

SUPREME COURT OF INDIA

All India Anna Dravida Munnetra Kazhagam

Vs.

L.K. Tripathi

Contempt Petition (C) No.262 of 2007

(B.N. Agrawal and G.S. Singhvi JJ)

01.04.2009

JUDGMENT

G.S. SINGHVI, J.

1. Whether respondent Nos.1 to 5 have willfully disobeyed order dated 30.9.2007 passed by this Court in Special Leave Petition (Civil) No.18879 of 2007 and thereby made themselves liable to be proceeded against under the Contempt of Courts Act, 1971 (for short 'the 1971 Act') read with Article 129 of the Constitution of India and whether respondent No.6 is guilty of criminal contempt within the meaning of Section 2(c) of the 1971 Act are the questions which arise for determination in this petition filed by All India Anna Dravida Munnetra Kazhagam through its Presidium Chairman Shri E. Madhusudhanan.

2. Background facts:

2.1 In an apparent bid to pressurize the Central Government to expedite implementation of Sethu Samudram Project, Democratic Progressive Alliance comprising Dravida Munnetra Kazhagam, Indian National Congress, Communist Party of India (Marxist), Communist Party of India and Pattali Makkal Katchi, passed a resolution on 24.9.2007 to resort to total cessation of work and

closure of shops on 1.10.2007 and to conduct a general meeting of the leaders of all parties on 30.9.2007 at Chennai. The relevant portions of the resolution are extracted below:

"... in order to make understand the fact that the support of the people is only to implement the Sethu Samudram Project expeditiously to the Central Government, it is resolved to conduct total cessation of work and closure of shops on the 1st of October, and to conduct a general meeting of the leaders of all parties on the 30th day of September, at Chennai."

2.2 The petitioner challenged the afore-mentioned resolution in Writ Petition No.31435 of 2007 filed before Madras High Court and prayed that the call given by the political parties for organizing bandh in the State of Tamil Nadu either on 1.10.2007 or any other day may be declared as violative of Articles 19 and 21 and the Directive Principles of the State Policy and fundamental duties embodied and enumerated in the Constitution of India. Shri Subramania Swamy of Janta Party, Shri K.R. Ramaswamy @ Traffic Ramaswamy (founder Chairman of the Tamil Nadu Social Workers Association, Chennai) and Shri R. Balasubramanian also filed Writ Petition Nos.31478, 31462 and 31631 of 2007 with similar prayers.

2.3 Along with the writ petition, the petitioner filed two miscellaneous petitions with the prayer that a direction be issued to Dravida Munnetra Kazhagam represented by its President M. Karunanidhi (Respondent No.4 in the contempt petition) to deposit a sum of Rs.100 crore with the Chief Secretary, Government of Tamil Nadu on or before 28.9.2007 which could be utilized to compensate the damage caused to the general public and the five political parties be restrained from proceeding with the call for bandh in the State in terms of resolution dated 24.9.2007.

2.4 After hearing counsel for the parties, the High Court admitted the writ petitions and issued the following directions to the Chief Secretary, Director General of Police, District Collectors and other officers of the State:

"(i) To ensure that no political party, organization, association, group or individual can, by organizing `bandh/ hartal' or by force or intimidate, stop or interfere with the road and rail traffic or free movement of the citizens in the State of Tamil Nadu on the day of `Bandh' i.e. 01.10.2007.

(ii) To ensure that the public transport in the State including the Civil Aviation run smoothly on the day of the `Bandh' i.e. 1.10.2007.

(iii) To take appropriate action against the person(s) indulging in stoppage or interference with the road and rail traffic or free movement of the citizens in the State of Tamil Nadu.

(iv) Chief Secretary to the Government shall issue a Press Note to the Print Media and also the Electronic Media on 29/30.9.2007 informing about the preparation made by the Police to deal with the `Bandh' and to make people secured."

2.5 Feeling dissatisfied with the High Court's order, the petitioner filed S.L.P.

(C) No.18879 of 2007 in this Court. The same was heard on 30.9.2007. The counsel representing respondent nos.1 to 3, who volunteered to appear, also made their submissions. After considering the respective submissions, this Court passed a detailed order, the relevant portions of which are reproduced below:

"From a bare perusal of the aforesaid decision, it would be clear that neither anybody can give a call for Bandh nor the same can be enforced. The High Court, in the present case, has recorded a, prima facie, finding that, in the present case, the call was given for Bandh and not strike/hartal.

Ordinarily, High Court as well as this Court refrains from passing an interim order the effect of which would be granting the main relief. But in cases where a party approaches court without loss of time, there are no laches on its part, it is not possible to give notices to all the necessary parties and hear them because of paucity of time and in case interim order is not passed in a case like the present one, which, prima facie, in the opinion of court is concluded by judgment of this court, the main case would become infructuous, different considerations would arise and appropriate interim order should be passed. In the present case, apart from the State of Tamil Nadu, out of the political parties, namely, Dravida Munnetra Kazhagam, Indian National Congress, Communist Party of India (Marxist), Communist Party of India and Pattali Makkal Katchi, only Dravida Munnetra Kazhagam has appeared before us, whom we have heard at length.

After taking into consideration the entire matter, prima facie, we are also of the view that the call given by the aforesaid political parties is a call for Bandh and not strike/Hartal. Accordingly, we have no option but to issue notices to the non-appearing respondents and pass interim order.

Issue notice.

Until further orders, Respondent Nos.3 to 7 are restrained from proceeding with the call for Bandh in the State of Tamil Nadu on 1st October, 2007 pursuant to resolution dated 24th September, 2007 or any other day."

2.6 Even before filing of writ petition by the petitioner, the then Chief Secretary of the State - Shri L.K. Tripathi (respondent no.1 herein) directed that the concerned officers be asked to take steps necessary for maintaining essential services and for providing protection to important offices and establishments apart from markets and business places. The instructions given by the Chief Secretary were circulated vide telefax No.SR.II/50641/2007 dated 27.9.2007, the relevant portions of which are extracted below:- "1. Essential services like Telephone and Telecommunication, water supply, milk distribution, power supply, fire services, newspapers, hospitals, shall be ensured to function and protection given.

2. Provide adequate protection to vital installations such as power stations/grids, sub-stations, important Government buildings, telecommunication and bridges, oil installations, railway bridges, etc.

3. Arrange open line patrol with immediate effect.

4. Arrange for regular supply of milk and other essentials.

5. Provide adequate protection to the High Court and other Courts.

6. Action to be taken against anti-social elements and persons indulging in acts of violence and vandalism.

7. A visible police presence shall be maintained throughout the city.

8. A visible bandobast outside railway stations, bus depots, main roads, main junctions, hospitals,

courts, schools and colleges will be maintained.

9. Necessary protection to market and business places shall be given.

10. All police control rooms will be fully activated to follow up incident to take proper stern and timely action.

11. Ensure that the 'Hartal' passes off peacefully.

12. Collectors may requisition and spare other department vehicles if required by the District Superintendent of Police.

Any incident of law and order and other matters of significance should be informed to Chief Secretary's Control Room Telephone Nos.26571388 and 26570372, followed by FAX-25677128. Bi- hourly report commencing from 0600 hours on 01.10.2007 about the 'Hartal' should be given to Chief Secretary's Control Room even if there is no incident. First Report should commence from 0600 hours on 01.10.2007."

2.7 On coming to know of this Court's order through electronic media, respondent No.1 directed that telephonic instructions be given to all the Collectors to convene meetings with the respective Superintendents of Police for ensuring that law and order and public tranquility are maintained.

