

"\212  
ITEM NO.1A4  
(for Jt.)

COURT NO.12

SECTION IV

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

SUO MOTU CONMT. PET.(C) NOS.195-196/2012 IN CIVIL APPEAL NO(s). 4318&4319  
OF 2012

PRIYA GUPTA & ANR.

Appellant (s)

VERSUS

ADDL. SEC. MIN. OF HEALTH&FAMILY  
WELF. & ORS.

Respondent(s)

Date: 13/12/2012 These matters were called on for judgment today.

For Appellant(s) Mr Purushottam Sharma Tripathi,Adv.  
Mr. Sanjeeb Panigrahi,Adv.  
Ms. Filza Moon's,Adv.  
Mr. Mukesh Kumar Singh,Adv.  
Mr. Ravi Chandra Prakash,Adv.  
Mr. Azeem Kalebuode,Adv.  
Mr. Sidhartha Chaudhary,Adv.

Ms. Pratibha Jain,Adv.

For Respondent(s)

Mr. D.S. Mahra,Adv.  
  
Mr. Atul Jha,Adv.  
Mr. Sandeep Jha,Adv.  
Mr. Dharmendra Kumar Sinha ,Adv

Hon'ble Mr. Justice Swatanter Kumar pronounced the judgment of the Bench comprising of Hon'ble Mr. Justice A.K. Patnaik and His Lordship.

The Contemnor Dr. S.L.Adile, Amrita Banerjee, Dr. Sanjivani Wanjari, Dr. P.D. Agrawal and Mr. Padmakar Sasane are hereby punished and awarded the sentence of fine of Rs.2,000/- each. The fine should be deposited within four weeks from today. In

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the event of default, they shall be liable to undergo civil imprisonment for a period of two weeks. The notice of contempt against them is discharged, however, subject to the observations aforemade.

[SUMAN WADHWA]  
COURT MASTER

[S.S.R. KRISHNA]  
COURT MASTER

Signed Reportable judgment is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

SUO MOTU CONTEMPT PETITION NOS. 195-196 OF 2012  
IN

CIVIL APPEAL NOS. 4318 AND 4319 OF 2012

Priya Gupta & Anr.

...Appellants

Versus

Addl. Secy. Ministry of Health &  
Family Welfare & Ors.

...Respondents

J U D G M E N T

Swatanter Kumar, J.

1. While disposing of the Civil Appeal No. 4318 of 2012 titled Priya Gupta v. State of Chhatisgarh & Ors., the Court not only noticed breach of time schedule as well as various other irregularities that were committed by the various stakeholders, but also returned a finding as to failure of the performance of duties and obligations by the authorities in accordance with law as stated by this Court. The Court noticed that the case in hand was a clear example of calculated tampering with the schedule specified under the regulations, and the judgments of the Court with a clear intention to grant admission to less meritorious candidates over candidates of higher merit. To put it simply, it was a case of favouritism and arbitrariness. The case in hand also demonstrates how either way the career of the students of higher merit has been jeopardised by the abuse and manipulation of provided procedure. While directing initiation of proceedings under the provisions of the Contempt of Courts Act, 1971 (for short "the Act") held as under:-

4. "We have categorically returned a finding that all the relevant stakeholders have failed to perform their duty/obligation in accordance with law. Where the time schedules have not been complied with, and rule of merit has been defeated, there nepotism and manipulation have prevailed. The stands of various authorities are at variance with each other and none admits to fault. Thus, it is imperative for this Court to ensure proper implementation of judgments of this Court and the regulations of the Medical Council of India as well as not to overlook the arbitrary and colourable exercise of power by the concerned authorities/colleges.

5. Therefore, we hereby direct initiation of proceedings against the following under the provisions of the Contempt of Courts Act, 1971. Let notice be issued to the following, to show cause why they be not punished in accordance with law.

a. Additional Secretary, Ministry of Health & Family Welfare,  
Union of India.

b. Dr. S.L. Adile, Director, Medical Education.

- c. Dean of the Jagdalpur College.
- d. Dr. M.S. Banjan, Member of the Selection Committee.
- e. Dr. P.D. Agarwal, Member of the Selection Committee.
- f. Shri Padmakar Sasane, Member of the Selection Committee.
- g. Director General, Directorate of Health Services, Union of India.

5. Notice be issued returnable in two weeks, on which day the matter shall be listed before this Court. Registry shall maintain separate file for that purpose.

