State Of Bihar Etc. Etc vs Kripalu Shanker Etc. Etc on 28 April, 1987

Equivalent citations: 1987 AIR 1554, 1987 SCR (3) 1, AIR 1987 SUPREME COURT 1554, 1987 (2) SERVLJ 96 SC, 1987 BLT (REP) 250, 1987 (4) JT 49, 1987 (3) IJR (SC) 273, 1987 (3) SCC 34, 1987 SCC(CRI) 442, (1987) 2 CIVLJ 242, (1987) 1 SUPREME 620, (1987) 2 SCJ 656, (1987) 2 SERVLJ 96, (1987) 2 CURCC 144

Author: V. Khalid

Bench: V. Khalid, G.L. Oza

PETITIONER:
STATE OF BIHAR ETC. ETC.

Vs.

RESPONDENT:
KRIPALU SHANKER ETC. ETC.

DATE OF JUDGMENT28/04/1987

BENCH:
KHALID, V. (J)
BENCH:
KHALID, V. (J)
OZA, G.L. (J)

CITATION:
1987 AIR 1554 1987 SCR (3) 1
1987 SCC (3) 34 JT 1987 (3) 49
1987 SCALE (1)1070
CITATOR INFO :
RF 1988 SC 782 (45)

ACT:
Contempt of Courts Act, 1971--Notings made by officers on Government files cannot be made the basis of contempt action against them.

HEADNOTE:
The first Respondent who was discharging the functions of a Public Relations Officer in the Bihar Irrigation Department when that post fell vacant in 1979, filed a writ

petition claiming the post for himself when another person was appointed to that post for six months. At the time of hearing, it was represented on behalf of the State that the other person had been appointed only on ad hoc basis for a period of six months and that after the expiry of that period, the matter would be referred to the Public Service Commission and that, at that stage, the case of the first Respondent would also be considered. On this assurance, the petition was allowed to be withdrawn on 19th December, 1979. However, the assurance was not respected and no reference was made to the Public Service Commission for making a regular appointment to the post, and, in April, 1983, yet another person was appointed to the post, again on ad hoc basis, and the same was challenged by 'another writ petition. When that petition was heard, the Advocate General informed the High Court that the appointment was only ad hoc and gave the impression that a regular appointment would be made after the expiry of six months and, on that representation, the High Court disposed of the petition on May 4, 1983, directing inter alia, that the post should be filled up in a regular way, and that, in case the appointment was not made within a period of six months, the ad hoc appointment shall stand terminated. The six months' period was to expire on October 17, 1983, and according to the State Government, the Irrigation Department had written to the Public Service Commission on April 4, 1983 to give concurrence to the appointment of the ad hoc incumbent since it was an ex-cadre post and he had been selected by a Selection Committee but that the concurrence was given only on. April 2, 1985 and thereafter the matter was further examined with reference to the provisions of the Rules governing reservations and a decision was taken to send a requisition to the Public Service Commission for advertising the post. Accordingly, the post was advertised on May 12, 1985, setting out the eligibility criteria for selection to the post.The
2
advertisement was challenged by yet another petition on the ground that the eligibility criteria had been so drafted as to suit only the ad hoc incumbent of the post. The High Court, which summoned the relevant records from the Government, felt, on their examination, that the direction given by it while disposing of the earlier writ petition on May 4, 1983 had been disregarded, and, issued notices to the appellants calling upon them to show cause why they should not be punished for contempt for ignoring the order dated May 4, 1983. The appellants expressed regret but contended that no contempt had been committed by them for the reason that expression of views in the notings made on the files, whether they were right or wrong, did not amount to contempt of Court, as no order had been passed appointing the ad hoc incumbent after October 17, 1983. The officials of the Public Service Commission pleaded that the appointment of the ad hoc incumbent from October 18, 1983 should be treated

as a fresh appointment, that they did not know about the order passed by the High Court, and that though concurrence was given, it had been withdrawn when the correct facts were made known to them.

The High Court, after going through the relevant files of the State Government and the Public Service Commission came to the conclusion that, although the State of Bihar as a juristic person was not liable for contempt for the reason that the Chief Minister had minuted that its order must be obeyed and the Chief Secretary had noted that the ad hoc incumbent should not be granted further ad hoc appointment, the appellants, inspire of the advice of the Advocate General that taking any step to appoint the ad hoc incumbent would amount to contempt of Court, were busy trying to find out how to ignore its earlier order. The High Court further observed that when its earlier direction was that regular appointment should be made through the Public Service Commission, there was no occasion for seeking the concurrence of the latter for the appointment of the ad hoc incumbent. According to the High Court, the whole file gave the impression that the appellant Officers were not reconciled to the orders passed by it earlier. In these premises, the High Court convicted the appellants for contempt and the ad hoc incumbent of the post for abetting contempt sentencing each of them to a fine of Rs.50 in default to suffer simple imprisonment for two weeks.