2.8 The Court's order was officially communicated to respondent no.1 on the same day i.e., 30.9.2007 at about 10.30 p.m. by fax. The latter immediately forwarded the same to respondent no.2 for taking necessary action. In turn, respondent No.2 directed the concerned police officers that steps should be taken for facilitating unobstructed movement of public transport and maintenance of essential services like water and electricity supply, milk distribution, telephone and telecommunication service, fire service, hospitals and protection be given to Central Government offices, courts, bus stands, railway stations, banks, market places, shops, industrial establishments, etc. These directions were conveyed to Zonal Inspector Generals of Police and Commissioners of Police by Additional Director General of Police (Law and Order) vide fax dated 1.10.2007 which was sent between 11.28 p.m. on 30.9.2007 and 6.30 a.m. on 1.10.2007. The contents of that fax are reproduced below:- Date 30.09.2007 "From ADGP (L&O) Chennai - 4.

To All Zonal IGPs and COPs All unit officers are instructed to strictly follow the following instructions,

1. The Depots Managers of the State Transport Corporation will decide about running the buses subject to availability of crew. Sufficient Bandobust must be provided to all Bus Depots under their jurisdiction.

2. Anyone who obstructs the movement of Public transport should be picked up.

3. Bandobust should be provided to all essential services like Hospital, Electricity, Offices, Bus stands and railway stations etc.

4. Bandobust must be provided to all Central Government offices, Courts and Banks.

5. Beats and Patrol should be provided to all market places, shops and industrial establishments.
6. All anti-social elements should be picked up.
7. Sufficient Bandobust arrangements should be provided at the places where Hunger strike is scheduled to be held.

Sd/- D.S.P.C.O.S.R.

For ADGP (L&O) Chennai-4 30.9.2007 C.No.D1/17566/IGP/NZ/2007 DATED 1.10.2007 COPY COMMUNICATED TO ALL SsP. AND DIsG. IN NORTH ZONE AND ARE REQUESTED TO TAKE NECESSARY

ACTION AND REPORT COMPLIANCE.

Sd/- 1.10.2007 For IGP/NZ/CNI-16"

2.9 The Secretary to Government, Public (SC) Department also sent fax No.SR.II/5064-5/2007 dated 1.10.2007 to all the District Collectors at 11.25 a.m.

requiring them to send hourly reports to the Chief Secretary's Control Room regarding the law and order situation, movement, transport, functioning of essential services, functioning of schools and colleges, opening of shops, hotels and other public utilities, attendance in Government offices etc.

3. On 3.10.2007, the petitioner filed this petition under Article 129 of the Constitution of India read with the 1971 Act and prayed that the respondents be punished for violation and disobedience of the Court's order dated 30.9.2007. The gravamen of the petitioner's allegation is that in complete disregard of the restraint order passed by this Court, the concerned political parties including Dravida Munnetra Kazhagam enforced the bandh in the entire State by ensuring that buses owned by the State Transport Corporation are kept off the road and shops and other business establishments remain closed; that 45,000 private buses were also not allowed to ply on that day; that shops and other business establishments were forcibly closed by the cadres of Dravida Munnetra Kazhagam party and that the State machinery did not take any action to ensure functioning of public transport system and opening of the shops etc. It is also the petitioner's case that even though 50,000 employees of the State Transport Corporation came forward to carry out their duties but they were prevented from entering the bus depots by the Depot Managers, Supervisor, etc. on the instructions of higher authorities and even the main gates of many bus terminals were closed and locked. To substantiate these allegations, the petitioner has placed on record the photographs collectively marked as Annexure P-5 and the telegrams which are said to have been sent by Shri K.K. Madeswaran, C.

Sengottaiyan and M.A. Paneerselvam to Tamil Nadu State Road Transport Corporation, representation made by A.J. Selvaraj, Anna Trade Union Secretary, Radhapuram Taluk. In paragraph 14 of the Contempt Petition, it has been averred that several workers of Dravida Munnetra Kazhagam party moved in various vantage areas of the State with deadly and lethal weapons to ensure that no business or commercial activity was done on 1.10.2007 and whoever opened the shop was forced to down the shutters. It has been further averred that in Chennai, a restaurant at Arterial Mount Road was attacked and looted and many other shops and restaurants were ransacked and eatables were thrown out and bottles were broken, but the police remained mute spectators. In support of these averments, the petitioner placed on record copies of various

newspapers. In paragraph 23, a reference has been made to the speech allegedly made by respondent No.6, Shri T.R.

Balu, Union Minister for Shipping and Surface Transport, at the venue of the hunger strike on 1.10.2007 and it has been averred that the same was calculated to scandalize judiciary in general and order dated 30.9.2007 in particular. The relevant portions of the speech allegedly made by respondent no.6, which is said to have been published in the newspapers and also telecast on the television channels are extracted below:- "If we want to conduct a Bandh in a democratic manner to ensure speedy implementation of this Project, the Supreme Court is injuncting the same. Are judgments being delivered correctly in the Courts? If that is so, why are higher courts granting stay of orders of lower Courts? If judges are not making mistakes why are there conflicting judgments? Today there are many complaints against many judges. Corruption charges are appearing everyday. What does that mean? If they were upright yesterday, does it mean that they are not upright now? When was a sitting ever held on a Sunday? Unprecedented things are taking place.

We are expressing our feelings. How many complaints are received against judges? There is provision in law for impeachment of sitting judges. The MPs' sitting here should also think about it. Nothing wrong about it. Our MPs, including the ministers should know about it. Everyone including the ministers can sign it."

4. In paragraph 7 of the reply affidavit filed by him, respondent no.1 has averred that after telecast of the news about the restraint order passed by the Court, telephonic instructions were issued to the District Collectors to maintain law and order and public peace. In para 8 of the affidavit, respondent no.1 has averred that immediately on receipt of the Court's order, a copy thereof was sent to respondent no.2 with suitable instructions to take necessary action and within the available time the police force was mobilized and bandobust was provided to all vital installations, State and Central Government offices, educational institutions, Tamil Nadu State Transport Corporation depots, bus stands, railway stations, airports, markets, places of worship, hospitals, important junctions, business areas and other places where people used to congregate and bandobust was also provided to the industrial establishments for their smooth functioning and pickets were posted at all sensitive places to avert law and order problems. According to respondent No.1, effective patrols and mobiles were organized for ensuring free flow of traffic in the State and open line patrols were deputed for keeping watch on the railway tracks; all the courts including the Madras High Court were given sufficient protection; vehicle checks were organized to prevent the movement of anti-social elements and trouble mongers and rowdy elements were detained under preventive measures. Respondent No.1 has claimed that on 1.10.2007 all the Courts functioned normally and movement of trains and other essential services were maintained without any obstruction. As regards transport services, respondent no.1 has averred that less number of Government transport services operated in the early morning but with the passage of time around 2749 routes were made operational.

5. In his affidavit, respondent no.2, Shri P. Rajendran, has detailed the steps taken for ensuring presence of police at various important places for maintaining law and order and movement of transport services. He has denied that workers of Dravida Munnetra Kazhagam party had forcibly closed business establishments and shops by wielding lethal and deadly weapons for the purpose of conveying threats to the public.

6. In his affidavit, respondent no.3 - Shri Debendranath Sarangi has given an account of the steps

taken for ensuring normal operation of State Transport Services. In paragraphs 11 of the affidavit, respondent no.3 has averred that senior officers, i.e., Branch Managers and Divisional Managers of various State Transport Undertakings were instructed to ensure normal operation of buses on 1.10.2007.

