Tirupati Balaji Developers Pvt. Ltd. ... vs State Of Bihar And Ors on 21 April, 2004

Equivalent citations: AIR 2004 SUPREME COURT 2351, 2004 (5) SCC 1, 2004 AIR SCW 2522, 2004 AIR - JHAR. H. C. R. 1697, 2004 (4) COM LJ 171 SC, 2004 (4) SCALE 724, 2004 (5) ACE 99, 2004 (6) SRJ 89, 2004 (3) BLJR 1908, 2004 (2) ALL CJ 1335, 2004 (3) SLT 574, (2004) 4 COMLJ 171, (2004) 3 JCR 72 (SC), (2004) 2 JCR 445 (JHA), (2004) 4 MAD LW 429, (2004) 3 PAT LJR 106, (2004) 3 SUPREME 445, (2004) 4 SCALE 724, (2004) 2 JLJR 338, (2004) 3 BLJ 177, (2004) 19 INDLD 803

Bench: R.C. Lahoti, Ashok Bhan

CASE NO.:
Special Leave Petition (civil) 2004 of 2002

PETITIONER:
TIRUPATI BALAJI DEVELOPERS PVT. LTD. AND ORS.

RESPONDENT:
STATE OF BIHAR AND ORS.

DATE OF JUDGMENT: 21/04/2004

BENCH:
R.C. LAHOTI & ASHOK BHAN

JUDGMENT:

JUDGMENT 2004 Supp(1) SCR 494 (CC Nos. 8071-8072 of 2002) The Order of the Court is as follows Hon'ble Justice R.C. Lahoti A Division Bench of the High Court of Judicature at Patna is seized of a hearing in public interest exercising its jurisdiction under Article 226 of the Constitution. The High Court is feeling concerned over the drainage system, the sewerage system, the drinking water supply system, the kerb on the road being in shambles and reallocating of footpaths. The High Court seems to have chosen one road as model habitat area so as to set an example for other roads conforming with the discipline governing urbanization and urban planning according to law and ensuring that future generations get a safer city to live in, a civic city, with civic amenities, for the benefit of civic citizens. The High Court has been issuing orders in the nature of continuing mandamus and has also been monitoring the compliance. On 1.10.2001, the High Court passed an interim order containing the following directions : (a) the street alignment is in a straight or a gentle curve natural to the road and the set backs, from the centre of the road, as indicated in the details given to the court in column 3, are maintained. Buildings eclipsed by a 110' (feet) distance on either side of the road are to be identified; (b) the storm-drain will be planned so that they run contiguous to the boundary alignment of the six properties shown and measured, reference order dated 28

September, 2001; (c) the flanks/footpaths/side walks will run parallel in a straight line between the storm-drain and the carriage width of the metal road; and (d) At any intersection of the Bailey Road, a diameter of 100 metres from the centre of the road will be planned as a protected area and set backs laid so that there is no blind spot or obstruction to sight, Minimum frontage and set back off this circumstance is to be maintained at 110' (feet). One of the effects of the proceedings before the High Court and the orders passed therein was the restraint of all construction work on the entire stretch of the public street, the Bailey road, within 110 feet from the centre of the road on either side. The local authorities were restrained from approving any map for construction within the said stretch of the area.2. It appears that there were a few builders/developers engaged in construction activity and the interim order dated 1.10.2001 had the effect of bringing their construction activity to a standstill substantially. On 17.9.2002, seven of them filed a petition in this Court seeking special leave to appeal against the the High Court's order dated 1.10.2001. In the cause title they had described themselves as interveners/ petitioners. It appears that they were not parties to, nor were noticed in, those, proceedings in which the order dated 1.10.2001 came to be passed, at least they say so in their application seeking permission to file SLP accompanying the SLP. When the matter came up for hearing before this Court on 28.10.2002, an obvious query raised by the Court and put to the learned counsel for the petitioners was that if, on their own showing, they were not parties impleaded before the High Court, then why should they not approach the High Court putting forth their case and grievance, if any, and pray for vacating or modifying the interim order dated 1.10.2001 passed by the High Court. The learned counsel for the petitioners seems to have brought to the notice of this Court that the petitioners had already applied for vacation of the interim order dated 1.10.2001 before the High Court. This Court, in its order dated 28.10.2002, held - "In that view of the matter, we are not inclined to entertain these petitions and the same are, accordingly, dismissed. The petitioners may approach the Hon'ble the Chief Justice for expediting the hearing of the said matter. We hope and trust that the matter would be decided at an early date."