Allowing the appeals and discharging the contempt orders passed by the High Court,

HELD: Notings made by officers in the files cannot be made the basis of contempt action against each such officer who makes the notings. [10D]

3

(i) A government functions by taking decisions on the strength of views and suggestions expressed by the various officers at different levels, ultimately getting finality at the hands of the Minister concerned. Till then, conflicting opinions, views and suggestions would have emanated from various officers at the lower level. There should not be any fetter on the fearless and independent expression of opinions by officers on matters coming before them through the files. The expression of opinion in internal files are for the use of the department and not for outside exposure or for publicity. To find officers guilty for expressing their independent opinion, even against orders of courts in deserving cases, would cause impediments in the smooth functioning of the Government. [9H; 10A-C]

(ii) Officers of the Government are often confronted with orders of courts which are impossible of immediate compliance for various reasons. They may find it difficult to meekly submit to such orders. On such occasions, they will necessarily have to note in the files, the reasons why the orders cannot be complied with and also indicate that the Court would not have passed those orders if full facts

were placed before them. The notings differ from officer to officer. It may well be that the notes made by a particular officer, technically speaking, is in disobedience of an order of the Court or may be in violation of such order, but a more experienced officer sitting above him can always correct him. We must guard against being over sensitive, when we come across objectionable notings made by officers, some times out of inexperience, some times out of over zealousness and some times out of ignorance of the nuances of the question of law involved. [11A-B]

(iii) The functioning of the Government in a State is governed by Art. 166 of the Constitution. A study of this Article makes it clear that the notings in a file get culminated into an order affecting rights of parties only when it reaches the head of the department and is expressed in the name of the Governor and authenticated in the manner provided in Art. 166(2). Viewed in this light, it cannot be said that what is contained in a notes file can ever be made the basis of an action either in contempt or in defamation. The notings in a notes file do not have behind them the sanction of law as an effective order. It is only an expression of a feeling by the concerned officer on the subject under review. To examine whether contempt is committed or not, what has to be looked into is the ultimate order. The expression of opinion in notes file at different levels by concerned officers will not constitute Criminal Contempt; it would not constitute Civil Contempt either, for the reason that mere expression of a view or suggestion will not bring it within the vice of sub-s. (c) ors. 2 of the Contempt of Courts Act, 1971, [12A-E]

4

Bachhittar Singh v. State of Punjab, [1961] Supp. 3 S.C.R. 713, relied on.

(iv) The internal notes file of the Government, maintained according to the Rule of Business, enjoys quasi-privilege and a disclosure in such communications cannot be made the basis of an action in contempt. The general principle on which confidentiality of State documents should be protected is that if a person is involved in litigation, the Courts can order him to produce all the documents he has which relate to the issues in the case. Even if they are confidential, the Court can direct them to be produced when the party in possession does not produce them, for the other side to see, or, at any rate, for the Court to see. When the Court directs production of these documents there is an implied understanding that they will not be used for any other purpose. The production of these documents in ordinary cases is imposed with a limitation that the side for whose purpose documents are summoned by the Court cannot use them for any purpose other than the one relating to the case involved. [10E-F]

Home Office v. Harman, [1981] 2 W.L.R. 310; Harman v. Secretary of State for the Home Department, [1983] A.C. 280

and S.P. Gupta' v. Union of India, [1982] 2 S.C.R. 365, referred to.

(v) In this case, the Court, after looking into the notes file could have passed appropriate orders giving relief to the affected party and expressing its displeasure at the manner in which its order was implemented instead of initiating action on the notings made in the file. That way the Court would have enhanced its prestige. [18B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 871 of 1986 etc. From the Judgment and Order dated 29.1.1986 of the Patna High Court in Misc. Judicial Case No. 356 of 1985. K.K. Venugopal, Jaya Narain, R.P. Singh, M.P. Jha, B.P. Singh, Ranjit Kumar, Ranjan Dwivedi and P.P. Singh for the appearing parties.