Respondent No.3 has then averred that the officers were on duty on 1.10.2007 and adequate police bandobust was provided at the Depots, but most of the crew did not turn up in the morning on 1.10.2007 and even those who came did not enter the Depot premises, did not sign the duty chart and dispersed after holding demonstration in front of the Depots; that the Branch Managers and Divisional

Managers made efforts to operate the bus services with the help of available crew and with the passage of time the number of services substantially increased. Respondent No.3 has denied that the Drivers and Conductors were prevented from carrying out their duties or that the conductors did not issue tickets or that the main gates of bus terminals were closed and locked. He has also denied receipt of any representation or telegram. In para 15 of the affidavit, respondent No.3 has referred to the call given by the trade unions to abstain from work in the wake of decision taken by the political parties and averred that even though the latter withdrew the call for cessation of work, there was no corresponding response from the trade unions due to paucity of time and also due to the fact that most of the workers had left for outside places taking advantage of the impending strike and two days' holidays. Respondent No.3 has also stated that the crew members who did not attend the duty on 01.10.2007 have not been paid the wages as per the policy "no work no pay". Respondent No.3 has controverted the petitioner's assertion that daily collection of the Transport Corporations is over Rs.10 crores. According to him, the average collection of the Transport Corporations is Rs.7.5 crores per day, which is reduced to half on any holiday and less than half in the event of continuous holidays for 3-4 days. According to respondent No.3, total collection on 1.10.2007 was Rs.483 lakhs. Lastly, respondent no.3 has averred that in observance of the order of this Court necessary instructions were given to Managing Directors of all the State Transport Corporations to ply buses and send reply by Fax.

7. Respondent No.4, Shri M. Karunanidhi, has come up with the plea that initially he was advised to adopt the counter affidavits of respondent nos.1 and 2 and a statement to that effect was made before the Court on 4.8.2008 by the advocate representing the State of Tamil Nadu but, later on, he decided to file a separate counter affidavit. In paragraph 3 of the affidavit, respondent no.4 has given

the background in which decision was taken by Democratic Progressive Alliance comprising major political parties in Tamil Nadu to demonstrate their concern on the delay in implementation of Sethu Samudram Project by observing cessation of work between 6 a.m. to 6 p.m. on 1.10.2007. Respondent No.4 has then averred that on the basis of reports appearing in the TV news channels and after verifying the facts from counsel appearing on behalf of respondent no.3 in the special leave petition, he gave a call at about 1.30 p.m. for withdrawal of resolution dated 24.9.2007 and this was conveyed to the concerned political parties. According to respondent no.3, instructions were given to the government officials to carry out the Court's order and ensure that the bandh did not take place on 1.10.2007 and the fast undertaken by political parties should not, in any way, affect the general public or hinder their routine life. For the sake of convenience, paragraph 7 of the affidavit of respondent no.4 is reproduced below:- "7. The order passed by this Hon'ble Court was communicated to the Chief Secretary to Government of Tamil Nadu by FAX at 10.30 PM by the Registrar of this Court on 30.09.2007. Even before the order was officially communicated, it was flashed in the TV News channels. After verifying with counsel at New Delhi and without waiting for any formal communication from this Hon'ble Court, at about 1.30 PM I immediately called for

the withdrawal of the resolution dated 24.09.2007 passed by the Democratic Progressive Alliance for cessation of work. This was also conveyed to all political parties, which were party to the said Resolution. However, Democratic Progressive Alliance decided to hold a day long fast on 1st October, 2007 to draw attention to the importance of the Sethu Samuthiram Project and for early implementation of the same. I made it clear at that time that the fast was not against the order of this Hon'ble Court. I annex an extract from the Hindu newspaper 1st October, 2007 reporting this (Annexure -R1). I also gave instructions to Government officials to carry out the order of this Hon'ble Court and to ensure that the Bandh did not take place on 1st October, 2007, and that the day long fast undertaken by political parties should not in any way affect the general public or hinder their routine life."

8. Respondent No.5 has taken the stand that at the time of passing of order by this Court, he was in his constituency (Trichy) and on receipt of information about the Court's order, he instructed respondent no.3 to take steps to maintain normalcy in transport services on 1.10.2007. Respondent No.5 has also stated that he had been continuously monitoring the operation of transport services from Trichy and also made efforts to contact the trade unions and instructed them to direct the workers to report for duty in view of withdrawal of call for cessation of work given by Democratic Progressive Alliance.

9. In paragraphs 4 and 5 of affidavit dated 26th August, 2008 filed by him, respondent no.6 - Shri T.R. Baalu has resorted to the rhetoric that he has highest respect for the judiciary and he is a strong believer in the independence of the judiciary. In paragraph 7 of the affidavit, respondent no.6 has made a mention of his electoral achievements and averred that the contempt petition has been filed with the sole object of tarnishing his political image in the State and position as Minister in the Central Government. In paragraph 8, respondent no.6 has alleged that by filing petition before this Court, the petitioner which is the main opposition party in the State is trying to indirectly achieve which it could not achieve in the political arena.

Respondent No.6 has then given his own interpretation of the term bandh and averred that he did not participate in any activity which can be described as a bandh.

In paragraph 11 of the affidavit, respondent no.6 has averred that nothing in the quoted speech constitutes participation in bandh or instigating others to do so and whatever he said was legitimate exercise of freedom of speech. In paragraph 12, respondent no.6 has claimed that the newspaper report regarding his speech is not accurate and words have been put in his mouth which were not uttered by him.

10. Arguments in the case were heard on 11.11.2008 and concluded on 12.11.2008 qua the alleged contemnor nos.1 to 5. However, the case was adjourned to 10.12.2008 to enable the petitioner to file additional affidavit in relation to respondent no.6 with liberty to the latter to file reply within two weeks. On the next date, i.e., 10.12.2008, the Court considered an application made on behalf of the petitioner for summoning the tapes of the speech allegedly made by respondent no.6 on 1.10.2007 at Chennai and ordered issue of notice to the Resident Managers of Times Now Channel and Jaya T.V. requiring them to produce the tapes and original chips of the speech. Notices were also issued to Dhanya Rajendran and M.

Ramasubramanian (reporters) and Manish Dhanani, Y. Jayaprakash and S.

Ravikumar (camera persons of Times Now Channel and Jaya T.V. respectively).

11. In response to the Court's notice, Shri M. Vasudev Rao, authorised signatory of Times Global Broadcasting Company Limited, which is running Times Now Channel, sent letter dated 16th January, 2009 stating therein that the company is unable to provide the original tapes and news clips of the speech delivered by respondent no.6 because in terms of the Uplinking and Downlinking Guidelines issued by the Ministry of Information & Broadcasting, Government of India, the company maintains a record of the contents uplinked and downlinked by its channel for a period of 90 days from the date of its telecast. After taking note of that letter, the Court allowed further time to the parties to file affidavits.

12. In furtherance of the liberty given by the Court, the petitioner filed affidavits of S/Shri M. Ramasubramanian, S. Ravikumar and R. Thillai, who were working as Reporter, Assistant Camera Person and Senior Sub-Editor respectively with Jaya T.V. on 1.10.2007. In his affidavit, Shri M. Ramasubramanian has claimed that he was deputed to cover the hunger strike organized by DMK and other allied parties on 1.10.2007 in front of the State Guest House, Chepauk, Chennai. He has then averred that he along with Shri Ravikumar (camera person) and Shri Satish (camera assistant) went to cover the events and that he was present at the venue where respondent no.6 made speech and Ravikumar recorded the speech which was in Tamil with sentences/phrases in English. According to Ramasubramanian, speeches of respondent no.6, Shri D. Raja of C.P.I. and Shri K. Veeramani of Dravida Kazhagam only were recorded and the original tapes were handed over to Shri R. Thillai. According to Shri S. Ravikumar, he accompanied by Shri Satish went to the venue of the hunger strike and recorded the speeches made by three persons and, thereafter, original tapes were handed over to Shri R. Thillai. In his affidavit, Shri R. Thillai has stated that Jaya T.V. shoots visuals on cameras using DV tapes and so far the channel has not shifted to the digital format and whenever visuals are brought by the reporting team, the same are ingested into the visual editing system called Avid and, thereafter, the tapes are reused for recording other events. Paragraphs (d), (e) and (f) of the affidavit of Shri R. Thillai, contain the following statements:

"d. It may be noted that the original tapes on which the visuals are recorded upon being ingested into the avid system as aforesaid and after the necessary visuals are taken, are re-used for recording other subsequent events. In the process, the left out visuals of a previous recording are erased since new recordings are made over the same. The tapes are re-cycled in this manner and not retained in view of commercial and operational compulsions.

e. Some of the original recordings are transferred on to separate DV tapes or DVDs for archival purposes as for example, file shots of certain important events so that they could be used for future purposes. The news bulletins, as telecast over the channel, are stored in the DVD format in the library.

f. That the protests organized by the DMK and its allies on 1.10.2007 by way of the hunger strike at Chennai was covered by the reporting team of Mr. Ramasubramanian and Mr. S.