6. All concerned authorities are hereby directed to carry out the directions and orders contained in this judgment, particularly paragraphs 30 and 31 of the judgment forthwith. The directions shall be applicable for the academic year 2012-2013 itself.

54. A copy of this judgment shall be sent to all concerned authorities, forthwith, for strict compliance and adherence, without demur and default.

55. Both the appeals are disposed of with the above directions."

2. In furtherance to the judgment dated 8th May, 2012, the Court initiated proceedings against the above defaulting persons under the Act and directed issuance of notice. Upon appearance, time was prayed for on behalf of the contemnors to file their reply affidavits and after they were filed, the contemnors were heard at some length by the Court. The stand taken by the respective contemnors is distinct and independent. However, the stand of contemnors "C" to "F" is somewhat common, therefore, it would be appropriate for the Court to deal with the case of these contemnors together. The case of contemnors 'A' and 'G' is to be considered together and finally that of contemnor 'B' will be dealt with separately. First and foremost, we would deal with the case of Dr. S.L. Adile, whose daughter Akansha Adile is the direct beneficiary of this entire process. In the affidavit filed by Dr. Adile, it has been averred that he was working as a Professor of Ophthalmology in the Medical College, Raipur till 1st August, 2006 and Dean thereafter in the same college. The Director of Medical Education, Chhatisgarh (Dr. Bhola) retired on 31st August, 2006 and being the senior, Dr. Adile was asked to relieve Dr. Bhola, on 8th September, 2006 temporarily. This is how he came to be appointed as the Director of Medical Education. The findings recorded in the order against him which includes violation of schedule, moulding the process of selection to select his daughter and actually providing her a seat in the Medical College, Raipur has not been disputed. However, it is stated that he tenders an unconditional apology to the Court for all the acts of omission and commission mentioned in the order dated 8th May, 2012. He prays for the mercy of the Court on the ground that he was under suspension for last two years i.e. since 23rd July, 2010 and has suffered already. His daughter was also asked to pay Rs. 5 lakhs, if she was to continue her course in terms of the order dated 8th May, 2012, and therefore, he prays for discharge.

3. Mr. Mukul Rohtagi, the learned senior counsel appearing for Dr. S.L. Adile argued in principle that the Court may take a lenient view and discharge the notice of contempt against the contemnor in view of his unconditional, unqualified apology being tendered at the very first instance. The apology tendered is bona fide and, thus, should be accepted by the Court. Explanation to Section 12(1) places an obligation upon the Court to consider apology in a very objective manner and further provides that the Court shall not reject the same merely on the ground of it being qualified or conditional if it is made bonafidely. It is also to be noticed that the Secretary, Ministry of Health has specifically disputed that the letter dated 8th August, 2006 was not issued by the Ministry and

is a manipulated one. This is the letter that has been relied upon by Dr. Adile. Of course, subsequently the said stand was given up by him

4. Without prejudice to the above and in the alternative, the contention raised is that every contempt, whether initiated on application of a party or suo motu by the Court, has to be a result of wilful disobedience of the orders of the Court. Wilful disobedience must be proved as a matter of fact. The directions or guidelines issued by this Court for general implementation cannot invite proceedings under the Act, if they are not strictly adhered to. Such guidelines may not be within the knowledge of a party and, thus, their non-compliance may not necessarily be a wilful disobedience of the order of the Court bringing the case of a contemnor within the rigours of Section 12 of the Act. Contempt proceedings can be initiated when an action is between the parties to a lis and not where the Court issues general directions.

5. Tendering an apology is not a satisfactory way of resolving contempt proceedings. An apology tendered at the very initial stage of the proceedings being bona fide and preferably unconditional would normally persuade the Court to accept such apology, if this would not leave a serious scar on the dignity/authority of the Court and interfere with the administration of justice under the orders of the Court.

6. 'Bona fide' is an expression which has to be examined in the context of a given case. It cannot be understood in the abstract. The attendant circumstances, behaviour of the contemnor and the remorse or regret on his part are some of the relevant considerations which would weigh with the Court in deciding such an issue. Where, persistently, a person has attempted to over-reach the process of Court and has persisted with the illegal act done in wilful violation to the orders of the Court, it will be difficult for the Court to accept unconditional apology even if it is made at the threshold of the proceedings. It is not necessary for us to examine in any greater detail the factual matrix of the case since the disobedience, manipulation of procedure and violation of the schedule prescribed under the orders of the Court is an admitted position. All that we have to examine is whether the apology tendered is bona fide when examined in light of the attendant circumstances and whether it will be in the interest of justice to accept the same.