The Judgment of the Court was delivered by KHALID, J. These appeals are directed against the Judg- ment of a Division Bench of Patna High Court in Misc. case No. 356 of 1985. Appeal No. 871 of 1986 is by the State of jointly by Srideo Mishra, Judicial Commissioner, Ranchi (at the relevant time, Secretary-cum-Legal Remembrancer, Depart- ment of Law, Government of Bihar, Patna) and Mrs. Radha Singh, Commissioner, Ranchi Division, Ranchi (at the rele- vant time Additional Irrigation Commissioner., Patna), Appeal No. 933 by Subh Chandra, Jha, Public Relation Offi- cer, Irrigation Department, Government of Bihar, Patna and Appeal No. 1178 by Birkeshwar Prasad Singh, now Professor and Head of Department Political Science, Magadh University (Member, Bihar Public Service Commission, Patna at the relevant time). The appellants have been convicted by the High Court for contempt of its order and have been sentenced to a fine of Rs.50 in default to suffer simple imprisonment for two weeks. The High Court had issued contempt notice against some others also. Those notices were discharged against them.

The background facts necessary can be now stated in brief as follows:

> In the Irrigation Department of the State of Bihar, there existed a post of Public Officer. This post became vacant some time in 1979. One Arun Kumar Verma was appointed to that post for six months. At that time one Kripalu Shan- ker was discharging the functions of Public Relation Offi- cer. He laid claim to that post. He did not succeed. The Secretary to the Department did not accede to his request. Therefore, he filed C.W.J.C. No. 3632 of 1979. When the case came up for hearing, it was represented on behalf of the State that Shri Verma was appointed only on ad hoc basis for a period of six months and that after the expiry of six months, the matter would be referred to the Public Service Commission for consideration and at that stage the case of Kripalu Shankar also will be considered. It is submitted that on this assurance by the State, the petition was al- lowed to be withdrawn as per order dated 19.12.1979. It appears that this assurance was not respected, no reference was made to the Public Service Commission for regular ap- pointment and the matter was kept

in abeyance for a long time. It is stated that in April, 1983, by which time Dr. Jagannath Mishra had become Chief Minister, the State Gov- ernment appointed Subh Chandra Jha as P.R.O. again on ad hoc basis. This gave rise to the filing of petition no. 1534 of 1983 which was disposed of on 4.5.83. It was contended that this appointment was made without any advertisement and without consultation with the Public Service Commission. The learned Advocate General informed the Court when the matter came up for heating that the appointment of Jha was only ad hoc giving an impression that regular appointment would be made after the expiry of six months. On this representation the following order was passed by the Court:

"In the circumstances we direct that the post of Public Relations Officer in the Irrigation Department on which respondent 3 has been appointed on ad hoc basis should be filled up in a regular way. In case the appointment is not made within the period of six months, the ad hoc appointment shah stand terminated. We further direct that the fact that the respond- ent No. 3 has worked on the post on ad hoc basis will not be taken to be a qualification for the purpose of any appointment through regular method on the post of Public Relations Officer."

The six months' period, according to the above order, was to expire on 17.10.1983. The case of the State is that the Irrigation Department had as early as 4.4.1983 written to the Public Service Commission to give concurrence to the appointment of Shri Jha, since his post was an ex-cadre post and since he was selected by a Selection Committee. Concur- rence was given on 2.4.85. The Government thereafter exam- ined the matter in consultation with the Personnel (Adminis- trative) Reforms Department, with reference to the provi- sions of the Rules governing reservations. The Government took a decision to send a requisition to the Bihar Public Service Commission for advertising the post. The Commission finally advertised the post on 12.5.1985, setting out the eligibility and criterion for selection.

Another Writ Petition was filed in the High Court as C.W.J.C. No. 2354/85 with the allegations that the adver- tisement was specially drafted to suit only Subh Chandra Jha. The matter was listed for admission on 13.6.1985. During the hearing of this petition the High Court felt on going through the records including the notes file summoned for production by the Court that its direction in C.W.J.C. No. 1534/83 was disregarded and, therefore, rule was issued upon the respondents to show cause why they should not be punished for contempt of the Court for ignoring its order dated 4.5.1983, in the above mentioned writ petition. The State of Bihar and the Commissioner-cum-Secretary, Irrigation Department who were respondent nos. 1 & 2 before the High Court expressed regret but at the same time con- tended that no contempt had been committed by them for the reason that expression of views in the notings made on the files whether they were right or wrong did not amount to contempt of court and that no order was passed appointing Subh Chandra Jha after 17.10.1983 to invite any contempt action. The third respondent also pleaded similarly and expressed regret for any omission on his part. The Bihar Service Commission and its Executive Officer stated that they had not committed any contempt, that Subh Chandra Jha's appointment from 18.10.1983 should be treated as a fresh appointment, that they did not know about the order passed in petition no. 1534 of 1983, that though concurrence was given, it was withdrawn when the correct facts were

made known to them and that the withdrawal of the concurrence was duly communicat- ed. The other respondents also adopted similar stand in the returns filed by the end.

