

HIGH COURT OF GUJARAT (D.B.)**JAISINH JODHABHAI VAISYA AND GROFED EMPLOYEES UNION*****Versus*****LAXMANBHAI ARSHIBHAI ZALA****Date of Decision:** 07 November 2000**Citation:** 2000 LawSuit(Guj) 868**Hon'ble Judges:** [R K Abichandani](#), [Kundan Singh](#)**Eq. Citations:** 2001 CrLJ 2002, 2001 2 GLH 68, 2001 3 RCR(Cri) 277, 2001 2 LLJ 511**Case Type:** Civil Miscellaneous Application**Case No:** 748 of 2000**Subject:** Civil, Constitution, Contempt of Court**Acts Referred:**[Constitution Of India Art 215](#), [Art 136](#), [Art 141](#), [Art 227](#), [Art 234](#), [Art 226](#), [Art 129](#)[Contempt Of Courts Act, 1971 Sec 10](#), [Sec 3](#)[Bombay Industrial Relations Act, 1946 Sec 119B](#), [Sec 119A](#)

Contempt Of Courts Act, 1952 Sec 3

[Contempt Of Courts Act, 1926 Sec 2](#)**Advocates:** [N D Nanavati](#), [S Panchal](#), [Nanavati Associates](#), [M K Vakharia](#), [Mukul Sinha](#),
[D C Dave](#)**Cases Cited in (+): 1**

[1] In these two applications, the learned Counsel appearing for the opponents have taken up a preliminary objection against initiation of contempt proceedings to the effect that the Labour Court and Industrial Tribunal are not Courts subordinate to the High Court and hence contempt proceedings for non-compliance of any order or award of the Labour Court or Industrial Tribunal were not maintainable. They have placed reliance on a decision of this Court in Muljibhai Bhurabhai Vs. Upendra Vyas, Manager, reported in 2000 (2) GLH 768, in which it was held that though Labour Courts/Industrial Tribunals have the trappings and attributes of a "Court" and they were amenable to writ jurisdiction of the High Court, they are not 'Courts' as contemplated under the Contempt of Courts Act, 1971, and therefore proceedings for

breach of any order or award made by such Courts and Tribunals are not maintainable under the provisions of that Act. The learned Counsel also relied upon the decision of the Supreme Court in *Alahar Co-operative Credit Services Society Vs. Sham Lal*, reported in 1995 (2) GLH 550, in which the Hon'ble Supreme Court had observed that the Labour Court was not a Court subordinate to the High Court in the sense that the Contempt of Courts Act makes provision requiring the High Court to deal with contempt of its subordinate Courts and had struck off the contempt proceedings before the High Court.

1.1 The Division Bench in *Muljibhai Bhurabhai's* case, followed the decision in *Alahar Co-operative Credit Service Society's* case and held that the Labour Courts and Industrial Tribunals were not Courts within the meaning of Section 10 of the Contempt of Courts Act. It was held that even if the Labour Court performed judicial functions and the Presiding Officers formed part of judicial service and the judges of the Labour Court and Industrial Tribunal belong to the judicial service of the State, that will not make the Labour Court and the Tribunal a "Court" so as to attract the provisions of Section 10 of the Contempt of Courts Act. It was further held that merely because the High Court exercises powers under Articles 226 and 227 of the Constitution of India over the Labour Courts or Industrial Tribunals and they are amenable to writ jurisdiction, that would not make them subordinate Courts as contemplated by the said Act. It was observed that if that reason is accepted, all the forums constituted under the Central or Local Acts shall have to be declared as "Courts". It has been contended that the decision of the Supreme Court in *Alahar Co-operative Credit Service Society's* case (supra) was directly on the point dealing with the precise issue as to whether the Labour Court was a Court subordinate to the High Court for the purposes of initiating proceedings under the Contempt of Courts Act and therefore, the decision was binding on this Court and has been rightly followed by a Division Bench of this Court. It was submitted that if a different view is thought of, then the matter ought to be referred to a larger Bench of the Court.

1.2 The learned Counsel for the respondents in support of their submissions placed reliance also on the following decisions:-

(A) *State of A.P. Vs. V.C. Subharayudu & ors.* reported in (1998) 2 SCC 516 was relied upon to contend that this matter should be referred to a larger bench if a view different from the one taken in *Muljibhai's* case is likely to be taken. From para 10 of the judgement, it would be noticed that it was contended before the Supreme Court that since the judgement of the learned Single Judge in writ petitions filed by SAS Accountants had been affirmed in appeal earlier by the Division Bench, the other Division Bench could not have dismissed the petitions and

set aside the judgement of the learned Single Judge and in context of this contention the Supreme Court said that if the second Division Bench was of the opinion that it had to take a different view than that taken by the first Division Bench, the matter should as a matter of propriety have been referred to a larger Bench.

