathina Ramakrishna Reddy Vs. The State of Madras, pointing out to the fact that Section 2(3) of the Contempt of Courts Act, 1926 exclude the jurisdiction of the High Court to take cognizance of the contempt alleged to have been committed in respect of a Court subordinate to it only in cases where the acts alleged to constitute contempts are punishable as contempt under specific provisions of the Indian Penal Code, but not where these acts merely amount to offences of other description for which punishment has been provided for in the Indian Penal Code.

64. The Supreme Court in (19) Sukhdev Singh v. Teja Singh, AIR 1954 SC 186 lays down that the Code of Criminal Procedure does not apply in matters of contempt triable

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

65. On the above case law and on the basis of the Article 215 of the Constitution read with Section 3 of the Contempt of Courts Act, 1952, I am of the opinion that this Court is the custodian of the dignity and majesty of law in this State concerning not only this Court itself but also all Courts subordinate to this Court. In this case the District Magistrate by the acts and conduct, stated as above, made it impossible for the Subordinate Judge of the district of Nadia to hold his Court and to perform his judicial duties, publicly humiliated him in the very area of his jurisdiction and brought the learned Judge and his Court down in the estimation of the public. This Court therefore holds the District Magistrate guilty of contempt of the subordinate Court.

66. At this stage, it will be appropriate to dispose of some technical points of objection. They are raised in paragraph 3 of the first affidavit of the District Magistrate affirmed on 26th February, 1964. Mr. Deb, the learned Counsel appearing for the contemnor has not really pressed these points but has asked us to clarify the procedure for the future in contempt proceedings.

67. In the first place, it is said that this rule should not have been issued in its criminal revisional jurisdiction. This point has really no substance. The practice and procedure of this Court have long been well-settled, ever since the time of Rankin, C.J. On the 18th May, 1953 Chakravarty, C.J. in Criminal Misc. Case No. 63 of 1953 passed the following order, which indicates the position :-

Cases for contempt of a subordinate Court which may be reported to this Court are to be dealt with judicially and under a standing order passed by Rankin, C.J., they are to be dealt with by the Division Bench taking criminal matters. So place the papers before that Court.

68. Chakravarty, C.J. further clarified this order by an administrative direction on the 29th July, 1957 as follows :-

I therefore, direct in modification of the previous orders on the subject that, in so far as the Appellate Side is concerned, applications relating to contempt moved before this Court, invoking its "special jurisdiction" shall in future be dealt with by the Criminal Section or the Rule and Miscellaneous section according to the alleged contempt for which process is prayed is a criminal or a civil contempt.

69. The jurisdiction for dealing with contempt is clear and settled now. No doubt, the High Court has "inherent" jurisdiction for contempts of itself. In a sense this is a special jurisdiction, but appropriately this is called the inherent jurisdiction special to the High Court. But this present matter relates to contempt of a subordinate Court and subordinate

Judge in the district and the jurisdiction in respect thereof is now contained in Section 3 of the Contempt of Courts Act, 1952. This jurisdiction can therefore be said to be Statutory. Rule 2, Chapter 4 of Part II Appellate Side Rules as well Original Side Rules in Chapter 38 deal with application for contempt and provide that such applications should be marked or headed "special jurisdiction" with the subject matter described as "contempt of Court". But when the Court acts suo motu and not on "application" these rules do not strictly apply. The criminal Bench of this Court exercising Criminal Revisional Jurisdiction is an appropriate Bench so far as contempts of subordinate Courts are concerned because it can be said to be the Bench exercising criminal revisional jurisdiction over the entire State and its subordinate Courts. The contempt in this case is also not a civil contempt but a criminal contempt according to the decisions which we have already discussed above. Therefore, the heading ''Criminal Revisional Jurisdiction'' cannot be said to be inappropriate. Besides, such cases as a matter of practice are also marked as Miscellaneous Cases.

70. The second technical point urged is that the State has no right to be represented and the affidavits filed on behalf of the State ought not to the treated or read as evidence in the case or otherwise used in these proceedings. The third point may also be taken together with this. It is that because the matter appears as "The State v. The District Magistrate of Nadia and another", the State is unable to defend the contemnor in these proceedings through its law officers and therefore the Advocate-General is also unable to appear from him and it was submitted that as a matter of importance to the contemnor as an officer of the State he should be officially defended. This third point was actually not pressed by Mr. Deb appearing for the District Magistrate and, in fact, dropped.