Arguments in the contempt matter were heard for some time, and they were concluded on 12.8.1985 and the case was posted for Judgment. The Court went through the Government files and the files of the Bihar Public Service Commission. From the noting in the file, the High Court discovered that Mrs. Radha Singh, the then Additional Irrigation Commission- er and Birkeshwar Prasad Singh, Member Bihar Public Service Commission and Sanjeevan Sharma, Section Officer, Bihar Public Service Commission, had also a part in the matter. Notices were, therefore, directed to be issued to them as well. They appeared and were heard on 25.9.1985.

The High Court considered the question of contempt on the following facts, which accord- ing to it were undisputed:

> (i) The ad hoc appointment of S.C. Jha must be terminated on 17.10.1983 as per its order.
>
> (ii) He was still working as P.R.O. with the acquiescence of the concerned officers.
>
> (iii) Concurrence of the Public Service Commission was sought, for his fresh ad hoc appointment.
>
> (iv) The Public Service Commissioner gave concurrence to the ad hoc appointment from October, 1983, by its order in May, 1985.

The High Court expressed itself, of what it felt about the disobedience of its order in para 4 of the Judgment as follows:

> "The State Government has ignored the order of the High Court. It had, therefore, to be made party. The Irrigation Commissioner-cum-Secre- tary is responsible for every act of his Department. It was, therefore, but natural that the proceeding should be drawn up against him also. Shrideo Mishra, Legal Remembrancer was proceeded against, as he advised the State Government on 10.10.1983 to seek concurrence from the Commission in the fresh ad hoc ap- pointment of Subh Chandra Jha knowing ball well the dictate of this Court that services of Subh Chandra Jha must be terminated after the expirty of six months. Incidentally, it may be stated once again that the six months period had expired on 17.10.1983. The Public Service Commission and the Special Executive Officer thereof have been proceeded against for granting concur- rence to the Ad hoc appointment of Subh Chan- dra Jha. Subh Chandra Jha himself has been proceeded against for master minding the whole affair. Proceeding is against him too on that score. The proceeding was initiated against A.U. Sharma on the footing that he was the Irrigation Commissioner in October, 1983 when the service of Subh Chandra Jha had to be terminated. That is how the contemners have been proceeded against."

The High Court found the officers guilty for the reasons given below in Paragraph 22 of the Judgment, which we read so that the approach of the High Court could be properly appreciated.

> "It is necessary to consider the submission urged by learned Advocate-General on behalf of the officers of the State and the public service commission. The General submission was, that notings did not represent the con- cluded decision of the Government, and there- fore, the officers were not liable for con- tempt of court. The proposition advanced by learned Advocate General is rather too wide. A Government file is not an individual's private property. It is public property. The opinions expressed therein are liable to reduce the credibility and the binding nature of the orders passed by the High Court, and that would amount to denigration of the State Judiciary. No officer has the right to abuse the High Court or to ignore the orders passed by the High Court. I do not for a moment contend that for every noting in the file contrary to the view taken by the High Court will amount to contempt of court. It will depend upon the nature of the view noted in the file and whether the nothings are intended to set the High Court's order at nought mali- ciously. In the present case, the order of the High Court was explicit. The Advocate General had advised explicitly that taking any steps to appoint Subh Chandra Jha ad hoc would amount to contempt of court and yet the offi- cers were busy trying to find out how to ignore the High Court order. When the High Court's direction was to make the regular appointment through the B.P.S.C. where was the occasion for seeking concurrence of ad hoc appointment of Subh Chandra Jha. The whole file gives the impres- sion that the officers in the state were not reconciled to the orders passed by the High Court. I am, therefore, unable to hold that some of the officers were not liable for contempt of court."