3. On April, 5, 2003, I.A. Nos. 8-9 of 2003 were filed by the petitioners in this Court submitting that their applications praying for vacating of the interim order dated 1.10.2001 were already filed on 16/17.7.2002 but till date no date has been fixed for hearing the stay vacate application of theirs. It is also mentioned in the application that mentioning slips were submitted which were taken on record to be put up when the bench in available. It was further stated that after the order of this Court dated 28.10.2002 such mentioning slips were filed before the Hon'ble the Chief Justice on 21.11.2002, 12.12.2002 and 16.1.2003 praying for early listing of the matter but no orders were passed. The averments made in the application are supported by affidavit and also documents which consist mostly of the copies of records of proceedings in High Court. The appellants had sought for recalling of the order of this Court disposing of the SLP, the SLPs being taken up for hearing and the operation of the interim order dated 1.10.2001 passed by the Patna High Court being stayed. The applicants enclosed a chart (Annexure P-8) with the application setting out the amount of monetary loss which they had already suffered and were continuing to suffer month by month on account of their applications to vacate the stay not being taken up for hearing by the High Court.4. This Court directed notice on the applications to be issued. On 3.11.2003, a three-Judges Bench presided over by Hon'ble the Chief Justice of India, after hearing the learned counsel for the parties appearing and in their anxiety for ascertaining if the averments made by the petitioners were correct, called for a response from the High Court. The Court wished to ascertain if the petitioners had filed any

applications and if the same were not listed for hearing. Obviously the purpose of this Court in passing the order dated 3.11.2003 was to ascertain the facts, also to emphasise the the need for an early listing of the petitioners' stay vacate applications' if that was not already done. The order of this Court was communicated by the Registry of this Court to the Registrar General of the High Court.

5. It appears that the Registrar General of the High Court prepared a note and put up the same before Hon'ble the Chief Justice of Patna High Court for consideration. The note seems to have been taken up for consideration not on the administrative side but on judicial side. The High Court seems to have taken a strong exception to the order dated 3.11.2003 of this Court forming an impression as if this Court has 'directed' the High Court - as an institution - 'to give an explanation'. A few excerpts from the order dated 3.12.2003 passed by the Division Bench of the High Court are as under:--

> "It is unfortunate, very unfortunate, that a dead and decided case was revived and sent for from the record room on the application of an intervener, who was not even a party to the cause in any case, and an explanation has been sought from the High Court. The High Court has been asked to give a response to the Supreme Court on the complaint of a quasi- litigant, who has not filed a case himself at the High Court but seeks certificate from the Supreme Court that the High Court has demurred. How does the High Court respond? The Bench providing an explanation to the Supreme Court? The Registrar General, High Court, filing an explanatory note to the Registrar General, Supreme Court? Should the High Court engage a lawyer? Has the High Court erred in any judgment? Is the High Court an adversary?
>
> This Court feels constrained to point out that perjury has taken place at the Bar of the Supreme Court. Falsehoods have been stated. The sanctity of public justice has been defiled in two Courts, the High Court and the Supreme Court.
>
> The report of the Registrar General, which details this dishonesty, should be an eye-opener as to how public justice has been defiled by falsehood's. And once the stream of justice has been polluted, it is like a poisoned river which kills rather than gives life.
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> xx xx xx In this case, an intervener has given a picture to the Supreme Court that no proceedings, in this case have been going on in the High Court, which is untrue. Proceedings have been going on regularly.
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> The Supreme Court has sought the 'response' of the High Court fortunately observing "on the ground alleging that despite petitioners mentioning... for early hearing..." This is the response. This Court may have had no occasion to give its response had it not been sought. Courts are not meant to chase their orders, as they are meant to discharge their obligations with a total sense of detachment. Adversary parties are meant to point out falsehoods before the Court, but even this is an abnormality, falsehoods are not expected to be the normalcy, falsehoods are not expected to be the

normalcy of Court proceedings.

Then, in a Public Interest Litigation, a financially week party bringing a cause and expecting positive action for the public good may regret the day of approaching the Court, if proceedings are frustrated by an outsider distorting the issues in a higher Court.

In the case in which a 'response' is being sought, the matter is connected to Urban Planning.

xx xx xx This Court is taking the liberty to speak frankly because a response was sought. The Registrar General was in a quandary and asked the Court as to how he should present the response. He is an official, should he give it to the Registrar General of the Supreme Court? He wanted to know, should the judges give an explanation? The only answer lies on what is a Superior Court of Record. If the facts are pure before the Constitution Court in its appellate jurisdiction, which the Supreme Court of India is, all these issues will not arise. If falsehoods are pleas at the Supreme Court, and the Supreme Court gets the feeling that some such situation may exist, then there are many other ways of finding out. Seeking an explanation from the High Court at the instigation of an erring litigant, would be a very sad day.

xx xx xx This court is very sad to record this order. As concealment of records and arguing untruths and false pleadings have taken place at the Bar of the Supreme Court, which may tantamount to offences against public justice. It will be only appropriate, in the public interest and the interest of justice, that a copy of this order may be sent by the Registrar General to the Registrar General, Supreme Court of India to be placed (a) before the Hon'ble Court which passed the orders dated 28 October 2002 and 3 November 2003 and (b) to the Attorney General of India."

6. In view of the direction of the Patna High Court contained in the last paragraph of the order, extracted above, and under instructions by the Hon'ble the Chief Justice of India, the matter has been placed before this Bench of ours. We have gone through the order passed by the Division Bench of Patna High Court presided over by Hon. the Chief Justice.