71. Taking these two technical points together, here again the administrative orders and the practice of this Court have been long settled. The latest is the Office Order dated 1st February, 1964, authenticated by the Registrar of the Appellate Side of this Court which reads as follows:-

The Hon''ble the Chief Justice has been pleased to direct that, until further orders, on the grant of a rule of this Court in other criminal revision case, a copy of the rule and the connected petition, shall be served on Superintendent and Remembrancer of Legal Affairs, West Bengal.

72. The reason for making the above order will appear from the Registrar''s note before the Chief Justice, dated the 31st January, 1962 stating as follows :-

The Superintendent and Remembrancer of Legal Affairs approached the Court in August, 1961 with the request that the Rule and the connected petition in other criminal case should be served "on him" to enable him to arrange for representation of the State in important cases. Copies of Rule and connected petition may, if your Lordship approves, be henceforth served on the Superintendent and Remembrancer of Legal AffaiRs.

73. On broad principles this Court considers that the State is as much interested in upholding and maintaining the dignity of the Court, the majesty of law and the judiciary and in preventing contempt of Court and as such it is only appropriate that the State should have notice of contempt proceedings. See also Rule 2, Chapter II, Appellate Side Rules. The affidavit filed on behalf of the State, against which complaint is made is an affidavit by the Assistant Legal Remembrancer who was directed only to disclose the correspondence in his office and record in this matter relating to this contempt. The affidavit only produces the papers and correspondence received by the office of the Legal Remembrancer, Government of West Bengal, from the Secretary, Judicial Department. In the facts of this case that was a necessary course and the objection is unfounded and without substance. The State as such has made no affidavit for or against the Rule. Whether this particular contemnor because he is a District Magistrate and officer in the State is entitled to be defended by the Government is a matter for the Government. It may be remembered that Harris, C.J. holding a District Magistrate guilty of contempt observed in the case presently to be referred :-

Fortunately no costs have been incurred, otherwise we should have had no hesitation whatsoever in directing the Magistrate personally to pay the costs of the proceedings.

74. It shows that a person, simply because he is an officer of the State has no right to waste public funds in this defence if his actions are held to be grossly mala fide, improper and throughout illegal and contemptuous. In this case as the State is already appearing in support of the Rule an order on the District Magistrate to pay the costs to the State may be in vain but this Court having regard to its findings here, thinks it fit to order that the District Magistrate should bear his costs personally and not be allowed to call upon the public funds of the Government to defend such grossly contumacious and illegal acts which he has committed in this case.

75. So far as title of a contempt proceeding is concerned this Court considers that the most appropriate title would be "In Re: Contempt, In Re: the name of the contemnor" instead of the State v. so and so, unless in any particular application the State or any other applicant itself moves for a rule in contempt, in which case the title "State or the applicant (name) v. so and so" may be adopted with propriety.

76. The last technical point is that the Rule is said not to specify the exact contempt and the charge. This point also has no substance. The publication in the paper "Bidyut" set out clearly the acts of contempt, namely, (1) driving the Judge out of the Circuit House, (2) in making it impossible for the Judge to hold his Court and compelling him to leave his station of justice and, (3) bringing down the Judge in the estimation of the local public. On the authorities discussed that is sufficient. See also on this point the observations of the Supreme Court in (19) Sukhdev Singh v. Teja Singh, AIR 1954 SC 185 already mentioned.

77. Before conclusion we would revert to the fact of the two Principals of the educational institutions subscribing their signatures as witnesses to the inventory which took long three hours'' time in the Circuit House and how they were present for such a long time. The following letters have been sent to the record of this Court through the Additional District Magistrate of Nadia. They are :-

(1) No. 100-CG

To

The Superintendent & Remembrancer of Legal Affairs,

Government of West Bengal,

Calcutta-1.

Dated, Krishnagar, the 5th March, 1964.

Sir,

The inventory of articles found in the Circuit House on 22.1.64 and the order of the Magistrate will be found in the case record. The time taken for making the inventory of the articles will be found on the last page of the inventory.

The circumstances under which the two Principals attested the inventory of articles may be seen from their letters which are enclosed in original.

