

Delhi High Court Sh. Abhendra Kumar Jain vs Shri B.K. Gupta And Ors. on 9 December, 2003 Equivalent citations: 2004 IAD Delhi 398, 108 (2003) DLT 734, (2004) IILLJ 408 Del Author: V Sen Bench: V Sen JUDGMENT Vikramajit Sen, J. 1. In this Petition it has been alleged that the Respondents have not complied with the directions contained in the Order dated August 3, 2001, whereby Hon'ble Mr. Justice Mukundakam Sharma allowed Civil Writ Petition No. 5078/2000, reads as follows: "This writ petition is filed by the petitioner seeking for a direction to the respondents to pay to the petitioner his entire salary in accordance with law, which is due from 1.11.94. It is stated in the petition that the aforesaid action of the respondents in not making payment of the salary due to the petitioner along with benefits of his increments is illegal and without jurisdiction. Counsel appearing for the respondents however, states that since the service book of the petitioner is with the Central Bureau of Investigation (C.B.I.) therefore, no salary could be paid to the petitioner in absence of the said service book. I am not impressed by the aforesaid stand of the respondents. The respondents could have collected the information or obtained copy of the said service book from C.B.I. and could have made the payment to the petitioner of they so desired. Be that as it may, I am informed by the counsel appearing for the respondents that certain orders have now been passed by the respondent on 1.8.2001 to make payment of an interim amount to the petitioner pending final determination of the dues payable to the petitioner. It shall be open to the respondents to pay the interim amount as assessed by them, within a period of a week from today. However, a direction is also issued to the respondents to make payment of all the arrear that is due and payable to the petitioner in accordance with law within a period of three weeks from today failing which the said amount shall carry an interest of 9% p.a. from the date of its falling due till the date of payment. In order to enable the respondents to make payment of the amount due and payable to the petitioner and also to determine and fix quantum of salary, the petitioner shall furnish all the information and the documents as and when the same is asked for by the respondents. The petitioner, for the present, shall furnish to the respondents copies of all the salary bills and the last pay certificate within a period of one week from today. The writ petition stands disposed of terms of the aforesaid observations and directions with a liberty to the petitioner to approach this Court in case this order is not complied with by the respondents with a reasonable time." 2. It is trite to state that for a person to be held punishable under the Contempt of Courts Act, the Order of which disobedience is alleged should be explicit and unambiguous. If two opinions are possible, and the one adhered to and complied with by the Respondents is a plausible one, the Court should eschew the exercise of its powers of committing for Contempt. It is also well established that the powers of Contempt cannot be invoked as a substitute for execution proceedings. 3. In J.S. Parihar v. Ganpat Duggar and Others, , it had been ordered that a seniority list be prepared which was so done. However, this was on the ground that it was not correctly prepared and violated the concerned Order. The Hon'ble Supreme Court made the following pronouncement: "It is seen that once there is any order passed by the Government on the basis of

the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the willful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge can not be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act,. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge the division Bench corrected the mistake committed by the learned single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned single Judge when the matter was already seized of the Division Bench. The appeals are accordingly dismissed. It may be open to the aggrieved party to assail the correctness of the seniority list prepared by the State Government, if it is not in conformity with the directions issued by the High Court, if they so advised, an appropriate forum. No costs'. Similar views have been reiterated in *Ram Kishan v. Raj Kumar*, 2003 (6) Scale 682 as is evident from a perusal of the following Order by which the Petition came to be dismissed.'1. Heard the learned counsel for the parties. 2. Mr. Mukul Rohtagi, the learned Additional Solicitor General appearing on behalf of the respondent-State states that the respondents have complied with the directions issued by this Court. Accordingly, they have prepared the seniority list and intimated to the petitioner his position in the seniority and have also prepared the Register as directed by this Court. Learned counsel for the petitioner, however, disputes the said submission. 3. Considering the dispute, in our view, the contempt proceedings is not the proper remedy. If respondents have not followed the directions, it would be open to the petitioner to file fresh petition for the remaining grievance. 4. Hence, this petition for initiation contempt proceedings is dismissed. Contempt Notice discharged.'4. In *Jharieswar Prasad Paul and Another v. Tarak Nath Ganguly and Others*, opined as extracted below:'The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law, since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of court is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the appellate court for determination of the disputes between the parties., The contempt jurisdiction should be confined to the ques-

tion whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment order does not contain any specific direction regarding a matter of if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes levelled against the courts exercising contempt of court jurisdiction 'that it has exceeded its powers in granting substantive relief and issuing direction regarding the same without proper adjudication of the dispute' in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts'. 5. Where an ambiguity occurs, it has been seen, a party should not be punished. The corollary is that an Order/Judgment can be read by a party, and if it is implemented as the latter genuinely and honestly understands it, its violation would not occur. In this context the following passage of the decision in *Diamond Plastic Industries v. Government of Andhra Pradesh and Ors.* is relevant- "Ms. Shyamla Pappu, learned senior counsel then referred to a report of the general manager, District Industries Centre, Sangareddy, Medak district dated 19th March, 2001 wherein the said officer appears to have taken the view that the claim of M/s. Diamond Plastic Industries was on the basis of the orders made by the BIFR, High Court and the Supreme Court. But the reading of the officer of the order of Supreme Court probably is not correct. At any rate such reading of the concerned officer does not confer a right of the claimant nor would it amount to a violation of the Court's direction so as to take action against the State of Andhra Pradesh and/or officers of State of Andhra Pradesh for non-payment of the amount in question. Unless and until the court is satisfied that there has been a deliberate violation of any positive direction, the question of initiating any contempt proceedings or taking any action against any party under the provisions of Contempt of Courts Act does not arise. Having regard to the facts including the order passed by this Court, already referred to, we do not see any justification for initiating or taking any action against the respondents under the provisions of Contempt of Courts Act. This contempt