7. A few questions arise. Could not this Court exercising appellate jurisdiction under Article 136 of the Constitution, have directed a communication being addressed to the High Court calling for information with the object of (I) ascertaining the facts, (ii) securing compliance with the direction contained in the order dated 28.10.2002? Whether the Division Bench of the High Court is justified - in law and on considerations of propriety - to make all those observations as have been extracted and reproduced hereinabove? Is it proper for the High Court to issue a direction to the Registrar General of Supreme Court of India to place its communication for consideration before a particular Bench of this Court? These delicate questions have provided as un opportunity for some consideration and in exploring into finding out what is the relationship of Supreme Court with High Courts as two august judicial institutions functioning under the Constitution.

8. Under the constitutional scheme as framed for the judiciary, the Supreme Court and the High Court both are courts of record. The High Court is not a court 'subordinate' to the Supreme Court. In a way the canvass of judicial powers vesting in the High Court is wider inasmuch as it has jurisdiction to issue all prerogative writs conferred by Article 226 of the Constitution for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose while the original jurisdiction of Supreme Court to issue prerogative writs remains confined to the enforcement of fundamental rights and to deal with some such matters, such as Presidential election or inter-state disputes which the Constitution does not envisage being heard and determined by High Courts. The High Court exercises power of superintendence under Article 227 of the Constitution over all subordinate courts and tribunals; the Supreme Court has not been conferred with any power of superintendence. If the Supreme Court and the High Courts both were to be thought of as brothers in the administration of justice, the High Court has larger jurisdiction but the Supreme Court still remains the elder brother. There are a few provisions which give an edge, and assign a superior place in the hierarchy, to Supreme Court over High Courts. So far as the appellate jurisdiction is concerned, in all civil and criminal matters, the Supreme Court is the highest and the ultimate court of appeal. It is the final interpreter of the law. Under Article 139-A, the Supreme Court may transfer any case pending before one High Court to another High Court or may withdraw the case to itself. Under Article 141 the law declared by the Supreme Court shall be binding on all courts, including High Courts, within the territory of India. Under Article 144 all authorities, civil and judicial, in the territory of India - and that would include High Court as well - shall act in aid of the Supreme Court.

9. In a unified hierarchical judicial system which India has accepted under its Constitution, vertically the Supreme Court is placed over the High Courts. The very fact that the Constitution confers an appellate power on the Supreme Court over the High Courts, certain consequence naturally flow and follow. Appeal implies in its natural and ordinary meaning the removal of a cause from any inferior court or tribunal to a superior one for the purpose of testing, the soundness of decision and proceedings of the inferior court or tribunal. The superior forum shall have jurisdiction to reverse, confirm, annual or modify the decree or order of the forum appealed against and in the event of a remand the lower forum shall have to re-hear the matter and comply with such directions as may accompany the order of remand. The appellate jurisdiction inherently carries with it a power to issue corrective directions binding on the forum below and failure on the part of latter to carry out such directions or show disrespect to or to question the propriety of such directions would - it is obvious - be destructive of the hierarchical system in administration of justice. The seekers of justice and the society would lose faith in both.

10. In Shankar Ramachandra Abhyankarb vs. Krishnaji Dattatraya Bapat - 1970 AIR(SC) 1, tihs Court pointed out that appeal is the right of entering the superior court and invoking its aid and interposition to redress the error of the court below. There are two important postulates of constituting the appellate jurisdiction; (i) the existence of the relation of superior and inferior court; and (ii) the power in the former to review decisions of the latter. Such jurisdiction is capable of being exercised in a variety of forms. An appeal is a process of civil law origin and removes a cause, entirely, subjecting the facts as well as the law, to a review and a retrial.

11. The very conferral of appellate jurisdiction carries with it certain consequences. Conferral of a principal substantive jurisdiction carries with it, as a necessary concomitant of that power, the power to exercise such other incidental and ancillary powers without which the conferral of the principal power shall be rendered redundant. As held by their Lordships of the Privy Council in Nagendra Nath Dey the Anr. vs. Suresh Chandra Dey and others, 1932 AIR(PC) 165 (Sir Dinshah Mulla speaking for the bench of five) an appeal is an application by a party to an appellate Court asking it to set aside or revise a decision of a subordinate Court. The appeal does not cease to be an appeal though irregular or incompetent. Placing on record his opinion, Subramania Ayyar, J., as member of Full Bench (of five Judges) in Chappan vs. Moldin Kutti 1899 (22) ILR(Mad) 68 (at P.80) stated inter alia that appeal is 'the removal of a cause or a suit from an inferior to a superior judge or Court for re-examination or review". According to Wharton's Law Lexicon such removal of a cause or suit is for the purpose of testing the soundness of the decision of the inferior Court. In consonance with this particular meaning of appeal, appellate jurisdiction means the power of a superior Court to review the decision of an inferior Court'. "Here the two things which are required to constitute appellate jurisdiction are the existence of the relation to superior and inferior Court and the power on the part of the former to review decisions of the latter. This has been well put by Story": The essential criterion of 'appellate jurisdiction is, that it revises and correct the proceedings in a cause already instituted and does not create that cause. In reference to judicial tribunals an appellate jurisdiction, therefore, necessarily implies that the subject - matter has been already instituted and acted upon by some other Court, whose judgment or proceedings are to be revised", (section 1761, Commentaries o the Constitution of the United States)."