Ravikumar and Camera assistant Satish. They had handed over to me the original tapes containing the events recorded including the speech made by Mr. T.R. Baalu, Union Minister for Shipping and of certain other speakers during the afternoon on 1.10.2007.

On my instructions, the news branch technicians ingested the contents of the original tapes containing the events covered including the speech of Mr. T.R. Baalu, into the Avid system.

From this, I selected the portions in the speech of Mr. Baalu which were most objectionable and

found appropriate to be telecast.

Accordingly, the portions were selected and telecast in the news bulletin carried by the channel on 1.10.2007 at 7.30 PM and on 2.10.2007 at 7.30 PM. The portions of the speech as telecast on the news bulletins clearly show the speech made by Mr. T.R.

Baalu and the objectionable statements made by him, the translations of which read as follows:

"A Judge is a judge till yesterday. Today there are allegations against him. Every day a list of corruption charges are coming out from Delhi. What does that mean? Is a person who was honest till yesterday dishonest today? The nation has not forgotten the fact that such people are also judges. When has there been [hearing] on a Sunday? Something unprecedented is happening. Why is there a provision for impeachment in the Constitution? Our M.Ps are all sitting here. We should also think about it. There is nothing wrong about it. Our MPs must know about it. Including Ministers.

Everybody can sign it."

The news bulletins as telecast is submitted before this Hon'ble Court in the form of a DVD which is filed as Annexure A/1 to this affidavit."

In the last paragraph of his affidavit which is again marked as (f), Shri R.

Thillai has stated as under:

"f. That I submit therefore that the original tape containing the speech of Mr. T.R. Baalu is not available.

Nevertheless, the news bulletins telecast by the channel containing the objectionable portions of his speech are presented before this Hon'ble Court."

13. To the above noted 3 affidavits, respondent no.6 has filed a reply on 21.3.2009. The thrust of his reply is that Jaya T.V. is controlled by AIADMK party on whose behalf the contempt petition has been filed and, therefore, it cannot be treated as an independent media and that failure of the management of Jaya T.V. to produce tapes and original chip of the speech allegedly made by respondent no.6 should be treated as sufficient for rejecting the affidavits. In paragraphs 7 to 12 of the reply, it has been averred that the petitioner has produced before the Court a truncated, edited and doctored version of the telecast made by Jaya T.V. channel, and the same is liable to be discarded because the full and correct version of the speech made by respondent no.6 has been erased and the original tape containing the speech has not been produced.

14. In the light of 3 affidavits filed on behalf of the petitioner and counter filed by respondent no.6, further arguments were heard on 25.3.2009 and judgment was reserved.

15. Shri S. Guru Krishna Kumar, learned counsel for the petitioner in S.L.P.

(C) No.18879 of 2007 representing the petitioner in Contempt Petition (C) No.262 of 2007 argued that in view of the orders passed by the Division Bench of the Madras High Court and this Court, the call given by Democratic Progressive Alliance for cessation of work must be treated as call for bandh in the State and even though respondent no.4 is said to have made a statement on 30.9.2007 at 1.30 p.m. giving an impression that resolution dated 24.9.2007 was withdrawn, no direction was

given by the political establishment to the concerned officers to ensure that the administration moves on and respondent Nos.1 to 3 did not take steps to prevent disruption of normal life in the State. He further argued that the so called withdrawal of the call given by the political parties for cessation of work must be treated as sham because the workers of the party headed by respondent No.4 indulged in physical violence and ensured that bandh is observed throughout the State by forcing closure of shops and commercial/ industrial establishments. Learned counsel relied on the newspaper reports to buttress his submission that the workers of Dravida Munnetra Kazhagam party had, by wielding deadly weapons compelled the shop keepers to down the shutters and general public to remain away from the streets and argued that this should be treated as sufficient for drawing an inference that respondent no.4 had deliberately manipulated violation of the Court's order.

Shri Guru Krishna Kumar emphasized that the business, commercial/industrial establishments could not have remained closed without intimidation and use of force by the outfits of the political parties and argued that respondent no.4 should be held responsible for the acts of his party workers. Learned counsel then argued that by sitting on hunger strike, respondent No.4 and other political parties deliberately violated the Court's order restraining them to organize bandh because out of fear the schools, colleges, business, commercial and industrial establishments were closed and people refrained from carrying out their normal activities. Learned counsel submitted that if respondent no.4 genuinely wanted to abide by this Court's order then after making a statement in the afternoon of 30.9.2007 that there will be no cessation of work, he would have given written instructions to respondent nos.1 to 3 to ensure that the public life is not disturbed but instead of doing so respondent no.4 indirectly encouraged the officers to enforce the bandh else there was no reason why majority of buses belonging to seven State Transport Corporations did not ply on 1.10.2007 putting the general public to great inconvenience and acute hardship. Learned counsel referred to the averments contained in paragraphs 10 to 12 of the contempt petition, to show that even as per the statement made by respondent no.1 in an interview given to a television channel during the mid day on 1.10.2007, only 61 of the 18641 buses could be operated on the date of bandh and argued that this should be treated as a clear proof of abject failure of respondent nos.1 to 3 to ensure that the normal life is not affected and the public is not inconvenienced. Learned counsel pointed out that due to the bandh organized by Democratic Progressive Alliance, which was indirectly supported by respondent nos.1 to 3, State Transport Corporations suffered loss to the tune of Rs.10 crores and submitted that all the respondents should be made to compensate the State Transport Corporations. Learned counsel submitted that in a cabinet form of government, the political party in power is responsible for the action and omissions of the administrative officers and, therefore, respondent no.4 should be held guilty of committing contempt of Court. As regards respondent no.6, Shri Guru Krishna Kumar strongly relied on the speech made by the said respondent on 1.10.2007 and argued that he should be held guilty of committing criminal contempt within the meaning of Section 2(c) of the 1971 Act and adequately punished. In support of his arguments, Shri Guru Krishna Kumar relied upon the judgments of this Court in Mohd. Aslam v. Union of India [(1994) 6 SCC 442], M. v. Home Officer [(1993) 3 All ER 537], A. Sanjeevi Naidu v. State of Madras [(1970) 1 SCC 443], Azhar Ali Khan v. Commissioner, Municipal Corporation of Delhi [(1984) 3 SCC 549], Hoshiar Singh v. Gurbachan Singh [1962 (Supp) 3 SCR 127], T.N. Godavarman Thirumulpad v. Ashok Khot [(2006) 5 SCC 1], Aswini Kumar Ghose v. Arabinda Bose [1953 SCR 215] and E.M. Sankaran Namboodripad v. T. Narayanan Nambiar [(1970) 2 SCC 325].

16. Shri R. Venkataraman, learned counsel appearing on behalf of the petitioner in Contempt Petition No.262 of 2007 argued that respondent nos.1 to 5 are guilty of civil contempt inasmuch as they willfully disobeyed the directions contained in order dated 30.9.2007 passed in Special Leave

Petition (Civil) No.18879 of 2007 and ensured that total bandh is organized in the State. Learned counsel further argued that respondent no.6 is guilty of criminal contempt because he scandalized the Court's order dated 30.9.2007 by making unwarranted remarks against the judiciary in general and particularly against the Bench which passed the restraint order.