After considering the factual matrix before the Court, the Court held that there was no disobedience of its order by the Government and that the Government had taken a deci- sion not to continue the ad hoc appointment but observed as follows:

> "The State of Bihar as a jurisdic person has certainly not committed contempt. Because their Chief Minister Shri Chandresekhar Singh wrote on 8.1. 1984 that the High Court order must be obeyed. On 10.3. 1984, the Chief Secretary noted that Shri Jha should not be granted ad hoc appointment ..... the State of Bihar therefore cannot be held to be guilty of contempt of this Hon'ble Court ..... "

After this finding, the High Court held some of the officers of the Government guilty solely on the basis of the views expressed by them in the files, which were not, in fact, accepted by the Government and which were only at the stage of suggestions and views. Shri K.K. Venugopal, the learned counsel for the State contended that it would be unsafe to initiate action in contempt merely on the strength of notings by officials on the files, expressing their views and to do so would imperil the working of various depart- ments in a Government in a democracy and would have far reaching consequences. Some times a view expressed by an officer may be incorrect. The view so expressed passes through various hands and gets translated into action only at the ultimate stage. The views so

expressed are only for internal use. Such views may indicate the line of thinking of a particular officer. Until the views so expressed culmi- nate into an executable order, the question of disobedience of Court's order does not arise. Though the State Government have been found not guilty, the State has filed the appeal to protect its officers from independent and fearless ex- pression of opinion and to see that the order under appeal does not affect the proper functioning of the Government. It cannot be disputed that the appeal raises an impor- tant question of law bearing upon the proper functioning of a democratic Government. A Government functions by taking decisions on the strength of views and suggestions expressed by the various officers at different levels, ultimately getting finality at the hands of the Minister concerned. Till then, conflicting opinions, views and sug- gestions would have emanated from various officers at the lower level. There should not be any fetter on the fearless and independent expression of opinions by officers on mat- ters coming before them through the files. This is so even when they consider orders of courts. Officers of the Govern- ment are often times confronted with orders of courts, impossible of immediate compliance for various reasons. They may find it difficult to meekly submit to such orders. On such occasions they will necessarily have to note in the files, the reasons why the orders cannot be complied with and also indicate that the courts would not have passed these orders if full facts were placed before them. The expression of opinion by the officers in the internal files are for the use of the department and not for outside expo- sure or for publicity. To find the officers guilty for expressing their independent opinion, even against orders of courts in deserving cases, would cause impediments in the smooth working and functioning of the Government. These internal notings, in fact, are privileged documents. Notings made by the officers in the files cannot, in our view, be made the basis of contempt action against each such officer who makes the notings. If the ultimate action does not constitute contempt, the intermediary suggestions and views expressed in the notings, which may sometimes even amount ex-facie disobedience of the courts orders, will nor amount to contempt of court. These notings are not meant for publi- cation.

In our considered view the internal notes file of the Government, maintained according to the vales of business, is a privilege document. if the Government claims privilege or quasi-privilege regarding the notes file we will not be justified in rejecting the claim outright. In this case, the notes file was brought to the Court not voluntarily by the Government. It was summoned for by the Court. The Court can always look into it. The right of the Court to look into any files, can never be denied. The contents of the notes file brought to Court got communicated to the Court because the Court looks into it. It would be dangerous to find an action for contempt, for the views expressed in the notes file, on the discovery of unpleasant or unsavory notes, on a perusal of the notes file by the Court, after getting them summoned. This would impair the independent functioning of the civil service essential to democracy. This would cause impediments in the fearless expression of opinion by the officers of the Government. The notings on files differ from officer to officer. It may well be that the notes made by a particular officer, in some cases, technically speaking is in disobedi- ence in an order of the Court or may be in violation of such order but a more experienced officer sitting above him can always correct him. To rely upon the notings in a file for the purpose of initiat-

ing contempt, in our view, therefore, would be to put the functioning of the Government out of gear. We must guard against being over sensitive, when we come across, objec- tionable notings made by officers, sometimes out of inexpe- rience, sometimes out of over zealousness and sometimes out of

ignorance of the nuances of the question of law involved. Now, the functioning of Government in a State is gov- erned by Article 166 of the Constitution, which lays down that there shall be a council of ministers with the Chief Minister at the head, to aid and advise the Governor in the exercise of his functions except where he is required to exercise his functions under the Constitution, in his discretion. Article 166 provides for the conduct of Government business. It is useful to quote this Article:

> "166. (1) All executive action of the Govern- ment of a State shall be expressed to be taken in the name of the Governor.
>
> (2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Gover-

nor, and the validity of an order or instru-

ment which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion."