12. Adapting the abovesaid pronouncements of authority as guiding the resolution of the issue in our hands we may venture to say that in spite of the Supreme Court and the High Courts being both constitutionally independent of each other and both being the Courts of record, to the extent of exercise of appellate jurisdiction certainly the Supreme Court exercises a superior jurisdiction and hence is a superior Court than the High Courts which exercise in that context an inferior or subordinate jurisdiction.

13. What is the significance of creating an appellate forum And, what is sought to be achieved by creation of such hierarchy in the justice administration system?

14. "The Appellate Court plays an important role in securing high standards of judicial behaviour in court... Bearing this in mind, the role of the Court of Appeal in checking, judges should not be underestimated... The Court of Appeal regards itself as fulfilling a disciplinary function... The Court of Appeal carefully phrases its criticism. The Court usually makes clear that they do not doubt that "the judge was actuated by the best motives" or that 'in a strong desire to do justice a judge may make mistakes", but they use a language clear enough to ensure that the judge to whom the criticism is addressed, as well as other judges, get their message". (See - Judges on Trial, Shimon Shetreet, pp.201-202). "The role of the Court of Appeal in checking judicial conduct and in securing high standards of judicial behaviour in court is manifold. The Court of Appeal censures and criticizes judicial misconduct in particular cases and corrects injustices resulting from such misconduct. Whether it reverses the judgment, quashes the conviction, reduces the sentence. or changes the judgment in any manner, the disapproval and condemnation of the misconduct restores the public

confidence in the courts which might otherwise have been impaired. The party offended or prejudiced, and the public at large, might be tempted to attribute misconduct of a particular judge to the judiciary as a whole. The disapproval of criticism of the appellate court, even without amending the judgment, eliminates such danger and restores the scales of justice to their proper balance". (ibid, pp. 203-204).

15. In Chapter IV of the Constitution of India, bearing the heading - the Union judiciary, Articles 132 to 136 deal with appellate jurisdiction of the Supreme Court of All these Articles, It is Article 136 which is worded in the widest possible terms. A plenary jurisdiction exercisable on assuming appellate jurisdiction subject to grant of special leave against any kind of judgment or order made by any Court or Tribunal and in any cause or matter has been embodied and vested in the Supreme Court. It is an extraordinary jurisdiction vested by the Constitution in the Court with implicit trust and faith and extraordinary care and caution has to be observed in the exercise of this jurisdiction. Article 136 does not confer a right of appeal on a party but vests a vast discretion in the Supreme Court meant to be exercised by the considerations of justice, call of duty and eradicating injustice.

16. The extent and dimension of jurisdiction conferred on the Supreme Court was well brought out by Chief Justice M.C. Mahajan in the case of Dhakeswari Cotton Mills vs. Commissioner of Income-Tax, West Bengal - 1955 AIR(SC) 65 wherein he said - 'It is not possible to define with any precision the limitations on the exercise of the discretionary jurisdiction vested in this Court by constitutional provision made in Article 136. The limitations, whatever they be, are implicit in the nature and character of the power itself. It being an exceptional and overriding power, naturally it has to be exercised sparingly and with caution and only in special and extraordinary situations. Beyond that it is not possible to fetter the exercise of this power by any set formula or rule.... It is, however, plain that when the Court reaches the conclusion that a person has been dealt with arbitrarily or that a court or tribunal within the territory of India has not given a fair deal to a litigant, then no technical hurdles of any kind like the finality of finding of facts or otherwise can stand in the way of the exercise of this power because the whole intent and purpose of this Article is that it is the duty of the Court to see that injustice is not perpetuated or perpetrated by decisions of courts and tribunals because certain laws have made the decisions of these Courts or tribunals final and conclusive".

17. The Founding Fathers of the Constitution devised a justice delivery system in the country as one homogenous in content, taking care independence and hierarchy both, and holding the scales of balance even while doing so. The Union judiciary and the State judiciary are undoubtedly independent of each other except for a few areas relating to jurisdiction as we have very briefly indicated hereinbefore. However, at the same time we, cannot resist laying emphasis on the appellate hierarchy which, examined in the correct perspective, is a factor strongly contributing towards the independence of the judiciary and securing finality in adjudication within the system and its insulation from any outside interference or correction. The delicate balance has been carefully crafted and sought to be achieved by independence and interconnection - both existing simultaneously - of the Supreme Court and the High Courts. There are 'relationships of tension as well as those of cooperation' to borrow the expression employed by Frank M. Coffin in his work 'On Appeal - Courts, Lawyering , an judging '. He says, 'on the sensitive and sophisticated application of

the various doctrines governing these relationships depends in large part the effective functioning of our unique form of federalism. (at pp. 52-53).

