ORISSA HIGH COURT

State (Orissa)

Vs

The Editors and Publishers of Eastern Times

Original Criminal Misc. Cases Nos. 8 to 10 and 12 of 1951

(Jagannadhadas, C.J. and Narasimham, J.)

07.01.1952

JUDGMENT

Jagannadhadas, C.J.

1. These four proceedings arise out of rules issued against certain persons for having committed contempt of this Court by publication of certain news items and articles in newspapers. To elucidate the background of these proceedings, it is necessary to state a few preliminary facts.

2. In the month of April, 1951, there were examinations held at Cuttack by the Utkal University for the M. B. B. S. degree. These proceedings arise out of examinations for the 1st year M. B. B. S. students. The Board of Examiners submitted their results to the Syndicate on the 21st of April. The Vice-Chancellor of the University had information two days earlier, that is on the 19th April, that some questions in the written paper for the examination in Anatomy of the said 1st M.B.B.S. held on the 9th April, had leaked out. At a meeting of the Syndicate on the 21st April, the informmation received about the leakage of the question in the written Anatomy paper was considered by the Syndicate. The Syndicate decided to cancel the results in the Anatomy examination and to have fresh examination in that subject. As against this decision of the Syndicate, the students affected, came up to this Court in '*S. K. Ghosh v. Vice-Chancellor, Utkal University*[1] praying for the issue of a writ of Mandamus directing the Syndicate to publish the results as sent up by the Board Of Examiners and holding that the cancellation was illegal. This Court by its judgment on that application directed the issue of a writ on the Syndicate of the Utkal University to take immediate steps for the publication of the result of the 1st M.B.B.S. examination held in April 1951, in exercise of the powers conferred on it by para 2 of Law 2 of Chapter XXII and Law 8 of Chapter XXIII of the Statutes of the said University. The order issuing the writ was pronounced on the 9th of August and the writ itself was issued on the 10th of August. The judgment and the reasons for the order dated 9th August were pronounced by the Court on the 17th of August. It may be mentioned that the Court which heard the application for issue of the writ and disposed of it, consisted of the learned ex-Chief Justice and my learned brother Narasimham, J. On the 17th August that is after the reasons for the judgment werepronounced the Syndicate filed an application in this court for leave to appeal to the Supreme Court and also an application for stay of operation of the order issuing the writ. The

application for stay was moved on the 20th and was rejected. While so rejecting, this Court considering that there was already delay in the Syndicate complying with the peremptory mandatory order of this Court dated 9th August issued on the 10th, gave a further direction that the publication of the results should be done on or before the 23th August, 1951. It also directed that failing the publication the President of the Board of Examiners, be appointed to publish the results on the 24th August 1951. An application was filed to the Supreme Court for special leave to appeal as also against the order of the Court dated the 9th August and the judgment dated the 17th August. The application was moved before the vacation Judge of the Supreme Court on the 23rd August. The prayer for an interim stay was rejected and the petition for special leave and for stay after notice were both posted for hearing by the Supreme Court on the 4th of September 1951. Meanwhile, the Syndicate published the results on the very same day i.e. the 23rd August as directed by the order of this Court dated the 20th August 1951. Thereafter the application for leave to appeal filed in this Court came up for hearing on the 27th and 28th August. On the later date this Court passed an order adjourning hearing of the petition to the 17th September to await the order of the Supreme Court on the similar application for special leave to appeal pending before it and posted to the 4th of September 1951. The Supreme Court by its order dated the 4th September, granted the special leave but dismissed the application for stay as the results had already been published. This Court thereupon by its order dated the 17th September 1951, closed the petition for leave to appeal pending before it with the note that inasmuch as special leave had already been granted by the Supreme Court, the application before this Court became infructuous.

3. The contempt of this Court alleged in these proceedings is, (a) in respect of a item which appeared on the 23rd of August in two local dailies by name (1) The Eastern Times and (2) The Prajatantra and the same news item which appeared in another local daily by name The Samaj in its issue dated the 25th August and (b) the leaders relating to these proceedings published in the Eastern Times and the Prajatantra in the issues dated the 26th August and the 28th August.

4. The publication of the editorial comments dated the 26th and 28th August in the Eastern Times and the Prajatantra was brought to the notice of this Court by the Registrar of the Court on the 29th of August. Original Cr. Misc. Case No. 8 of 1951 was accordingly registered on the 30th August 1951 and this Court issued notice on the 7th September 1951 against Editors, Printers and Publishers of the two papers, the" Eastern Times and the Prajatantra. On the 12th September 1951 the news item referred to above (as well as another news in respect of which no action has been taken) published in the Prajatantra and the Eastern Times on the 23rd August and in the Samaj on the 25th August were brought to the notice of this Court by one of the affected students by name G. C. Das. That application was registered on the 12th September 1951 and notice thereon was ordered to the Editors, Printers and Publishers of the Eastern Times, the Prajatantra and the Samaj. Thus, these three local dailies are concerned in these contempt proceedings, the Samaj being concerned only with the news item published in its issue dated the 25th August, while The Eastern Times and The Prajatantra are concerned with both the news item published in their issue of the 23rd and the Editorials published in their issues of the 25th and 28th of August.

5. The Original Criminal Misc. Cases Nos. 10 and 12 of 1951 are against certain persons connected with the United Press of India and they arise under the following circumstances. The news item which is the subject-matter of the contempt proceedings in petitions 8 and 9 and which was published in the Prajatantra and the Eastern Times on the 23rd and in the Samaj on the 25th

August seems to have been supplied through the Agency of the United Press of India. This appeared from the affidavits filed in Criminal Misc. Case No. 9 of 1951 by the Editors, Printers and Publishers of the Samaj, the Prajatantra and the Eastern Times, and also by a letter filed on behalf of the Samaj by its Advocate, Mr. H. Mohapatra that the news item was sent by the New Delhi representative of the United Press of India Ltd. Notice was accordingly issued against the said New Delhi representative to show cause in respect of the contempt committed by him in transmitting that news. The proceeding against him was separately numbered as Original Criminal Misc. Case No. 10 of 1951. Parties to Original Cr. Misc. Cases Nos. 8 and 9 were asked to furnish information as to the name of the concerned New Delhi representative of the United Press of India but they failed to do so. In the course of the attempts to get the information, it was found that one Mr. B. Sengupta M. A., appeared to be the managing Director of the United Press of India Ltd., with Head Office at Calcutta. Letters were accordingly written by the Registrar of this Court on the 12th of September and again on the 27th September to the said Mr. B. Sengupta for furnishing information as to the name of the New Delhi representative of the United Press of India who supplied the news item in question. These attempts however, to find the name of the New Delhi representative from the Managing Director also proved infructuous. This Court, therefore, by its order dated the 26th October 1951, issued notice for contempt on Mr. B. Sengupta himself as the Managing Editor of the News Agency. The proceedings thus initiated against Mr. Sengupta, as the Managing Director are numbered as Original Criminal Misc. Case No. 12 of 1951.

6. Original Criminal Misc. Cases Nos. 8 and 9 of 1951 came up for hearing before the learned ex-Chief Justice and my learned brother Narasimham, J., on the 23rd, 24th and 25th October 1951. The learned Judges thought it desirable to clear those cases along with cases Nos. 10 and 12 which were then not ready for hearing. All these four cases have, therefore, now come up before us for final hearing.

7. As regards Original Criminal Misc. Case No. 10 of 1951, which is the proceeding initiated against the New Delhi representative of the United Press of India Ltd., we find that the notices have not yet been served on him. Indeed it is not possible to carry out any effective service on him in view of the fact that his name could not be ascertained and that none of the parties concerned, namely, the Editor, Printers and Publishers of the Prajatantra, the Eastern Times and the Samaj nor even the Managing Director of the United Press of India at Calcutta have furnished the information, whatever the reason for the same may be. We have therefore, intimated at the commencement of the hearing of these applications that the proceeding against him will be dropped. Accordingly Original Criminal Misc. Case No. 10 of 1951 must be treated as closed for the present.

8. It will be convenient next to take up Original Criminal Misc. Case No. 12 of 1951. The case against him can be disposed of on the assumption that the news item emanating from the New Delhi representative of the United Press of India and published in the issue of the Prajatantra and the Eastern Times dated the 23rd August and the issue of the Samaj dated the 25th August may constitute contempt. The main argument on his behalf is that there is no proof in the case that the person proceeded against is in fact the Managing Director at Calcutta of the United Press of India Ltd. and no proof at all that he is in any way connected or is responsible for the dissemination of the news item objected to so as to render him liable in contempt for the dissemination of the said news. There is no substance in the contention that the person proceeded against in this case viz.

Mr. B. Sengupta, is not the "Managing Director" of the United Press of India Ltd. This Court issued notice on Mr. B. Sengupta describing him as the "Managing Director" of the United Press of India Ltd., and in answer to that notice an affidavit has been filed on the 19th November 1951 by Sri N. K. Swami, living at United Press of India office, Cuttack, who adopts that description of Mr. B. Sengupta in his affidavit, in support of an application for adjournment of the hearing of the petition. This Court by its order the 21st November 1951 asked Mr. B. Sengupta, the "Managing Director" of the United Press of India Ltd. to supply certain information and in answer to that again Mr N.K. Swami, once again filed another affidavit dated the 26th November, 1951 adopting the description of Mr. B. Sengupta as the "Managing Director" of the United Press of India. These affidavits, filed in answer to the notice issued by this Court specifically describing Mr. Sengupta as the "Managing Director" constitute, in our opinion, sufficient proof that the said Mr. B. Sengupta is the person styled as "Managing Director" of the United Press of India with Head Office at Calcutta and can be proceeded against on this application as such.

9. The question, however, is whether there is any evidence or proof in this case which shows his connection with or responsibility for the news item objected to and supplied by the New Delhi representative of the United Press of India to the three local newspapers. The mere fact that he is described as "Managing Director" need not carry with it any implication as to the scope of the "Management". The contention on behalf of the State is that since the main function of the United Press of India is the dissemination of news through the process of sale to its customers, the Managing Director thereof, would ipso facto be liable for any news circulated through its agency by any of its representatives. In support of it, the passage in 'Oswald on Contempt of Court' at page 96 is relied on. The said passage runs as follows : ‘

> "The Manager of a limited company which disseminates or publishes news amounting to a contempt of Court may be held responsible and punished for it".’

It is on the basis of this passage that this Court holding that contempt has prima facie been committed by the Manager, issued notice on him. It has been strenuously argued by Sri S. M. Bose for the Managing Director, that without specific proof in the individual case as to the functions of the Managing Director and his direct responsibility arising out of such functions, the Managing Director, cannot, as a matter of law be held liable for contempt and that the passage cited in 'Oswald on Contempt' is not any' authority against that view. Learned Counsel drew our attention to the case in '*In Re Motilal Ghose*[2]*'* In that case his Lordship Mr. Justice Mukherji pointed out in his judgment at page 1021 that

> "It cannot be held as a matter of law that the Directors of a Limited Company which owns a newspaper are liable to be committed for contempt of Court on account of a libel published in this paper."

That was a case relating to the publication of certain article in the 'Amrit Bazar Patrika which a Special Bench of five Judges unanimously held to constitute Contempt of Court and the only question was who was to be held responsible for the publication. The persons sought to be proceeded against were the Printers and Publishers of the said paper as also the Directors of the Limited Company which owned that paper. So far as the liability of the Printer and Publisher was

concerned, the Court unanimously held him to be liable on the basis of a long line of English decisions showing that the Printer and Publisher is liable even though he may not be aware of the contents, on the ground

> "that a Printer and Publisher intends publication and therefore cannot plead ignorance of the contents as a justification".

The case of the Directors of the paper however was treated on a different footing. It was found on the evidence that the company had four directors and that according to the Articles of Association, the business of the company was to be managed by the Directors. Two of the Directors were held to be not liable on the basis of affidavits filed by them stating that at the time when the offending articles were published they were away from Calcutta on private business. As regards the third one, there was an affidavit filed showing that he was only concerned with receipts and disbursements of the Company. This was accepted as showing sufficiently that he was not connected with the dissemination of the news and the proceedings against him were also dropped. The fourth, namely, Motilal Ghosh was the person against whom the proceedings were mainly pressed. Their Lordships while noticing that according to the Articles of Association, the management was vested jointly in all the four Director and that therefore, all the four would prima facie be liable both civilly and criminally, felt that there was really no proof at all before them to connect the said Motilal Ghose with the dissemination of the news and on that ground dropped the proceedings against him also. It will be seen that in this case, the Articles of Association show that the Management vested in the Directors and in that sense all the four were Managing Directors. There were also strong enough circumstances to show that the said Motilal Ghose was the person who was likely to have been responsible for the offending articles. Still, on a strict standard of proof, the learned judges dropped the contempt proceedings even against him. The manner in which each one of the learned judges dealt with the liability of Motilal Ghose is instructive. His Lordship Sanderson, C. J., held at page 998 of the report as follows :

> "The main duty of the Directors mentioned and defined in the Articles of the Company, is to manage the business in the publication of the newspaper. Under such circumstances the natural presumption would be, I think, that Motilal Ghose either was responsible for, or at all events, was privy to the publication of the articles. But it has always been held that the jurisdiction which the Court has in respect of a contempt of court should be exercised with great care and should only be exercised when the case is beyond all reasonable doubt, and this should especially be the case when the proceedings are at the instance of the Court itself. Motilal Ghose has made no affidavit nor has be offered any explanation of his position in connexion with the news-paper at No. 2, Annanda Chatterjee's Lane, and if the above mentioned presumption of responsibility were drawn against him, I do not think he could complain. But I think it is just possible that he may not have been responsible for or privy to the publication of the Article."

Woodroffe, J., in dealing with the responsibility of Mr. Motilal Ghose at page 1006 said as follows :

> "In the absence of evidence as to there being a separate editor prima facie, the Directors

> who are authorized to manage the business, are the persons who do so in all its aspects".....
> "Here there is evidence that the management of this business includes every department of it, financial, literary and so forth, for there is nothing to prevent one or other of the Directors being also editor.....The affidavit filed in support of Motilal Ghose discloses a prima facie case against the Directors as such."

But his Lordship went on to say :

> "I cannot shut my eyes to the fact that there are three sworn statements before us that neither the Directors, Financial Manager, Secretary or Printer have control over the contents of the newspaper."

On this ground, his Lordship Woodroffe, J., gave the benefit of doubt to Motilal Ghose. Mr. Justice Mukherjee at page 1021 says as follows :

> "The memorandum and Articles of Association taken together may imply that it was the duty of the Directors to manage the publication of the paper, and from this point of view they might be held responsible for the publication of the Articles mentioned. But although the case may in these circumstances be one of strong suspicion, it is impossible to hold that, notwithstanding the categorical denial to the contrary, it has been established beyond doubt that the Directors were responsible for or connected with the actual publication of the two articles."

These extracts from the judgment of the learned Judges show that even before they held any of the Directors to be prima facie responsible they relied on the evidence given in the case, namely, the Articles of Association, showing that the management of the Company in all its aspects was vested in all the Directors and that inspite of strong suspicion that Motilal Ghose was connected with the publication, gave him the benefit of doubt, because of the categorical denial that any of the Directors had any control over the publication of the news.

10. The passage relied on from 'Oswald on Contempt' to show that the Manager of a Limited Company which disseminates or publishes news amounting to contempt may be held responsible and punished for is based on two cases, namely, *Ex. Parte Greene*[3] and *'O'shea v. O'shea*[4]*',* In the first of these cases, viz., 'EX PARTE GREENE', a news item appeared in the "Daily News" under the heading "The Baccart Scandal" which was clearly in the nature of contempt of Court in respect of a pending action. The news item appeared under the authority of the Press Association. One Mr. Robbins, the Manager of the Press Association was proceeded against for contempt. He was found guilty, though in his affidavit, before the Court he specially disclaimed responsibility for the dissemination of the said news item. The report of the case shows that the motion for contempt was based on the affidavit of one Mr. Lewis, a solicitor. He very definitely stated that Mr. Robbins was the Manager of the Association who was, according to his information and belief, responsible for the dissemination of the paragraph sent to the news papers. It is to be noticed that in the course of the arguments on behalf of Mr. Robbins, it was urged by Mr. Pinlay,

Q. C. that this affidavit spoke only to information and belief of Mr. Lewis about the responsibility of Mr. Robbins and this was not enough. But Mr. Justice Cave (who delivered the judgment in the case) intervened with a remark

> "What more could he say? Is it not 'prima facie' sufficient? There is a good deal in the letters to lead to the conclusion that he is responsible. He says not a word as to any other person being responsible".