Articles 166(1)requires that all executive action of the State Government shall be expressed to be taken in the name of the Governor. This clause relates to cases where the executive action has to be expressed in the shape of a formal order or notification. It prescribes the mode in which an executive action has to be expressed. Noting by an official in the departmental file will not, therefore, come within this Article nor even noting by a Minister. Every executive decision need not be as laid down under Article 166(1) but when it takes the form of an order it has to comply with Article 166(1). Article 166(2) states that orders and other instruments made and executed under Article 166(1), shall be authenticated in the manner prescribed. While clause (1) relates to the mode of expression, clause (2) lays down the manner in which the order is to be authenticated and clause (3) re- lates to the making of the rules by the Governor for the more convenient transaction of the business of the Govern- ment. A study of this Article, therefore, makes it clear that the notings in a file get culminated into an order affecting right of parties only when it reaches the head of the department and is expressed in the name of the Governor, authenticated in the manner provided in Article 166(2). Viewed in this light, can it be said that what is con- tained in a notes file can ever be made the basis of an action either in contempt or in defamation. The notings in a notes file do not have behind them the sanction of law as an effective order. It is only an expression of a feeling by the concerned officer on the subject under review. To exam- ine whether contempt is committed or not, what has to be looked into is the ultimate order. A mere expression of a view in notes file cannot be the sole basis for action in contempt. Business of a State is not done by a single offi- cer. It involves a complicated process. In a democratic set up it is conducted through the agency of a large number of

officers. That being so, the noting by one officer, will not afford a valid ground to initiate action in contempt. We have thus no hesitation to hold that the expression of opinion in notes file at different levels by concerned officers will not constitute criminal contempt. It would not, in our view, constitute civil contempt either for the same reason as above since mere expression of a view or suggestion will not bring it within the vice of sub-section

(c) of Section 2 of the Contempt of Courts Act, 1971, which defines civil contempt. Expression of a view is only a part of the thinking process preceding Government action. In the case of Bachhittar Singh v. The State of Punjab, [1962] Suppl. 3 SCR 713 a Constitution Bench of this Court had to consider the effect of an order passed by a Minister on a file. which order was not communicated. This Court, relying upon Article 166(1) of the Constitution, held that the order of the Revenue Minister, PEPSU could not amount to an order by the State Government unless it was expressed in the name of Rajpramukh as required by the said Article and was then communicated to the party concerned. This is how this Court dealt with the effect of the noting by a Minister on the file:

> "The question, therefore, is whether he did in fact make such an order. Merely writing some- thing on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then if has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones."

This Court observed in this Judgment that business of State is a complicated one and has necessarily to be con- ducted through the agency of a large number of official and authorities. Before action is taken by the authority con- cerned in the name of the Rajpramukh which formality is a Constitutional necessity, nothing done would amount to an order creating rights or casting liabilities on third par- ties. It is possible, observed this Court, that after ex- pressing one opinion about a particular matter at a particu- lar stage a Minister or Council of Ministers may express quite a different opinion which may be opposed to the earli- er opinion. In such cases, which of the two opinions can be regarded as the order of the State Government. It was held that an opinion becomes a decision of the Government only when it must be communicated to the person concerned and that this is the essence of the matter. We seek support from these observations for our purpose that notings in a notes file, not only of officers but even that of a Minister will not constitute an order to affect others unless it is done in accordance with Article 166(1) and (2) and communicated to the person concerned.

In England, absolute privilege is given to statements made by one officer of a State to another and such state- ments are protected in the context of law of defamation. Section 123 of the Evidence Act deals with privilege. We have already stated that State communications or acts of State in Public interest, enjoy privilege and if that be so, disclosure in such communications made to the court will not constitute either contempt or defamation. In any case such internal communications enjoy

quasi-privilege and a disclo- sure in such communications cannot be made the basis of an action in contempt.

We have seen how the High Court approached the whole question from paragraph 22 extracted early in the Judgment. It is clear that the High Court based its conclusion purely on the notings in the file. The High Court felt that the officers of the Govern-

ment did not like the orders passed by it and this, accord- ing to the High Court, was evident from the files before it. The High Court summed up its conclusion as follows in para- graph 24 of the Judgment:

> "To sum up, contempt of this Court has been committed by Shri Deo Mishra, Legal Remem- brancer, Mrs. Radha Sinha, I.A.S. then working as Additional Commissioner, Irrigation Depart- ment and now working as Additional Finance Commissioner, Dr. Birkeshwar Prasad Singh, Sanjeewan Sharma and Subh Chandra Jha and I convict them accordingly. In regard to sen- tence, I am clearly of the view that there was motivation for it. The hand of the moving spirit has, however, remained concealed. It appears that the feeling amongst high officers of this state is that the High Court will not punish them for contempt of the High Court, as they are high officers and that all that the High Court will do in case of contempt of court is to give lectures and at times rant at them. To remove this misconception it is essential to impose upon them a fine of Rs.50 (Rupees fifty) each on all the five persons mentioned above, in default to suffer simple imprisonment for two weeks. The rule issued against J.C. Kundra, A.K.M. Nassan. A.U. Sharma and Arjun Prasad is discharged."

