Reportable

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

WP (C) No.4534 OF 2010

Reserved On: 19th July, 2010

% *Judgment Pronounced On: 30th July, 2010*

DEEPAK KHOSLA . . . Petitioner

through : Petitioner in person

VERSUS

UNION OF INDIA AND ORS. . . .Respondents

through: Mr. Sanjiv Sachdeva with Mr. Preet Pal Singh, Mr. Vibhu Verma and Mr. Chitranshul Sinha, Advocates for Union of India
Mr. Rajiv Bansal, Advocate for the respondent No.3 & 5.

CORAM :-
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE REVA KHETRAPAL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The petitioner herein has preferred a petition for criminal contempt of Court. It was filed in the Registry of this Court on 31.05.2010, which has not been listed so far. In that petition, the petitioner has alleged that in some proceedings pending between the petitioner and the opposite party, the opposite party has levelled certain allegations of bias and prejudice against a judge of this Court, which according to him, amounts to contempt of the Court. In this petition, we are not concerned with the merit of the criminal contempt petition preferred by the petitioner. The grievance of the petitioner is against non listing of the said petition on the judicial side.

2. We would like to point out that the petitioner had applied for the consent of the Law Officer, but the Law Officer has declined the same, as in his opinion no case for criminal contempt is made out and his petition is one of civil contempt.

3. The petitioner avers that when he contacted the Registry, he was given to understand that the request of the petitioner for listing the matter has been referred to Hon'ble the Chief Justice of this Court 'administratively'.

4. This procedure is questioned by the petitioner by means of present petition and he has made following prayers:

> "a) Issue a writ of certiorari, and strike down all administrative orders direction or instruction, howsoever called or described, issue by this Court in connection with listing of criminal contempt petitions whereby the petitions are placed before Hon'ble the Chief Justice in chambers for 'administratively' deciding whether or not to place them before the appropriate Bench for 'judicial' disposal.
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> b) Issue a writ of certiorari, and strike down all administrative orders or directions or instructions, howsoever called or described, issued by this Court in connection with listing of criminal contempt petition filed by the petitioner vide Filing Reference NO.88920 dated 31-5-2010.
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> c) Issue a writ of certiorari, striking off the phrase *"with the consent in writing of such Law Officer"* from Section 15(1)(c) of the Contempt of Courts Act so that the Section hereafter reads as under:
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> *15 (1)(c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person.*
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> In the alternative:
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> Issue a writ of mandamus by way of direction to the Respondents to incorporate, and/or make a specifically-worded amendment in the existing Delhi High Court Rules to the effect that:
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> i) The word "consent" in Section 15(2) of the Contempt of Court Act shall be interpreted and acted upon by the Registry as if the word "opinion" was used.
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> ii) Every party shall file a copy of the criminal contempt petition itself alongwith all its annexures with the Law Officer for his/her "opinion" prior to filling the petition with the Registry, and proof of such filing shall be presented to the Registry.

iii) In the event that the Law Officer has not issued any opinion within 7 days (or such period as may be deemed reasonable by this Court), it shall be deemed that his/her opinion is that criminal contempt, *prima facie,* appears to have been committed, and that the petition warrants judicial attention by placement before the Bench concerned.

iv) In the event that his/her opinion is that criminal contempt has not been committed, this opinion notwithstanding, the Registry shall, if still pressed by the petitioner, obtain an undertaking form the petitioner as per format to be suggested, and shall place the petition forthwith for the perusal of the appropriate Bench.

v) In the event that the Law Officer's opinion is that criminal contempt has not been committed and the petitioner is not willing to furnish the suggested undertaking, the Registry shall return such petition to the petitioner as a "defective" petition.

d) To issue a writ of mandamus, directing the Law Officer to issue his "consent".

e) To grant costs for the petition.

f) To pass *ex parte* orders on the above prayers.

g) And pass such other order or further order or orders as this Hon'ble Court may deem fit and proper under the circumstances of the case."

5. It is clear from the prayers extracted above that the main grievance of the petitioner is with respect to the practice adopted by this Court while considering petition for criminal contempt. The practice which is followed is that the matter is taken up by Hon'ble the Chief Justice or the Judge designated by him on administrative side. It is only when on administrative side the matter is cleared for listing on judicial side that it is listed before the appropriate Bench dealing with such criminal contempts. The petitioner admits that this practice is the result of the judgment of this Court passed in the case of ***Anil Kumar Gupta*** Vs. ***K. Suba Rao and Anr.*** [ILR 1974 Delhi 1] wherein following directions were given:

> "(10) The office is to take note that in future if any information is lodged even in the form of a petition inviting this Court to take

> action under the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in section 15 of the said Act, it should not be styled as a petition and should not be placed for admission on the. judicial side. Such a petition should be placed before the Chief Justice for orders in Chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the Court whether to take any cognizance of the information. The office is directed to strike off the information as "Criminal Original No. 51 of 1973" and to file it."