17. Shri Ashok Desai, learned senior counsel appearing for respondent nos.1 and 2 argued that his clients cannot be held guilty of contempt of court because even before formal receipt of the Court's order at 10.30 p.m. on 30.9.2007, respondent no.1 had issued detailed instructions to all the officers to ensure that general public is not inconvenienced and normal life is not disrupted on account of the call given by the political parties for hartal. Learned senior counsel referred to the instructions contained in telefax issued as per the directions of respondent No.1 and fax sent by Additional Director General of Police (Law & Order) to show that respondent nos.1 and 2 had taken all measures for protection of hospitals, courts, railways, airports, banks, schools, telecom installations, transport services, shops and markets, industrial establishments and for ensuring that essential services like supply of milk and water and movement of trains are maintained without any obstruction and the police force was mobilized to protect the lives and property of the people in addition to Government and private establishments. Shri Desai emphasized that proceedings under the 1971 Act are quasi criminal and argued that respondent nos.1 and 2 cannot be accused of committing contempt within the meaning of Section 2(b) of the 1971 Act because the petitioner has not produced any evidence to show that they willfully disobeyed order dated 30.9.2007. Learned senior counsel submitted that respondent nos.1 and 2 cannot be held guilty of contempt merely because leaders of political parties sat on hunger strike on 1.10.2007 and the business community did not open the shops in view of resolution dated 24.9.2007 passed by Democratic Progressive Alliance for cessation of work. He submitted that the buses of the State Transport Corporations could not be operated in the early part of the day on 1.10.2007 because trade unions affiliated to political parties had decided to abstain from work and large number of employees might have left their stations in view of the call for cessation of work on 1.10.2007 given by the Democratic Progressive Alliance and the coming holidays on 29th and 30th September, 2007 and again on 2nd October, 2007.

18. Shri T.R. Andhyarujina, learned senior counsel appearing for respondent no.4, extensively referred to affidavit dated 22.8.2008 of his client to show that even before receipt of the Court's order, he had made a statement for withdrawal of resolution dated 24.9.2007 and argued that in the absence of any evidence to show that respondent no.4 had instigated anyone to disrupt the essential services or cause inconvenience to the general public, he cannot be proceeded against under the 1971 Act. Learned counsel submitted that telefax dated 30.9.2007 sent at the instance of respondent no.1 also shows that the administration had taken positive steps to ensure that essential services are not disturbed due to call given by the political parties for cessation of work etc. on 1.10.2007 and the police bandobust was provided for all public and private establishments and effective steps were taken for maintaining transport services.

19. Dr. A.M. Singhvi, learned senior counsel appearing for respondent nos.3 and 5, argued that the concerned Minister and Secretary had made genuine efforts to ensure that operation of buses by the State Transport Corporations is not jeopardized due to the call given by the Democratic Progressive Alliance for cessation of work or for hunger strike on 1.10.2007 and, therefore, they cannot be held guilty of contempt under Section 2(b) of the 1971 Act. Dr. Singhvi placed before the Court a compilation of fax messages and circulars issued by respondent no.3 and statements containing the details of buses operated by seven State Transport Corporations on 1.10.2007 and collection of

revenue to the tune of Rs.4.83 crores and argued that in the absence of any evidence or contemporaneous record to show that respondent nos.3 and 5 were directly responsible for non-operation of bus services for some time, they cannot be hauled up on the allegation of committing contempt of Court. Shri Singhvi emphasized that unless intentional circumsppection of the Court's order or positive attempt to frustrate implementation thereof is proved, the respondents cannot be proceeded under the 1971 Act.

20. Shri M.N. Rao, senior advocate argued that newspaper reports of the alleged speech made by respondent no.6 on 1.10.2007 at Chennai cannot be relied upon for holding him guilty of contempt of court because the petitioner has not produced primary evidence of the so-called speech. Shri Rao emphasized that newspaper reports merely represent the version given by the correspondent on the basis of his understanding/impression of the speech made by respondent no.6 and the same do not constitute primary evidence of what was actually stated by respondent no.6 warranting initiation of action for criminal contempt. Shri Rao further argued that the tape/CD of the telecast of the speech of respondent no.6 does not represent the true and correct version of what was said and as the original version has been erased and tape has been reused, the allegation made against respondent no.6 is liable to be discarded.

21. In his rejoinder arguments, Shri S. Guru Krishna Kumar highlighted discrepancies in the fax messages sent by respondent no.3 as also the statement of income produced by Dr. A.M. Singhvi and submitted that these documents appear to have been fabricated after issue of notice by this Court. He then argued that these documents cannot be relied for exonerating respondent nos.1 to 3 of the charge of highly contumacious conduct which resulted in violation of the Court's order.

22. We have considered the submissions/arguments of learned counsel for the parties. Section 2(b) and (c) of the 1971 Act which define civil and criminal contempt read as under:

2(b) "civil contempt" means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

2(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which- (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court ; or (ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner."

An analysis of Section 2(b) shows that willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court constitutes civil contempt. If this definition is read with Article 129 of the Constitution of India, it becomes clear that being a Court of record, this Court can punish a person for civil contempt if it is found that he has willfully disobeyed any judgment etc. or violated undertaking given to the Court.

23. The term "wilful" (willfull) has not been defined in the 1971 Act.

Therefore, it will be useful to notice dictionary meaning of the said term. As per The New Oxford Illustrated Dictionary (1980 Edition), the term "willful" means "asserting or disposed to assert one's own will against instruction, persuasion, etc.

obstinately self-willed; deliberate, intentional, showing perversity or self-will".

According to Black's Law Dictionary, Vol.II (8th Edition) - Willful means "voluntary and intentional, but not necessarily malicious" and willfulness means "the fact or quality of acting purposely or by design; deliberateness; intention; willfulness does not necessarily imply malice, but it involves more than just knowledge; the voluntary, intentional violation or disregard of a known legal duty." As per the Stroud's Judicial Dictionary, Vol.5 (4th Edition), wilful disobedience means "the willful disobedience of a SEAMAN or apprentice is 'wilfully disobeying any lawful command DURING the engagement': 'There may be many cases in which desertion or absence without leave, would not amount to willful disobedience, and in these cases the seaman would only be liable to the lesser penalty. Where, however, the seaman deserts or is intentionally absent without leave after the time at which he has been lawfully ordered to be on board, his desertion or absence may amount to 'wilful disobedience', and, consequently, that he would be liable to imprisonment. The words 'during the engagement' seem to suggest that the contract between the employer and the employed should be taken into account, and that if, having regard to that contract, the order was one which the employed was bound to obey, his disobedience might be dealt with under clause (d)" In Shorter Oxford English Dictionary, the term "willful" has been defined as, "asserting or disposed to assert one's own will against persuasion, instruction, or command; governed by will without regard to reason; obstinately self-willed or perverse; 2. Willing; consenting; ready to comply with a request, desire, or requirement - 1598. 3. proceeding from the will;

done or suffered of one's own free will or choice; voluntary - 1687. 4. Done on purpose or wittingly; purposed, deliberate, intentional. (Chiefly, now always, in bad sense of a blameworthy action; freq. implying 'perverse, obstinate'.)

24. In Ashok Paper Kamgar Union v. Dharam Godha and others [(2003) 11 SCC 1], this Court was called upon to decide whether the respondents, i.e., Shri Dharam Godha, Chairman, Nouveau Capital & Finance Ltd., Shri S. Jagadeesan, Joint Secretary, Ministry of Industry, Department of Industrial Policy and Promotion, Government of India, Shri G.S. Kang, Secretary, Department of Industries, Government of Bihar, Shri S.N. Khan, Chairman and Managing Director and Shri R.P. Chabra, Chief General Manager, Rehabilitation Finance Department, Industrial Development Bank of India were guilty of contempt. The facts of the case were that by an order dated 8.7.1996, this Court approved the proposal made by the Government of India for take over of M/s. Ashok Paper Mills by M/s. Nouveau Capital and Finance Ltd. and disposed of the writ petition filed by Ashok Paper

Kamgar Union. Later on, by an order dated 1.5.1997, all concerned were directed to participate in implementation of the scheme and the Finance Secretary, Ministry of Finance, Government of India was directed to ensure that the legal requirements are fulfilled and the mill is rehabilitated and both Phases I and II of the Scheme are given effect to. Two more orders were passed by the court in the matter on 31.7.2000 and 1.9.2000. The petitioner alleged that the respondents have failed to comply with the directions given by the Court for implementation of the Scheme and, therefore, they are liable for contempt of court. This court took cognizance of the fact that M/s.