We see that the High Court felt that there was an at- tempt on the part of the officers to disobey its orders. The officers had tendered apology. This was not accepted. We are concerned more than anyone in upholding the dignity and prestige of the High Court, but we have a duty at the same time to lay down the law correctly. We feel that the convic- tion entered by the High Court purely on the basis of the notes file cannot be justified.

The High Court was under the impression that all the officers acted in unison to help the 5th respondent. We now deal with his case separately. He is described by the High Court as the Kingpin of the whole drama and according to the High Court everybody concerned acted for his benefit. There is a veiled suggestion that he would not have achieved what he wanted except with the help of political forces and that there is an un-seen hand behind what he achieved. He was found guilty of abetting the contempt. -

According to him he has been made a scape-goat, that his is an unfortunate case of a journalist, appointed as Public Relation Officer on ad-hoc basis for six months as recom- mended by a selection commit-

tee at an interview held along with seven other candidates. He joined service after such a selection on 18-4-1983. As per the order of the High Court, the period of six months for making the regular appointment to his post was to expire on 17-10-1983. Long before this date, the Irrigation Department had written to the Public Service Commission stating that the post held by the appellant was an ex-cadre post and that concurrence may be accorded for his appointment. This was an internal letter. The Government sent a requisition to the Public Service Commission for advertising the post on 10-8-1984. The Commission ultimately made the publication on 12-5-1985 stating the eligibility and criteria for selec- tion. It was this publication that promoted the filing of the writ petition in question in which the order that gave rise to the contempt proceeding was passed. Regular appointment pursuant to the advertisement was stayed. The appellant thus continued at the post.

According to him he has not disregarded the order of the High Court. The Bihar Public Service Commission gave concur- rence for his appointment for six months. The post of P.R.O. being an ex-cadre post since its creation in 1955, the post could not be filled up by giving promotion to anyone working in the department. It was constituted to interview candi- dates and to recommend a suitable person. The appellant continues to function on the strength of the orders passed in his favour and he cannot be held to have committed con- tempt of the High Court's order. He has stated that he had no notice in the writ petition filed by Kripalu Shankar or the writ petition from which the present contempt arise. Though he was made a party no notice was ever issued to him and no direction was given to him by the High Court. Accord- ing to him, apart from a general observation that he abetted in disregarding the order of the High Court nothing specific has been attributed to him. His unqualified apology was also not accepted by the High Court. He also relies upon the fact that he was not paid salary from 18-10-1983 to date in re- inforcement of his submission that he has not committed any contempt.

With respect to the learned Judges, we find it difficult to agree wholly with them regarding the finding that the appellant was guilty of contempt. We do not have sufficient materials before us to conclude that the appellant exercised political clout to further his interest in utter disregard of the orders of the Court. Although it may be said that the conduct of the appellant is in some measure suspect, we do not find sufficient justification to enter a finding that he is guilty of contempt and that he acted in utter disregard of the High Court's order. It is useful to remember that apart from the notes file, there is no indepen-

dent material before us to held that the appellant had committed contempt. The Government pleader and the Advocate General had clearly advised the Government to act in accord- ance with the directions given by the High Court. The Minis- ter who is the ultimate authority also acted in obedience to the orders of the High Court. That being so, we find it difficult to agree with the finding that he is guilty of criminal contempt. The High Court felt that his was not a fit case to accept the unqualified apology tendered. Howev- er, we find, that on materials placed before us, it is not proved beyond doubt that he had committed contempt. We would, therefore, give him benefit of doubt and purge him of the contempt found against him.

We would like to outline the general principle on which confidentiality of State documents should be protected. The general principle is that if a person is involved in litiga- tion, the Courts can order

him to produce all the documents he has which relate to the issues in the case. Even if they are confidential, the Court can direct them to be produced when the party in possession does not produce them, for the other side to see or at any rate for the Court to see. When the Court directs production of those documents there is an implied understanding that they will not be used for any other purpose. The production of these documents in ordinary cases is imposed with a limitation that the side for whose purpose documents are summoned by the Court cannot use them for any purpose other than the one relating to the case involved.