petition is, accordingly, dismissed. Dismissal of the contempt petition, however, will not debar the applicant to agitate the claim before an appropriate forum, if the applicant is really entitled to any sum and the forum on being approached, will dispose of the matter in accordance with law.’⁶ It is this exposition of the law which has to be applied to the facts of the present case. As a preface, it has been contended by learned counsel for the Respondent that the Delhi Jal Board had come into existence in 1998 prior to which it was one of the arms of the Municipal Corporation of Delhi. At the relevant period the Petitioner had been serving with the M.C.D. and, therefore, his service records were not immediately and easily available. It is explained by Ms. Mittal, learned counsel for the respondent that it was primarily for this reason that delay has been caused in complying with the said Order. 7. As has been seen the Order takes into contemplation a statement on behalf of the Respondent that an interim amount had been assessed by the Respondents and it is this amount which is directed to be paid within one week. Giving adjustments for holidays which would have occurred in the interregnum a delay of few days would not justify the invocation of punishment for Contempt of Court Orders. A sum of Rs. 5,77,901/-, which according to the Petitioner ought to have been paid by 10.8.2001, has been paid on 23.8.2001. 8. The next grievance is that the entire dues of the Petitioner were to be paid within three weeks from the date of the passing of the Order viz. August 3, 2001. A sum computed by the Respondent at Rs. 86,019/- was paid to the Petitioner on 1.8.2002. The rafter, a further sum of Rs. 1,89,304/- has been paid on 11.3.2003. 9. The Petitioner has claimed interest at the rate of 9% per annum. It must immediately be observed that on a perusal of the Order the consequences of its breach are contained therein inasmuch as interest at the rate of 9% has been ordered. If the Petitioner presses his claim for this interest the natural consequence would be that contempt proceedings would no longer be maintainable, since the relief is really in the nature of the execution of the Order. It cannot be gainsaid that contempt proceedings are not a surrogate or substitute for execution. The position has somewhat been confounded because the Respondent has submitted that it is not liable to pay interest. The averments made in this regard which are unhappily worded, read as under: ‘Further as regards the interest (simple) @ 9% per annum on part A+B+C+D for amount to Rs. 4,41,321/- is concerned, it is stated/clarified that since the individual was running under various penalties since 1980 to date (time to time), (Annexure X attach d), his case for crossing of EB due on 1.4.1979 (under 3rd pay commission) and thereafter EB due on 1.4.1986 under 4th Pay Commission could not materialize. As soon as the same was decided on processing the case on receipt of the photocopy of the service book from the Hon’ble Court, the payment was made to the individual/applicant, without loss of time. Therefore, the claim of the petitioner is liable to be rejected.’ 10. Apart from the explanation for delay mentioned above, viz. that the Delhi Jal Board had been constituted only in 1998, it has also been contended that the positive attitude of the Respondents should also be gathered from the fact that no opposition was offered to the Writ Petition. Keeping all these circumstances in view, and unable to ignore the fact that the sum of Rs. 5,77,901/- had been paid to the Petitioner with

expedition, I do not find this to be a proper case to exercise the punitive powers possessed by the Court under the Contempt of Courts Act and the Constitution of India. It has also been explained that the service records and personal file of the Petitioner were not readily available with the Respondents as these were originally in the possession of the Municipal Corporation of Delhi and had been forwarded to the Court of the Special Judge in the C.B.I. prosecution against the Petitioner. An essential pre-condition for awarding punishment to a party for disobeying an Order of the Court must be the palpable presence of a contumacious and recalcitrant refusal to obey the Order, which is wholly missing in the present case. Since the purpose of the present Petition is not the recovery of sums due, the question of whether the Respondents are liable to pay interest at the rate of 9% per annum, and on which amount and for what period, is left open. All that remains to be considered is whether the amounts for annual increments, non-implementation of granting of ACP Scheme, difference in claims on account of DA/ADA/CCA etc., benefits for crossing of efficiency bar do not fall for consideration in these proceedings. In view of the fact that the Respondents have tendered payments which in their view are payable in accordance with law, whether these calculations are legitimate and proper is also beyond the province of this Court while exercising Contempt jurisdiction. 11. In these circumstances, I do not consider it a fit case for taking any action of alleged disobedience of the Court orders which are allegedly punishable under the Contempt of Courts Act. The Petition stands disposed of in the above terms. The parties to bear their respective costs.