6. However, the submission of the petitioner is that the aforesaid practice is suggested in that judgment is not in accordance with law. The petitioner has averred that this is wrong because of the following reasons:

(i) Firstly, the word "consent" used in the Contempt of Courts Act, if interpreted to mean in the nature of a 'mandatory' go/no-go "permission", is illegal, and in derogation of the fundamental rights of the petitioner enshrined in Article 14, 19(g) and 21 of the Constitution, and in fact, squarely meets the impermissible situation foreseen by Articles 13(1) and 13(2). The violation of his fundamental rights flows from the fact that every person has the right to receive justice swiftly, where justice is delivered by a system of check-and-balances built-in into the justice-dispensation system whereby the stream of justice is "assumed" to remain unpolluted, the carrot-and-stick approach underlying the assumption being that:

- Carrot: swift deliverance of justice;
- Stick: if polluted, the polluter shall be severely punished on the petition of a person desiring the polluter's prosecution.

Therefore, if an 'administrative' fetter is placed on the right of a person to seek the prosecution of another, it

is a violation of the fundamental rights to justice guaranteed in the Constitution.

(ii) Secondly, pursuant to the aforesaid judgment which was clearly passed in the peculiar facts and circumstances of that particular case (and especially does not apply to cases where the consent of the Law Officer has, in fact, been issued in the nature of a 'decline'), this Court is treating the office of Hon'ble the Chief Justice as a kind of "appellate" authority of the Law Officer [Standing Counsel (Crl.)], and that too, in an "administrative" framework rather than a judicial framework, when there is no such provision for either in law.

(iii) Thirdly, it is also his grievance that assuming without admitting that the course highlighted at (ii) is at all legally permissible, the 'administrative' decisions of Hon'ble the Chief Justice are then taken *ex parte*, without granting a hearing to the petitioner concerned, in violation of the most basic principles of natural justice enshrined in the maxim *audi alterum partum.*

(iv) It is also his case that even if Hon'ble the Chief Justice opines that a petition does not warrant placement of the petition for judicial determination, it is the fundamental right of a party to nonetheless seek adjudication of his criminal contempt petition "judicially", notwithstanding whatever the administrative 'opinion' of the Law Officer [Standing

Counsel (Crl.)' and/or Hon'ble the Chief Justice may be.

7. Since advance copy of the petition was served upon the respondents, Mr. Sanjiv Sachdeva appeared for the respondent No.2/UOI and Mr. Rajiv Bansal for the respondent Nos. 3 and 5, viz., Hon'ble the Chief Justice and the Registrar of this Court. They entered caveat to the maintainability of this petition and submitted that the procedure adopted and followed by this Court in entertaining the criminal contempt petition is the result of directions given by the Supreme Court in various judgments and therefore it is not permissible for the petitioner to challenge the same by filing the present writ petition. Accordingly, we have heard the arguments on this aspect viz. the maintainability of the writ petition.

8. Section 2(c) of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act') defines the criminal contempt and this provision is couched in the following language:

> "**Section 2. (c)** "Criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-
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> (i) Scandalizes or tends to scandalize, or lowers or tends to lower the authority of, any court, or
> (ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding , or
> (iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner."

9. Section 14 of the Act deals with the procedure where contempt is in the face of the Supreme Court or a High Court. In respect of other cases, Section 15 provides the manner in which cognizance of such criminal contempts is to be taken, which reads as under:

> "**15. Cognizance of criminal contempt in other cases-** (1) In the case of a criminal Contempt, other than a contempt referred to

in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by -

(a) The Advocate –General, or

(b) Any other person, with the consent in writing of the Advocate – General, (Note:- Ins. by Act 45 of 1976, sec.2)

(c) [(Note:- Ins. by Act 45 of 1976, sec.2)] In relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other persons, with the consent in writing of such Law Officer.

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charge is alleged to be guilty.

Explanation- In this section, the expression "Advocate-General" means-

(a) In relation to the Supreme Court, the Attorney or the Solicitor – General

(b) In relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established.

(c) In relation to the court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf."

10. It follows form the aforesaid provision that the cognizance of criminal contempt can be taken by the Court either on its own motion or on a motion made by the persons listed in the Section. It is for this reason, when a third party wants to bring to the notice of the Court, the commission of a criminal contempt by any person, the consent in writing of the Advocate General/Law Officer is required. Once such a consent is given, the Supreme Court of the High Court, as the case may be, take cognizance of criminal contempt.

11. What would be the position if the Law Officer refuses to give the consent as has happened in this case? Answer is available in the following judgments of the Supreme Court.