Miss Harman's case Home office v. Harman, [1981] 2 WLR 310 may give some assistance for this aspect of our discus- sion. The facts are as follows:

> Miss Harman, a Solicitor, acted for a criminal, Michael Williams who was in prison serving a long sentence for robbery of the bank. He complained that he was subjected to cruel and unusual punishments while in prison contrary to the Bill of Rights and accordingly brought an action for damages against the Home Office. Miss Harman acted for him as a legal aid counsel. Miss Harman got an order for discov- ery against the Home Office. The Home Office did not raise any objection regarding the production of the documents. However, it objected the use of the documents by the Group, called "The National Council for Civil Liberties". Accord- ingly the documents were brought to Court and they were read out in open Court. Miss Harman passed the bundles of the documents to a journalist and a write up appeared in 'The Guardian' which was highly critical of the Home Office. The Home Office took proceedings against Miss Harman for contempt of Court. She was held guilty for contempt by the High Court and was confirmed by the Court of Appeal and by the House of Lords. In the Court of Appeal, Lord Denning, despite his liberal views, while upholding the right of the Court to read documents relating to cases while conceding also the liberty to those present in Court to listen when those documents were read and the reporter to take down what was read, did not extend to the press a right to any further use of the confidential documents or any further dissemination of their contents without the consent of the owner. It is of no use to plead the freedom of the press, he said, that freedom is itself subject to restriction. Public confiden- tial documents, it was said, should be kept confidential in the public interest and should not be exposed to the ravages of outsiders. When the House of Lords' decision in Harman v. Secretary of State for the Home Department, [1983] AC 280 upholding the Court of Appeals was rendered, there was great hue and cry that the ruling meant "a black day for press freedom .... ". Even so, Lord Denning regretted that the Court ever ordered disclosure of the documents and observed that the "legal milestone will have to be taken up and set back a bit."
>
> In Bachittar Singh's case (supra), privilege was claimed regarding the production of which was sought, embodied the minutes of the meetings of the Council of Ministers showing the advice which the Council ultimately give to the Rajpra- mukh. This Court held that these documents fell within the category of documents relating to the affairs of State within the meaning of Section 123 of the Evidence Act and were protected

under the said Section. Though the ratio of this decision outlines the conservative view in the law relating to privilege, we are not unmindful of the fact that the doctrine of privilege received a shock treatment against the State at the hands of this Court in the Judges' case, S.P. Gupta & Ors. etc. etc. v. Union of India and others etc. etc., [1982] 2 SCR 365. May we say that the legal milestone in Gupta's case, also needs a retreat, a bit. Before parting with this case we would like to observe the need for restraint and care in dealing with the internal files of the Government. We have already indicated its privileged position and limited areas where exposure is permissible of the notings in the file. This is not to say that absolute privilege can be claimed of its exposure and protection from the view of Courts. But what is to be borne in mind is that the notings in the departmental files by the hierarchy of officials are meant for the independent dis- charge of official duties and not for exposure outside. In a democracy, it is absolutely necessary that its steel frame in the form of civil service is permitted to express itself freely uninfluenced by extraneous considerations. It might well be that even orders of Court come in for adverse re- marks by officers dealing with them, confronted with diffi- cult situations to straight away obey such orders. Notings made on such occasions are only for the benefit of the officers concerned. When a subordinate official commits a mistake higher official will always correct it. It is neces- sary for Courts also to view such notings in the proper perspective. In this case, the Court, after looking into the notes file could have passed appropriate orders giving relief to the affected party and expressing its displeasure at the manner in which its order was implemented instead of initiating action on the notings made in the file. That way the Court would have enhanced its prestige. It will not serve either the healthy working of the civil service, public interest or democratic norms to pro- ceed in contempt against officials solely on the basis of minutes in the internal files, notings which might even be unsavory or even derogatory to an order of the Court, but which get ultimately corrected by the head of the depart- ment, ending with an order under Article 166(1) and (2) in the name of the Governor in the proper form. We are con- scious of the fact that the learned Judges felt that there was a deliberate attempt to act against their order. We are not unmindful of the indignation shown by them at the not- ings in the file. The only reason why we feel constrained to disagree with the High Court's order is our anxiety to delineate the limits of judicial power while dealing with files of the Government and also of the Public Service Commission, a high Constitutional authority. It is necessary to have mutual respect among the various wings of the admin- istration, in the process of disposal of justice. We allow these appeals and discharge the contempt orders passed by the High Court with utmost reluctance in view of the far reaching consequences that would flow if the judg- ment was allowed to stand. We are happy that the appellants have tendered their regret and apology to the High Court and have reiterated their regret in this Court also.

H.L.C. Appeals allowed.