7. The facts which will weigh with the Court while considering acceptance of an apology are the contemptuous conduct, the extent to which the order of the Court has been violated, irresponsible acts on the part of the contemnor and the degree of interference in the administration of justice, which thereby cause prejudice to other parties. An apology tendered, even at the outset, has to be bona fide and should be demonstrative of repentance and sincere regret on the part of the contemnor, lest the administration of justice be crudely interfered with by a person with impunity. The basic ingredients of the rule of law have to be enforced, whatever be the consequence and all persons are under a fundamental duty to maintain the rule of law. An apology which is not bonafide and has been tendered to truncate the process of law with the ulterior motive of escaping the consequences of such flagrant violation of orders of the Court and causes discernible disrespect to the course of administration of justice, cannot be permitted. The Court has to draw a balance between cases where tendering of an apology is sufficient, and cases where it is necessary to inflict punishment on the contemnor. An attempt to circumvent the orders of the Court is derogatory to the very dignity of the Court and administration of justice. A person who attempts to salvage himself by showing ignorance of the Court's order, of which he quite clearly had the knowledge, would again be an attempt on his part to circumvent the process of law. Tendering a justification would be inconsistent with the concept of an apology. An apology which is neither sincere nor satisfactory and is not made at the appropriate stage may not provide sufficient grounds to the Court for the acceptance of the same. It is also an accepted principle that one who commits intentional violations must also be aware of the consequences of the same. One who tenders an unqualified apology would normally not render justification for the contemptuous conduct. In any case, tendering of an apology is a weapon of defence to purge the guilt of offence by contemnor. It is not intended to operate as a universal panacea to frustrate the action in law, as the fundamental principle is that rule of law and dignity of the Court must prevail.

8. In the case of *In Re Sanjeev Datta & Ors.* [(1995) 3 SCC 619], this

Court while declining to accept an apology tendered by the contemnor observed that any conduct that is designed to or is suggestive of challenging the crucial balance of power devised by the Constitution, is an attempt to subvert the rule of law and is an invitation to anarchy. The institution entrusted with the task of interpreting and administering the law is the judiciary, whose view on the subject is made legally final and binding on all till it is changed by a higher Court or by permissible legislative measures. Under a constitutional government, such final authority has to vest in some institution otherwise there will be a chaos.

With these observations, the Court declined to accept the apology where statements had been made with a malicious attempt to cast aspersions and attribute motives to the Court and the same were made knowingly by the contemnor. At this stage, we may also notice another judgment of this Court in the case of All Bengal Excise Licensees' Association v. Raghendra Singh & Ors. [(2007) 11 SCC 374], where the Court while declining to accept an apology, punished the contemnors for disobeying the orders of the Court. The Court noticed that the respondents were senior officers and were expected to know that under the constitutional scheme of the country, the orders of the Court have to be obeyed implicitly and that orders of this Court and of any Court cannot be trifled with. The Court returned a finding that the officers had acted deliberately to subvert the orders of the High Court evidently and observed :-

"41. All Respondents 1-4 are senior and experienced officers and must be presumed to know that under the constitutional scheme of this country orders of the High Court have to be obeyed implicitly and that orders of this Court-for that matter any court should not be trifled with. We have already found hereinabove that they have acted deliberately to subvert the orders of the High Court evidently. It is equally necessary to erase an impression which appears to be gaining ground that the mantra of unconditional apology is a complete answer to violations and infractions of the orders of the High Court or of this Court. We, therefore, hold them guilty of contempt of court and do hereby censure their conduct. Though a copy of this order could be sent which shall form part of the annual confidential record of service of each of the said officers, we refrain from doing so by taking a lenient view of the matter considering the future prospects of the officers. As already stated, the officers shall not indulge in any adventurous act and strictly obey the orders passed by the courts of law. The civil appeal stands allowed. Though this is a fit case for awarding exemplary costs, again taking a lenient view, we say no costs."

9. The government departments are no exception to the consequences of wilful disobedience of the orders of the Court. Violation of the orders of the Court would be its disobedience and would invite action in accordance with law. The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No Court or Tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. [Ref. East India Commercial Companies Ltd. v. Collector of Customs [AIR 1962 SC 1893] and Official Liquidator v. Dayanand & Ors [(2008) 10 SCC 1].