This was said in the course of arguments. In the course of the judgment the learned Judge Mr. Justice Cave says as follows :

> "It is not suggested on the part of Mr. Robbins that the association or any of its members, interfere at all in the publication of these paragraphs, and he has not a free hand as to the management; Ought he not, then to be held responsible for what paragraphs are sent by the association and appear in the papers? As to that, we must look at the affidavit he had made, and I regret very much that he was advised to make such an affidavit. It is in unfortunate contrast with the letters he has written, and is not calculated to do this case any good. We have it admitted that he is the manager of the association, and that the association is for the purpose of circulating news among newspapers".

The learned Judge after having considered the contents of the affidavit finally said as follows :

> "I therefore, come without hesitation to the conclusion that Mr. Robbins is liable for the publication of this paragraph".

The report of this case clearly shows that since the person who moved for the contempt swore to an affidavit that the alleged contemner was the Manager and was, 'to his information and belief, responsible for the circulation of the news item and thus gave 'prima facie' evidence and since the letters written previously by the contemner also confirmed it, while the affidavit barely denying his responsibility did not disclose who else was responsible, it is found, on the evidence in the case, that the manager, Mr. Robbins was liable. This case is not therefore any authority for saying that a Managing Director is ipso facto and as a matter of law, liable. That is why even in "Oswald on Contempt" what is said is that the Manager may be held liable, indicating that it depends on the facts and the evidence. This is how the case in 'EX PARTE GREEN', was understood by Mr. Justice Woodroffe also in "Tarit Kanti Biswas In The Matter Of', AIR 1918 Calcutta 988, (SB) At P. 1008. It was therein pointed out that the Manager in 'Ex Parte Green's Case,' was held liable in spite of his denial, because the affidavit of the party taking proceedings in contempt showed the responsibility of the Manager to his information and belief. The judgment of Woodroffe, J.M also refers to another case in '*Reg v. Judd', 'Reg v. Allison*[4]*',* wherein it was held that the Directors of the Company who did not in fact sell or deliver to another company which published them was not liable. His Lordship lays down the dictum that the question whether a person in the position of a Director is responsible, must depend on the facts of each case. The other case referred to in "Oswald on Contempt" is *'O'shea v. O'shea'*[5]*,* which is not a case directly dealing with this question, but the facts of that case as stated at page 59 show that the Manager of the newspaper Office in London of a paper published and registered in Dublin was held to be responsible by the

learned Judge on the evidence.

11. In the present case, there is no evidence at all against Mr. Sengupta, excepting the fact that he has been styled by this Court in its notice to show cause as the Managing Director of the United Press of India, Ltd., and the fact that that description has not been challenged, but on the other hand adopted by the local representative of the United Press of India, in the two affidavits filed on his behalf in this Court. This by itself is insufficient to show that exactly his functions are and in what way he is connected with the dissemination of the news item with which we are concerned. We have not before us the Articles of Association of the United Press of India Ltd, or any other material indicating even in a general way what the "Management" of the person styled as 'Managing Director" in this case is. It is true that in answer to the notice to show cause, he has not informed the Court as to what his exact position or responsibility is, nor did he disclaim any responsibility. But there is no affidavit against Mr. Sengupta to constitute prima facie evidence as in 'EX PARTE GREEN'S CASE', (1891) 7 TLR 411 that according to information and belief of the deponent he is responsible for the dissemination of the news item. The present proceeding being criminal in nature, Mr. Sengupta's silence cannot be treated as supplying the lack of 'prima facie' evidence, notwithstanding that unlike in a regular criminal trial the contemner is free to give evidence on his own behalf by means of an affidavit.

12. In this connection, the definition of the word "Manager" in section 2(9) of the Indian Companies Act, as well as Regulations 71 and 82 in Appendix 'A' to the said

Act have been brought to our notice and pressed into service. Regulation 71 shows
that "the business of the company shall be managed by the Directors" and Regulation 72 shows that "the Director may from time to time appoint one or more of their body to the office of the Managing Director or Manager" and the word "Manager" as defined in Section 2 shows that the Manager means

> "a person who subject to the control and direction of the Directors, has the management of the whole affairs of a Company and includes a Director or any other person occupying the position of a Manager".

These provisions are not enough to enable us to fix on Mr. Sengupta any specific responsibility which may connect him with the publication of the news item of the United Press of India and much less of the particular news item. Regulation 72 itself shows that there may be more than one Managing Director. If so, each Managing Director may have, allotted to him, different functions. There is nothing before us to show that Mr. Sengupta is the sole Managing Director or that he is the Manager in whom the whole affairs of the Company are vested. In this connection the case in '*Basant Lal v. Emperor*'[6], may be referred to. The conviction of a Managing Director under Section 87 of the Indian Companies Act was set aside on the ground that he was not shown to be in charge of the "entire affairs of the Company and was hence not a Manager."

13. An argument has also been advanced before us that this Court has no jurisdiction to proceed in contempt against Mr. Sengupta who is a resident of Calcutta and accordingly outside the territorial jurisdiction of this Court. It is unnecessary for us, however, to deal with that contention and express any opinion thereon, in view of the opinion already expressed by me that there is no

evidence to connect Mr. Sengupta with the responsibility for the publication of the news item.

14. In the circumstances, I cannot hold that there is enough evidence on which responsibility for the contempt, if any, for the dissemination of the news item in question, be fixed on Mr. Sengupta. The motion as against him must accordingly be dismissed.

15. The cases against the three local dailies, Eastern Times, Prajatantra and the Samaja have now to be considered. Of the three, Eastern Times is an English daily. Prajatantra and the Samaj are Oriya dailies. As already stated, all the three papers are concerned in the publication of the same news item, relating to the filing of the petition for leave to appeal in the Supreme Court by the Syndicate of the Utkal University on the 22nd of August. The Eastern Times and Prajatantra are further concerned in the editorial comments published in their respective issue of the 26th and 28th August. It may be mentioned that in respect of the matters alleged as amounting to contempt, the versions in the English paper are conceded to be reasonably fair translations of the Oriya versions of the corresponding Oriya dailies. For convenience of reference, therefore, the discussion will be confined to the English version of the news item and of the editorial comments as they have appeared in the
Eastern Times, They are as follows :

> "(1) NEWS ITEM DATED THE 22ND and PUBLISHED IN THE ISSUE OF THE 23RD AUGUST, 1951."
> "Case against Orders of Orissa High Court; Interference in work of Versity alleged Interest in Delhi Circles"
> "An interesting and unique case was filed today before the Supreme Court by Sri Harihar Mohapatra, Advocate, Cuttack, against the orders of the Orissa High Court calling upon the Syndicate of the Utkal University to publish as having passed the examination, the names of those students of S. C. B. Medical College, who had been asked by the University to appear in fresh examination on account of leakage of question papers in the previous examination.

The case which has been filed and has been prepared by Buxi Tek Chand, retired Justice of the Punjab High Court alleges that the High Court of Orissa has displayed unusual zeal in going into internal matters of the University and interfering in the work of the University. This case as disclosed in papers had created a sensation in the circle of lawyers, Universities and the members of the Parliament. Some members of Parliament are contemplating to agitate on the matter in Parliament in some form or other. It is reported that the Vice-Chancellor of the Calcutta University, who is a Judge of the Calcutta High Court, and Dr. Katju, Chancellor of the University, are interested in this case, as it involves the basic principles regarding the autonomy of all Universities."

> (2) 'EDITORIAL : Dated 26th August, 1951.' "It is reported that Sri Harihar Mohapatra, Advocate, and member of the Syndicate of the Utkal University, has filed an appeal before the Supreme Court against the recent decision of Orissa High Court overruling the decision of the Syndicate of the University to hold fresh examination in a subject for the students of the Medical College. This is not the only judgment of the Orissa High Court

which has questioned the decision of the Syndicate of the University. In a number of cases, the decisions of the Syndicate have been questioned and a belief is steadily growing amongst the students and others that the University as an institution is not the master of its own affairs. The decisions of the Syndicate have been questioned by the High Court while exercising its power to issue writs which it enjoys under Section 226 of the Constitution of India. The power of the High Courts to issue writs is not a new phenomenon in India. Since the inception of High Courts in India, the three Presidency High Courts of Bombay, Calcutta and Madras have been enjoying the power of issuing writs and the Constitution simply extended this power to other High Courts since 1950. In the Presidencies of Bombay, Madras and Calcutta, High Court Judges have almost all along held the office of Vice-Chancellorship in their respective Universities. As a matter of fact, the tradition has always been to appoint Judges of the High Court as Vice-Chancellors and for the last many decades it is the Judges who have held controlling positions in the affairs of Universities of Bombay, Calcutta and Madras. Even today the Vice-Chancellors of the Calcutta and Bombay Universities are Judges of the Bombay and Calcutta High Courts. Curiously enough at no time, either in the past or at present the decisions of the Universities have been questioned by the High Courts anywhere in India except in the State of Orissa. So far as we are aware, there is only one case of a student of Benares going upto the Allahabad High Court in an appeal against the decision of the Benares Hindu University. In that case, the Allahabad High Court, if we are not mistaken, held that even if the decision of the University was wrong, it was not for the High Court to interfere in it. The power of issuing writs has never been sought nor has it been used against the Universities by the High Courts of Bombay, Calcutta or Madras, particularly where the High Courts have all along enjoyed this power."

"We are not questioning the power of the High Court We are prepared to concede that the High Court has got the power to issue writs against the University materially affecting the latter's decision in matters of examinations, admission etc. But the legal position should be clearly thrashed out and the final decision of the Supreme Court should be obtained on the subject. If it is finally held that the High Courts have the power to interfere in the internal affairs of the University specially in so far as they relate to examinations and admissions, then we think it will be proper for the Universities to change their rules and for the Government to amend the law relating to the Universities, so that a conflict may not arise creating an atmosphere of indiscipline in the educational field of the country. There is sufficient indiscipline in this field already and it should not be allowed to be accentuated by other factors. It is from this point of view we very much appreciate the action of the University in taking up the matter to the Supreme Court of India. Not only the State of Orissa but all States and Universities must look forward to know what the decision of the Supreme Court will be. It is a serious matter affecting the entire education of the country. The question to be decided by the Supreme Court is whether the University should be the supreme authority in matters of education or some other authority. Many a battle has been fought to secure the autonomy for Universities. At one

time the executive authorities had some direct or indirect control over the Universities and situation is changed now after long agitation and examination of the question. Today the point to be decided is whether the University in its educational matters will be subjected to the control of the Judiciary. Incidentally, we may point out that if the decisions of the Universities are questioned in the High Courts, it would not appear to be proper that the Judges of the High Court should be connected with the Universities in any way either as members of the Syndicate or as office-bearers of the Universities. We would suggest to the Utkal University to bring this matter to the notice of the Inter-University Board and the other Universities in the country so that the problem which has arisen may be satisfactorily solved after due examination by all concerned".

(3) EDITORIAL Dated 28th August, 1951. "THE PROBLEMS OF THE UNIVERSITY".

"The judgment of the High Court of Orissa rescinding the decisions of the Syndicate of the Utkal University regarding examination of students is likely to create a tremendous problem for the University and for the matter of that for the State of Orissa as such. It must be remembered that the University of Orissa is still in its infancy. It has not yet been recognized by all the Universities abroad. For aught we know the Delhi University has not yet recognized the Utkal University for post-graduate admissions. The Medical Council of India has not yet recognized the Medical College of Orissa. Those who have obtained degrees in Medicine from the Medical College of Orissa are not eligible for service elsewhere because the degree is not yet recognized. The question of recognition of the Medical College is now under consideration of the Medical Council. In these circumstances, if the attention of the other Universities and the Medical Council of India is drawn to the fact that students have been allowed by the High Court to pass examinations, which had been declared invalid by the Syndicate it is possible they might feel disinclined to recognize the degrees of the University. The Syndicate of a University is considered to be the best judge in educational matters such as various examinations of the University. If the Syndicate does not recognize an examination, to be a fair one, and if it decides to hold a fresh examination, naturally the outside public and particularly the other Universities will be inclined to accept the verdict of the Syndicate, even though the students having appeared in the examination, declared null and void by the Syndicate, are directed to be declared as having passed the examination by the High Court. We do not think the Orissa High Court has got jurisdiction over the other Universities in the country and over the Medical Council of India. Recognition has been withdrawn from one or two Universities of India, because of the fact that reasonable doubt was expressed with regard to fairness of the examinations they held. The same might happen with regard to the Utkal University also. In that case the University itself cannot fight out its own case because something has been done against its own decision and against its will. If it so happens that the educational institutions outside begin to doubt the fairness of examinations held under the auspices of the University and if recognition of degrees awarded by it is withdrawn or not granted in the case of the Medical College, it will be a serious problem not only for

the University but also for the State of Orissa. The students having succeeded in securing passes through the intervention of the High Court might find themselves in quandary at last, when the other Universities would not accept their degrees. Frankly speaking, we do not know how the problem will be solved. Now that an appeal has been filed against the Judgment of the Orissa High Court by the Utkal University, it is possible that the law may be interpreted, in such a way that all our fears expressed above may not have any justification, whatsoever."

"The State of Orissa will certainly feel isolated in this matter because a problem of this nature has not arisen in any other State. So far as our information goes, the authorities of various Universities in India beginning from the Chancellors and Vice-Chancellors downwards do not believe for a moment that such a problem could arise in the case of a University. We wonder if the public of Orissa realise the seriousness of the problem which the University faces today. To be or not to be, is the problem which the Utkal University faces today. Public sympathy will no doubt be with the University in the crisis. Let us pray that the infant University of Orissa may pass over the crisis in a satisfactory manner as early as possible."

16. It may be mentioned that so far as the news item dated the 22nd, published in the Eastern Times, and Prajatantra on the 23rd and in the Samaj on the 25th is concerned, the notice to show cause in respect thereof which was issued in the first instance, on the 17th September specified only the following extracts of the said news item as amounting prima facie to contempt of Court.

"The case which has been filed and has been prepared by Buxi Tek Chand, retired Justice of the Punjab High Court alleges that the High Court of Orissa has displayed unusual zeal in going into internal matters of the University and interfering in the work of the University."

At a later date, that is, by an order dated 25-10-51 fresh notices on the Editors, Printers and Publishers of these three dailies were issued drawing their attention to the entirety of the news item, and not only for the above extract of it, as amounting prima facie to contempt of Court. It has been pointed out that this notice has been issued after the cases against them were heard fully on the 23rd and 24th of October by the learned ex-Chief Justice and my learned brother Justice Narasimham and that this procedure is irregular. It is urged that in those circumstances the consideration of the case so far as the news item is concerned must be confined to the extract as quoted in the original notice issued on 17-9-51, and that the entire news item as quoted in the notice ordered on 25-10-51 should not be taken into consideration. I am unable to see how the procedure adopted is irregular and why the entirety of the news item should be excluded from consideration. It is not a case of filling up any gaps in evidence. Learned counsel has not shown to us that any prejudice has been caused. That notice was issued on the 25th October and the final hearing of these applications have been taken up now by this Bench on the 10th of December. The persons proceeded against, have had ample opportunity for answering the fresh notice, but they have filed no fresh answers. Indeed, in a matter of this kind, it is always fair both to the party proceeded against and to the Court also that a particular passage complained of is considered and understood in relation to the entire matter of which it is a part and not in its

isolated context.

17. As regards the Editorials dated the 26th and the 28th August in the Eastern Times and the Prajatantra, there is no scope for any such objection, because, the original notices issued on 17-9-51 for showing cause, though they extracted particular portions of the Editorials, as constituting contempt specifically stated as follows :

> "Whereas the aforesaid Editorial comments and, in particular the following passage therein, namely, 'In a number of cases ..... matter of its own affairs'. Curiously enough ..... except in the State of Orissa'. 'In these crcumstances ..... Utkal University, etc. etc'".

Thus the entire Editorials are for consideration of the Court but particular portions may have been specified for convenience. Since all the three items, that is, of 23rd, 26th, and 28th are common to the Eastern Times and Prajatantra, it will be convenient to deal with their cases first.