Yours faithfully,

Sd./- A.Sen, 5.3.64

Addl. District Magistrate, Nadia.

.....

(2) No. 733

Dt. 5.3.1964

Krishnagar College,

Krishnagar, Nadia,

West Bengal.

To

Sri A. Sen, I.A.S.,

Addl. District Magistrate, Nadia

Krishnagar.

Ref. : Your letter No. 99-CG(2) dt. 4th March, 1964

Sir,

I went to the Circuit House, Krishnaar on 22.1.1964, after my office work, to meet Sri Rahaman Hon''ble Minister, West Bengal in connection with a meeting of the Nadia District Peace Steering Committee to be held on the following day. A copy of the notice of the meeting is enclosed.

As I was about to leave the Circuit House after having a discussion with the Hon''ble Minister, I was requested by some members of the staff of the Nadia Collector to attest a list of articles expected to be inside one of the rooms of the Circuit House, which was locked and was to be broken open. I was at first hesitant as I did not want myself to be dragged into this matter. It was then ascertained from Shri Bakshi, Sub-Deputy Magistrate, Krishnagar, that the responsibility in this matter was not mine and I was to act merely as a formal witness. Thereupon I attested the inventory of articles.

Yours faithfully,

Sd/- A.K. Mazumdar,

Principal,

Krishnagar College.

To

Sri A. K. Majumdar, Principal,

Krishnagar Govt. College.

The Hon''ble Shri S. M. Fazlur Rahaman, Minister-in-Charge, Departments of Animal Husbandry, Veterinary Services, Fisheries and L.S.G. has expressed his desire to meet the members of the District Peace Steering Committee on 23.1.64 at 9.00 a.m. in the Nadia District Board Hall.

You are requested to attend.

Convenor,

Sd/- S.M. Badaruddin,

21.1.64

(S. M. Badaruddin).

ATTESTED

Sd/- A. K. Mazumdar,

Principal, Krishnagar College,

(3) No. D.O.9 (Con.)/11

R.K. Banerjee, Principal,

B.P.C. INSTITUTE OF TECHNOLOGY,

CONFIDENTIAL

Dated 4th March "64

Dear Sri Sen,

You wanted to know as to why and how I had been at the local circuit house on 22.1.64 in the afternoon.

I write to inform you that on my way to the club, I met Principal, A.K. Majumdar on that day. Principal Majumdar was going to meet Hon''ble Minister, Sri F. Rahaman at the circuit house in connection with the meeting of the Peace Steering Committee with the Minister, scheduled to be held on the next day. He requested me to accompany him to the circuit house and I conceded to his request and that is how and why I went to the Circuit House.

Yours sincerely,

Sd/- R. K. Banerji, 4/3.

To

Sri A. Sen / M.A., I.A.S.

Additional District Magistrate, Nadia

The explanation does not seem to this Court impressive. The Peace Steering Committee was to meet on the 23rd January and much remains unexplained why Principal Amiya Kumar Majumdar of Krishnagar College should not only be going to the Circuit House a day earlier but also why he does not say how he picked up another chance witness on the way, witness Banerjee, Principal, B.P.C. Institute of Technology, who says in his turn

that on his way to the club, Principal Majumdar met him and requested him to accompany him to the Circuit House. We do not propose to take any further notice of this fact except by making the observation that this Court will hope that in future, educational institutions and their responsible heads will not permit themselves to be involved in this kind of a situation.

78. Last comes the question of punishment for this contempt. Section 4 of the Contempt of Courts Act, 1952 provides as follows: -

Save as otherwise expressly provided by any law for the time being in force, a contempt of Court may be punished with simple imprisonment for a tem 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:

Provided further that notwithstanding anything elsewhere contained in any law for the time being a force, no High Court shall impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a Court subordinate to it.