10. These very principles have to be strictly adhered to by the

executive and instrumentalities of the State. It is expected that none of these institutions should fall out of line with the requirements of the standard of discipline in order to maintain the dignity of institution and ensure proper administration of justice.

11. From the above principle, it is clear that consideration of an apology as contemplated under explanation to Section 12(1) of the Act is not a panacea to avoid action in law universally. While considering the apology and its acceptance, the Court inter alia considers a) the conduct of the contemnor prior and subsequent to the tendering of apology. If the conduct is contemptuous, prejudicial and has harmed the system and other innocent persons as a whole, it would be a factor which would weigh against the contemnors; and b) the stage and time when such apology is tendered.

12. In light of the above principles, if one examines the conduct of Dr. S.L. Adile, he is a person who cannot plead ignorance to the directions of this Court inasmuch as he was the officiating Director and responsible for making admissions not only to the college in question, but to all the medical colleges in the State of Chhattisgarh. It was expected of him to conduct the admissions strictly on merit, transparently and in adherence to the schedule and directions contained in the judgments of this Court. He attempted to violate the same with impunity. He manipulated the entire process of admission and directed his subordinates to manage admissions of appellants, including his daughter, and on the other hand misguided the Ministry of Health, Government of India. There was flagrant violation of the orders of the Court which has proved prejudicial not only to the system of admission, but even to the deserving students who in the order of merit were entitled to get those seats. No advertisement was effected. There is nothing on record to show that any other candidate had been informed of the date of admission. At the eleventh hour on 30th September, 2006, the last date for admission, very cleverly admission of the two appellants was managed by him.

13. As already noticed, the violations are admitted on the part of this contemnor. The tendering of apology by him, though at the initial stage of the hearings, cannot be accepted by the Court inasmuch as violation of the orders of the Court is wilful, intentional, and prejudicial. Such conduct, not only has the adverse effect on the process of admissions and disturbs the faith of people in the administration of justice, but also lowers the dignity of the Court by unambiguously conveying that orders of this Court, its directions and prescribed procedure can be manipulated or circumvented so as to frustrate the very object of such orders and directions, thereby undermining the dignity of the Court. Administration of justice is a matter which cannot be ignored by the Court and the acceptance of apology tendered by the contemnor would amount to establishing a principle that such serious violations would not entail any consequences in law. This would, thus encourage repetition of such offences, rather than discouraging or preventing others from committing offences of similar nature as it would have no preventive or deterrent effect on persons for committing such offences in future. Thus, it is not a case where the Court should extend mercy of discharging the accused by acceptance of apology, as it would amount to encouraging similar behaviour.

14. The contemnor, Dr. Adile, while heavily relying upon the factum of his having been placed under suspension by the disciplinary authority as well as the direction to his daughter to pay Rs.5 lacs for continuing with the medical course to which she was admitted, has argued that the Court should take a lenient view and accept the apology. We are of the view that such a contention cannot be of much advantage to the contemnor. These are not the relevant factors for acceptance of an apology, however, they may be of some consideration while imposing the punishment.

15. Now, we shall proceed to discuss the legal issues raised on behalf of the contemnor that in such cases, the proceedings under the Act cannot be taken recourse to.

16. It is true that Section 12 of the Act contemplates disobedience of the orders of the Court to be wilful and further that such violation has to be of a specific order or direction of the Court. To contend that there cannot be an initiation of contempt proceedings where directions are of a general nature as it would not only be impracticable, but even impossible to regulate such orders of the Court, is an argument which does not impress the Court. As already noticed, the Constitution has placed upon the judiciary, the responsibility to interpret the law and ensure proper

administration of justice. In carrying out these constitutional functions, the Courts have to ensure that dignity of the Court, process of Court and respect for administration of justice is maintained. Violations which are likely to impinge upon the faith of the public in administration of justice and the Court system must be punished, to prevent repetition of such behaviour and the adverse impact on public faith. With the development of law, the Courts have issued directions and even spelt out in their judgments, certain guidelines, which are to be operative till proper legislations are enacted. The directions of the Court which are to provide transparency in action and adherence to basic law and fair play must be enforced and obeyed by all concerned. The law declared by this Court whether in the form of a substantive judgment inter se a party or are directions of a general nature which are intended to achieve the constitutional goals of equality and equal opportunity must be adhered to and there cannot be an artificial distinction drawn in between such class of cases. Whichever class they may belong to, a contemnor cannot build an argument to the effect that the disobedience is of a general direction and not of a specific order issued inter se parties. Such distinction, if permitted, shall be opposed to the basic rule of law.