18. The question of contempt committed by the Editors, Printers, and Publishers of these items have to be considered from two aspects. (1) In relation to the case then pending arising out of the judgment in M.J.C. 80/51; (2) In relation to its tendency to undermine the reputation and prestige of this Court and public confidence in its capacity to administer even-handed justice and in thereby interfering with its effective authority to administer justice.

19. So far as the first aspect is considered, the facts to be remembered are the following : This Court delivered its mandatory order in M.J.C. 80/51 on the 9th August, and delivered the reasoning's and judgment on the 17th August. The Syndicate filed in this court on the 17th August its application for leave to appeal to the Supreme Court. The Syndicate also filed a similar application in the Supreme Court itself for special leave on the 22nd August. The application filed in this Court came up for hearing on the 27th and 29th of August and was after some discussion adjourned to the 4th September by that Court. Having regard to the relevant period covered by the news item and the editorial comments that is, 23rd to 29th, it would appear that by then, two applications for special leave were pending, one before this Court and another before the Supreme Court and that in addition, a regular appeal to the Supreme Court was imminent on leave being granted by one court or the other. A bare perusal of the three items dated 23rd, 26th, and 28th, charged as amounting to contempt, shows clearly that they deal with the very matter that had to be dealt with in the two applications for leave to appeal and that they 'also deal substantially with one important aspect of the matter which will have to be considered in the main appeal itself. In so far as these items may constitute any attempt (contempt?) in respect of the special leave application pending before the Supreme Court and in respect of the main appeal in that Court which was imminent, we have nothing to do. In these proceedings we are concerned only with the question whether these items constitute any contempt of this Court with reference to the application for leave to appeal pending in this Court. The substantial theme of all the three items charged as amounting to contempt is that the issue involved is one of "great public importance". It is argued on behalf of the State as well as the students that the dates of the two editorial comments, viz., 26th and 28th August are particularly significant, because the application for leave to appeal pending in this Court did actually come up for hearing on the 27th and 29th and also that the news item dated 23rd must have been in relation to the application for

leave to appeal which was filed on the 17th and which was still pending at the time. Making comments either in respect of a pending matter or in respect of a case disposed of shortly before, and with reference to which an appeal would still be available, involves serious responsibility. It may amount to contempt of Court, if it is found to have had a tendency to obstruct the free and fair course of justice in the case. It is true as has been stated by authorities that when a case is over, the Judge and the Jury are given over for criticism by the public. But such comments, if they overstep the bounds of legitimate comment and fair criticism, will amount to contempt, if they are shown to have a tendency to hinder the justice of the case. If with reference to this test, the news item and the articles in question are considered the news item does attempt to give a hint to those whom it may concern that it is a case of great public importance. The editorial comments also emphasise that aspect, in addition to discussing the probable repercussions of the decision given by the High Court. In one sense, therefore, these three items do amount to prejudging the very question that had to be decided by the High Court on the application to it for leave to appeal to the Supreme Court. It is to be remembered that such an application can be granted either under Article 132 or Article 133 of the Constitution and that this Court has power to grant leave, if it is satisfied that a serious question of constitutional law is involved or that the question of law involved is one of public importance either under Article 132 or because then it would be able to certify under Article 133, Clause (1) sub clause (c), that the case is a fit one for appeal. It is argued for the contemners that there is nothing to show that they were aware of the pendency of the application in this Court and that as a matter of fact these articles were not intended to relate to and do not concern the application for leave to appeal pending in this Court nor were they likely to have any tendency to interfere with the decision of this Court on the leave application. It is no doubt true that there is no specific evidence formally adduced before us that the contemners were aware of the pendency of the application for leave to appeal in this Court, but it can hardly be supposed that they were unaware of it, having regard to the sensation which according to these very articles the decision and all the subsequent proceedings are supposed to have created. Nor is it likely that the items in question were not intended to have reference to the application for leave to appeal whether pending in the Supreme Court or here. But it is unnecessary to pursue this line of objection, because, what we are concerned with in the first instance is not the intention of the contemners, nor even the specific and direct knowledge of the pendency of the proceedings, except probably as an aggravating or mitigating circumstance. What is more important to decide first in such cases is their tendency to affect the pending proceedings and then only the relevancy of knowledge or intention. So far as this aspect is concerned, after having considered carefully the arguments on both sides, I have come to the conclusion that no serious notice of this head of contempt constituted by these articles need be taken in this case. The question as to whether a question of law sought to be raised on an appeal to the Supreme Court is of public importance and hence substantial, is not a matter which relates to the appreciation of any evidence or the facts of a particular pending case, about which news-paper comments might have a tendency to create prejudice on the merits thereof. It is hardly to be supposed that in deciding the point, whether or not the question raised on appeal to the Supreme Court is a substantial question of constitutional law, or is otherwise a fit one for appeal, any court will be prejudiced, or any litigant can reasonably apprehend that he will be prejudiced, by the opinion expressed by the daily newspapers. Further, there is the fact in this case that this Court was not ultimately called upon to decide that question on the application then pending because leave was in fact granted by the Supreme Court on a special motion on the 4th September. I would therefore, hold that in so far as the articles in question may constitute contempt on account of the pendency of the application for leave to appeal before this Court, it

cannot be said that there is any such serious contempt as would call for further action of this Court.

20. The next question then to be considered is whether or not these three publications in the issues of the 23rd, 26th and 28th of August disclose a tendency to lower the prestige, dignity and authority of this Court and to undermine public confidence therein in any substantial measures so as to constitute contempt of this Court. This aspect requires much closer consideration of the actual passages in question.

21. Taking first the news item dated the 23rd it purports to convey the news about the filing on that day of a case in the Supreme Court against the order of the Orissa High Court, calling upon the Syndicate of the Utkal University to publish, as having passed the examination, the names of those students of the Medical College, who had been asked by the University to appear for a fresh examination on account of alleged leakage of question papers in the previous examination. The offending portion in this news item is :

> "The case which has been filed and has been prepared by Baxi Tek Chand, retired Justice of the Punjab High Court, alleges that the High Court of Orissa has displayed unusual zeal in going into internal matter of the University and interfering in the work of the University."

This is a definite and categorical statement that the case filed alleges some "unusual zeal" that is, uncommon mental attitude on the part of the High Court in its judicial work. The zeal of a Court in relation to a particular case may be good or not, according to circumstances. But it cannot be doubted that to attribute 'unusual zeal' to a Court is to attribute that the High Court did something out of the way and in that sense it amounts to an imputation of doing something very improper. Indeed, that this is the sense in which, it was meant to be understood by the readers, is emphasised by the statement in the same news item that

> "This case as disclosed in papers (which I take it means the papers filed in the Supreme Court) has created a sensation in the circle of lawyers, Universities, and the members of the Parliament and that some members of Parliament are contemplating to agitate on the matter in Parliament in some form or other."

What the agitation referred to herein is, is not indicated. It may be either the passing of an Act, curtailing the power of the High Court or an address to the President against the Judges under Article 218 read with Article 124 (4) of the Constitution.

22. It may be pointed out at this stage that the petition for leave to appeal to the Supreme Court, a copy of which has been filed before us, does not in fact contain any such allegation. The learned Counsel Sri S. M. Bose has, however, contended that, this in effect is a summary of what all has been stated in that application for leave to appeal and that the statement was fully justified by the course that the proceedings took before the High Court and the orders passed thereon. It has been pointed out that paragraphs 22 and 29 in the application for special leave filed before the Supreme Court allege :

"That though the mandatory orders of the High Court were pronounced on the 9th of August, the reasons were delivered on the 17th of August and that on the same day, an application for leave to appeal and an application for stay were filed in the High Court and that on Monday the 20th, the applications were moved and that the High Court declined to grant any stay and directed the publication of the results on or before the 23rd under a virtual threat of possible further proceedings for contempt and that the High Court directed its orders to be immediately communicated to the Vice-Chancellor and then to all other members of the Syndicate by telegraphic messages wherever necessary; that the petitioner had not even reasonably sufficient time to move the Supreme Court against the order refusing the stay of operation of the order of the High Court, and that by immediately availing of the next train after passing of the order by High Court and by taking the immediate next air service from Calcutta to Delhi, the petitioner could reach Delhi only on the 21st evening to approach the Hon'ble Supreme Court on the 22nd."

It has been argued that all these averments constitute allegations relating to display of unusual zeal and that the facts stated therein in fact constitute unusual zeal. It is, to my mind, extremely doubtful whether the Senior Counsel of the Supreme Court who is said to have been responsible for the draft of this application can be said to have imputed "unusual zeal" to the High Court by the narration contained in the paragraphs above referred to. But whether or not the imputation of unusual zeal is a fair summary of the above allegations, there can be no doubt, as already stated, that the imputation of 'unusual zeal" in relation to any particular case is to impute something improper to any Court and much more so to a High Court. With reference to the contention of the learned counsel that the events narrated in the above paragraphs of the application for leave to appeal to the Supreme Court constitute in fact unusual zeal, a question has been raised whether it is open to a contemner to plead the truth of an improper imputation as a valid defence. It is unnecessary to express any opinion on the validity of such a plea, because what is in dispute is not the truth or otherwise of any disputed facts, but the correctness or otherwise of the impression formed on certain admitted facts. A fair consideration of the entire series of orders passed by this Court, from the date when the mandatory order on the 9th of August was passed to the date when on the 20th the Court refused stay and peremptorily directed publication of the results on the 23rd August does not, I am quite dear, warrant the imputation of "unusual zeal" on the part of the Court responsible for the same.

23. The circumstances under which these orders have been passed have been fully explained by the very Bench which was responsible for those orders in its order dated 29th August. It has been therein pointed out that the refusal of the application for stay was on considerations of balance of convenience and it would appear that the direction to publish the results on the 23rd was in discharge of the duty that the Court owed to itself to see that its mandatory orders are obeyed. No doubt, the order of this Court dated the 29th had not been passed by the time the news item imputing "unusual zeal" to the High Court was published on the 23rd and 25th. But the Press owes a duty to itself, to the public, and to the Court not to impute impropriety to the action of the highest Court in the State when there is, to say the least, another reasonable construction that ought to have been put upon its action. I am prepared however, to recognize that the sequence of events may possibly have created a wrong impression, though of course, this would not at all

justify the hasty and irresponsible, if not deliberate, imputation of wrong conduct on the part of the highest Court in the State. It is now necessary to pass on to a consideration of the two editorial comments that have been made in the issues of the 26th and 28th in the Eastern Times and the Prajatantra. For this purpose one has to scrutinize them closely and to understand the purport, implication and tendency thereof taken as a whole.

24. The editorial comment of the 26th August starts with a news item that an appeal has been filed before the Supreme Court against the recent decision of the Orissa High Court overruling the decision of the Syndicate of the University to hold the 1st M. B. B. S. examination for the students of the Orissa Medical College. It passes on to say that

> "this is not the only judgment of the High Court which questioned the decision of the Syndicate of the University, but that in quite a number of cases, the decisions of the Syndicate have been questioned and that a belief is steadily growing amongst the students and others that the University as an institution is not the master of its own affairs".

It goes on to point out that the power to issue writs has been there all along, with the three Presidency High Courts of Bombay, Calcutta and Madras and that the Judges of the High Court have been Vice-Chancellors of Universities holding controlling position in the University affairs, and further says :

> "Curiously enough at no time, either in the past or at present, the decisions of the Universities have been questioned by the High Courts anywhere in India except in the State of Orissa".

It adds, however, that so far as the editor was aware, there is only one case in which an application was made to the Allahabad High Court against the decision of the Benaras Hindu University, but that in that case the High Court declined, to interfere. It concludes the paragraph by saying as follows :

> "The power of issuing writs has never been sought nor has it been used against the Universities by the High Courts of Bombay, Calcutta, or Madras, particularly where the High Courts have all along enjoyed this power."

The rest of the Editorial discusses the disadvantages of the view that the High Court has the power to control the acts of the University and expresses the editor's appreciation of the action of the University in taking up the matter to the Supreme Court of India. It stresses the importance of the autonomy of Universities and refers to the battle with the executive to secure it, and winds up with a suggestion that the question involved is to be brought to the notice of the Inter-University Board and other Universities for a satisfactory solution after due examination. In the first paragraph a statement of fact has been made that the Orissa High Court questioned the decision of the Syndicate in quite a number of cases. Following from that statement as a fact, it is stated that a belief is steadily growing amongst the students and others that the University as an institution is not the master of its own affairs. This statement may be taken in the context of another statement in the second paragraph which suggests that if the power of the High Court to

interfere in the affairs of the University is upheld as a matter of law, "a conflict may arise creating an atmosphere of indiscipline in the educational field of the country", and a further statement "that there is sufficient indiscipline in the field already and it should not be allowed to be accentuated by other facts". The obvious implication is that in view of the fact that the Orissa High Court had questioned the decisions of the Syndicate in a number of cases and that such interference is unique, those judgments have resulted in prompting a spirit of indiscipline amongst the students of the University. It may be noticed at this stage that in the issue of the Eastern Times of the 28th, a correction has been issued at p. 1 in the following terms :

> "A Misrepresentation : In our Sunday's leader we referred to the recent decision of the Orissa High Court overruling the decision of the Syndicate of the University to hold fresh examination in a subject for the students of the Medical College. However, on wrong information we said : "this is not the only judgment of the Orissa High Court which has questioned the decision of the Syndicate. In number of cases the decisions of the Syndicate have been questioned". In fact, this is the only case where the High Court has questioned the decision of the Syndicate. We are sorry for this mistake. Editor, Eastern Times".

I shall advert to this correction later, when I deal with the second editorial comment of the 28th, but for the present it is sufficient to notice that though there has been a correction as regards the inaccurate statement, and an apology for the same was expressed, there has been no retraction of the inference deduced therefrom, namely :

> "that a belief is steadily grown among the students and others that the University as an institution is not the master of its own affairs".

All that is necessary to state at this stage is that the allegation of promotion of indiscipline amongst students - which remained unretracted - is based on an incorrect assumption that there were many judgments of the High Court which questioned the decision of the Syndicate. Passing on to the next statement in para I of the Editorial above noticed, namely :

> "Curiously enough at no time, either in the past or at present; the decisions of the Universities have been questioned by the High Courts anywhere in India except in the State of Orissa .....

The power of issuing writs has never been sought, nor has it been used against the Universities by the High Courts of Bombay, Calcutta, or Madras, particularly where the High Courts have all along enjoyed this power". Now these statements are untrue as a fact. In addition to the case of the Allahabad High Court referred to by the Editor himself in this article, on a mere cursory inquiry, it should have been possible for any responsible person to know that there are at least two other instances, in which the Madras High Court and the Calcutta High Court had been approached for issue of writs against the concerned Universities. In '*Re G. A. Natesan*[7]*',* a writ was in fact issued by the Madras High Court, against the University of Madras. In *Samarendra Prosad v. University Of Calcutta*[8]*,* a writ was applied for against the University of Calcutta with regard to certain examinations. The learned Judge discussed the whole question elaborately and

came to a very clear conclusion overruling the contention that since the University is a domestic tribunal, the court had no power to interfere
with its internal matters. But on the merits of the case, and on account of the finding that the Syndicate of the University had not been shown to have acted mala fide, the writ was refused. If the Editors of the local dailies had exercised a little care that was expected of them, and ascertained facts with a little sense of responsibility, they should not have found it difficult to know that at least in these two cases, the High Courts were approached for such writs and that in the one case the High Court did exercise the power arid in the other the High Court held that it had the power. The Editor in this article has referred to the Banares Hindu University and the reference was obviously to the case reported in '*Ram Ugrah Singh v. Banares Hindu University*[9]*,* (2). A perusal of that case itself would have shown that 40 Mad., 125 was referred to therein. Indeed the main judgment '*S. K. Ghosh v. Vice Chancellor Utkal University*[10]*',* which has given rise to these proceedings has itself referred to 40 Mad 125. So far as the case in 55 Cal WN 443 is concerned, it is a very recent judgment which was delivered on the 7th March 1951, and which appeared in the issue of Calcutta Weekly Notes dated the 23rd, April 1951. The attempt, therefore, to convey the impression that the High Court of Orissa in giving the judgment, has done something unique by way of interference with the University, is based on an irresponsibility and inaccurate assumption. There can be no excuse for an Editor of a newspaper who proposes to make such a sweeping statement on a matter concerning law which was not his normal equipment, for not having acquainted himself with the existence, of such a recent judgment as 55 Cal WN 443 and for not having looked into 40 Mad 125.