18. Delivering a lecture on 25.7.1963, in Centenary Lecture Series organized on the occasion of Centenary Celebration of the Advocates Association of Western India, Motilal C. Selavad - the great Indian jurist dealt with the role of the Supreme Court under the Constitution and said - 'the exercise by the court of its jurisdiction under article 136 bears witness to the wisdom and foresight of the court. That article confers on the court an overriding power to examine the decision of all courts and tribunals in the country, a power which is larger than the Crown prerogative exercised by the Privy Council and which is not capable of being restricted by ordinary legislation. The court has refused to define the limitations on the power under that article and laid down that these were inherent in its exceptional and overriding nature'. (Centenary Souvenir, p.134).

19. How the Supreme Court and the High Court have to deal with each other specially when the Supreme Court is exercising its appellate jurisdiction over a decision by, or proceedings - concluded or pending - in the High Court? The Constitution has clearly divided the jurisdiction between the two institutions and while doing so these institutions have to have mutual respect for each other. The framers of the Constitution did not think it necessary to specifically confer power on the Supreme Court to give a command to the High Court for they were the men of vision and foresight. They knew that all the constitutional functionaries and institutions would act in the best interest of norms and traditions consistent with democracy and constitutionalism, set down in and discernible from the Constitution and as handed down by history and generations of judges. Everyone would, it was expected, keep within its bounds and would not over- step its limits so that the ideals with the values remain a living reality and do not become either an intrusion or an illusion. The constitutional and democratic institutions, complementing and supplementing each other, would lend strength to these handed down traditions and would also contribute to also developing such rich traditions as would be respected and hailed by posterity. This would result in strengthening the working of the Constitution. In the realms of constitutionalism the values of mutual trust and respect between the functionaries, nurtured by tradition, alleviate the need to codify the rules of the relationship. Experience shows that any rigid codification of such delicate relationship is advantageous to those bent upon vilification. A rigid written law makes it difficult to maintain that dignity which is better and rightly left to be perceived by right - minded people who zealously uphold the dignity of others as they do their own.

20. An institution dealing with another institution under the Constitution shall have to observe grace and courtesy. No judge shall criticize another judge and certainly not strongly. Any departure therefrom needs to be corrected at the earliest and in the larger interest. It is obligatory on an appellate forum to correct such deviation from rule brought to its notice as having been committed by a jurisdiction subject to appeal and if it does not do so it fails in its duty. Undoubtedly, the corrective step too is taken carefully with courtesy and respect and not by way of harsh criticism. An instance quoted by David Pannick is worthy of reference and reverence. In a 1971 case Mr. Justice Lawson gave his reasons for doubting the correctness of an earlier decision of the Court of Appeal. Nevertheless, he concluded, 'I am bound by the decision in (the earlier case), although I am compelled to say, again with the greatest respect, that I believe it to have been wrongly decided".

The Court of Appeal was very unhappy. Lord Justice Davies replied, 'with the greatest respect to Lawson J', that he thought that 'those observations were out of place. It is unusual, and, I am bound to say, undesirable, in my opinion, for a judge sitting at first instance to express the opinion, although accepting that he is bound by it, that a decision, and a fairly recent decision, of this court was wrong'. Judges, pp. 127-128).

21. A great judge and jurist Benjamin N. Cardozo has a little bitter truth to describe. Cautioning the judges against the official-in-judge being permitted to swallow up the main in-him, Benjamin Cardozo says that there have been judges in the past who suffered that disaster. However, what Cardozo has in mind is something more than 'the egotism that displays itself in harsh and overbearing manners, in explosive vigour of voice etc. Exuberances such as these are at times the result of infirmities of temper not unknown altogether to the bench though happily uncommon; more often they are the defensive appliances of weakness or incapacity, conscious of its failings, and hopeful to divert attention by what seems to be a manifestation of its strength'. 'The slumbering beast is in us, and may be waked to life and fury if we feed him overmuch. The ravening official will seek to swallow up the man. I interpret the invitation to be with you today as an expression of your judgment that whatever mistakes I may have made - and I know that they have been more than I like to figure or remember - I have at least avoided this one. I have not allowed the official to swallow up the man. I don't mean that I am entitled to a great deal of credit for so modest an achievement. In a court where the tradition of courtesy and equity is so ingrained and inveterate as it is in the Court of Appeals, one would have to be a pretty hardened sort of sinner to be guilty of the particular form of wrongdoing that has its origin in the pride of office. But then, when you come to think of it, virtue s are important in the inverse order to the credit that is due to those who cultivate and practice them. No one of us struts about with satisfaction for the self-restraint involved in refraining from the crime of homicide, yet if the importance of the virtue were the measure of the credit we should all be crowing and cawing with the pride of moral excellence. So I don't assume to pride myself on the very modest virtue of being merely a human being." (Selected Writings of Benjamin Nathan Cardozo, pp. 427-428).