17. The directions which have been issued in the cases referred to in the main judgment clearly provide for admission to medical courses in order of merit, for the process of admission to be transparent and fair, and that there must be strict adherence to the time schedule specified in the judgments. The purpose of this is to ensure that arbitrariness and discrimination do not creep into this process, and equal opportunity is ensured to the eligible candidates applying to the medical courses in a just and fair manner.

18. These directions are intended to serve a greater public purpose and are expected to be within the knowledge of all concerned persons besides the fact that the law declared by this Court is deemed to be known to all concerned. The violation of general directions issued by this Court would attract the rigours of the provisions of the Act. Whether for such violation or non-compliance, the Court would punish a person or persons, would always depend upon the facts and circumstances of a given case. It is not possible to provide any straight jacket formula that is universally applicable to all cases. All that we have to examine is whether the apology tendered is bona fide, when examined in light of the attendant circumstances and that it will be in the interest of justice to accept the same.

19. This Court in the case of Mohd Aslam v. Union of India [(1994) 6 SCC 442] observed that when we speak of the rule of law as a characteristic of our country, no man is above the law but that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to jurisdiction of the ordinary tribunals. Respect for law and its institutions is the only assurance that can hold a pluralist nation together. One should ensure respect for law as its breach will demolish public faith in accepted constitutional institutions and weaken the peoples' confidence in the rule of law. It will destroy respect for the rule of law and the authority of Courts and will thus seek to place individual authority and strength of principles above the wisdom of law.

20. The provisions of the Act do not admit any discretion for the initiation of proceedings under the Act with reference to an order being of general directions or a specific order inter se the parties. The sine qua non to initiation of proceedings under the Act is an order or judgment or direction of a Court and its wilful disobedience. Once these ingredients are satisfied, the machinery under the Act can be invoked by a party or even by the Court suo motu. If the contention raised on behalf of the contemnor is accepted, it will have inevitable consequences of hurting the very rule of law and, thus, the constitutional ethos. The essence of contempt jurisprudence is to ensure obedience of orders of the Court and, thus, to maintain the rule of law. History tells us how a State is protected by its Courts and an independent judiciary is the cardinal pillar of the progress of a stable government. If over-enthusiastic executive attempts to belittle the importance of the Court and its judgments and orders, and also lowers down its prestige and confidence before the people, then greater is the necessity for taking recourse to such power in the interest and safety of the public at large. The power to punish for

contempt is inherent in the very nature and purpose of the Court of justice. In our country, such power is codified. It serves at once a dual purpose, namely, as an aid to protect the dignity and authority of the Court and also in aiding the enforcement of civil remedies. Looked at from a wider perspective, contempt power is also a means for ensuring participation in the judicial process and observance of rules by such participants. Once the essentials for initiation of contempt proceedings are satisfied, the Court would initiate an action uninfluenced by the nature of the direction i.e. as to whether these directions were specific in a lis pending between the parties or were of general nature or were in rem.

21. The reliance by the contemnor upon the judgment of *In Re. M.P. Dwivedi & Ors.* [(1996) 4 SCC 152], does not further the cause of the contemnor. On the contrary, it supports the view that we are taking. In this case, despite the judgment of this Court, the accused persons were handcuffed and brought in the court of learned Magistrate who was a young judicial officer. Upon initiation of contempt proceedings, it was contended that the officer was not aware of the directions issued by this Court. Rejecting the plea of ignorance of law, the Court returned a clear finding that there was default on the part of the contemnor and disapproval of such conduct was ordered to be placed on their personal files. However, the Court did not punish them primarily on the ground that they were young judicial officers and had ignored the order of the Court. The directions of this Court in the case of *Prem Shankar Shukla v. Delhi Admistration* [(1980) 3 SCC 526] issuing guidelines prohibiting such handcuffing itself were, in that sense, of a general nature and this Court clearly held that they were required to be obeyed without exception.