(B) Mahanagar Railway Vendors' Union Vs. Union of India & ors., reported in (1994) Supp. (1) 609 was cited for its proposition that a decision of a larger Bench of three judges of the Supreme Court, would prevail over the decision of a Bench of two judges.

[2] The learned Sr. Counsel and other Counsel who argued for the applicants seeking initiation of contempt proceedings contended that it was a settled legal position that Labour Courts and Industrial Tribunals are Courts subordinate to the High Court and that in any event contempt jurisdiction could be invoked for breach of any order or award made by any subordinate Court or Tribunal.

2.1 The learned Counsel placed reliance on the following decisions in support of their contentions:-

(A) Thakur Jugal Kishore Sinha Vs. The Sitamarhi Central Co-operative Bank, reported in AIR 1967 S.C 1494 was cited for the proposition that subordination for the purpose of Section 3 of the Contempt of Courts Act means judicial subordination and that the Assistant Registrar functioning under the Bihar and Orissa Co-operative Societies Act was a Court subordinate to High Court for the purpose of Section 3 of the said Act.

(B) The decision of the Supreme Court in S.K. Sarkar, Member, Board of Revenue, U.P Vs. Vinay Chandra Misra, reported in AIR 1981 SC 723, was cited for the proposition that the phrase "Courts subordinate to it" as used in Section 10 of the Contempt of Courts Act, 1971 was wide enough to include all Courts which are judicially subordinate to the High Court. It was held that the Court of Revenue Board is a Court "subordinate to the High Court" within the contemplation of Section 10 of the said Act.

(C) Delhi Judicial Service Association Vs. State of Gujarat, reported in (1991) 4 SCC 406 was relied upon for the proposition that the High Court as a Court of record had inherent power to indict a person for the contempt of itself as well as of courts inferior to it, and that Section 10 of the said Act like Section 3 of the Act of 1952 reiterates and reaffirms the jurisdiction and power of the High Court in respect of its own contempt and of subordinate courts.

(D) A Full Bench decision of this Court in Gujarat Mazdoor Sabha Vs. State of Gujarat, reported in 1998 (2) G.L.H 151 was relied upon to point out that on the basis of the decision of the Supreme Court in State of Maharashtra Vs. Labour Law Practitioners Association, reported in AIR 1998 SC 1233 it was already held that the term "courts" will cover all tribunals which are basically courts performing judicial functions.

(E) The decision of the Supreme Court in Durga Shankar Vs. Raghuraj Singh, reported in AIR 1954 S.C 520 was cited for the proposition that the expression "Tribunal" as used in Article 136 of the Constitution includes, within its ambit, all adjudicating bodies constituted by the State and invested with judicial functions.

(F) Prantiya Kamdar Sena & anr. Vs. State of Gujarat reported in 1998 (2) GLH 970 was referred with a view to point out that the Division Bench, after noticing that in Alahar Co-operative Credit Service Society's case (supra) the Supreme Court had held to the effect that the Labour Court was not a Court subordinate to the High Court and not forming part of judicial service of the State, held that it was only in the decision given by the Supreme Court on 11.2.1998 in State of Maharashtra Vs. Labour Law Practitioners Association case (supra) that the matter was elaborately dealt with by the Supreme Court and it was held that the Labour Courts and Industrial Tribunal would come within the purview of the State judicial service.

(G) State of U.P Vs. Synthetics & Chemicals Ltd., reported in (1991) 4 SCC 139 was cited to show that the Supreme Court (in paragraphs 40 and 41 of the judgement) has held to the effect that doctrine of per incuriam and sub-silentio operate as exceptions to the rule of precedent and that a decision not express, nor founded on reasons nor proceeding on consideration of the issue cannot be deemed as "law declared" under Article 141 of the Constitution.

[3] Under Article 215 of the Constitution of India it has been provided that every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. Under Section 10 of the Contempt of Courts Act, 1971 it is, inter-alia, provided that every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself.

3.1 It is held by the Supreme Court in Supreme Court Bar Association Vs. Union of India, reported in (1998) 4 SCC 409, that the object of punishment for contempt being both curative and corrective, these coercions are meant to assist an individual complainant to enforce his remedy and there is also an element of public

policy for punishing civil contempt, since the administration of justice would be undermined if the order of any court of law is to be disregarded with impunity. Under some circumstances, compliance of the order may be secured without resort to coercion, through the contempt power. For example, disobedience of an order to pay a sum of money may be effectively countered by attaching the earnings of the contemner. In the same manner, committing the person of the defaulter to prison for failure to comply with an order of specific performance of conveyance of property, may be met also by the court directing that the conveyance be completed by an appointed person. Disobedience of an undertaking may in the like manner be enforced through process other than committal to prison as for example where the breach of undertaking is to deliver possession of property in a landlord-tenant dispute. Apart from punishing the contemner, the court to maintain the majesty of law may direct the police force to be utilised for recovery of possession and burden the contemner with costs, exemplary or otherwise.