Nouveau Capital & Finance Ltd. had failed to pay the consideration of Rs.6 crores;

that IDBI had disbursed term loan of Rs.15 crores towards Phase I of revival Scheme; that the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India in cooperation with the Department of Banking obtained sanction for additional term loan of Rs.11 crores from IDBI and a working capital of Rs.9.25 crores from United Bank of India; that NCFL had invested Rs.20 crores towards promotion contribution which was much more than

amount contemplated in Phase I of the Scheme and held that respondents cannot be held guilty of contempt. Para 17 of the judgment which contains discussion on the subject reads as under:

"Section 2(b) of the Contempt of Courts Act defines "civil contempt" and it means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of undertaking given to a court. "Wilful" means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extraordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case. The facts mentioned above show that none of the respondents to the petition can be held to be directly responsible if the Scheme which had been formulated by the Government of India on 28-6-1996 and had been approved by this Court by the order dated 8-7-1996 could not be implemented in letter and spirit as many factors have contributed to the same. The reasons given for non-inclusion of Shri Umadhar Prasad Singh in signing of the agreement appear to be quite plausible. NCFL has undoubtedly not discharged its liability of making payment of its entire liability of Rs.6 crores.

However, it has come out with a case that some additional expenditure has been incurred in running the unit. It is not possible to get the complete financial picture only on the basis of the affidavits filed in the present petition. On the material on record, therefore, it is not possible to hold that the charge of having committed contempt of court on account of alleged non-compliance with the orders passed by this Court on 8-7-1996, 1-5-1997 and 31-7-2000 has been established against any one of the respondents."

[Emphasis added]

25. In *Delhi Development Authority v. Skipper Construction* [(1995) 3 SCC 507], this Court highlighted distinction between the civil and criminal contempt in the following words:- "Civil contempt is defined under Section 2(b) of the Act. Thus, any wilful disobedience to the order of the court to do or abstain from doing any act is prima facie a civil contempt. Civil contempt arises where the power of the court is invoked and exercised to enforce obedience to orders of the court.

On the contrary, criminal contempts are criminal in nature. It may include outrages on the Judges in open court, defiant disobedience to the Judges in court, libels on Judges or courts or interfering with the courts of justice or any act which tends to prejudice the courts of justice."

26. In *Kapildeo Prasad Sah and others v. State of Bihar and others* [(1999) 7 SCC 569], the Court outlined the object of its contempt jurisdiction in the following words:- "For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court's order. Since notice of contempt and punishment for contempt is of far-reaching consequence, these powers should be invoked only when a clear case of wilful disobedience of the court's order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to

disobedience particularly when the attention of the person is drawn to the court's orders and its implications.

Disobedience of the court's order strikes at the very root of the rule of law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice.

No person can defy the court's order. Wilful would exclude casual, accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order. A petitioner who complains breach of the court's order must allege deliberate or contumacious disobedience of the court's order."

[Emphasis added]

27. In the light of the above, we shall now consider whether respondent nos.1 to 5 can be said to have willfully disobeyed order dated 30.9.2007. At the cost of repetition, we consider it necessary to point out that while issuing notice in Special Leave Petition (Civil) No.18879 of 2007, this Court restrained the political parties from proceeding with the call for bandh in the State of Tamil Nadu on 1.10.2007 pursuant to resolution dated 24.9.2007 or any other day. The language of the restraint order is unambiguous. The prohibitive injunction contained therein was explicitly directed against the political parties and not against respondent nos. 1 to 3.

The Court did not direct respondent nos. 1 to 3 to act in any particular manner or take certain specific steps to meet the challenge likely to be posed by implementation of the call given by Democratic Progressive Alliance. This was so because the Court could not have presumed that the restraint order passed by it will be disregarded or flouted by the political parties. Therefore, respondent nos.1 to 3 cannot, per se, be held guilty of disobeying or violating the Court's order dated 30th September, 2007 and punished for committing contempt of court as defined in Section 2(b) of the 1971 Act.

28. No doubt, the petitioners have repeatedly asserted that the buses of State Transport Corporations and 45000 private buses remained off the road on 1.10.2007 causing serious inconvenience to the general public and loss of revenue to the tune of Rs.10 crores, but their assertion is partly belied by the counter affidavits of respondent nos.1 to 3, wherein all the officers have detailed the reasons for operation of less number of buses in the initial hours on 1.10.2007 and the fact that revenue collection of the day was to the tune of Rs.4.83 crores. In his affidavit, respondent no.1 has categorically averred that during the course of the day 2749 routes were made operational. The affidavits of the official respondents also reveal that despite instructions issued to various functionaries, normal transport services could not be made available on account of the support extended to resolution dated 24.9.2007 by the trade unions affiliated to the political parties and the fact that large number of employees had gone on leave thinking that the services may not operate in the wake of the call given by the political parties and three holidays. This has not been controverted by the petitioners. The photographs produced by petitioner - All India Anna Dravida Munnetra Kazhagam do show empty streets, but the same cannot be made basis for recording a finding of guilt against respondent nos. 1 to 3, more so because the petitioners have not produced any evidence to prima facie establish that the transport services did not at all operate in the State on 1.10.2007 and that too on account of any action or omission on the part of respondent nos. 1 to 3. This being the position, it is not possible to record a finding that respondent nos. 1 to 3 or for that reason

respondent no.5 deliberately disobeyed or violated the direction given by this Court.

29. The petitioners have also not placed on record any evidence to show that despite restraint order passed by the Court on 30.9.2007, the political parties constituting Democratic Progressive Alliance resorted to strike or bandh. They have not even disputed that after coming to know about the Court's order, respondent no.4 made a statement at 1.30 p.m. withdrawing resolution dated 24.9.2007 which contained a call for cessation of work on 1.10.2007. If, despite statement of respondent no.4, which was made known to the public, the shops and business establishments remained closed and the private transport operators did not consider it proper to operate their services on 1.10.2007, respondent nos.1 to 3 cannot be held to have deliberately disobeyed the Court's order.

30. The argument of Shri S. Guru Krishna Kumar that respondent no.4 should be held guilty of contempt because the Government did not issue written instructions to the officers to take steps for maintaining the essential services and to ensure that public life is not disrupted on account of the call for bandh and the workers of his party coerced the people to close the commercial and business establishments is being mentioned only to be rejected. The bald statement contained in the contempt petitions that violence and coercion was resorted to by members of the party headed by respondent no.4 has remained unsubstantiated because except the newspaper reports no material has been produced before the Court giving the names and other relevant particulars of the persons who are said to have indulged in forced closure of shops and business establishments on 1.10.2007 and no other evidence has been produced to show that respondent no.4 had, directly or indirectly, encouraged the members of his party to enforce the call for cessation of work which has been prima facie treated by the Courts as call for bandh. Therefore, respondent no.4 cannot be accused of having engineered violation of the Court's order.

31. Insofar as respondent no.6 is concerned, we find that the only material produced by the petitioner in Contempt Petition No. 262 of 2007 is in the form of zerox copies of newspapers and tape of the edited version of speech which is said to have been telecast on Jaya T.V. on 1.10.2007 and 2.10.2007. The petitioner in Contempt Petition No. 327 of 2007 has also produced zerox copies of some newspapers. In his first affidavit, respondent no.6 has claimed that the newspapers have reported something by putting in his mouth which he did not speak. In his second affidavit filed in the form of reply to the affidavits of S/Shri M.