22. Just two or three instances of Indian judiciary available in Law Reports deserve a reference and would suffice too. In Bharat Builder Pvt. Ltd. and others vs. Parijat Flat Owners Coop. Housing Society Ltd. - 1999 (5) SCC 622 while disposing of an earlier SLP the Supreme Court desired the High Court to decide a plea by the convenient means of a review petition expecting the High Court 'that the questions shall addressed", 'regardless of the technical limitations of the review petition". The High Court dismissed the review application and observed inter alia - 'the issue posed to be examined as directed by the Supreme Court is not the issue which was raised in the trial Court or the appellate court and it is not permissible for us to go into such a fresh issue in this view application, first time. In view of this we do not find any merit in the contentions of the applicant and review application is, therefore, liable to be rejected". This Court referred to Article 144 of the Constitution and observed that it was imperative for the High Court to have decided the questions that it was required to be decided by the earlier order of this Court. The order of the High Court was set aside and the review petition was directed to be restored on the file of the High Court by this Court once again stating "the High Court shall scrupulously follow the requirements of the (earlier) order of this Court'. In Bharat Earth Movers vs. Commission of Income Tax, Karnataka 2000 (6) SCC 645 of the

Supreme Court seized of a hearing in a matter had issued a direction to the Income-tax Appellate Tribunal to frame a supplementary statement of case so as to enable this Court to appreciate the facts correctly and in that light to settle the law. The Tribunal was remiss in compliance. On this being brought to the notice of the Court, this Court observed - 'Article 144 of the Constitution obliges all authorities civil and judicial, in the territory of India to act in aid of the Supreme Court. Failure to comply with the directions of this Court by the Tribunal has to be deplored. We expect the Tribunal to be more responsive and more sensitive to the directions of this Court. We leave this aspect in this case by making only this observation."

23. In Assistant Collector of Central Excise Chandan Nagar, West Bengal vs. Dunlop India Ltd. and others 1985 (1) SCC 260 this Court reiterated a few observations from an earlier case (Siliguri Municipality vs. Amalendu Das 1984 (2) SCC 436 which read as - "We mean no disrespect to the High Court in emphasizing the necessity for self-imposed discipline in such matters in obeisance to such weighty institutional considerations like the need to maintain decorum and comity. So also we mean no disrespect to the High Court in stressing the need for self discipline on the part of the High Court in passing interim orders without entering into the question of amplitude and width of the powers of the High Court to grant interim relief". Referring to what was said in Cassell & Co. Ltd. vs. Broome [1972] 2 W.L.R. 645 the Court said - We hope it will never be necessary for us to say so again that "in the hierarchical system of courts" which exists in our country, 'it is necessary for each lower tier", including the High Court, "to accept loyally the decisions of the higher tiers". "It is inevitable in hierarchical system of courts that there are decisions of the Supreme Appellate Tribunal which do not attract the unanimous approval of all members of the judiciary .. but the judicial system only works if someone is allowed to have the last word and that last word, once spoken, is loyally accepted." The better wisdom of the court below must yield to the higher wisdom of the court above. That is the strength of the hierarchical judicial system'. Though qualifying its statement by the expression 'it is needless to add', yet the court felt the need of adding in its judgment that under Article 144 all authorities, civil and judicial (High Courts included) in the territory of India shall act in aid of the Supreme Court.

24. We are inclined to extract and reproduce a very instructive passage, apposite to the context, from the judgment by a Constitution Bench headed by Chief Justice Chandrachud in State of Punjab and others vs. Jagdev Singh Talwandi - 1984 (1) SCC 596). The excerpt is self explanatory of factual backdrop and is as under -

> "We would like to take this opportunity to point out that serious difficulties arise on account of the practice increasingly adopted by the High Courts, of pronouncing the final order without a reasoned judgment. It is desirable that the final order which the High Court intends to pass should not be announced until a reasoned judgment is ready for pronouncement. Suppose for example, that a final order without a reasoned judgment is announced by the High Court that a house shall be demolished or that the custody of a child shall be handed over to one parent as against the other; or that a person accused of a serious charge is acquitted, of that a statute is unconstitutional or, as in the instant case, that a detenu be released from detention. If the object of passing such orders is to ensure speedy compliance with them, that object is more

> often defeated by the aggrieved party filing a special leave petition in this Court against the order passed by the High Court. That places this Court in a predicament because, without the benefit of the reasoning of the High Court, it is difficult for this Court to allow the bare order to be implemented. The result inevitably is that the operation of the order passed by the High Court has to be stayed pending delivery of the reasoned judgment.
>
> It may be thought that such orders are passed by this Court and therefore this is no reason why the High Courts should not do the same. We would like to point out respectfully that the orders passed by this Court are final and no appeal lies against them. The Supreme Court is the final court in the hierarchy of our courts. Besides, order without a reasoned judgment are passed by this Court very rarely, under exceptional circumstances, Orders passed by the High Court are subject to the appellate jurisdiction of this Court under Article 136 of the Constitution and the other provisions of the concerned, statues. We thought it necessary to make these observations in order that a practice which is not very desirable and which achieves no useful purpose may not grow out of its present infancy."