22. Equally, the contemnor cannot draw any advantage from the judgment of this Court in the case of *Packraft (India) Pvt. Ltd. through its Director V.S. Mann v. U.P.F.C. through its M.D. R.M. Sethi and Others* [(1996) 1 SCC 304] as that was a judgment on its own facts and the Court did not state any absolute proposition of law. We may notice that in that case, the applicant had participated in the sale of the property which was alleged to have been sold contrary to the guidelines issued by the Court and had not taken any steps during that period. Since, such steps could be corrected by adopting the procedure of judicial review, the Court did not initiate the contempt proceedings. The law is well settled that mere availability of another legal proceeding does not debar invocation of the provisions of the Contempt of Courts Act. Even where execution petitions are filed or an order of injunction is issued and if during the course of the proceedings, the act or conduct of a non-applicant may be such which would invite the proceedings under the Act then such proceedings would not be debarred.

23. As already noticed, contempt proceedings are intended to ensure compliance of the orders of the Court and adherence to the rule of law. The directions are binding and must be obeyed by the parties and all concerned *stricto sensu*. In fact, the directions of the present kind are to be placed at a higher pedestal as compared to cases where the matter is *inter se* between two parties to the *lis* as they are intended to attain a greater purpose and ensure adherence to rule of law in a particular process which otherwise would be arbitrary and violative of constitutional mandate.

In the case of *Asha Sharma v. Pt B.D. Sharma University of Health Sciences* [(2012) 7 SCC 389], this Court held as under :

"25. Strict adherence to the time schedule has again been a matter of controversy before the courts. The courts have consistently taken the view that the schedule is sacrosanct like the rule of merit and all the stakeholders including the authorities concerned should adhere to it and should in no circumstances permit its violation. This, in our opinion, gives rise to dual problem. Firstly, it jeopardises the interest and future of the students. Secondly, which is more serious, is that such action would be *ex facie* in violation of the orders of the court, and therefore, would invite wrath of the courts under the provisions of the Contempt of Courts Act, 1971. In this regard, we may appropriately refer to the judgments of this Court in

Priya Gupta, State of Bihar v. Sanjay Kumar Sinha, Medical Council of India v. Madhu Singh, GSF Medical and Paramedical Assn. v. Assn. of Self Financing Technical Institutes and Christian Medical College v. State of Punjab.

26. The judgments of this Court constitute the law of the land in terms of Article 141 of the Constitution and the regulations framed by the Medical Council of India are statutorily having the force of law and are binding on all the parties concerned. Various aspects of the admission process as of now are covered either by the respective notifications issued by the State Governments, prospectus issued by the colleges and, in any case, by the regulations framed by the Medical Council of India. There is no reason why every act of the authorities be not done as per the procedure prescribed under the Rules and why due records thereof be not maintained. This proposition of law or this issue is no more res integra and has been firmly stated by this Court in its various judgments which may usefully be referred at this stage. (Ref.: State of M.P. v. Gopal D. Tirthani, State of Punjab v. Dayanand Medical College & Hospital, Bharati Vidyapeeth v. State of Maharashtra, Chowdhury Navin Hemabhai v. State of Gujarat and Harish Verma v. Ajay Srivastava.)"

24. In view of the above established principle, we have no hesitation in rejecting even the other contention raised on behalf of the contemnor. Having dealt with both the contentions raised on behalf of the contemnor, we conclude that the contemnor, Dr. S.L. Adile, has wilfully violated the directions of this Court and has manipulated the process of selection laid down by this Court so as to gain personal advantage for admission of his daughter and the other appellant thereby causing serious prejudice to other candidates of higher merit. Having held him guilty of the offence of civil contempt in terms of Section 12 of the Act, we refrain from awarding him civil imprisonment for the reasons aforementioned and award him a penalty of Rs.2,000/- as fine.

Contemnors (C) to (F) : Ms. Amrita Banerjee Mitra, former Assistant Prof. Physiology, Medical College Jagdalpur, Chhattisgarh; Dr. Sanjivani Wanjari, former Associate Prof. Obstetrics and Gynaecology, Medical College Jagdalpur, Chhattisgarh; Dr. P.D. Agrawal, former Associate Prof. Radiology medical College, Jagdalpur, Chhattisgarh and Mr. Padmakar Sasane, former Demonstrator Biophysics in the Department of Physiology, Medical College Jagdalpur, Chhattisgarh