25. I shall now pass on to a consideration of the Editorial of the 28th. This editorial starts with the following statement :

> "The judgments of the High Court of Orissa rescinding the decisions of the Syndicate of the Utkal University regarding examination of students is likely to create a tremendous problem for the University and for the matter of that for the State of Orissa as such."

What problem is, is indicated in succeeding portions of the editorial. In substance, it is stated to be that in view of the fact that the medical degrees of the Utkal University have not yet been recognized by the other Universities or by the Medical Council is still under consideration, the other Universities and the Medical Council of India might refuse to recognize the degree of the Utkal University when students have been allowed to pass by the High Court whose examination had been declared invalid by the Syndicate and that the Medical graduates of Orissa may not secure service elsewhere. It states :

> "The outside public and particularly the other Universities will be inclined to accept the verdict of the Syndicate even though the students, having appeared in the examination declared null and void by the Syndicate, are directed to be declared as having passed the examination by the High Court."

It further states as follows :

> "It raises a serious problem not only for the University, but also for the State of Orissa"

and proceeds :

"The students having succeeded in securing passes through the intervention of the High Court might find themselves in a quandary at last when the other Universities would not accept their degrees."

This last statement when it uses the phrase "succeeded in securing passes through the intervention of the High Court" conveys the definite insinuation that something unworthy and improper has been done or achieved. The article ends with the following paragraph :

"The State of Orissa will certainly feel isolated in this matter because a problem of this nature has not arisen in any other State. So far as our information goes, the authorities of various Universities in India beginning from the Chancellor and Vice-Chancellors downwards do not believe for a moment that such a problem could arise in the case of a University. We wonder if the public of Orissa realise the seriousness of the problem which the University faces today. To be or not to be is the problem which the Utkal University faces today. Public sympathy will no doubt be with the University in this crisis. Let us pray that the infant University of Orissa may pass over the crisis in a satisfactory manner as early as possible."

This passage emphasizes in a highly imaginative and flamboyant style the seriousness of the problem which the judgment of the High Court, in matters relating to the function of the University with reference to examinations, is supposed to have created. That problem is said to have arisen on the basis of the assertion that the High Court has in fact declared certain candidates to have passed which the University Syndicate have declared not to have passed and that the other Universities etc. may prefer the verdict of the Syndicate to the verdict of the High Court.

26. Thus taking the two editorial comments of the 26th and 28th together, the following conclusions may be stated as to their contents and effect :

"1. The Orissa High Court is wrongly represented as having been unique in interfering with the autonomy of the University; it is said to have done so in quite a number of cases with the alleged result that this has contributed to the growth of a sense of indiscipline among the students and has raised a serious problem affecting the entire education of the country.

2. The judgments have encroached on the autonomy of the University by interfering with the internal affairs of the University.

3. The judgments in addition to violating the principle of autonomy of Universities have brought about a more direct and serious problem, namely, as to the value of the medical degrees of the Utkal University abroad.

4. It is insinuated that the particular students secured their passes by improper interference by the High Court and it is asserted that the other Universities and the Medical Council and the public are likely to prefer the verdict of the Syndicate to that of the High Court.

> 5. A crisis in the University affairs is said to have resulted from the judgment of the High Court in which public sympathy will be with the University which calls for the Editor's prayer for a satisfactory ending of this crisis.

27. The question that arises is whether these two articles taken as whole, can be said to be fair and legitimate comment, however imaginative and over-drawn the language used may be, or whether it has not exceeded the bounds of legitimate comment and thereby disclosed the tendency to lower the dignity and prestige of the High Court as an effective instrument for the discharge of its duties in the administration of justice.

28. It is necessary to remember in this context the following weighty pronouncement of the Privy Council in '*Channing Arnold v. King-Emperor*[11]

> "Their Lordships regret to find that there appeared on the one side in this case the time-worn fallacy that some kind of privilege attaches to the profession of the Press as distinguished from the members of the public. The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever length the subject in general may go, so also may the journalist, but apart from statute law, his privilege is no other and no higher. The responsibilities which attach to his power in the dissemination of printed matter may and in the case of a conscientious journalist do, make him more careful; but the range of his assertions, his criticisms, or his comments is as wide as, and no wider than, that of any other subject. No privilege attaches to his position." It has always been recognized that criticisms and conclusions based on wrong and irresponsible statements of facts are not legitimate.

29. In the present case, the implication in the comments that the judgments of the High Court have contributed to the growth of sense of indiscipline among the students is based on an irresponsible and incorrect assumption, that the High Court has been unique in interfering with the affairs of the University and on an untrue statement of fact that the High Court has interfered with the University affairs in a number of cases. Though the incorrectness of this latter statement has been later corrected, there has been as already pointed out, no contradiction of the supposed growth of belief, as to promoting indiscipline arising from the allegation that there has been a number of such judgments of the High Court as contributory factor for the alleged indiscipline of the students. It is to be noticed that inspite of the contradiction published by the Editor on the 28th, the editorial of the 28th itself, begins with a statement that

> "judgments of the High Court rescinding the decisions of the Syndicate were likely to create a tremendous problem".

It has been suggested that the use of the plural word "judgments" has no reference to the judgments in a number of independent cases, but has reference to the various orders of the High Court in '*S. K. Ghosh v. Vice Chancellor Utkal University*[12]*',* which have given rise to these proceedings, I am unable to agree that that would have been meant, because the reference there is also to the rescission of the decisions of the

Syndicate while the judgment in the M.J.C. and all the subsequent orders following therein has rescinded if at all, only one decision of the Syndicate and not a number of them. At any rate, whatever may have been intended by the Editor, the obvious impression left on the mind of a reader is still likely to be maintained that there are quite a number of such judgments, and that the High Court by its interference in a number of judgments and by the singularity of such interference has contributed to the growth of indiscipline of the students - assumptions of fact which are untrue.

30. The next comment that the judgments of the High Court have encroached on the autonomy of the University by interfering with its internal affairs is one which would not have been reasonably made by any Editor who had cared to peruse the Judgment of the High Court in *S. K. Ghosh v. Vice Chancellor, Utkal University*[13]*',* That judgment may have been right or wrong, a matter which is sub-judice now. But the basis of that judgment has in very clear terms been summarised by the learned Judges themselves who are responsible for it in language which cannot be reasonably misunderstood even on a bare perusal. My learned brother Justice Narasimham in his leading judgment in paragraph 26 stated as follows :

> "The Syndicate assumed that there was 80 per cent leakage though the papers placed before the members of the Syndicate and explained to them by Col. Papatla indicated that the leakage, if any, was far below 45 or 50 per cent. Though the Syndicate was fully aware that the number of the failures is an important test for deciding whether such a percentage indicated real leakage of questions of mere intelligent anticipation on the part of the students or their Lecturers, the members of the Syndicate did not care to scrutinise the results that were on their table to ascertain the number of failures in Anatomy. They acted on the hearsay statement of Shri B. C. Mohanty and assumed that most of the students must have known the questions though Mohanty's statement did not go so far. There was an easy method of testing the truth of his statement, but they would not apply the same. The subject was also hurriedly put up for discussion in direct contravention of their own Standing Orders regarding the giving of proper notice. There was no special urgency which compelled them to ignore their own Standing Orders. The results had already been reported and if the matter was urgent, the Vice-Chancellor could easily have called for an urgent meeting on the 25th April, after giving three days' notice. I cannot help observing that they acted with undue haste, assumed the existence of certain facts which did not exist, ignored certain papers that were before them and were carried away by the hearsay statement of Sri Bhairab Chandra Mohanty far beyond the limits to which he himself was (not?) prepared to go. The impugned resolution was passed under such circumstances unreasonably and with want of due care".

The learned ex-Chief Justice has also been careful enough to point out as follows :

> "IN coming to our decision in this particular case, we have carefully avoided to exercise any jurisdiction as lies with a Court of appeal or writ of error. If we have come to the decision that we have given, it is because the Syndicate have failed to perform the judicial action that they were called upon to do in

complete disregard of the principles of natural justice".

Later on, again the learned Judge stated as follows :

> "The only other important aspect to which I shall address myself briefly is whether we have trespassed into the jurisdiction peculiar to the Court of appeal or writ of error" and has been at pains to point put in that paragraph that they were not interfering on the ground of any errors of law, wrongful conclusions of fact resulting from mistaken judgment. Any Editor who had taken care to read the above-mentioned summary of the judgment, wherein the distinction between interference on the merits of the Syndicate's decision and interference on the ground that the Syndicate's decision was arrived at without proper exercise of reasonable care and of judicious consideration, could not reasonably jump to the conclusion that the judgment of the High Court amounts to interference with the internal affairs of the University. Such an assertion on the part of an Editor can only be characterized as an irresponsible misreading of the judgment of the High Court and is consequently outside the limits of legitimate comment.

31. As regards the particular allegation relating to the declaration of the individual students that have passed the examination and the consequent seriousness of the problem that is said to have arisen, this again is based on an exaggerated assertion of fact different from what the judgment had directed. It was also based on the wrong assumption that such interference has taken place on a number of previous occasions and was therefore likely to be repeated and that it would consequently raise a serious problem, by way of the non-recognition of the medical degrees of the Utkal University. It is necessary to emphasize in this context that the judgment has not in terms declared the students concerned to have passed. The concluding and operative paragraph of the leading judgment of my learned brother Narasimham, J., which has been concurred in by the learned ex-Chief Justice is as follows :

> "I would therefore direct the issue of writ of mandamus on the Syndicate of the Utkal University requiring it to take immediate steps for the publication of the results of the first year M. B. B. S. examination held in April 1951, in exercise of the powers conferred on it by para 2 of Law 3, Chapter XXII and Law 8 of Chapter XXIII".

The short order originally pronounced by the Bench on 9-8-51 immediately on the conclusion of the hearing and pending pronouncement of the detailed reasoning later on, is also in the following terms :

> "On consideration of the merits thereof, we hold that Resolution No. 338 is not warranted by the materials placed before them, and in that respect the Syndicate have not discharged their statutory duties reasonably and with due care, and for that reason too, the aforesaid Resolution should not be given effect to. We therefore direct that a writ of mandamus should issue to the Syndicate of the Utkal University to take steps for publication of the results of the first M. B. B. S. Examination held in April 1951, in accordance with the

powers vested in them under the last paragraph of Clause (b) of Law 2 of Chapt. XXII, and Law 8 of Chapt. XXIII".

What all the Court did, therefore, was to set aside the previous decision of the Syndicate withholding the publication of the results of the examination which had been sent up with the approval of the Board of Examiners, and to direct the publication of the results by the Syndicate in exercise of certain specified statutory powers vested in them, including the power of approval specified in Clause (b) of Law 2 of Chapter XXII. This could only mean that the matter relating to the publication of the results of the candidates concerned received from the Board of Examiners is to be taken from the point at which it was previously dealt with by the Syndicate at its meeting on 21-4-51. It is not reasonable to construe the order as precluding a fresh and independent consideration by the Syndicate from that point if they took care to avoid the mistakes pointed out by the High Court as the reasons for the setting aside of its previous decision. Whatever is the element of further consideration, after receipt of the results from the Board of Examiners, vested in the Syndicate by the Statutory regulations in the normal course that was not in anyway excluded by the order issued. This Court in its judgment did not at all substitute for that element of consideration by the Syndicate, the exercise of its own judgment thereon; nor did it purport or even attempt to do so. I am therefore satisfied that to have represented the judgment of the High Court as having interfered with the internal affairs of the University and of having assumed to itself the functions which legitimately belonged to the Syndicate as regards the publication of the results of the examination, is based on a hasty view thereof, which it was not fair to attribute to the judgment of the High Court. On this aspect of the case, it has been pressed upon us that though it may be that the judgment taken by itself may not be reasonably taken as precluding a fresh consideration of the results of the examination by the Syndicate, the subsequent order dated the 20th of August passed by this Court has that effect. But it must be pointed out that that subsequent order is not in any sense an explanation of the judgment and does not add to it. That order is a fresh order peremptorily directing the publication of the results within three days. It appears to have been passed on the subsequent facts brought to the notice of the Court that in spite of the mandate having been issued on the 10th, no steps had so far been taken for reconsideration or publication of the results by the Syndicate (vide affidavit of G. C. Das dated 20-8-51, para 12). Though a specific meeting for that purpose had been summoned on the 17th all that appears to have been done is merely to decide on the filing of an appeal to the Supreme Court. It abstained from considering the results afresh, taking the off chance of stay being granted. It is only when the abstention from fresh consideration at the meeting of the 17th by the Syndicate was brought to the notice of the Court, that the peremptory order for publication was issued by this court. Thus, finally, the peremptory order for publication was occasioned by the subsequent attitude of the Syndicate as disclosed for the period that elapsed between the 10th and the 20th August. In these circumstances, it was improper on the part of the Editors, to have assumed that the judgment of the High Court raised any serious problem and to present their comments on the case, as though the High Court had "passed" certain students or "allowed" certain students to pass which the Syndicate in exercise of its fair and reasonable consideration had declined to pass. It was also improper to suggest that other Unversities and the outside public are likely to prefer the Syndicate's decision to that of the High Court, ignoring the findings of the High Court that the Syndicate had not acted with due care and judgment. It was also grossly unfair to insinuate improper action which is implied when it was stated that "the students have secured their passes by interference of the High Court."

32. Thus to sum up, taking together the news item of the 23rd and the Editorials of the 26th and the 28th, the position to my mind, is as follows. (1) Improper action has been definitely attributed to the High Court in imputing "unusual zeal"; (2) Improper action has also been insinuated in saying that the students had succeeded in securing passes through the intervention of the High Court (3) The High Court has been incorrectly represented as having interfered with the internal affairs of the University, and wrongly stated as having been unique in so doing. These conclusions are based on an irresponsible appreciation of the Judgment and the orders of the High Court and on a careless assumption of incorrect facts. (4) It has been improperly suggested that the public and the Universities would prefer the verdict of the Syndicate to that of the High Court without even noticing that according to the findings of the High Court the verdict of the Syndicate was one arrived at without the exercise of due care and caution. The implication of this suggestion is that the judgment of the High Court merits ignoring, (5) It has been luridly painted that the case has created a big sensation and that the members of parliament are contemplating agitation in the Parliament in some form or other (allegations regarding the truth of which no attempt has been made to prove by filing affidavits) and that a very serious problem for the Universities and for the State of Orissa has arisen and that the Utkal University, is faced with the problem of "to be or not to be" and that a crisis has developed and that public sympathy will be no doubt with the University in the crisis. The climax is reached with the prayers of the Editor. It is difficult to hold all this to be justified as legitimate comment. No doubt, it has been laid down that :

> "The Judges and the Courts are alike open to criticism. If reasonable argument or expostulation is offered against any judicial act as contrary to law or public good, no Court would or could treat it as contempt of Court". Vide '*Queen v. Gray*[14]',
>
> .

It has been repeatedly pointed out that on the conclusion of a judgment, the Judges and the judgment are given over to the public for criticism. In *Andre Paul Terence Ambard v. Attorney General of trinidad*[15]', the Privy Council have stated as follows :

> "But whether the authority and position of an individual Judge of the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticizing in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way : the wrong-headed are permitted to err therein; provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism and not acting in malice of attempting to impair the administration of justice, they are immune: Justice is not a cloistered virtue; she must be allowed
> to suffer the scrutiny and respectful even though out-spoken comments of ordinary men."