79. The acts complained of are in the present case deliberately and highly contemptuous, contumacious, humiliating and deliberately planned and executed. No District Magistrate in the history of public administration in India had the temerity to humiliate and pursue a Judge to public disgrace to the extent and manner that this District Magistrate has done. This District Magistrate was condemned both by the learned Standing Counsel for the State as well as by his own Counsel as "arrogant and impertinent". His own Counsel described him as "pig-headed". His defiance is unprecedented. He defied the Rules of the Circuit House. He defied the orders of his superior, the Member of the Board of Revenue. He defied the Chief Secretary of the State. He defied the administrative directions conveyed through the Registrar of this Court. He was a law unto himself and took all law in house own hands and broke it. That he broke decency, responsibility and the minimum standards of public behaviour of one Gazetted Officer towards his fellow brother officer makes this contempt all the more grave. This District Magistrate is immature and young. He has not been in service for even ten years having joined the I.A.S. in 1955 and being in training at the I.A.S. Training School until April, 1956. He was posted to the high and responsible office of a District Magistrate in May, 1962 when he was barely six years in service. Posting of immature officers in charge of a district is a very risky and dangerous course. A District Magistrate has to perform highly responsible duties and in the present context of a constitutional democracy in India he has to handle many complex and delicate problems. He must be a person whose public relations have to reach at least minimum standards of human behaviour. If his brother officer received such treatment one shudders to think how the ordinary private citizen will be treated by him. This District Magistrate is far too inexperienced. His office record shows that he was an Assistant Magistrate at Berhampore from May, 1956 to middle of 1957 to 1958. he worked for some

time as an Assistant Settlement Officer of Darjeeling from May, 1958 to March, 1959 and a Settlement Officer and Superintendent of Surveys of North Bengal and adjoining areas from April, 1959 to July, 1960 and in some other districts such as Settlement Officer and Superintendent of Surveys from July 1960 to October, 1961. His only experience as a Magistrate, was as Additional District Magistrate in Murshidabad for only one month from March, 1962 to April, 1962, before he was given the sole responsibility of being a District Magistrate of Nadia from May, 1962. Such a course in the tradition of the administration was unthinkable and is undesirable in public interests, when many senior and experienced State executive service officers are available. No officer in that tradition however brilliant got sole charge of a District Magistrate unless he had done at least double the number of years or service that this District Magistrate has done and unless he had been an Additional District Magistrate at least in two districts for a reasonable length of time to acquire knowledge, experience and responsibility. This Court cannot help making the comment that such trial should be avoided in future in order to prevent this unseemly ugly public exhibition of magisterial highhandedness.

80. In his first affidavit this District Magistrate neither expressed "regret" for "apology". In paragraph 31 of his affidavit all that he said on this point was "I have had no intention ever to act in any way which could be even remotely regarded as contempt of Court. If I have done any act which can in any way be regarded contempt of Court, I have done so without the least intention of committing any contempt and without appreciating that it was a contempt for which I am sincerely sorry." In the glaring context of ugly facts this Court cannot take the above statements as an expression even of regret or apology. If a public officer of the status and responsibility of a District Magistrate by turning the Judge in his district out of the Circuit House publicly, when he had no other shelter or place to live in, by publicly seizing his goods, by making an inventory of them before public witnesses, by despatching them to the Police Malkhana and by making it impossible for the Judge to be in the district to perform his judicial functions, did not even realise that he was committing contempt of the subordinate Court and says he had no intention of doing so, then this Court is constrained to remark that such a person should not be in such a responsible position whose sense of appreciation and understanding is so sadly limited.

81. At the very last moment and on the very last day of hearing of this Rule for contempt a certain sense of responsibility appears to have dawned upon this District Magistrate. He made an affidavit on the 6th March, 1964 wherein he said in paragraph 2 as follows: -

I had no animus against Shri M. Roy and the entire matter was distressing to me. I have the deepest respect for this Hon"ble Court and the Courts subordinate to it and I realise that I should have avoided doing any act which could have been considered even as an occasion for the issue of a Rule for the contempt of Court against me and for this I express my most sincere apology. I have and had no intention ever to act in any manner which could be even remotely regarded as savouring of contempt of Court. If I have done any act which could in any way be regarded as contempt of Court, I have done so without the least intention of committing any contempt and without appreciating that it was a

contempt for which I express my sincere apology.

82. The first proviso to Section 4 of the Contempt of Courts Act, 1952 says that "The accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of this Court." The apology in this case has been very slow, hesitant and tardy. On the present facts of gross contempt, unprecedented as they are, this Court considers that the proper punishment for this District Magistrate would be a sentence of a fortnight"s simple imprisonment. If persons committing such gross contempt of Court were to get the impression that they will get off by ultimately tendering an apology, however slow and tardy it might be, then that would be a most unfortunate state of affairs. The law of apology and its acceptance by Court is not in doubt. The fact of apology must be clear. The apology must be real and sincere.