25. The stand taken by these contemnors in their reply affidavit is that Ms. Amrita Banerjee had taken over as acting Dean on 1st November, 2006 and she had acted in furtherance to the letters issued by the Director. While Dr. Sanjivani Wanjari, Dr. P.D. Agrawal and Mr. Padmakar Sasane have stated that they were members of the Selection Committee which had recommended admission of the two appellants, they also have taken up the stand that they had acted as per the directions of the Dean. It is further pointed out that the Dean had constituted the Committee and required it so as to make recommendations for admission. On behalf of Ms. Banerjee, it is stated that she had received a letter from the Director of Medical Education Office on 30th September, 2006 that the seats should be filled according to merit upon establishing contact with the candidates. On 30th September, 2006 itself, she had constituted the Committee consisting of the other three contemnors and, in fact, the Committee conducted its entire proceeding and recommended the names of the two candidates, i.e. Kumari Priya Gupta and Kumari Akanksha Adile and they were granted admission on that very day i.e. on 30th September, 2006. The same was intimated to the Director of Medical Education Office vide a letter of the same date. All these contemnors have relied upon a judgment of this Court in the case of D.P. Gupta v. Parsuram Tiwari [(2004) 13 SCC 746] to contend that if a person acts upon the directions of his superior, he is not liable to be punished for contempt. In the alternative, they have also tendered unconditional apology before this Court.

26. Firstly, we must deal with the case of D.P. Gupta (supra). In that case, the High Court had punished the Vice-Chancellor for over-reaching the judgment of the High Court by exercising his power to condone the break in service for promotion to the post of Head of Department. The High Court also punished the Registrar of the University who was stated to have advised the Vice-Chancellor to act accordingly. The Supreme Court, while upholding the conviction of the Vice-Chancellor of the University noticed that the person concerned was not the acting Registrar who had advised the Vice-Chancellor but had merely carried out the order of the Vice-Chancellor by issuing the notification, which he was bound to carry out. Accordingly, the prayer of the appellant was allowed by this Court. It is obvious that the contemnor in that case had not done any act or advised the Vice-Chancellor on any count whatsoever. The Vice-Chancellor had issued an order condoning the break in service and required the Registrar to issue notification in furtherance thereto. In these circumstances, the Supreme Court found that he was not guilty of violating the order of the Court as he had merely issued notification as directed. Certainly, this case on facts has no application to the case in hand. The Dean of the College was expected to act in accordance with law. She not only abdicated her responsibilities and obligations in conducting a fair and transparent admission to the two remaining seats but, in fact, colluded with Dr. Adile, Director of the Health Services in ensuring manipulation of the process leading to admission of his daughter and deprived more meritorious students of those seats. In her entire affidavit or in the letter, she has not averred that any other candidate was informed or contacted on telephone in the entire State, which means that all other meritorious and eligible candidates were not even informed of availability of the two seats. It was her responsibility to ensure that the vacancy of such seats be duly intimated to the eligible candidates, which was not done, primarily with the intention to favour the two appellants who have been given admission in a most arbitrary manner. It is not even disputed before the Court that candidates, who were much higher in the order of merit than the two to whom seats were awarded, have not got admission to the medical course. It is also surprising that within the working hours of the office on 30th September, 2006, the entire commotion of awarding seats to the two candidates was completed. The scrutinizing of the applications and documentation, the holding of the interview and even deposit of fees by the appellants was completed on that very day. All this could not have happened but for complete collusion between the Director, the Dean and the Selection Committee. It is also not clear as to why the vacancy position was informed by the Dean to the Director on 30th September, 2006 though the second counseling had been held between 22nd and 23rd August, 2006. It was expected of her to inform the vacancy position well in time. Intentionally withholding of this information does not speak well of the functioning of the Committee.

27. The members of the Selection Committee were to discharge the very onerous duty of ensuring that all the eligible candidates had been informed of the vacancy position and they were also expected to scrutinise the certificates of eligible candidates and recommend admission strictly in order of merit. They have not even averred in their affidavit that vacancy position was in the knowledge to the eligible persons. It is not only improbable but impossible to believe that in the entire State and even from the same town, no candidate would have come to take admission to the medical courses, had they been intimated of the vacancy position. The Committee has not only failed to discharge its onerous duty but has even kept all principles of fair selection aside and ensured selection of the daughter of the Director. In contradistinction to D.P. Gupta's case (supra), none of these persons were obliged to carry out the directions of the Director to give admission to these two candidates. In fact, there was no such direction. These persons were not subordinate to the Director or even the Dean while performing the duties for filling up the two vacancies as members of the Selection Committee. They cannot take shelter of bona fide exercise of power in obeying orders of the superior.