It appears to me however, that even keeping in view these wholesome dicta of very eminent Judges, the news item and the editorial comments, under consideration have definitely crossed the bounds of fair inference and legitimate comment and criticism. They have been conceived in a spirit of hasty and irresponsible appreciation of the action of the High Court and out of a hasty

impulse to whip up undue sensationalism thereof. The news item and the editorial comments have the clear tendency to affect the dignity and prestige of this Court and of thereby disturbing the confidence of the public in its capacity to administer justice evenhandedly and with a due sense of responsibility for any larger issue that may be involved or affected thereby. I have no doubt, therefore, that the publication of the news item of 23rd August and of the editorial comments of 26th and 28th August, published in the Eastern Times and Prajatantra, taken together as far each Journal is concerned constitute contempt of this Court. This, however, does not exhaust the consideration of all that is relevant in proceedings of this kind. It has been strenuously urged by the learned counsel for the contemners that the contempt committed in this case, if any, is of a class which falls within the category of what is known as "scandalizing the Court". It has been contended that contempts of that kind either ceased to be considered contempts at all or at any rate that no notice of them is ordinarily taken. It is no doubt true that in '*Mcleod v. St. Aubyn*[16]', the Privy Council observed that proceedings by way of contempt for scandalising the Court had become obsolete. But that remark was made with reference to the proceedings in England. It would appear however, that that view was not accepted in later cases as shown by the judgment of Lord Russel of Killowen, Chief Justice, in (1900) 2 QB., 36, and by the judgment of Lord Hewart, Chief Justice, in '*Beg v. Editor of the New Statesman*[17]', and in other cases. The Privy Council itself in (1899) AC 549 has recognised that the position in the Colonies may be different. In AIR 1936 PC 141 and '*Lachminarain v. Ibrahim Hussain*'[18], the Judicial Committee has recognised that the jurisdiction to punish for contempt by way of scandalising of Court, at least outside England is still a live one. So far as this country is concerned, there have been quite a number of cases in which it has been held that punishing for contempt committed by scandalising the Court is not to be treated as obsolete. It is enough, in respect of this proposition to refer to the cases '***In*** *Re Motilal Ghosh*[19]', 'In *The Matter Of, Tushar Kanti Ghosh*[20]', '*Emperor v. Murli Manohar*[21]', '*In Re Satyabodha Ramchandra*[22]', '*Emperor v. Marma Duke Pickthall*[23]', 'In the Matter of Habib', AIR 1926 Lahore 1 (FB) 'In *Re Kl Gauba*[24]', 'An Advocate Of Allahabad In The Matter Of', AIR 1935 Allahabad 1; '*M.G. Kadir v. Kesari Narain*[25]', A full and complete exposition of the question raised has been given by his Lordship Sir Asutosh Mookerjee, J., in his judgment in 45 Cal 169 (SB) and it is unnecessary to canvass the same in the present case at any length. The view taken in that case that contempt in the nature of scandalising the Court is not to be treated as obsolete has been followed in all the later cases including the one in 63 Cal 217 (FB). In this last case, even the dissenting Judge did not really contravene the proposition and in fact held that the articles in Amrit Bazar Patrika which came up for consideration in that case constituted contempt. But his Lordship was of the opinion that it was not expedient in that case to punish the contemner by the summary process necessarily involved in such proceedings. I have, therefore, no hesitation in overruling the contention that we cannot hold that any contempt has been committed in the present case by the news item and the editorial comments which have come in for consideration.

33. But the question has still to be considered whether in spite of the finding that a contempt has been committed, the circumstances are such as to call for any substantial punishment. Whether a contempt actually committed is to be followed by substantive punishment and if so, to what extent must depend on the circumstances of the case. It must be recognised that eminent Judges have been unanimous in the view that contempt by way of scandalising the Court, though not obsolete, is not to be meted out with punishment except in very grave cases. The punitive jurisdiction for such contempt of Court is to be exercised only where the imputations against the Court have not merely a tendency to lower the prestige, dignity and authority of the Court as

such, but are of such a serious nature as is calculated to hamper the effective functioning of the Court. It is necessary in this context to keep in mind the following weighty pronouncement of the Privy Council in '*Lachmi Narain v. Ibrahim Hussain*[26]',

> "The cases of contempt which consists of "scandalising the Court" itself are fortunately rare and require to be treated with much discretion. In 1899, this Board pronounced proceedings for this species of contempt to be obsolete in this country, though surviving in other parts of the Empire : but they added : "It is a weapon to be used sparingly and always with reference to the administration of justice" '*Mcleod v. St. Aubyn*[27]', In the matter of a Special Reference from the Bahama Islands, (1893) AC 138 the test applied by the very strong Board which heard the reference was whether the words complained of were in the circumstances calculated to obstruct or interfere with the course of justice and the due administration of the law. In '*Queen v. Gray*[28]', it was shown that the offence of scandalising the Court itself was not obsolete in this country. A very scandalous attack had been made upon a Judge for his judicial utterances while sitting in a criminal case on circuit; and it was with the foregoing opinions on record that Lord Russell of Kiliowen, L. C. J., adopting the expression of Wilmot, C.J., in has opinion in 1765 Wilm., 243 : 97 ER 94 which is the source of much of the present law on the subject, spoke of the article complained of as "calculated to lower the authority of the Judge".

In '*Governor Of Bengal v. Motilal*[29]', it has been laid down by his Lordship Sir Lawrence H. Jenkins, Chief Justice, that before exercising punitive jurisdiction for contempt, it must be shown that it was probable that the publication in question would substantially interfere with the due administration of justice. In the same case his Lordship Sir Ashutosh Mukherjee, J., at p. 124 has stated as follows :

> "The power, it is well settled, must be exercised with caution and only when
>
> the case is clear beyond controversy, because, as Sir George Jessel observed in '*Plating Co. v. Farquherson*[30]', it is an arbitrary jurisdiction. There is no limit to the amount of the fine which may be inflicted or to the length of the term of imprisonment which may be directed; there is no appeal, as a matter of right, against an order of attachment. Besides as observed in *'O'shea v. O'shea'*[31], it is the only criminal offence summarily punishable. The Court will, consequently not make an order for attachment unless it is satisfied beyond dispute that the order is needed peremptorily in the interest of the administration of justice. Reference may usefully be made to the emphatic warning given by eminent Judges against the inconsiderate use of this power: '*Rex v. Parnell*[32]', '*Reg v. Gray*'[33], '*Macleod v. St. Aubuyn*'[34], *Rex v. Doolan*'[35], This reluctance of the Courts to take action except in cases of great gravity may be traced to quite respectable antiquity. Historians record that when Emperor Augustus desired to punish a historian for contempt, Mecaenus advised him that the best policy was to let such things pass and be forgotten.

> Caesar said on a similar occasion that to retaliate was only to contend with impudence and put oneself on the same level, and even Tiberius acted upon the same view. The Theodosian Code also made this the law and expressly declared that slanderers of Majesty should be unpunished for if this proceeded from levity, it was to be despised, if from madness it was to be pitied, and if from malice, it was to be forgiven, for all such sayings were to be regarded according to the weight they bore".

In '*Ananta Lal Singh v. Alfred Henry Watson*[36]', his Lordship Rankin, C. J., has pointed out at p. 261 that a Court's jurisdiction in contempt is not to be invoked, unless there is real prejudice which can be regarded as a substantial interference with the due course of justice. No doubt these two Calcutta cases just referred to are cases relating to contempt committed by way of comments on a pending action. But they are helpful, because the standard of caution to be exercised by a Court in punishing for contempt is more and not less when the contempt committed is by way of scandalising the Court.

34. A careful scrutiny of the decided cases where the punitive jurisdiction of the Court for this class of contempt has in fact been exercised shows clearly that it is where the scandalising of the Court was of a grave nature, or was committed in circumstances which indicated a likelihood of repetition or where such other special circumstances existed that the punitive jurisdiction has in fact been exercised. In '*Queen v. Gray*[37]', the newspaper article concerned was a scandalous personal abuse of Mr. Justice Darling in his capacity as a Judge. In '*In Re Satyabodha Ram Chandra*'[38], the contempt committed was an innuendo that the lower Courts were not giving independent and impartial decisions, but were merely registering the wishes of the executive and were passing sentences already pre-arranged with the executive and consequently, it was useless to appeal to the High Court, for no justice could be obtained there either . In 'IN THE MATTER OF HABIB', AIR 1926 Lahore 1 (FB) the articles which were found to have constituted contempt in effect accused a Judge of that Court as having decided a case not according to the dictates of justice. It was suggested that the judgment was the improper decision of a parasitic judge in order to please and curry favour with others and that justice is closed against the Mahammadans of Punjab. In '*Emperor v. Murli Manohar*[39]', the articles found to have constituted contempt were a scurrilous attack upon the Chief Justice Sir Courtney-Terrell with reference to his judgments in criminal cases in the following terms :

> "It is our deliberate conviction that the life and liberty of a subject must necessarily be in grave peril when the Chief Justice of the highest judicial tribunal in the land ignores the arguments, refuses to consider the authorities that may be cited and in the end produces a judgment full of sound and fury and signifying nothing, except imprisonment so far as the parties are concerned. It is obvious even that the life and liberty of the subject are in danger under the present administration of the criminal law and unless we wish to perish, we must protect ourselves against this new menace".

In 'An Advocate Of Allahabad In The Matter Of', AIR 1935 Allahabad 1, the article which was treated as contempt was the statement that undeserving lawyers had been raised to the Bench and that it was a fairly frequent occurrence in the judicial history of the Allahabad High Court. In 'In The Matter of tushar Kanti Ghosh,' AIR 1935 Cal, 419 (FB), the article which was found to have

constituted contempt stated as follows :

> "It is so unfortunate and regrettable that at the present day, the Chief Justice and Judges find a peculiar delight in hobnobbing with the Executive with the result that the judiciary is robbed of its independence which at one time attracted the admiration of the whole country."

In '*In Re K. L. Gauba*[40]*,'* the contempt that was found was a very scurrilous attack on the Chief Justice of the Court, Young, C. J., with reference to his judicial work. In '*M. G. Kadir v. Keshri Narain*[41]*'* the contempt committed was again a scurrilous attack on the Chief Justice of the Court, Sir Iqbal Ahmed, C.J., with reference to his work as Judge.

35. A review of the cases in which a contempt committed by way of scandalising the Court has been taken notice of, for punishment shows clearly that the exercise of the punitive jurisdiction is confined to cases of every grave and scurrilous attacks on the Court or on the Judges in their judicial capacity, the ignoring of which would only result in encouraging a repetition of the same with a sense of impunity and which would thereby result in lowering the prestige and authority of the Court. The observations of the learned Judges in '*Hunt v. Clarke*[42]*'* and the course they adopted in spite of their finding that contempt was committed in that case are instructive and emphasize the caution required in the exercise of this summary punitive jurisdiction.

36. While therefore, I have come to the clear conclusion that the publication of the news item dated 23rd August and the editorial comments dated 26th August and 28th August in the Eastern Times and Prajatantra constitute contempt of this Court and am also loath to characterize it as "technical" contempt, a somewhat unhappy phrase which has come into vogue lest it should be treated lightly by the contemners and repetition be thereby encouraged, I am of the opinion that the exercise of the punitive jurisdiction of the Court is not called for, by the award of any substantive punishment. I am alive to the consideration that the Court should not shirk its duty to punish when the contempt committed is of a grave nature. But in the present case, the most serious allegation is of "unusual zeal" and the insinuation of improper action, by an irresponsible and hasty appreciation of the judgment and orders of the Court in the background of wrong assumptions of facts. There is however, in this case nothing like the scurrilous abuse, or the sweeping condemnation of the Judges or of the Court, which have been found in the cases noted above, in which punishments have in fact been awarded for such contempt. There is no imputation of habitual incompetency, gross partiality or the like. I cannot also help feeling, what I have already said in an earlier portion of this judgment, that there may have been something in the sequence of the events that led upto actual publication of the results which might have led the contemners to form hasty and wrong impression however irresponsibly, and made them indulge in the sensation-mongering attitude disclosed in these editorials and news items. The court would in such circumstances, out of consideration for its own standards, prefer to let matters alone with a clear indication of its opinion, for future guidance rather than exercise its punitive jurisdiction. Punishment would not be called for in such cases for the vindication or maintenance of the authority, prestige and dignity of the High Court, unless there is reason to think that the libel would be repeated.

37. It is true that the contemners have not offered any apology, nor have they disclosed any

commendable attitude in refusing to disclose the name of their special representative at New Delhi. But the punitive jurisdiction in such cases is exercised for the vindication of the dignity and authority of the Court and not merely for the improper attitude of the contemners. I have also in view the fact that these proceedings were in the first instance, started by the Court itself; that there has also been substantial delay by now after the initiation of the proceedings and the atmosphere generated by the comments may be assumed to have cooled down, and also the fact that the matter had to be argued twice fully on behalf of the contemners by senior counsel from Calcutta. I propose therefore not to award any punishment in this case to the Printers, Publishers, and Editors of Prajatantra and Eastern Times for the contempt they have committed. They are however directed to pay costs to the petitioner in Original Cr. Misc. Case No. 9 of 1951 which is fixed at five gold mohurs.

38. I cannot, however, leave this case without sounding a clear note of warning to the newspapers concerned. It is the duty of this Court to point out to them that by conducting their journals in the manner that has been disclosed in these proceedings, they have brought themselves definitely within the punitive jurisdiction of this Court. If the Court, in the particular case, has let them off, it is only out of consideration for its own dignity and prestige. The news item and the editorial comments which have come in for consideration are certainly of a kind which does not enhance the prestige of the journals concerned. It must also be pointed out that thereby, they have failed not only in their duty to this Court, but in their duty to the general public and to themselves.

39. As regards the contempt charged against the Printer, Publisher and Editor of the Samaj which consisted only of the single news item of 22nd published on 25th, it is unnecessary to take any notice in view of all that was said above.

40. My learned brother has in his judgment touched on the question as to what the position of the law of contempt is in the light of Article 10 (1) (a) and (2) of the Constitution. I should like to reserve my views on the matter as also on the other questions of law dealt with by him relating to the validity of defence by way of truth in contempt proceedings in the nature of scandalising the Court and also on the question relating to the requirement of knowledge of pendency of proceedings in contempts arising in respect of such pending proceedings.

Narasimham, J.

41. I agree with the order proposed by my Lord the Chief Justice. But in view of the importance of the subject I consider it necessary to give my own reasons.

42. The sole question for consideration is whether –

> (a) The news item emanated from the New Delhi office of the U.P.I, dated the 22nd August and published in "Eastern Times" and 'Prajatantra' in their issue of the 23rd August and published in the 'Samaj' in its issue dated the 25th August; and
> (b) the two editorial comments which appeared in the 'Eastern Times' and 'Prajatantra on the 26th and 28th August - amount to contempt of this Court. The offending passages have been quoted in full in the judgment of my Lord the Chief Justice. The relevant facts have also been set out in full in that judgment. I would only add that the joint editor of the 'Eastern Times' is none else than Sri Bhairab Charan Mohanty, M.L.A. who is a

prominent public worker of Cuttack town and whose name figures with equal prominence in my main judgment '*S. K. Ghosh v. Vice-Chancellor Utkal University*[43]', In para (2) of his affidavit dated 14-7-51 in that case he has clearly admitted this fact. If that judgment be perused it will be clear that Sri Bhairab Charan Mohanty was solely responsible for bringing to the notice of the authorities the suspicion of leakage of the questions in Anatomy which induced the Syndicate to cancel the Examination in that subject by its resolution dated the 23rd April 1951 and which eventually culminated in the application under Article 226 of the Constitution by the aggrieved students and the passing of the writ of Mandamus by this Court on the 9th August 1951. Moreover, Sri Bhairab Charan Mohanty is also a member of the Senate of the Utkal University. His interest in this case is therefore obvious and there is a motive for him to take up the cause of the University in an agitation against what he thought to be unusual interference by the High Court into its internal affairs. This fact

should be prominently borne in mind in considering what was the effect which was intended to be produced and which was likely to be produced in the mind of an average reader who peruses the news item and the two editorials in question. The 'Prajatantra1 is nothing but an Oriya translation of the 'Eastern Times' and the Printer and Publisher of both the dailies is the same. The 'Samaj' however, stands on a different footing. Its editor Sri Radhanath Rath has no concern with the University. No editorial comment was made in that paper regarding the judgment of the High Court in the main case. The news item also was not immediately published in the paper of the 23rd. The editor seems to have hesitated for sometime and it was only two days after the publication of the news in the Eastern Times' and 'Prajatantra' that he took the risk of publishing the same in his issue dated the 25th August 1951. He has no motive to take up the cause of the Utkal University against unusual interference by the High Court.