83. Acceptance of an apology by a Court is not a matter of course. The language of the proviso to Section 4 of the Contempt of Courts Act, 1952 makes it clear that the apology has to be to the "satisfaction of the Court". Because an apology is offered the Court is not bound to accept it. A Court certainly can refuse to accept an apology if it is not to its "satisfaction" or when it is not genuine. It should be tendered at the earliest opportunity. The apology must be unequivocal and not hedging and hypothetical, Mahajan, C.J. in M.Y. Shareef v. Hon"ble Judges of the Nagpur High Court, said on behalf of the Supreme Court in M.Y. Shareef and Another Vs. The Hon"ble Judges of The High Court of Nagpur and Others, "An apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to be a universal panacea, but it is intended to be evidence of real contriteness." The test of apology is the "real contriteness". In the case of (21) English Mail in Re. Claridge, 14 BLR 231, where a rule was issued against the editor, the editor offered apology qualified by the words "If the Court is of opinion that any part of the paragraph would prejudice Khan of Hoti". The Court through Davar, J. at p. 233 of the Report observed. "This the respondents have no right to ask. The Court"s opinion would not be expressed till after the respondents had done what they may be advised to do or what they may think fit to do at the arguments of the Rule." It has been said that apology is not a magic formula of words which has to be uttered as an incantation at the last possible moment when all else had failed and to be used to stave off the inevitable punishment. See the observations of Vivian Bose, J. in the case of the Subordinate Judge, AIR 1940 407 (Nagpur) where the learned Judge observed as follows at page 408 :-

It appears to be felt that a man should be free to continue unfounded attacks... and then when he is unable to stave off the consequences of his infamous conduct any longer, all he need do is to wave this magic formula referred to as an apology in the Judge"s face in order to emerge triumphantly from the fray. Nothing can be further from the truth."

84. Again in the same case at pp. 408-9 the learned Judge analysed the nature and purpose of apology in these words with which we respectfully agree :-

An apology is not a weapon of defence forged to purge the guilty of their offences. It is not an additional insult to be hurled at the heads of those who have been wronged. It is intended to be evidence of real contriteness, the manly consciousness of a wrong done of an injury inflicted, and the earnest desire to make such reparation as lies in the wrong-doer''s power. Only then is it of any avail in a Court of justice. But before it can have that effect it should be tendered at the earliest possible stage, not the latest, and even if wisdom dawns only at the appellate stage, the apology should be tendered unreservedly and unconditionally before the arguments begin and before the person tendering the apology discovers that he has a weak case and before the Judge (when that happens, as it did here) has indicated the trend of his mind. Unless that is done, not only is the tendered apology robbed of all grace but it ceases to be an apology it ceases to be the full, frank, manly confession of a wrong done which it is intended to be. It becomes instead the cringing of a coward shivering at the prospect of the stern hand of justice about to descend upon his head. It then deserves to be treated with the contempt with which cowards and bullies who do not hesitate to threaten others and to impugn their honesty and character without the slightest foundation and who cringe and wall when their own safety is at stake, are treated. However, I do not intend to make a point of this in this case because of the misconception which is prevalent in these parts about the meaning, nature and effect of an apology; nor of course am I intending to lay down any universal rule or to ignore the proviso to Section 3, Contempt of Courts Act of 1926. I refer to the matter in these strong terms only in order that there should be no misconception about apologies in the future and about the practice in respect of the tendering of them, and in order that there should be no possible mistake about my meaning and attitude. Mere lip service to a formula without any contrition of heart will not do.

85. The Allahabad High Court points out in (23) Lal Behari and Others Vs. State, that apology is not a convenient device to be used by a person driven and compelled by the logic of events t resort to a measure mode of escape from the impending doom or as a last desperate throw in a game of chance hazarded by him at a time when all else has failed and everything seems to be lost. We have anxiously considered whether this belated, dubious and graceless apology in the present case can be said to be to the satisfaction of the Court within the strict meaning of the great principles laid down regarding the nature and character of apology, just discussed. Not without hesitation we have decided to accept this apology for the limited purpose of only remitting the punishment that we have considered proper.