12. The first judgment is ***P.N. Duda*** vs. ***P. Shiv Shanker and Others*** [(1988) 3 SCC 167]. The Court in that case dealt with the criminal contempt petition filed by the petitioner against the respondents alleging that the respondent No.1 in his speech delivered at a seminar on "Accountability of the legislature, executive and judiciary under the Constitution of India" organized by the Bar Council of Hyderabad on 28.11.1987 made certain remarks about the judiciary and particularly, the Supreme Court, which were contemptuous in nature and amounted to criminal contempt. A Bench of two Judges, in their separate opinions, took the view that no criminal contempt was made out and dismissed the same.

13. Hon'ble Justice Ranganathan in his separate opinion interpreted Section 15 of the Act in the following manner:

> "54. A conjoint perusal of the Act and rules makes it clear that, so far as this Court is concerned, action for contempt may be taken by the Court on its own motion or on the motion of the Attorney General (or Solicitor General) or of any other person with his consent in writing, there is no difficulty where the court or the Attorney-General choose to move in the matter. But when this is not done and a private person desires that such action should be taken, one of three courses is open to him. He may place the information in his possession before the Court and request the Court to take action: (vide C.K. Daphtary v. O.P. Gupta [1971] Su S.C.R. 76 and Sarkar v. Misra 1981CriLJ283); he may place the information before the Attorney General and request him to take action; or he may place the information before the Attorney General and request him to permit him to move the Court. In the present case, the petitioner alleges that he has failed in the latter two courses-this will be considered a little later-and has moved this "petition" praying that this Court should take suo motu action. The "petition" at this stage, constitutes nothing more than a mode of laying the relevant information before the Court for such action as the Court may deem fit and no proceedings can commence until and unless the Court considers the information before it and decides to initiate proceedings."

14. Inpasse, the Hon'ble Judge also suggested the procedure which should be followed in such cases, in the following terms:

> "..... The form of a criminal miscellaneous petition styling the informant as the petitioner and certain other persons as respondents is inappropriate for merely lodging the relevant information before the Court under Rule 3(a). It would seem that the proper title of such a proceeding should be" In re... (the alleged

contemner)" (see: Kar v. Chief Justice [1962] 1 SCR 320 though that decision related to an appeal from an order of conviction for contempt by the High Court). The form in which this request has to be sought and considered in such cases has also been touched upon by the Delhi High Court in Anil Kumar Gupta v. K. Subba Rao. This case, at the outset, pointed out that the information had been erroneously numbered by the office of the Court as Criminal Original No. 51 of 1978 and concluded with the following observations:

> The office is to take note that in future if any information is lodged even in the form of a petition inviting this Court to take action under Section 15 of the Contempt of Courts Act or Article 215 of the Constitution, where the information is not one of the persons named in Section 15 of the said Act, it should not be styled as a petition and should not be placed before the judicial side. Such a petition should be placed before the Chief Justice for orders in chambers and the Chief Justice may decide either by himself or in consultation with the other judges of the court whether to take any cognizance of the information. The office to direct to strike off the information as "Criminal Original No. 51 of 1973" and to file it.

I think that the direction given by the Delhi High Court sets out the proper procedure in such cases and may be adopted, at least in future, as a practice direction or as a rule, by this Court and other High Courts."

15. It is, thus, clear that the decision of this Court in ***Anil Kumar Gupta (supra)*** delineating the procedure, which is being followed by this Court was affirmed and it was suggested, such a procedure should be followed in future in all such cases.

16. The petitioner, who appeared in person made an attempt to persuade us not to go by the aforesaid observations and submitted that it was merely an opinion of one the Judges in the said case, which was not accepted by the other learned Member of that Bench and therefore, cannot be treated as direction of Court. However, this is only a wishful thinking which ignores the mandate of the Supreme Court in a subsequent case. This very procedure suggested by Justice Ranganathan in ***P.N. Duda (supra)*** has been given approval by three Bench judgments of the Supreme Court in ***Bal Thackrey*** vs. ***Harish Pimpalkhute and Others*** [(2005) 1 SCC 254]. The relevant portion from that judgment is as under:

> “17. In the light of the aforesaid, the procedure laid and directions issued in *Duda's case* are required to be appreciated also keeping in view the additional factor of the Chief Justice being the master of the roster. In *State of Rajasthan v. Praksh Chand and Ors. 998 CriLJ 2012 ,* it was held that it is the prerogative of the Chief Justice of the High Court to distribute business of the High Court both judicial and administrative. He alone has the right and power to decide how the Benches of the High Court are to be constituted; which Judge is to sit alone and which cases he can and is required to hear as also to which Judges shall constitute a Division Bench and what work those Benches shall do.
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> 18. The directions in *Duda's case* when seen and appreciated in the light of what we have noticed hereinbefore in respect of contempt action and the powers of the Chief Justice, it would be clear that the same prescribe the procedure to be followed by High Courts to ensure smooth working and streamlining of such contempt actions which are intended to be taken up by the court suo motu on its own motion. These directions have no effect of curtailing or denuding the power of the High Court. It is also to be borne in mind that the frequent use of suo motu power on the basis of information furnished in a contempt petition otherwise incompetent under Section 15 of the Act may render the procedural safeguards of Advocate-General's consent nugatory. We are of the view that the directions given in *Duda's case* are legal and valid.”