43. The news item purports to be a summary of the special leave application filed before the Hon'ble Supreme Court. It is an incorrect summary because the special leave application (a copy of which was furnished to this Court by the Registrar of the Supreme Court) does not support the allegation contained in the news-item. Whether the publication of an untrue summary of the special leave application would amount to contempt of the Supreme Court is obviously not a point for this Court to consider. Similarly, the editorial comments of the 26th and 28th August on a judgment of this Court at a time when an appeal against the judgment had been filed and was pending before the Supreme Court may or may not amount to contempt of the Supreme Court. But if the said news item and the two editorials also amount to contempt of this Court we have been shown no authority questioning our jurisdiction to continue the committal proceedings in respect of the alleged contempt of this Court. Sir S.M. Bose on behalf of the petitioners also did not challenge our jurisdiction to continue the contempt proceedings on the ground that the offending passages may also amount to contempt of the Supreme Court.

44. A chronology of the various incidents will be helpful.

9th August 1951. Orders passed by this Court in '*S. K. Ghosh v. Vice Chancellor, Utkal*

University[43]', directing the issue of a writ of Mandamus on the Syndicate of the Utkal University to take steps for publication of the results of the first M.B.B.S. Examination in accordance with the powers vested in them in the Statutes (which were specifically quoted) of the University.

10th August 1951. Actual service of the writ of Mandamus on the members of the Syndicate.

17th August 1951.- (i) Delivery of the judgment, (hereinafter referred to as the main judgment) giving full reasons for the issue of Mandamus. (ii) Petitions filed by the Syndicate for --

(a) grant of leave to appeal to the Supreme Court (registered as Supreme Court Appeal No. 15 of 51);

(b) stay of the operation of the writ of Mandamus

20th August 1951.- Stay petition moved and rejected with a direction to publish the results by the 23rd and providing an alternative remedy if the Syndicate would not obey the mandate.

22nd August 1951.- Special leave petition filed before the Supreme Court for leave to appeal against the order of this Court dated the 9th August, the main judgment dated the 17th and the order refusing stay dated the 20th.

23rd August 1951.- (a) Orders passed by the Hon'ble the Vacation Judge of the Supreme Court rejecting the prayer of the Syndicate for ad interim stay and posting the special leave petition and the stay matter for hearing after notice on the 4th September.

(b) Publication of the news item in the 'Eastern Times' and 'Prajatantra'.

(c) Publication of the results by the Syndicate in compliance with the writ of Mandamus dated the 9th August 1951.

25th August 1951. Publication of the news item in the 'Samaja'.

26th August 1951.- Appearance of the first editorial in the 'Eastern Times' and 'Prajatantra'. 27th August 1951- (a) A copy of the order passed by the Hon'ble the Vacation Judge of the Supreme Court dated the 23rd August 1951 received in this Court.

(b) The leave petition S. C. A. No. 15 of 1951 (Orissa) pressed by the Syndicate and opposed by the opposite party. The case adjourned to 29th after being argued at some length.

28th August 1951.- Appearance of the second editorial 'Eastern Times' and 'Prajatantra'.

29th August 1951.- Orders passed adjourning the leave petition till the 17th September in view of the pendency of the special leave petition before the Supreme Court on the same subject-matter.

4th September 1951.- Special leave granted by the Supreme Court and the prayer for stay rejected as having become infructuous.

17th September 1931.- The leave petition disposed of as having become infructuous.

45. It was urged that the news item and the two editorials in question by attributing 'unusual zeal' to this Court and by misrepresenting the main judgment have a tendency to lower the authority

and dignity of the Court. It was also urged that the two editorials having been published at a time when the leave petition was pending before this Court have a tendency to prejudice the fair hearing of that petition on its merits.

46. A leave petition is undoubtedly a 'judicial proceeding' and the Judges disposing of that petition have to decide:

> (i) Whether the main judgment involves a substantial question of law as to the interpretation of the Constitution (Article 132 (D) or
> (ii) Whether the case is a fit one for appeal to the Supreme Court (Article 133 (1)(c)) as involving questions of far-reaching importance. Before the Court finally decides these questions both the parties have a right to be heard and as a matter of fact the petition was actually posted for hearing on the 27th August 1951. A day before that date the first editorial appeared. It says, in substance, that the case is of far-reaching importance not only to the Utkal University but to ail the Universities of India and that consequently it was very desirable to have an authoritative decision of the Supreme Court as to the extent of interference by the High Court into the internal affairs of autonomous bodies like the Universities. Both the editorials strongly advocate the taking up of the case to the Supreme Court in view of the importance of the case. They have therefore a tendency to prejudice the very issue which has to be decided by this Court while passing orders on the leave petition and as such clearly constitute contempt of Court. It was urged that the granting of leave involved considerations of pure questions of law and consequently parties were not likely to be prejudiced by such comments. I am however unable to accept this argument. Even on pure questions of law, parties are entitled to make their submissions before the Justice finally makes up his mind. In the present case it was certainly open to the opposite party in S. C. A. No. 15 of 1951 (Orissa) (the students of the M. B. B. S. class) to urge before this Court on the 27th and again on the 29th August that the case was not a fit one for granting leave to appeal to the Supreme Court. The two editorials have a tendency to prejudice this very question, to deter the students from opposing the leave petition and to embarrass the Judges also in considering judicially whether leave should be granted or not. I think they clearly amount to interference with the due course of justice and as such constitute contempt. Comments by newspapers on pending proceedings have always a tendency to interfere with the due course of justice and have been treated as an aggravated form of contempt and it is immaterial whether the comments affect pure questions of law or fact.

47. It cannot also be urged that the leave petition had become academic or infructuous in this High Court due to the filing of the special leave petition before the Supreme Court on the 22nd August. Doubtless if the Syndicate had either withdrawn their leave petition or agreed not to press the same on the 27th August when it came up for hearing, such an argument would have had, much force. But, as a matter of fact, the leave petition was seriously pressed by the learned Advocate for the Syndicate on the 27th, with full knowledge of the pendency of the special leave petition, and he did not offer to withdraw the leave petition. It was the learned Advocate for the

other side Mr. P. v. B. Rao who objected to our hearing the leave petition on the 27th August on the ground that in view of the pendency of the special leave petition before the Supreme Court it was improper for us to consider the same. Therefore when the two editorials appeared on the 26th, and 23th, the leave petition was not, for all practical purpose, dead but was fully alive and was seriously pressed. This will be clear from a perusal of the order of this Court dated the 29th August 1951.

48. Next it was contended that unless it was affirmatively established that the editor had knowledge of the pendency of the leave petition he was not guilty of contempt even though the editorials might have a tendency to affect the decision in that petition. In support of this argument, reliance was placed on the decision of Chitty, J., in '*Metropolitian Music Hall Co. v. Lake[44]',* That case however is clearly distinguishable on facts. There the contemner stated on affidavit that he was unaware of the pendency of the case in Court and there was nothing to challenge the truth of
the affidavit. Chitty, J., did not say as a proposition of law that where a comment is made on a pending proceeding and the commentator is unaware of the pendency of that proceeding he is not guilty of contempt. All that he said was that where there was no reason to disbelieve the statement of the contemner about his want of knowledge of the pendency it was not desirable to proceed against him for contempt. He however fully recognised the existence of the strict and somewhat severe rule laid down in 'HERBERT'S CASE', (1731) 24 ER 992 where absence of knowledge in a guardianship case was not permitted to be pleaded as an excuse for committing contempt. It will be a dangerous innovation in the law of Contempt to say that a comment on a pending proceeding which has a tendency to interfere with the due course of justice will not amount to contempt unless it is affirmatively established that the commentator had knowledge of such pendency. If such a view be held, it will be very easy for a party to set up persons who are not parties in a pending litigation, to publish with impunity the most damaging articles against the rival party and thus prejudice the fair trial of the case. The essence of the offence of contempt lies in the tendency to interfere with the due course of justice, and motive, good faith or absence of knowledge of the pendency are immaterial. The law regarding knowledge appears to have been correctly pointed out by Byrne, Q. C., in the aforesaid case of the ' *Metropolitin Music Hall Co. v. Lake[45]',*

> "To shew knowledge on the part of the offender is not an obligation laid upon the applicant, but to shew absence of knowledge is an obligation upon the offender if his offence is to be extenuated."

The decision of Chitty, J., only endorsed the above view. In the present case the editor has not sworn any affidavit to the effect that he was unaware of the pendency of the leave petition. Moreover, considering the wide publicity given to the case in Cuttack, the fact that the editor himself is one of the members of the Senate and had practically started the whole trouble it cannot be believed for a moment that when he made the editorial comments on the 26th August and 28th August he was unaware of the pendency of the leave petition. He has not said so and the Court therefore need not speculate and say that he might not have knowledge of the pendency. As pointed out in the course of the argument, in the issue of the 'Eastern Times' of the 28th in which the second editorial comment actually appeared there is also news item reproducing the proceedings of this court in the leave petition dated the 27th and categorically

stating that the leave matter was adjourned to 29th for orders. On the facts of this case therefore I am not prepared to say in the absence of any affidavit from the editor, that he was unaware of the pendency.

49. But I am much impressed with the argument of Sir S. M. Bose that the contempt was of a technical nature and not worth taking serious notice. That the case is of great importance involving questions relating to the extent of interference by the High Court under Article 226 into the affairs of public bodies exercising statutory functions cannot be denied by any person. In fact, in our order dated 9.1.1951 we had ourselves pointed out that the matter involved in the case was of great public importance. In the concurring judgment of my Lord the Ex-Chief Justice also this aspect was emphasised. Again in our order dated the 29th August we pointed out relying on ' *Emperor v. Benoari Lal Sarma*[46]', that though the publication of the results might make the appeal against the main judgment academic that would not prejudice the hearing of leave petition inasmuch as there was a good precedent for entertaining an appeal on questions of law of far-reaching importance even though they might have become academic at the time of the hearing. The leave would, in all probability, have been granted as a matter of course but for the conduct of the Syndicate in filing the special leave petition before the Supreme Court while the leave petition was pending in this High Court. Therefore, the actual effect of the two editorials in interfering with the due course of justice is almost negligible though they have undoubtedly such a tendency. This may be no consideration for the holding of the party guilty of contempt; but I think it may legitimately be taken as an extenuating circumstance for not taking serious notice of this contempt. Sir S. M. Bose cited the case '*Hunt v. Clarke*[47]', where the Court refused to punish a party who was guilty of technical contempt.

50. Next I take up the question as to whether the news item and the two editorials have a tendency to lower the authority and dignity of this High Court. This class of contempt usually known as 'scandalising the Court' is based on the well-known classification first made by Lord Hardwicke in the 'ST. JAMES'S EVENING POST CASE',(1742) 26 ER 683. The essence of such kind of contempt was pointed out by Blackstone in his Commentaries as :

> "The tendency to demonstrate a gross want of that regard and respect which when once Courts of Justice are deprived of, their authority so necessary for the good order of the kingdom is entirely lost among the people".

Justice Wilmot in his famous Opinion in '*King v. Almon*[48]', also emphasised the consequences that will follow if the

> " 'deference and respect which is paid' to the Judges and their acts from an opinion in their justice and integrity is in any way impaired by such Comments".

Though the infallibility of Wilmot's views has been questioned in several subsequent decisions, the existence of this class of contempt in English law has been reiterated again and again in several decisions. In '*Re Martindale*[49]', North, J., said :

> "But there may be and are publications which amount to contempts of Court, although they do not interfere with the course of justice and have been committed when all

proceedings are at an end".

It is true that Lord Morris in '*Mcleod v. St. Aubyn*'[50], went to the extent of saying that this class of contempt had become obsolete in Britain though he recognised the necessity for committal in proper cases for attacks made on Courts in colonies. That this statement went too far was noticed in 'Halsbury's Laws Of England, 2nd Edition Vol. VIII. p. 7. note N. In the very next year in '*Queen v. Gray*[51]',
Lord Russell reiterated in unambiguous terms that :

> "Any act done or writing published calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority, is a contempt of Court".

Doubtless the necessity of exercising great care in using the summary process of the Court for punishing contempts of this nature was also pointed out in the aforesaid decision. But that does not in any way detract from the full force of the observations quoted above. In '*Rex v. Davies*[52]', the principles underlying the cases in which persons making attacks upon Courts were punished were discussed and it was observed (at page 40) :

> "It will be found to be, not the purpose of protecting either the Court as a whole or the individual Judges of the Court from a repetition of them, but of protecting the public and especially those who, either voluntarily or by compulsion, are subject to its jurisdiction from the mischief they will incur if the authority of the tribunal be undermined or impaired".

The following observations of Wilmot, J., were quoted with approval;

> "To be impartial and to be universally thought so are both absolutely necessary for the giving justice that free, open, and unimpaired current which it has for many ages found all over, this kingdom."

In '*Reg v. Editor of the New Statesman*[53]', Lord Hewart pointed out that an attack on a Judge imputing unfairness and lack of impartiality to him in the discharge of his judicial duties would amount to contempt

> "because the gravamen of the offence was that by lowering his authority it interfered with the performance of his judicial duties".

51. The principles laid down in '*Queen v. Gray*'[54], have been followed in several Indian decisions and it is unnecessary to refer to all of them. I would content myself with citing *'Emperor v. Marmaduke Pickthall*[55]', and 'IN THE MATTER OF TUSHARKANTI GHOSE', (63 Cal 217 FB). In the Bombay decision the learned Chief Justice while fully recognising that

> "the confidence of the public in courts rests mainly upon the purity and correctness of their pronouncements and that such confidence is not lightly shaken by a mistake or

unfair criticism of this kind" yet thought it necessary to point out :

"At the same time, it is clear that the tendency of such criticism is to undermine the dignity of the Court and in the end to embarrass the administration of justice. The faith of the public in the fairness and incorruptibility of Judges is a matter of great importance".

In the Calcutta case an editorial comment by a newspaper on a matter which was not pending before the Court was still held to amount to contempt as calculated to undermine the confidence of the public in the administration of justice. Contempts of this class have a general tendency to interfere with the due course of justice by lowering the dignity of the Judge and thereby impairing his authority and effectiveness. But that tendency is of a general nature and may or may not have any connection with any case pending or disposed of or imminent. The distinction between contempt of this class and ordinary libel on a judge was pointed out by Lord Atkin in the well-known case of the Hindusthan Times reported in '*Debi Prasad v. Emperor*[56]', Where there was no criticism of the judicial act of a Judge or any imputation on him for anything done by him in the administration of justice, proceedings for contempt would be clearly misconceived. Again the essential distinction between this class of contempt on the one hand and wrong-headed or even perverse criticism of a judgment on the other, was pointed out by Lord Atkin himself in '*Andba. Paul v. Attorney General*[57]', where before saying that justice was not a 'cloistered virtue' he observed :

"provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice and are genuinely exercising a right of criticism and not acting in malice or attempting to impair the administration of justice they are immune."

52. Sir S. M. Bose urged that the two editorials did not exceed the limit of fair comment on the main judgment of this Court dated the 17th August and that the news item though based on incorrect facts did not have a tendency to lower the authority or dignity of the Court. He traversed the whole of the order of this Court dated the 20th August 1951 and urged that the impression which any one would get from a perusal of that order was that the High Court by judicial coercion and threat of proceedings for contempt had compelled the Syndicate to publish the results of the M. B. B. S. Examination and that thereby it had shown unusual zeal in interfering with the internal affairs of the University. He also relied on certain other passages in that order as giving an impression of 'unusual zeal.'

53. In meeting these arguments of the learned counsel I feel somewhat embarrassed because of my consciousness that the legality and propriety of the main judgment of this Court dated the 17th August and the order of this Court dated the 20th August are now under challenge in the Supreme Court and it will obviously be improper for this Court to make any observation which might have any bearing, direct or indirect, on the questions that may arise for consideration by their Lordships of the Supreme Court. I would therefore try to scrupulously avoid discussion of any matter that is sub judice now in the Supreme Court.

