

Writ Petition No.17578 of 2020V.PARTHIBAN, J.

This Court has gone through the undated affidavit filed by the 1st respondent, in response to the action initiated by this Court vide proceedings dated 10.12.2020 against him for the act of committing contempt of this Court and directed the official to offer his explanation.

2. The affidavit filed by the 1st respondent contains cliched, trite and common place expression of 'apology' accompanied by usual mundane deferential verbalisms not intended to convey true sense of regret for his crafty transgression.

The apologies of this nature are usually not deeper than skin deep and have been always used as a well protected shield from being taken to task in contempt proceedings. The Courts have also been very fairly gracious in accepting such empty apologies in overlooking contemptuous actions of the officials.

3. But this time and in this case, this Court has to take its contempt jurisdiction seriously for the reasons stated under:

4. Firstly, the official said to have committed the act of contempt, belongs to All India Service and is supposed to foresee the consequences of his action, particularly, when he deals with Court orders and its compliance.

5. Secondly, even according to the official, in the earlier Writ Petition filed by the petitioner in W.P.No.6984 of 2019, the impugned transfer order was stayed by this Court on 11.3.2019 and subsequently, the interim stay was extended until further orders on 09.04.2019. In the present impugned memorandum dated 4.11.20, the official records the said fact. Therefore, he cannot claim that he was not aware of the extension of stay until further orders and has been in force, as on date.

6. Thirdly, the reference to the Hon'ble Supreme Court decision reported in “2018(10) SCC 299 (**Asian Resurfacing Of Road Agency Private Limited and another vs Central Bureau Of Investigation**)” rendered in context of criminal

investigation/trial and pitchforking the same in the present context relating to service jurisprudence amounts to clever misreading, nay convenient “misunderstanding” of the import and the context of the Hon'ble Supreme Court ruling.

7. Fourthly, even assuming in favour of the official that the principle laid down by the Hon'ble Supreme Court is to be applied across the board, the official ought to have formulated his opinion on the basis of comprehensive understanding of the judgment, before acting against the subsisting stay of order passed by a constitution Court.

8. Fifthly, the official before venturing into his impertinent act of indiscretion ought to have consulted Law Officers of the government. The files produced does not disclose any such consultation preceding the impugned action. His explanation that he was under the bona fide impression about the applicability of the ratio laid down by the Hon'ble Supreme Court in the aforementioned decision appears to be far fetched and does not carry conviction with this Court.

9. Lastly, the act of the official even assuming it was unwittingly done, the larger issue is whether it is open to the officials of the Government to defy the subsisting interim order of the Constitution Court on the pretext of following the principle laid down by the Hon'ble Supreme Court in relating to a different set of facts and circumstances of the lis prompting the Apex Court to laying down general judicial directives which guidelines though indisputably, are the declared law of the land under Article 141 of the Constitution of India.

10. This issue assumes paramount importance as the officials of the Government ought not to be allowed to undermine the Constitutional jurisdiction of this Court under Article 226 of the Constitution of India in derogation of the powers of judicial review and due compliance to the judicial orders.

11. In view of the above, the first respondent is afforded with another opportunity to put forth his explanation if any, other than what is already stated by him in the affidavit filed and on such explanation being received by this Court, further orders would be passed in the matter.

12. I am reminded of this quote of British vintage, attributed to Lord Diplock, in contempt jurisdiction, which I am inclined to borrow as appropriate.

“There is an element of public policy in punishing civil contempt, since administration of justice would be undermined if the order of any Court of law could be disregarded with impunity”.

13. The first respondent is directed to submit his explanation on or before 22.12.2020.

14. The Registry is directed to take these contempt proceedings on file after assigning Contempt Petition number and tag the same with the present Writ Petition.

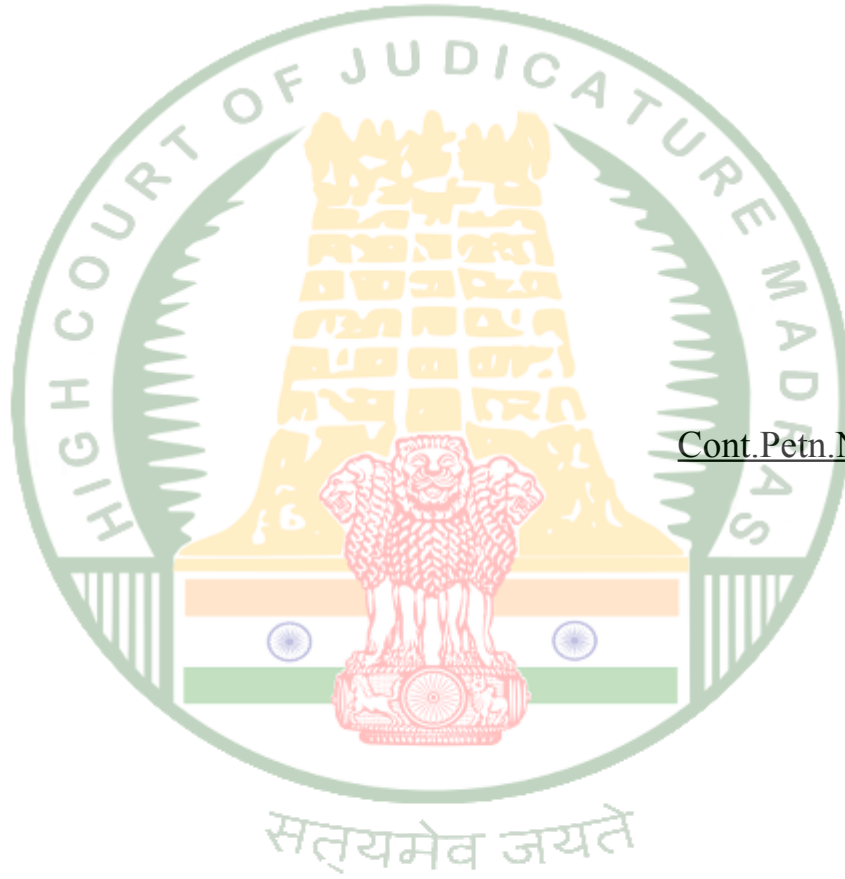
15. List the matter on 22.12.2020.

suk

WEB COPY

17.12.2020

V.PARTHIBAN, J.



Cont.Petn.No.17578 of 2020

WEB COPY

17.12.2020