17. The Court did not rest with that, but gave a positive direction to all the High Courts to frame necessary Rules or practice direction in terms of ***P.P. Duda (supra)*** as can be found in the last paragraph of the said judgment:

> “26. Before parting, it is necessary to direct framing of necessary rule or practice direction by the High Courts in terms of ***Duda's case.*** Accordingly, we direct Registrar-General to send a copy of this judgment to the Registrar-Generals of the High Courts so that wherever rule and/or practice direction on the line suggested in ***Duda's case*** has not been framed, the High Courts may now frame the same at their earliest convenience.”

18. The Court made following pertinent observations about the requirement of obtaining consent in writing of the Advocate General as per Section 15 of the Act, which is as follows:

> 20. It is well settled that the requirement of obtaining consent in writing of the Advocate-General for making motion by any person is mandatory. A motion under Section 15 not in conformity with the requirements of that Section is not maintainable. ***[State of Kerala v. M.S. Mani and Ors. 2001CriLJ4284****.”*

19. The consequences of not getting consent of the Advocate General are stipulated in Paragraph 23 of the said judgment in the following manner:

> "23. In these matters, the question is not about compliance or non-compliance of the principles of natural justice by granting adequate opportunity to the appellant but is about compliance of the mandatory requirements of Section 15 of the Act. As already noticed the procedure of Section 15 is required to be followed even when petition is filed by a party under Article 215 of the Constitution, though in these matters petitions filed were under Section 15 of the Act. From the material on record, it is not possible to accept the contention of the respondents that the Court had taken suo motu action. Of course, the Court had the power and jurisdiction to initiate contempt proceedings suo motu and for that purpose consent of the Advocate-General was not necessary. At the same time, it is also to be borne in mind that the Courts normally take suo motu action in rare cases. In the present case, it is evident that the proceedings before the High Court were initiated by the respondents by filing contempt petitions under Section 15. The petitions were vigorously pursued and strenuously argued as private petitions. The same were never treated as suo motu petitions. In absence of compliance of mandatory requirement of Section 15, the petitions were not maintainable."

20. The petitioner accepts that the practice direction of this Court in dealing with the criminal contempt petition is based on the directions given by the Division Bench of this Court in ***Anil Kumar Gupta (supra.)*** What follows from the aforesaid discussion is that ***Anil Kumar Gupta (supra)*** was approved by the Supreme Court in ***P.P. Duda (supra)*** and it was observed that such procedure should be followed by the High Courts and even by the Supreme Court in future. Thereafter, in ***Bal Thackrey (supra)***, the Supreme Court gave categorical direction to the High Courts to follow this procedure in incorporating the same either in rules or by issuing practice direction. Directions of the Supreme Court in ***Bal Thackrey (supra)*** are binding on all the High Courts under Article 141 of the Constitution. Insofar as this Court is concerned, this procedure was already in vogue as a result of direction in ***Anil Kumar Gupta (supra).*** There is now a seal of approval put by the Supreme Court as well. In the wake of this legal position, the

present petition, whereby the petitioner is making an attempt to unsettle the said procedure, is clearly not maintainable. Most of the arguments made by the petitioner are covered and stand answered by the aforesaid dicta of the Apex Court.

21. We may point out at this stage that Mr. Khosla had referred to certain observations in the opinion rendered by Hon'ble Mr. Justice Sabyasachi Mukherjee where the Hon'ble Judge highlighted that there was need to deliver quick and substantial justice to the needy; the procedural wrangle eroding the faith in the justice system; the reasons given by Advocate General or the Solicitor General in giving or not giving his consent were justiciable. However, that would not change or vary the legal position in view of the fact that procedure suggested by HMJ Ranganathan in ***P.P. Duda (supra)*** has not only been accepted by the Supreme Court in subsequent judgment in the case of ***Bal Thackrey (supra),*** whereby positive directions are given to all the High Courts to incorporate there procedure in Rules or practice direction.

22. We, accordingly, dismiss this writ petition *in limine* as bereft of any merit.

(A.K. SIKRI)
JUDGE

(REVA KHETRAPAL)
JUDGE

JULY 30, 2010.
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