54. The news-item, in substance, says (i) that the special leave petition was drafted by such an eminent personality as Mr. Bakshi Tek Chand, a retired Judge of the Punjab High Court; (ii) that

the said petition contains an allegation to the effect that the High Court of Orissa has displayed 'unusual zeal' in going into the internal matter of the
University and in interfering with the work of the University.An authentic copy of the special leave petition was forwarded to this Court by the Registrar of the Supreme Court and I am unable to find any passage in that petition which either directly or indirectly alleges that the High Court displayed 'unusual zeal' in going into the internal matter of the University and interfering with the work of the University. An attempt was made to show that paras 22 to 29 of the special leave petition might by implication support the statement made in the news-item. This attempt however has not been successful. Those paragraphs and other paragraphs in the special leave petition are of the usual type found in such petitions and do not either expressly or impliedly ascribe 'unusual zeal' to any order of this Court. Therefore when the news-item categorically says that the special leave petition contains an allegation to the effect that the High Court of Orissa has displayed unusual zeal it is obvious that the news item contains an untrue statement of fact. Even when the untruth was fully known to the parties no attempt was made to contradict the untruth or to express regret for the same.

55. In these contempt proceedings the primary question lor consideration is the effect of the news item on an ordinary reader. Has it the tendency to impute something unfair or improper to the High Court and thereby lower its authority and dignity? I have no doubt that an ordinary reader of the news item would get the impression that this High Court has done something unjudicial and therefore improper by displaying 'unusual zeal' against the Syndicate of the University which was a party in the litigation before that Court. Sir S. M. Bose urged that 'zeal' may be for a good cause and that there was no imputation of unfairness in the offending passage. 'Zeal' by itself may be an innocuous word; but as pointed out in the Oxford Dictionary, that the word has a "Contextual tendency to 'unfavourable implications' such as emulation, rivalry or partisanship". As emulation and rivalry are out of question here, imputation or partisanship is apparent. The use of the adjective 'unusual' leaves no doubt as to what was intended. It was meant to convey the impression that partisanship has been shown by this Court because no Court of justice is expected to show 'unusual zeal' for or against, any party. The association of the name of Mr. Bakshi Tek Chand and the untrue statement about the contents of the special leave petition are, I think, deliberate. Apparently the impression sought to be created in the mind of an ordinary reader was that such an eminent personality as Mr. Bakshi Tek Chand who is himself a retired Judge of another High Court had thought it fit to characterize the judgment of this Court as displaying 'unusual zeal'. If in the special leave petition Mr. Bakshi Tek Chand had in fact so characterised the judgment of this Court different considerations may arise; but when he had not made a characterisation and when an untrue statement is associated with his name I have no doubt that a deliberate attempt was made to create an unfavourable impression of this High Court before an ordinary reader. It is in this connection that the fact that the Editor, Sri Bharab Charan Mohanty is a member of the Senate should be borne in mind. The University authorities felt aggrieved by the judgment of this Court and were taking the proper steps in the Supreme Court for challenging the judgment. But when the news item was received here from Delhi, a member of the Senate who is also the joint editor of the 'Eastern Times' thought it a good opportunity to show to the public that the University was the victim of partisanship shown by the High Court in that case. It should also be mentioned that some other cases against the University were then pending in this Court and as a matter of fact they are still pending. The editorial comment of the 26th August shows that the editor of the 'Eastern Times' thought that those cases were also disposed of. But in his issue of the 28th August he admitted that a mistake was made in assuming

that those cases were disposed of. Thus, when some other cases against the University were actually pending in this Court a news item of this nature imputing something improper to the Judges who passed the judgment against the Utkal University in a particular case has not only a tendency to lower the authority and dignity of this Court but also to embarrass the Court in the trial of the other cases.

56. The news item was based on a message transmitted by the New-Delhi branch of the United Press of India and the editor of the local paper may ordinarily assume that no untrue statement would be made by such an agency. I fully realise that the editor at Cuttack could not on the 23rd August have any facility for verifying the correctness or otherwise of the statement contained in the news item. But if he chooses to publish such a news he does it at his own risk. In the 'Eastern Times' of the 23rd August the said news item was said to be "From our New Delhi Representative". The Editor declined to disclose the name of the New Delhi Representative of the paper and stated that he was none else but the New Delhi Representative of the U. P. I. If the Editor of a news paper publishes a news item emanating from the local representative of that paper he cannot escape responsibility if an item of the news is untrue, especially when he is unwilling to disclose the name of that Representative. His good faith or the fact that he trusted his New Delhi Representative can hardly be a ground for absolving him from guilt though they may be taken as extenuating circumstances in his favor, if when the truth came to the light the Editor had immediately published a contradiction and expressed regret for the mistake. But till now no expression of regret has been made for publishing an incorrect statement in the news item.

57. I do not think it necessary to examine whether in fact the order of this Court dated the 20-8 displays 'unusual zeal'. My reluctance is mainly because that order itself is sub judice in the Supreme Court. I would only invite attention to paras 4, 5 and 6 of the subsequent order of this Court dated the 29th August 1951 where the circumstances under which the order of the 20th was passed and the authority on which reliance was placed have been fully pointed out. The Court held on the 20th August after considering the balance of convenience that the results should be published as soon as possible and that if the Syndicate failed to obey the writ of Mandamus issued by the Court the well-known alternative remedy pointed in Halsbury's Laws of England 2nd Edition, Vol. IX, p. 798, para 1359 should be adopted. It may be that the Court's view as regards the balance of convenience was wrong; and it may also be that the Court wrongly applied the principles laid down in the aforesaid passage of Halsbury's Laws of England. These are matters for their Lordships of the Supreme Court to decide. But I am unable to understand how an order passed by this Court hearing the parties on the question of balance of convenience and on the basis of such an authority as Halsbury's Laws of England (cited at the Bar) can be characterised as betraying 'unusual zeal'. I realise that our order of the 29th August was not available to the Editor when he published the news item on the 23rd. But the order of the 29th merely narrates all that happened in the Court on the 20th August and on the other relevant dates. If the Editor would only take the trouble of making enquiries he would have known before the 23rd itself, the circumstances under which the order of the 20th was passed. The case had aroused considerable local interest and the newspapers were publishing reports of the proceedings of almost every date of hearing.

58. On the 20th of August nearly ten days had elapsed since the issue of the writ of Mandamus and no steps had been taken by the University authorities to comply with the same. This Court would have merely stultified itself and reduced itself to the position of a debating society if it had

not taken effective steps for enforcing prompt compliance with the writ. The Order of the 20th, after giving further three days time to the University authorities to comply with the writ, merely pointed out to them the consequences that would follow from disobedience of the writ. Sir S. M. Bose's argument that the said order amounted to judicial threat and coercion is beside the point. A Court must use all coercive process permitted by law to enforce obedience of its orders. If the mere pointing out of the penalty for disobedience of the Court's order is sufficient to justify the characterization of the order as betraying unusual zeal every executing Court will render itself liable to attacks of this type and will not be able to function at all.

59. Apart from all these considerations, I cannot accept Sir S. M. Bose's argument that the news item refers in particular to our order dated the 20th August. It has reference to the orders that were under challenge in the Supreme Court which were (i) the order dated 9th August, (ii) the main judgment dated 17th August and (iii) the order dated the 20th August. It was the main judgment of the 17th August that was the principal order in the whole case which was the principal target of attack in the special leave petition; the orders of the 9th and 20th being merely ancillary or consequential. Once the Court has decided that a writ of Mandamus should issue as prayed for, the order issuing the writ (9th August) or the order directing the enforcement of the writ (20th August) follow as a matter of course. Sir S. M. Bose, very fairly, did not urge that the main judgment would convey the impression of 'unusual zeal'. As regards the order of the 20th August, he urged that by directing the publication of the results by the 23rd an impression may be created that the Syndicate's power of approving the results which was clearly recognized in para 10 of the main judgment was taken away. If the order of the 20th is read isolated from the context there may perhaps be some ground for argument of this kind. But that order must be read along with the contents of the writ of Mandamus dated 9-8-51 and the main judgment. The members of the Syndicate to whom the order of the 20th was primarily addressed also understood it to be nothing else but a direction to comply with the writ of Mandamus issued on the 9th August, by the 23rd August at the latest. This will be clear from a perusal of para 7 of the return of compliance with the writ they filed before this Court on the 23rd August. Therein they have stated that "they have decided to comply with the direction of the writ of Mandamus at once". The writ expressly refers to the powers of the Syndicate under the last paragraph of Clause (b) of Law 2 of Chapter XXII of the Statutes which paragraph alone confers on them the power of approval of the results. Thus none could have and in fact none misunderstood the order of the 20th as in any way modifying the writ of Mandamus dated the 9th August, but only as a peremptory direction to comply with the same by the 23rd August.

60. It is true that the said news item might not have any effect on the judges concerned. They may treat it with the contempt which it perhaps deserves. But in considering the tendency of such a news item one must see the effect which it is likely to produce on an ordinary reader because newspapers are intended for the perusal of the general public. As early as 1881 Jessel M. R. in '*Plating Co. v. Farquharson*[59]*',* pointed out :

> "To justify an order for committal it must be shown that the advertisements on their face would convey to mind of a person of ordinary intelligence that they would tend to interfere with the administration of justice.."

Similarly in '*Emperor v. Marmaduke Pickthall*[60]*',* it was pointed out that :

> "The article as a whole would leave on the mind of an average ordinary reader the clear impression that injustice has been deliberately done on political grounds to some of the accused who apparently were innocent.....We have to consider the natural and probable effect of the article and not only the avowed intention of the Editor."

Authorities regarding this aspect have been collected at page 254 of Tek Chand's Law of Contempt of Court and of Legislature, 2nd Edition. I would only quote the following passage (occurring at the end of page 253 and the beginning of page 254 of that book.

> "The intent has to be inferred from a consideration of the natural meaning of the word used and the impression which they convey to an ordinary reader".

I have no doubt that an ordinary reader of the news item would get an impression that this Court has taken up an unjudicial and partisanship attitude against the University. Such an impression is not only derogatory to the dignity of the Court but must necessarily embarrass the Court in disposing of other pending cases in which the University is a party.

61. The plea of justification put forward by Sir S. M. Bose need not be discussed at length. There is sufficient authority in India for the view that any attempt to justify contempt is itself contempt : (See 'In *re K. L. Gauba*[61]*,)* and '*M. G. Kadir v. Kesari Narain*[62]*',* There is doubtless no direct English decision on the question and '*Coats v. Chadwick*[63]*',* on which the Government Advocate relied deals with a different aspect of the question. So far as I could gather from the English decisions, plea of justification was never put forward in contempts of this type. In '*Queen v. Grey*[64]*',* as well as in '*Reg v. Editor of the New Statesman*[65]*',* where contempt of this class was committed no such plea was ever put forward, and the contemner promptly apologized. That such a plea cannot obviously be taken arises from the essential nature of the difference between a libel against the Judge on the one hand and a libel which may amount to contempt on the other. In the latter class of cases action is taken
'brevi manu' not for the purpose of vindicating the character of the Judge concerned but in the interests of the public at large. Therefore the plea of justification which is a good defense in an ordinary action for libel cannot be applicable in an action for contempt. It was this distinction which seems to have weighed much with Mukherji, J., in his dissentient judgment in 'In the matter of Tushar Kanti Ghosh', 63 Cal 217 (FB) when he discouraged the adoption of the summary process for punishing contempt of this type by saying (at page 243) :

> "The embarrassing situation, in which the Court itself is placed when it adopts that procedure, is apparent; and the disadvantages that it causes to the party brought up before the Court to be dealt with, 'precluding him from taking a plea and depriving him of his defense are obvious'."

62. As regards the tendency of the two editorial comments dated the 26th and 28th and the effect which they are likely to produce on an ordinary reader I have little to add to what my Lord the Chief Justice has stated in his judgment. There is no doubt that the editor did not care to read my main judgment dated the 17th August. He has misrepresented the decision and tried to make it

appear that the Court has done something unique and unknown in the legal world. In para 7 of my main judgment I had relied on In *re G. A. Natesan[66']*, for the view that a Syndicate of a University in India was amenable to the Mandamus jurisdiction of the High Court. The Editor would not care to read that para and yet would make a sweeping observation in his editorial of the 26th to the effect that though the High Court of Madras, Bombay and Calcutta had powers to issue writs

> "curiously enough at no time either in the past or at present the decisions of the Universities have been questioned by the High Courts anywhere in India except in the State of Orissa."

I do not for a moment suggest that it will be reasonable to expect an Editor of a local newspaper like the 'Eastern Times' to be fully conversant with the up-to-date law regarding the extent of interference with the decisions of Universities by the High Courts of India. But when he takes upon himself the duty of commenting on my main judgment and yet would not care to read para 7 where a decision of the Madras High Court was cited and relied upon, and attempts to hold up this High Court as the only Court in the whole of India where the decisions of the University have been questioned I cannot but hold that he deliberately misrepresented the judgment or, at any rate, was so grossly negligent that the plea of fair comment cannot stand. Again as pointed out by my Lord the Chief Justice, there was a very recent decision of the Calcutta High Court reported in '*Samarendra Prosad v. University of Calcutta'[66],* ' (in its issue dated the 23rd April 1951.) where the right of the High Court to interfere with the decision of a University in exercise of its powers under Article 226 of the Constitution was re-affirmed and the plea raised on behalf of the University to the effect that it was a 'domestic tribunal' and as such free from such interference except to a very limited extent as permitted by the law relating to domestic tribunals was negatived. I cannot help observing that the Editor in his unusual zeal (if I may borrow his New Delhi Representative's words) to depict this High Court in an unfavourable light before his readers completely shut his eyes both to the contents of my main judgment and also to the relevant case law on the subject notwithstanding his self-imposed task of commenting on the judgment.

63. He started with a fundamental misconception that in a number of cases the decisions of the Syndicate have been questioned by the judgments of this High Court. This seems to have created an obsession that the effect of such judgments would be to create indiscipline amongst the students and lead them to think that the University is not master of its own affairs. He was alarmed at the prospect of the autonomy of the University being thus jeopardised. When two days later he became aware of his mistake in assuming that other cases against the University have been disposed of by the High Court, he has no doubt published a contradiction in his issue of the 28th: but continued his editorial comment on that date in the same strain. An Editor making fair comment in good faith, would have, on discovering his mistake, made handsome apology in his editorial itself and tried to undo the mischief caused by his first editorial. Instead, I regret to find that in his editorial of the 28th he has worked himself to such a pitch as to say "To be or not to be is the problem which the Utkal University faces to-day", as if the judgment of the High Court in one case would have the effect of killing the University; Exaggeration and hysterical outburst cannot go further.

64. Apart from exaggeration, there is a serious misrepresentation in the editorial of the 28th regarding the true effect of the writ of Mandamus actually issued by this Court. The following passage may be quoted :

> "In these circumstances if the attention of the other Universities and the Council of India is drawn to the fact that the 'students have been allowed by the High Court to pass examinations' which had been declared invalid by the Syndicate."

This attempt to show that the High Court, "allowed the students to pass the examinations" is again based on either a deliberate misreading of the judgment or gross negligence to read the same. There was no question of the High Court arrogating to itself the power to declare any person to have passed any examination of the University. In para 10 of the main judgment it was made absolutely clear that it was primarily the function of the Board of Examiners to pass the results of the examinations and that the Syndicate's function was to publish the same after approval. The provisions of law 8 of Chapter XXIII and the last para of Law 2 of Chapter XXII of the University's Statutes were referred to. It was further pointed out that this power of approval being a statutory power and the Syndicate being a public body, such power of approval or disapproval (as the case may be,) must be exercised with due care and reasonably. The Court held that in the present case the power of disapproval was not exercised with due care and reasonably and therefore directed the Syndicate to take steps for the publication of the results in exercise of the powers conferred on them by those two Laws themselves. The judgment of the High Court did not go further than this. It was always open to the Syndicate on grounds other than those fully dealt with in the judgment, to disapprove the results as passed by the Board of Examiners. But in this case this question becomes academic because apart from the suspicion of leakage of questions as brought to the notice of the Syndicate at its meeting held on the 23rd April 1951, there was absolutely no other ground for disapproving the results as passed by the Board of Examiners. Consequently though in this particular case the Syndicate had no other alternative but to publish the results 'as passed by the Board' it is a travesty of truth to say that the High Court allowed the students to pass the examinations. An attempt to create this impression by such an editorial comment betrays either gross negligence in reading the judgment or deliberate attempt at propaganda, against the High Court and as such does not come within the limits of fair comment. It would have been nearer the truth to say that the Board of Examiners allowed the students to pass the examinations.

65. I am fully aware of the note of caution sounded in all the decisions about the summary process for punishing contempts of this type. It is not to be used for vindication of the Judge as a person or to satisfy his wounded vanity but always with reference to the interests of the administration of justice. As pointed out in '*Queen v. Grey*[67]'.