28. In addition to this and for the reasons recorded in the earlier part of the judgment, we have no hesitation in holding that all these four persons have also violated the orders of the Court and have circumvented

the process of selection and defeated the very object of the directions issued by this Court. They have lowered the dignity and authority of the Court and, thus, are liable to be punished for violating the orders of this Court. Consequently, they are also punished and directed to pay a fine of Rs.2,000/- and copy of this order shall be placed on their personal file.

29. Now, we will deal with the case of Mr. Keshav Desiraju, Special Secretary in the Ministry of Health and Family Welfare and of Jagdish Prasad, director General, Health Services, Ministry of Health and Family Welfare, Government of India. Mr. Keshav Desiraju has stated in his affidavit that he has been very serious in maintaining the time Schedule for giving permission to new medical colleges taking admissions for MBBS/BDS courses under Section 10(a) of the Medical Council of India Act, 1956 by 15th July of every year. The permission was stated to be granted to the said college on 15th July, 2006 for the academic year 2006-2007. It is further stated that the State of Chhattisgarh has contributed only three seats of MBBS at JLN Medical College, Raipur, Chhattisgarh and no seat was contributed in the Government Medical College NMDS Jagdalpur towards Central Pool quota. Thus, the question of allotting of seat from the central pool quota did not arise. He further affirms that they shall strictly adhere to the schedule term provided under the judgment of the Court.

30. Dr. Jagdish Prasad in his affidavit has also stated that the Government Medical College, Jagdalpur was given approval on 15th July, 2006 as per Rules for the academic year 2006-07. Admission to 15% quota was completed by 8th August, 2006 and the unfilled seats were returned to the respective State Governments. According to this Affidavit, Kumari Akanksha and Kumari Priya Gupta did not belong to All India quota. The Jagdalpur college was granted permission for starting the academic procedure for academic year 2006-07 by the Government of Chhattisgarh on 14th August, 2006. The fake admission of the two candidates came to be known to the Department when an application under the Right to Information Act was filed by one Dr. Anil Khakharia in September, 2009 upon which the action was taken. The letter dated 8th August, 2006 issued by the Director General's office was fake. The admission was cancelled vide letter dated 19th September, 2010. It is further averred that the Directorate strictly adheres to the schedule provided. It is also stated that no deviation has been made from the prescribed procedure, time schedule approved by the Supreme Court.

31. From these two affidavits, it is in fact clear that both these contemnors are not directly responsible for violating any order or direction of the Court. However, they are expected to exercise proper control and supervision over grant of recommendation, permission to give admission in the colleges and the admission process. The Director General of Health Services, Union of India is responsible for maintaining transparency in the process of admission to the medical colleges. Two things are clear that they ought to have checked that the State could not have permitted the college to grant admission to the students on or after August 14, 2006 as 15th of July, 2006 was the last date for grant of recognition and permission to run the medical college. Secondly, when the complaint was received, the Ministry as well as the Directorate was expected to act with greater expeditiousness and ought not to have permitted the wrongly granted admissions to continue. In fact, the Government or the Directorate both took no action against the institute, even till date. There is apparent lack of proper supervision and enforcement of the directions issued by this Court on the part of these contemnors.

32. Having considered the entire spectrum of the matter, we are of the considered view that the ends of justice would be met by issuing a warning to both these contemnors and not to punish them with fine or imprisonment. They should be more careful in discharge of their functions and duties in accordance with the judgment of this Court and we further direct them to ensure circulation of this judgment as well as the judgment of Priya Gupta's case to all the Directors, Health Services of the respective States, Deans of the Universities holding the selection/examination or admission process for MBBS/BDS courses as well as to the Dean of all the

colleges.

33. In result of the above discussion, contemnor Dr. S.L. Adile, Amrita Banerjee, Dr. Sanjivani Wanjari, Dr. P.D. Agrawal and Mr. Padmakar Sasane are hereby punished and awarded the sentence of fine of Rs.2,000/- each. The fine should be deposited within four weeks from today. In the event of default, they shall be liable to undergo civil imprisonment for a period of two weeks. The notice of contempt against them is discharged, however, subject to the observations aforemade.

.....J.  
[A.K. Patnaik]

.....J.  
[Swatanter Kumar]

New Delhi  
December 13, 2012