Ramasubramanian, S. Ravikumar and R. Thillai, respondent no.6 has alleged that what was telecast on Jaya T.V. was the doctored version of his speech. This being the position, the petitioners were duty bound to produce some primary evidence to prove the contents of the speech made by respondent no.6 scandalizing judiciary in general and this Court's order dated 30th September, 2007 in particular. The zerox copies of the newspapers in which the contents of speech made by respondent no.6 have been published cannot be relied upon because the petitioners have not filed affidavits of those who covered the meeting held by the political parties in front of Chepauk Guest House on 1.10.2007 and heard the speech made by respondent no.6. If such affidavits had been filed, respondent no.6 could have been called upon to explain his position. Likewise, the original tape containing telecast of the speech made by respondent no.6 has not been made available to the Court.

32. The law on the admissibility of tape recorded versions is well settled. In *Ram Singh and others v. Col. Ram Singh* [1985 (Supp) SCC 611] Fazal Ali, J with whom Sabyasachi Mukharji, J. agreed, laid down the following tests for determining the admissibility of tape recorded version:

1. The voice of the speaker must be identified by the maker of the record or other persons recognizing his voice.

Where the maker is unable to identify the voice, strict proof will be required to determine whether or not it was the voice of the alleged speaker.

2. The accuracy of the tape-recorded statement must be proved by the maker of the record by satisfactory evidence: direct or circumstantial.

3. Possibility of tampering with, or erasure of any part of, the tape-recorded statement must be totally excluded.

4. The tape-recorded statement must be relevant.

5. The recorded cassette must be sealed and must be kept in safe or official custody.

6. The voice of the particular speaker must be clearly audible and must not be lost or distorted by other sounds or disturbances.

33. In *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra and others* [(1976) 2 SCC 17], a three-Judge Bench while considering the question whether the appellant was guilty of promoting feeling of enmity between two sections of the society, examined the question of admissibility of tape recorded speech, referred to the judgment in *R. v. Maqsd Ali* [(1965) 2 All ER 464] and observed :

"We think that the High Court was quite right in holding that the tape-records of speeches were "documents", as defined by Section 3 of the Evidence Act, which stood on no different footing than photographs, and that they were admissible in evidence on satisfying the following conditions:

(a) The voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who know it.

(b) Accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had to be there so as to rule out possibilities of tampering with the record.

(c) The subject-matter recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act."

34. We may now notice some judgments in which the Courts have considered the question relating to burden of proof in contempt cases. In *Re, Bramblevale Ltd.*

[(1969) 3 All ER 1062], Lord Denning observed:

"A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence. Where there are two equally consistent possibilities open to the court, it is not right to hold that the offence is proved beyond reasonable doubt."

35. In *Mrityunjoy Das and another v. Sayed Hasibur Rahman and others* [(2001) 3 SCC 739], the Court referred to a number of judicial precedents including the observations made by Lord Denning in *Re, Bramblevale Ltd.* and held:

"The common English phrase "he who asserts must prove" has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the "standard of proof", be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt."

36. In *Chhotu Ram v. Urvashi Gulati and another* [(2001) 7 SCC 530], a two- Judge Bench observed :

"As regards the burden and standard of proof, the common legal phraseology "he who asserts must prove" has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the "standard of proof", be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt."

37. In *Anil Ratan Sarkar and others v. Hirak Ghosh and others* [(2002) 4 SCC 21], the Court referred to the judgment in *Chhotu Ram v. Urvashi Gulati and another* (supra) and observed:

"The [Contempt of Courts Act, 1971](#) has been introduced in the statute-book for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country - undoubtedly a powerful weapon in the hands of the law courts but that by itself operates as a string of caution and unless thus otherwise satisfied beyond doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the statute."

38. The judgments on which reliance has been placed by Shri S. Guru Krishna Kumar do not have any direct bearing on this case. In *A. Sanjeevi Naidu's* case, the Court interpreted the provisions of Section 68C of the Motor Vehicles Act, 1939 and held that when a civil servant takes a decision, he does not do it as a delegate of his Minister but on behalf of the Government, though it is always open to a Minister to call for any file in his office and pass order or issue directions to the officers in his Ministry regarding the disposal of Government business generally or as regards any specified case. In *Azhar Ali Khan's* case, the Court held that compliance of orders or directions given by Court to Government or its instrumentalities cannot be avoided merely on ground of inability to comply with its own resolution passed in the face of those clear orders or directions. In *T.N. Godavarman Thirumulpad's* case it was found that the Minister and Principal Secretary, Department of Forests, Government of Maharashtra have brazenly and willfully flouted the Court's directions and granted permission to certain sawmills to recommence their operations and, therefore, they were punished under the 1971 Act.

In *Mohd. Aslam's* case, this Court considered the question whether the State and its ministers can be proceeded against in contempt for failure to obey the judicial pronouncements. The facts of the case were that during the month of July, 1992, land measuring 2.77 acres situated in Ayodhya was acquired by the State

Government under Land Acquisition Act, 1894, for developing an amenity for pilgrims at Ayodhya. Writ Petition No.1000 of 1991 was filed under Article 32 of the Constitution before this Court questioning the acquisition proceedings. On 15.11.1991, the Court noted that the Chief Minister of the State has made statements in the meeting of the National Integration Council held on 2.11.1991 against the making of construction at the site and accordingly, resolution was passed by the National Integration Council and directed that no construction be made at the site.

However, despite the Court's order, construction activities were allowed to be undertaken at the site by Sadhus. It was urged on behalf of the respondents that any coercive/preventive action in the matter of construction of the platform would have triggered an adverse reaction endangering the safety of disputed 'Ram Janma Bhoomi-Babri Masjid' structure which was situated in immediate vicinity and for whose protection Government stood committed and, therefore, the respondent who was holding the office of the Chief Minister, cannot be held guilty of contempt. While rejecting the plea, this Court relied upon the observations contained in William G.

Cooper, Members of the Board of Directors of the Little Rock v. John Aaron [358 US1 : 3 L Ed 2d 5 : 78 S Ct 1401 (1958)] and observed:- "The use of force to further obedience to law is in any event a last resort and one not congenial to the spirit of our Nation. ... Violent resistance to law cannot be made a legal reason for its suspension without loosening the fabric of our society. What could this mean but to acknowledge that disorder under the aegis of a State has moral superiority over the law of the Constitution? The historic phrase 'a Government of laws and not of men' epitomizes the distinguishing character of our political society.

When John Adams put that phrase into the Massachusetts Declaration of Rights he was not indulging in a rhetorical flourish. He was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic.

Compliance with decisions of this Court, as the constitutional organ of the supreme law of the land, has often, throughout our history, depended on active support by State and local authorities.

It presupposes such support. To withhold it, and indeed to use political power to try to paralyse the supreme law, precludes the maintenance of our federal system as we have known and cherished it for one hundred and seventy years.

Lincoln's appeal to 'the better angels of our nature' failed to avert a fratricidal war. But the compassionate wisdom of Lincoln's First and Second Inaugurals bequeathed to the Union, cemented with blood, a moral heritage which, when drawn upon in times of stress and strife, is sure to find specific ways and means to surmount difficulties that may appear to be insurmountable."

Dicey, in his Law of the Constitution, (10th Edn., pp.193-94) said:

When we speak of the 'rule of law' as a characteristic of our country, (we mean) not only that with us no man is above the law, but (what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. In England the idea of legal equality, or of the universal subjection of all classes to one law administered by the ordinary courts, has been pushed to its utmost limit. With us every official, from Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen. The reports abound with cases in which officials have been brought before the courts, and made, in their personal

capacity, liable to punishment, or to the payment of damages for acts done in their official character but in excess of their lawful authority. A colonial governor, a secretary of State, a military officer, and all subordinates though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorise as is any private and unofficial person."