> "if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good no Court could or would treat that as contempt of Court."

But where reasonable limits of fair comment are exceeded, and the High Court is held up to the public as having done something unjudicial and improper; of having interfered with a nascent University in a manner unknown in other High Courts of India and where the main judgment is misinterpreted (either deliberately or due to gross negligence) and it is made to appear as if the Court had passed those students whom the Syndicate directed to appear for a fresh examination;

at a time when other cases against the University are pending in this High Court, the necessity for taking action brevi manu is apparent. Otherwise the confidence of the public in the fairness of the High Court in deciding cases in which the University is a party will be seriously impaired. I cannot overlook the fact that this state of Orissa is hardly fifteen years old and the High Court also has completed hardly three and a half years of its existence. "The Eastern Times" claims in every one of its issue to be "the only English Daily of Orissa" and "The Prajatantra" is its Oriya counter-part. The only object of the editor in publishing the offending passage was to influence the persons who might read them to sympathise with the University in what he thought was its struggle for survival and to view the action of the High Court in an unfavourable light. Even in '*McLeod v. St. Aubyn*[68]', (on which Sir S. M. Bose relied very much) it was recognised by Lord Morris that though committals for contempt by scandalising the Court had become obsolete in England (which statement itself was disproved in the very next year in '*Queen v. Gray*[69]', yet there may be cases where

> "the enforcement in proper cases of committal for contempt of court for attacks on the Court may be absolutely necessary to preserve in such a community the dignity of and respect for the Court."

Doubtless his Lordship was referring in particular to "small colonies consisting principally of coloured population" but his observations are of wider import and would apply with equal force to those recently created States of India where the Press itself is of recent growth and the public opinion cannot be said to be so fully advanced as to justify our leaving to such public opinion attacks or comments derogatory or scandalous to the Court. I have no doubt that the news item and the two editorials have a tendency to impair the confidence of the public of this State in the impartiality of this Court in cases in which the University is a party and that summary proceedings are necessary for maintaining the position of this Court in public esteem.

66. I may now take up the argument based on Article 19 (2) of the Constitution which had been advanced by Sir S. M. Bose when he first argued the case in October 1951. It was then urged relying on Clause (2) of Article 19 that the fundamental right of freedom of speech and expression conferred on the Press by Clause (1) (a) of Article 19, could be taken away only by the provisions of any existing law relating to contempt of Court. The expression 'existing law' as defined in Clause (10) of Article 366 clearly refers to statutory law (both main and subsidiary) and not to case law. It was therefore urged that the existing law relating to contempt referred to in Clause (2) of Article 19 was limited to statutory law only and not to case law as administered by the High Courts of India prior to the advent of the Constitution. In support of this argument reliance was also placed on the recent decision of the Supreme Court of India in '*A. K. Gopalan v. State Op Madras*[70]', construing the expression 'law' occurring in Article 21 as being limited to State-made law only. This question has been recently discussed in '*State v. Braham Prakash*'[71]. The Government Advocate has drawn my attention to the Constitution (First) Amendment Act, 1951 by which Clause (2) of Article 19 was amended. But I do not think that that amendment has any bearing on this question. The definition of 'existing law' in Clause (10) of Article 388 undoubtedly refers to statutory law. But the opening words of that Article expressly say that the said definition cannot be applied in construing the same expression occurring in Clause (2) of Article 19 "if the context otherwise requires". The makers of the Constitution were fully aware that the law relating to contempt of Court in India was mainly case law based on the English

Common law as interpreted by the English Courts and by the Privy Council. The statutory law relating to contempt in India touches only the fringe of the subject and is to be found in the Contempt of Courts Act, 1926 and some of the provisions of the Criminal Procedure Code, the Indian Penal Code and the Code of Civil Procedure. Contempt which is not ex facie is not dealt with in the Indian Penal Code. The Contempt of Courts Act does not define "contempt of Court". But sub-section (iii) of Section 2 of that Act implies the existence of the offence of 'contempt of Court' outside the provision of the Indian Penal Code. In Article 215 of the Constitution the fact that that every High Court as a Court of Record has power to punish contempt of itself was recognised. The contempt of Court contemplated in this Article could not obviously be that class of contempt dealt with in the Criminal Procedure Code, the Indian Penal Code and the Code of Civil Procedure because those three Codes themselves provide the machinery for punishing contempts of that class. The expression 'Court of Record' has got a well-recognized meaning in English law and Courts of Record have always power to

punish contempt which is not ex facie by summary procedure. Prior to the advent of the Constitution, the High Courts of India have been exercising this power and in the Government of India Act 1935 also the status of High Courts as Courts of Record was recognised in Section 220. Therefore when the makers of the Constitution inserted Article 215 in the Constitution recognising the power of a High Court as Court of Record to punish Contempt of itself and when the Contempt of Courts Act, 1926 does not define "contempt" the obvious inference is that the law relating to contempt as contemplated by them was not the statutory law described in the aforesaid Codes but also the Common law right of every Court of Record recognised in England and applied in India in the various decisions of the High Courts. If the definition of the expression 'existing law' as given in Clause (10) of Article 366 is applied in construing that expression occurring in Article 19 (2) the result would be that the power of the High Court as a Court of Record under Article 215 would become nugatory and the Contempt of Courts Act would become unworkable. I would therefore hold that the definition of 'existing law' in Clause (10) of Article 366 should not be applied in construing that expression occurring in Clause (2) of Article 19 in so far as it relates to the law of contempt of Court because 'the context otherwise requires'. The existing law in so far as it relates to contempt of Court saved by Clause (2) of Article 19 must include not only statutory law but the entire law of contempt as was recognised in India prior to the advent of the Constitution, based on the English common law and the case law as laid down by the High Courts and Privy Council. The Constitution has not in any way enlarged the freedom of the Press in this respect.

67. The analogy derived from the decision of the Supreme Court in '*A. K. Gopalan v. State of Madras*[72]', in construing the expression 'law' in Article 21 will not stand. Even prior to the advent of the Constitution, no person could be deprived of his life or liberty except in accordance with the procedure established by statutory law. There was no common law of England as applied in judicial decisions of Indian High Courts dealing with that subject. Hence Article 21 cannot be of aid in construing Article 19 (2) in so far as it relates to law of contempt.

68. As regards the case against Mr. Sengupta the managing director and the managing editor of the news agency known as the 'United Press of India', though I do not wish to differ from the order proposed by my Lord the Chief Justice I must (with great respect) express my grave doubts about the correctness of his reasonings regarding the liability of Mr. Sengupta. It is well-established that the news-item emanated from the Delhi branch of the U. P. I. which is a limited

company with its headquarters at Calcutta, It is also well-established that Mr. Sengupta is the managing editor and the managing director of that company. When called upon to disclose the name of the representative of the U. P. I. at New Delhi who transmitted the aforesaid news item to the Cuttack dailies Mr. Sengupta declined to furnish the information. He 'has not sworn any affidavit to the effect that the New Delhi branch of the U. P. I. was an autonomous body which was transmitting message direct to the subscribers of the company and that he, as the managing director and the managing editor at Calcutta had nothing to do with the editing or transmission of the news item. He has taken up an attitude of complete silence. The question therefore for consideration is whether
from the admitted fact that the U. P. I. is a limited company with Mr. Sengupta as its managing director and managing editor and that the news in question was transmitted from New Delhi office of the Company he can be held guilty of contempt of Court. The Government Advocate who appeared for the other side could have been of more help if he had secured a copy of the Articles of Association of the U. P. I., Limited or given the Court further information about office at Calcutta for the message transmitted from different branches of the Company. But even in the absence of such additional evidence I think that the fact that Mr. Sengupta is the managing director and the managing editor, is sufficient to fix him with liability for contempt unless of course he can show by affidavit or otherwise that the New Delhi office is completely autonomous and that he has absolutely nothing to do with the editing or transmission of the news in question. The case of Ex Parte Green, (1891) 7 TLR 411 is directly in point. In that case the news agency was a limited company known as the 'Press Association' and when contempt proceedings were started against the manager of the Company he filed an affidavit to the effect that he was in no way responsible for or privy to the alleged transmission of the message and further stated that the duty of supervising and sending the various items of news was performed by the heads of the various departments of the company. Inspite of this plea he was held guilty of contempt of Court and it was observed :

> "If the association is responsible it would only be responsible for something it permitted its manager to do; and if the association were responsible the manager would be so. It is not suggested on the part of Mr. Robbins that the association or any of its members interfere at all in the publication of these paragraphs, and that he has not a free hand as to the management."

The managing director of a limited company in India is the director of the Company who is in the charge of the management of the Company. This follows from a construction of the expression 'manager' occurring in Clause (9) of Section 2 of the Indian Companies Act read with Regulations 71 and 72 in the first schedule to that Act. My lord the Chief Justice has doubt as to whether Mr. Sengupta was the sole managing director or whether there may be other managing directors as well. Mr. Sengupta has entered appearance in this case through his Cuttack Representative Mr. N. K. Swamy and described himself as "Sri B. Sengupta, managing editor and managing director of the United Press of India, Calcutta". If he was one of the managing directors, he would not have styled himself in the aforesaid manner. Moreover, he is also the managing editor of the news agency. The position of the editor of a news agency is analogous to that of the editor of a big newspaper who though wholly unaware of the publication of a particular news-item in his paper has always been held liable for contempt. Mr. Sengupta is obviously the best person to speak about the 'indoor management of the Company' and to say to

what extent autonomy has been conferred on the New Delhi branch of his office and how far the head office of the Company at Calcutta is liable for editing and transmitting the news item. Outside public can hardly know these matters and if he would not disclose information about them he cannot escape responsibility. This inference does not mean the shifting of the burden of proof on an accused to prove his innocence because as is well known, though contempt proceedings are of a quasi-criminal nature the contemner is permitted to give evidence and an adverse inference may be drawn from his refusal to disclose facts specially within his knowledge. In the aforesaid case of Ex Parte Green, an adverse inference was drawn from the fact that the manager did not suggest that the association or any of the members interfered with the publication of the news item or that he had not a free hand as to its management. It was further held in that case that a manager of a news agency who leaves it to the heads of the department of his office to publish whatever comes to them without taking any precautions is clearly responsible for what is done under these general directions. It is not suggested on behalf of Mr. Sengupta that he has no power to issue general directions to the New Delhi branch of the U.P.I. regarding precautions to be taken before disseminating news of the type. It is also not suggested that the New Delhi office sends out the news direct and not through the head office at Calcutta. Moreover, it is now well settled that a limited company is liable for contempt of Court: '*Rex v. J. G. Hammond and Co. Ltd*[73]*.',* If the limited company were liable the manager or the managing director of the company would also be liable as pointed out in the case of Ex Parte Green. My Lord the Chief Justice has relied on In *re 'Motilal Ghose*[74]*',* where the responsibility of the directors of the Amrit Bazar Patrika Limited was considered. There is however a fundamental distinguishing feature between that case and the present case because in that case there was no evidence about the existence of a managing director of the Amrit Bazar Patrika Limited whereas in the present case it is admitted that Mr. Sengupta is the managing director and also the managing editor. If the question turns on fixing responsibility on one of the several directors of a company the discussion in the aforesaid Calcutta case would undoubtedly be of great help.

69. However, I do not think that this is a fit case for expressing dissent from the order proposed by my Lord the Chief Justice in the case against Mr. Sengupta (Original Misc. Case No. 12 of 1951). His liability seems of a vicarious nature and the news item having emanated from the New Delhi branch of his office might, in all probability, have not come to his notice at all. It is however a matter of great regret that an all India news agency like the United Press of India should have transmitted an untrue statement about the contents of the special leave petition and subsequently taken no steps for contradicting the same when the truth was exposed. I would content myself with quoting the following observation of Cave, J., in the case cited above:

> " ..... the association is for the purpose of circulating news among newspapers, and, therefore, everything which goes out is intended to obtain, and will undoubtedly obtain a very wide and large circulation. It is obvious that unless a paper is conducted with considerable care it is very likely that false news will be put in circulation. 'It is obvious also that one of the first duties of the manager would be to take precautions that false news should not get into circulation'. "

70. In conclusion I wish to point out that this judgment is based not only on the affidavits and other papers filed in these contempt proceedings but also on the various orders, affidavits and other papers filed in '*S. K. Ghosh v. Vice-Chancellor, Utkal University*[75]*', in and* Though these

have not been formally marked as exhibits due to
oversight on the part of the office the three cases are so closely inter-linked that reference to the papers and orders passed in the above two cases is absolutely necessary for appreciating the true purport of the offending passages and to consider them in their proper setting. Contempt proceedings though quasi-criminal are of a summary nature and I do not think that the omission to formally mark the relevant papers as exhibits has prejudiced any party. On the other hand, the petitioners themselves, relied very much on the order dated the 20th August though that order also has not been formally marked as an exhibit in the case.
Order accordingly.

Cases Referred.

[1] M.J.C. No, 80 Of 1951 (Ori)
[2]45 Cal 169 : AIR 1918 Cal 988 (SB)
[3](1891) 7 TLR 411
[4](1890) 15 P.D. 59
[4](1889) 37 Wr., 14359 Lt 933
[5](1890) 15 Pd 59
[6]19 Cr Lj 215 (Lah)
[7]40 Mad 125
[8]55 Cal WN 443
[9] AIR 1925 All 253
[10] Dated 17-8-51 In M.J.C. 80 Of 1951 (Ori)
[11]41 Ind App 149 At P. 169 : AIR 1914 Pc 116 At P. 124
[12] M.J.C. No. 80 Of 1951 (Ori)
[13] M.J.C. 80 Of 1951 (Ori)
[14](1900) 2 Qb 35 At P. 40
[15] AIR 1936 Pc 141 At P. 145
[16](1899) Ac 549
[17](1928) 44 Tlr 301
[18] AIR 1934 PC 202
[19]45 Cal 169 (SB)
[20]63 Cal 217 (FB)
[21] AIR 1929 Pat 72 (FB)
[22] AIR 1922 Bom 426
[23] AIR 1923 Bom 8
[24] AIR 1942 Lah 105 (FB)
[25] AIR 1945 All 67
[26] AIR 1943 Pc 202
[27](1899) Ac., 549
[28](1900) 2 Qb 36
[29] AIR 1914 Cal, 69 (SB) At P. 109
[30](1881) 50 Lj Ch 406
[31](1890-15 P.D. 59)
[32](1878 Cox Cc 474)
[33](1900-2 Qb 36)
[34](1899 Ac 549)
[35](1907-2 Ir. Rule 260)
[36] AIR 1931 Cal 257
[37](1900) 2 Qb 36
[38] AIR 1922 Bomb 426
[39] AIR 1929 Pat 72 (FB)
[40] AIR 1942 Lah 105 (FB)
[41] AIR 1945 All 67

[42](1889) 58 LJQB 490
[42A] Dated The 17th August 1951 In M.J.C. No. 80 Of 1951. (Ori)
[43] M.J.C. No. 80 Of 1951 (Ori)
[44](1889) 58 Lj Ch 513
[45] (1889-58 Lj Ch 513)
[46] AIR 1945 Pc 48
[47](1889) 58 Lj Qb 490
[48](1765) 97 Er 94
[49](1894) 3 Ch D 193
[50](1899) Ac 549
[51](1900) 2 QB 36
[52](1908) 1 KB 32
[53] (1928) 44 TLR 301
[54](1900-2 QB 36)
[55] AIR 1923 Bom 8
[56] AIR 1943 PC 202
[57] AIR 1936 PC 141
[59](1881-50 Lj Ch 406)
[60] AIR 1923 Bom 8
[61] AIR 1942 Lah 105 (FB)
[62] AIR 1945 All 67
[63](1894) 1 Ch 347
[64](19005 2 QB 36
[65](1928) 44 T.L.R. 301
[65]40 Mad 125
[66]55 Cal WN 443
[67](1900) 2 QB 36
[68](1889) AC 549
[69](1900) 2 QB 36
[70] AIR 1950 SC 27
[71] AIR 1950 All 556
[72] AIR 1950 SC 27
[73] (1914) 2 KB 866
[74]45 Cal 169 (SB)
[75] M.J.C. No. 80 of 1951 (Ori) S.C.A. No. 15 of 1951 (Ori)