(emphasis supplied)

25. The Supreme Court, exercising its appellate jurisdiction, is called upon to issue directions which is not only its privilege as appellate forum but often a necessity for meeting the demands of justice and effective exercise of appellate power. Yet, it cautiously abstains from issuing any 'directions' as such an rather uses the alternative and polite expressions like - 'we request the High Court', 'the High Court is expected to', 'we trust and hope that the High Court will/ shall', spelled out by courtesy and the respect and regards which the Supreme Court has - and must have - for High Courts. The practice has developed and gained ground as tradition. Barring may be an instance or two, which too must have been avoidable, there has been no occasion either for any disrespect having been shown by the Supreme Court or vice versa or for this Court having been called upon to take cognizance of any instance of disrespect shown to it by any High Court.

26. Harry T. Edwards, Chief Justice, U.S. Court of Appeals for the D.C. Circuit emphasises self-restraint as helping build up the Courts constitutional legitimacy overtime inasmuch as judicial self-restraint helps both to generate and to preserve judicial independence. In the context of dealing of judges by judges, he uses the term 'collegiality' and then he mentions the relationship between collegiality and independence by saving -" ... an aspect of judicial practice that has seemed increasingly important to me over the last decade: the practice of collegiality. By collegiality I mean an attitude among judges that says, we may disagree on some substantive issues, but we all have a common interest and goal in getting the law right. We are, in a word, one another's colleagues. An attitude of collegiality means, in practice, that we respect one another's views, listen to one another, and, where possible, aim to identity areas of agreement... Collegiality does mean, however, that, even when I disagree with another judge, I recognize that we are part of a common endeavor, and that each of us is, almost always, acting in good faith according to his or her own view of what the law requires... Because I see myself as engaged in a common endeavor with my judicial colleagues, it

follows that I have the interest of the judiciary as a whole at heart. .. When there is little or no judicial collegiality, there is less incentive for judges to exercise self-restraint. ... collegiality is important not only for working together effectively, but also at a deeper structural level. An attitude of judicial collegiality helps reinforce judges' incentives to behalf in a principled and responsible fashion. I think that any discussion of judicial independence, either at the level of institutions or individuals, should take this practice of collegiality into account". (See - Judicial Norms: A Judge's Perspectives - Washington University School of Law).

27. We would end our this discussion by quoting what Oliver Wendell Holmes Jr. nearing his 60th birthday, and unaware that he was shortly to be elevated from the office of Chief Justice of Massachusetts to the Supreme Court of the United States said - "I ask myself, what is there to show for this half lifetime that has passed? I look into my book in which I keep a docket of the decisions of the full court which fails to me to write, and find about a thousand cases. A thousand cases, many of them upon trifling or transitory matters, to represent nearly a half a lifetime. A thousand cases when one would have liked to study to the bottom and say his say on every question which the law has presented. I often imagine Shakespeare or Nepoleon summing himself up and thinking: 'yes, I have written 5,000 lines of solid gold and a good deal of padding, who would have covered the Milky Way with words that outshone the stars'. We are lucky enough if we can give a sample of our best and if in our hearts we can feel that it has been nobly done." (Extracted I and cited by J.H. Wootten, "Creativity in the Law" (1972) 4 Aust J Frensic Sciences, at 107).

28. Cooperation can be achieved and tension avoided between two judicial institutions if only judicial collegiality is learnt, nobility prevails and Holmes' humility rules.

29. The constitutional jurist H.M. Seerval in his work 'Constitutional Law of India, Fourth Edition, Silver Jubilee Edition, Vol.3, in para 25.481) refers to the 'values' of our Constitution and says - 'the word 'values' in plural means one's principles or standard, one's judgment and what is available as important in life". However, the interpretation of the provisions of our Constitution cannot fluctuate with the different values in which different judges believe. Seerval quotes B.N. Rau, the eminent constitutional advisor and states - 'the only values which can be said to underlie our Constitution is best expressed in the Preamble to the draft Constitution presented to the Constituent Assembly by Sir B.N. Rau, its eminent Constitutional Adviser. It ran: "We, the people of India, seeking to promote the common good, do hereby, through our chosen representatives, enact, adopt and give to ourselves this Constitution". In our opinion, it is the concept of the common good which ought to guide us - as institutions and a individuals - in testing times.

30. While quoting the several authorities and references as hereinabove we should not be misunderstood as calling 'the Supreme Court a superior Court and the High Court an inferior court', all that we wish to say is that jurisdictionally, and in the hierarchical system, so far as the exercise of appellate jurisdiction is concerned, undoubtedly the Supreme Court is a superior forum and the High Court an inferior forum in the sense that the later is subjected to jurisdiction, called 'appellate jurisdiction' of the former.