39. The Court then referred to the reports of Chief Engineer, District Magistrate and Senior Superintendent of Police and proceeded to observe:- "The next question is whether these activities were carried on by a congregation of Sadhus at the site and not by the State Government and despite Government's efforts. Apart from a glib suggestion that any attempt to prevent the work would have created a violent situation endangering the safety of the "Ram Janma Bhoomi-Babri Masjid structure" itself, nothing is indicated as to what was sought to be done at all to prevent constructional material coming in. There is no mention in any of the affidavits of any of the officers as to what reasonable measures the Government took to prevent the inflow of constructional material such as large quantities of cement, mortar, sand, constructional equipment, water-tankers etc. that were necessary for the work.

The report of the Expert Committee has indicated that constructional machinery was indispensable having regard to the nature and magnitude of the work carried out. While it is understandable that the prevention of the gathering of Sadhus might have created some resentment, it is understandable why large quantities of building materials were allowed to be brought on the land unless it be -- and that must be the reasonable presumption -- that the Government itself was not too anxious to prevent it. It is not merely positive acts of violation but also surreptitious and indirect aids to circumvention and violation of the orders that are equally impermissible. If reasonable steps are not taken to prevent the violation of the orders of the Court, Government cannot be heard to say that violation of the orders were at the instance of others. The presumption is that the Government intended not to take such preventive steps. In the facts and circumstances of the case, we are unable to persuade ourselves to the view that the Government was helpless and the situation that had developed was in spite of all reasonable steps taken by the Government. Indeed there is no indication that the Government bestirred itself to take any steps, reasonable or otherwise, to prevent large-scale building material getting into the site. The Chief Minister having given a solemn assurance to the National Integration Council and permitted the terms of that assurance to be incorporated as his own undertaking to this Court and allowed an order to be passed in those terms cannot absolve himself of the responsibility unless he placed before the Court sufficient material which would justify that he had taken all reasonable steps and precautions to prevent the occurrence.

Indeed, if such reasonable steps had been taken he could not be faulted merely because he did not do the best by the standards of others. In this case, we find no explanation at all apart from the fact that the Sadhus had congregated in that place in large number, as to what steps the Government took to prevent the constructional equipment from getting into site. If any reasonable effort had been made and evidence of that placed before Court, it might have been possible for the Court to assess the situation in the light of that explanation to find out whether such steps had been taken. In the absence, we are constrained to hold that the Government failed to take steps to prevent the grossest violation of the order of this Court. We record a finding accordingly."

40. On the question whether the undertaking furnished by the Chief Minister was a personal undertaking or was on behalf of the State of U.P., the Court held:

"The last question is whether the undertaking furnished by the Chief Minister was a personal undertaking or was on behalf of the State of U.P. It was both.

There is no immunity for any authority of Government, if a personal element is shown in the act of disobedience of the order of the Court, from the consequence of an order of the Court. Even in England where the maxim "Crown can do no wrong" has had its influence, a distinction is made between the Crown as such and the Executive.

In a recent pronouncement of far-reaching impact, the House of Lords in *M. v. Home Office* observed (as per Lord Templeman):

"My Lords, Parliament makes the law, the executive carry the law into effect and judiciary enforce the law. The expression 'the Crown' has two meanings; namely the monarch and the executive.

In the seventeenth century Parliament established its supremacy over the Crown as monarch, over the executive and over the judiciary. Parliamentary supremacy over the Crown as monarch stems from the fact that the monarch must accept the advice of a Prime Minister who is supported by a majority of Parliament.

Parliamentary supremacy over the Crown as executive stems from the fact that Parliament maintains in office the Prime Minister who appoints the ministers in charge of the executive.

Parliamentary supremacy over the judiciary is only exercisable by statute. The judiciary enforce the law against individuals, against institutions and against the executive. The judges cannot enforce the law against the Crown as monarch because the Crown as monarch can do no wrong but judges enforce the law against the Crown as executive and against the individuals who from time to time represent the Crown. A litigant complaining of a breach of the law by the executive can sue the Crown as executive bringing his action against the minister who is responsible for the department of State involved, in the present case the Secretary of State for Home Affairs. To enforce the law the courts have power to grant remedies including injunctions against a minister in his official capacity. If the minister has personally broken the law, the litigant can sue the minister, in this case Mr. Kenneth Baker, in his personal capacity. For the purpose of enforcing the law against all persons and institutions, including ministers in their official capacity and in their personal capacity, the courts are armed with coercive powers exercisable in proceedings for contempt of court.

* * * My Lords, the argument that there is no power to enforce the law by injunction or contempt proceedings against a minister in his official capacity would, if upheld, establish the proposition that the executive obey the law as a matter of grace and not as a matter of necessity, a proposition which would reverse the result of the Civil War. For the reasons given by my noble and learned friend Lord Woolf and on principle, I am satisfied that injunctions and contempt proceedings may be brought against the minister in his official capacity and that in the present case the Home Office for which the Secretary of State was responsible was in contempt."

In the State of Bihar *v. Rani Sonabati Kumari* this Court approved the following view of Chakravarti, C.J., in *Tarafatullah Mandal v.*

S.N. Maitra:

"I do not say that in fit cases a writ for contempt may not be asked for against a corporation itself, or against a Government. In what form, in such a case, any penal order, if considered necessary, is to be passed and how it is to be enforced are different matters which do not call for decision in this

case. In England, there is a specific rule providing for sequestration of the corporate property of the party concerned, where such party is a corporation. I am not aware of any similar rule obtaining in this country, but I do not consider it impossible that in a fit case a fine may be imposed and it may be realised by methods analogous to sequestration which would be a distress warrant directed against the properties of the Government or the Corporation."

(emphasis supplied) The State Government is, therefore, liable in contempt. A Minister or Officer of Government is also either in his official capacity or if there is a personal element contributing to contempt, in his personal capacity, liable in contempt."

41. In the case before us fact situation is entirely different. As mentioned above, on coming to know of the restraint order passed by this Court, respondent no.4 made a statement for withdrawal of resolution dated 24.9.2007 vide which call was given by five political parties for cessation of work. It is also borne out from the affidavit of respondent no.1 that on 24.9.2007 itself the said respondent had issued instructions to all the officers to ensure that law and order and essential services are maintained and the general public is not inconvenienced due to the call given by political parties for cessation of work. On 30.9.2007, respondent nos.1 to 3 gave detailed instructions to all the officers to ensure that the public is not put to harassment, the government and private properties are not damaged, supplies of essential services like water, electricity, telecom, railways etc. are not disrupted, supply of milk etc. is maintained and business and other commercial establishments are provided protection. Efforts were also made to ensure that operation of transport services is not affected. Respondent no.5 had monitored operation undertaken by the departmental authorities for restoring normal operation by the State Transport Corporation. It is, thus, evident that respondent nos. 1 to 5 did not disobey the restraint order passed by this Court and respondent nos. 1 to 3 took all

the steps necessary for preventing any disruption of public services and inconvenience to the general public. It is a different thing that in the wake of hunger strike by leaders of political parties, the business community did not consider it proper to open shops etc. Therefore, the ratio of Mohd. Aslam's case and other precedents referred to in that judgment cannot be applied to this case for framing charges against respondent nos.1 to 5 on the premise that they have committed contempt within the meaning of Section 2(b) of the 1971 Act.

42. Insofar as respondent no.6 is concerned, charge cannot be framed against him with reference to Section 2(c) of 1971 Act because the petitioners have not produced any legally admissible evidence to prove the contents of the speech allegedly made by the said respondent. The judgments in *Aswini Kumar Ghose v. Arabinda Bose* (supra) and *E.M. Sankaran Namboodripad v. T. Narayanan Nambiar* (supra) do not have any bearing on this case and, therefore, we do not consider it necessary to deal with the same.

43. In the result, the contempt petitions are dismissed. However, the parties are left to bear their own costs.