86. The records have been so eloquent in this case that there is even a letter on record showing the approach of this District Magistrate to the Divisional Commissioner who went to the length of describing that the contempt was a "reprisal" in the District Magistrate''s action. This notorious word appears in the letter of Mr. R. Banerji, I.A.S., the Commissioner of the Presidency Division to the Chief Secretary dated the 4th February, 1964, which is annexed to the affidavit of the Assistant Legal Remembrancer before us.

To meet this "reprisal" this Commissioner of the Division commends this District Magistrate as "dutiful civil servant" deserving to be defended at public cost of the Government. It is needless to say this Commissioner of the Division while as District Magistrate of West Dinajpore was once himself convicted of being guilty of contempt on the 13th February, 1951 by Harris, C.J. and Shambhunath Banerjee, J. with the following words :-

The District Magistrate was guilty of a clear contempt and we find him guilty of the contempt charged. But for the fact that an unconditional apology has been offered on behalf of the District Magistrate concerned, we should have taken a very serious view of this case. We do not however in view of this apology propose to inflict any punishment. Fortunately no costs have been incurred, otherwise we should have had no hesitation whatsoever, in directing the Magistrate personally to pay the costs of this proceedings. Rule is made absolute accordingly.

87. These observations were made in the (24) Criminal Misc. Case No. 17 of 1951. Even during the trial of this case the public spectacle before the Court was the presence of Magistrates who came and attended in appreciable number giving the impression to the public, that it was trial between the Executive and the Judiciary and that it was not a case but a cause and a campaign. It will be a sad day for India and her Constitution if this is a true state of affairs, where two equally necessary and indispensable limbs of the State, the Executive and the Judiciary, instead of responsive reciprocity and understanding of the common cause of alike serving the State, were to engage in a trial of strength and power. Constitutional democracy means checks and balances and not internecine competition of powers between the necessary organs of the State. The constitution of an Indian Judicial Service like the Indian Administrative Service may help the much needed climate of parity of understanding between these two essential wings of public service in India. The Court has in view the decision of the Supreme Court in (20) M. Y. Shariff and another v. The Hon''ble Judges of the High Court of M.Y. Shareef and Another Vs. The Hon''ble Judges of The High Court of Nagpur and Others, where Mahajan, C.J. at page 765 observed :-

Once the fact is recognised as was done by the High Court here, that the members of the Bar had not fully realised the implications of their signing such applications and were formally under the belief that their conduct in doing so was in accordance with professional ethics, it has to be held that the act of the two appellants in this case was done under the mistaken view of their rights and duties, and in such cases even a qualified apology may well be considered by Court.

88. The present case however can be distinguished in many ways from the above case which dealt with (1) members of the Bar with forty years'' experience, (2) a single instance of signing one solitary application, and (3) debatable question of conflict of professional ethics between duty to the Court and duty to the client.

89. On the same facts and on the same reasons this Court holds the Nazir also guilty of contempt and sentences him to a fortnight''s simple imprisonment but we remit that sentence. We make no order for costs against the Nazir because he acted under the orders of the District Magistrate.

90. This Court however will continue to do its duty and administer justice and if possible to temper it with mercy. Having regard to the utter immaturity displayed by this District Magistrate, having regard to his extreme youth, which we hope will be better employed in the public service elsewhere not as the ruler of a district, and having regard to the apology which he has ultimately tendered on the last day of hearing of the Rule and at its conclusion, this Court makes the following order :-

This Court makes the Rule absolute and holds this District Magistrate guilty of gross contempt of the subordinate Court, sentences him to a fortnight''s simple imprisonment but out of mercy to him remits that punishment by accepting his belated apology under the first proviso of Section 4 of the Contempt of Courts Act, 1952. The Rule is therefore made absolute accordingly by holding (1) both the District Magistrate and his Nazir guilty of the contempt charged, (2) by sentencing each to a fortnight''s simple imprisonment, (3) by remitting the sentence in each case by accepting their respective apologies and (4) by directing the District Magistrate in these proceedings to bear and pay his own costs and the Nazir''s costs personally.

R.N. Dutt, J.

91. I agree.