31. The very existence of appellate jurisdiction obliges the lower jurisdiction to render all of its assistance to the higher jurisdiction to enable the exercise of appellate jurisdiction fully and effectively. The lower forum may be called upon to certify its record of case and proceedings to the superior forum. The superior forum may stand in need of some information which being in the possession or knowledge of the subordinate forum, shall have to be made available only by it. The superior forum may issue a stay order or restraint order or may suspend, expedite or regulate the proceedings in the subordinate forum. During or at the end of exercise of the appellate jurisdiction any direction made by the higher forum shall have to be complied with by the lower forum, otherwise the hierarchy becomes meaningless.

32. Though, the jurisdiction conferred on the Supreme Court under Article 136 is very wide and no technically can prevent or hinder the effective exercise of such jurisdiction yet as a rule of prudence and self-imposed discipline the superior forum refuses to exercise its jurisdiction in the first instance if the grievance raised is capable of being taken care of by any lower forum competent to do so.

33. Having recalled and recapitulated a few of the golden principles, fundamental and basic, we now revert back to the facts of the the present case.

34. After all, what was done by this Court? On 28.10.2002, this Court exercised self-control and refused to entertain the SLP forming an opinion as to why it should step in and why it should not leave it open to the High Court to freely exercise its constitutional jurisdiction and that too in public interest in the present case. However, the grievance raised by the then petitioners needed to be heard early; to form such opinion and issue a consequential direction undoubtedly were within the competence of this Court under Article 136 of the Constitution. Later on the order dated 3.10.2003 came to be passed on the petition supported by an affidavit, stating the facts and mentioning the dates, giving rise to the occasion for filing the same, which was, if not a complaint, at least a grievance that the High Court had failed to comply with the order dated 28.10.2002 passed by this Court in exercise of its jurisdiction conferred by Article 136 of the Constitution. The Court felt that the order should have been complied with. The Court proceeded with the assumption that in ordinary course it would not be persuaded to think, much less believe, that the High Court was not complying with the order of this Court, if only the order has been brought to its notice. So, to ascertain the facts this Court called for a response. The Registrar General of this Court addressed a communication to the Registrar General of the High Court seeking information. The communication should have been dealt with on administrative side and responded to by the Registrar General of the High Court, just apprising this Court of the correct factual position. If there was no error, no default and nothing like non-compliance at the end of the High Court, an appraisal in that regard contained in a communication with brief necessary facts by the Registrar General of the High Court to the Registrar General of this Court, which the latter would have placed for the consideration of this Court on the judicial side, was enough. Such procedure is followed quite often and nobody has never taken any exception to this practice barring the singular instance with which we are reluctantly dealing with.

35. We can only regret the wrong impression created in the minds of the Division Bench of the High Court in this case. Merely on account of an innocuous communication by this Court addressed to the Registrar General of High Court, the High Court was not reduced to the status of a litigant nor the High Court came to be arrayed as a party nor the High Court as an institution and as a court of record was called upon to give an explanation or to respond. How does the need arise for the High Court to engage a lawyer of its own? All these impressions, if created, are an outcome of misunderstanding and misapprehension or 'exuberance' as Benjamin Cardozo calls it. It is obvious that any person approaching this Court by indulging into misadventure of suggestio falsi or suppressio veri, would suffer the consequences but that would be only after the facts have been ascertained. Ordinarily, what was there to disbelieve the averments made in the petition, filed before this court detailing the facts and supported by an affidavit? Yet, the Court did not act in haste on the petition and did not pass any order ex-parte . Acting with care, caution and circumspection - and obviously with respect to the High Court - it held its hands back and tried to ascertain the facts. There was absolutely no occasion for the High Court to feel annoyed and disturbed much less to feel perturbed and react in the manner in which it has unfortunately done. The High Court should have known that both the orders, the order dated 20.10.2002 as also the order dated 3.11.2003 were passed by the Benches headed by Hon. the Chief Justice of India, the pater families of Indian Judiciary. In our considered opinion, the order dated 3.12.2003, passed by the Division Bench of the High Court, it unfortunate. We too are not feeling too happy to pass the present order. Our embarrassment stands multiplied when we notice that the Division Bench of the High Court which passed the order dated 3.12.2003 too was headed by the Chief justice of the High Court. All this was avoidable and should have been avoided far from making mountain out of a mole hill.

36. Be that as it may, we have to maintain the dignity of this august institution as the Apex Court of the country and undo a mistaken assumption of the High Court, that any order of this Court was intended to undermine the High Court's status as a constitutional court or Court of Record. Such an order of the High Court, which has done no good either to this Court or to the High Court itself, having been brought to our notice, we are constitutionally obliged not to blink our eyes but to act and so we do. We direct all those passages which have been extracted and reproduced in the earlier part of the judgment, from the order dated 3.12.2003 passed by the Division Bench of the High Court, to be expunged and scored out as derogatory of this Court, disparaging, totally uncalled for and making observations on the proceedings of this Court which the High Court should not have made. Such remarks should not continue to be retained on the record of the High Court as a Court of record. The order shall be carried out in letter and spirit and the compliance reported to the Registrar General of this Court by the Registrar General of the High Court. We depart with the good hope that there would be no order occasion for this Court to make such an order.