[4] The expression "Subordinate Courts" appears in the Constitutional provisions more particularly in Chapter VI, which provides for appointment of all District Judges (as defined in Article 236) and persons other than District Judges to judicial service. Article 235 gives control jurisdiction to the High Court over subordinate courts.

4.1 The word "Court" is not defined in the said Act. As per the Oxford Dictionary, the 'Court' means an assembly of judges or other persons acting as a tribunal in civil and criminal cases and the word 'tribunal' means a board appointed to adjudicate some matter, a court of justice, a seat or bench for judge/judges, or a judicial authority (See the Concise Oxford Dictionary). In Webster's II New Riverside Dictionary, meaning of 'court' is given as: a person or group of persons whose task is to hear and submit a decision on cases at law or a regular session of a judicial assembly, while 'tribunal' means a court of justice, the platform or seat on which a judge or other presiding court officer sits or one empowered to determine or judge.

4.2 Even before framing of the Constitution, Sec. 2 of the Contempt of Courts Act, 1926, made express provision giving the High Courts in India the same jurisdiction, power and authority in accordance with the same practice and procedure in respect of contempt of courts subordinate to them as they had in respect of contempt of themselves. The Contempt of Courts Act, 1952 re-enacted the provisions thereof in substantially the same language. In *Brajnandan Sinha Vs. Jyoti Narain* reported in AIR 1956 S.C 66, the Supreme Court, after referring to authorities like *Coke on Littleton and Stroud and Stephen*, the Privy Council decision in *Shell Co. of Australia Vs. Federal Commissioner of Taxation*, 1931 AC 275, and the earlier decisions in *Bharat Bank Ltd. Vs. Employees of Bharat Bank Ltd.*, reported in AIR

1950 S.C 188, Magbool Hussain Vs. State of Bombay, reported in AIR 1953 S.C 325 and Cooper Vs. Wilson (1937) 2KB 309 observed:-

"It is clear, therefore, that in order to constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgement which has finality and authoritativeness which are the essential tests of a judicial pronouncement."

4.3 In Jugal Kishore's case (supra), the Supreme Court after approving the above dictum and referring to the wider ambit of Article 227 of the Constitution which gave power to the High Courts to correct errors of various kinds of all courts and tribunals in appropriate cases, in terms, held in paragraph 24 of the judgement, that the subordination for the purpose of Section 3 of the Contempt of Courts Act, 1952 means judicial subordination and not subordination under the hierarchy of Courts under the Civil Procedure Code or the Criminal Procedure Code. It was held that the Contempt of Courts Act does not define 'contempt' or 'Courts' and in the interest of justice contempt towards any person who can be called a 'Court' should be amenable to the jurisdiction under the Contempt of Courts Act.

[5] The question whether the Labour Courts were Courts within the purview of the control jurisdiction of the High Court and whether the recruitment of Labour Court judges was required to be made in accordance with Article 234 of the Constitution of India came up for consideration of Hon'ble the Supreme Court in the State of Maharashtra Vs. Labour Court Law Practitioners' Association, reported in AIR 1998 SC 1233 and the Supreme Court holding that Labour Courts were Courts and decide disputes that are civil in nature (paragraph 5 of the judgement) and that the Labour Courts were undoubtedly Courts in the true sense of the term applying the tests laid down by the Supreme Court in The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., reported in AIR 1950 SC 188, came to the conclusion that Chapter VI of Part VI of the Constitution of India dealing with the Subordinate Courts applied for making appointment to such Courts. It was observed that the said Constitutional provisions reflected a clear anxiety on the part of the framers of the Constitution to preserve and promote independence of the judiciary from the executive. Thus, in a case where the question as to whether the Labour Courts were subordinate Courts directly arose before the Supreme Court, it has in terms been held that they are Courts subordinate to the High Court, making them amenable to the control jurisdiction of the High Court and the appointments of its Presiding Officers subject to the procedure indicated in Chapter VI of the Constitution pertaining to the Subordinate Courts. It will be seen that this declaration that the Labour Courts are Courts subordinate to the High Court was not available when in Alhar's case the Supreme Court had proceeded on an

assumption that they were not courts subordinate to the High Court in context of the Contempt jurisdiction of the High Courts.

[6] We may here take note of the fact that Section 119B of the Bombay Industrial Relations Act, 1946, throws ample light on the question whether the High Court has power to punish for contempt of Labour Courts or Industrial Courts. Section 119B reads as under:-

"119B. (1) If any person commits any act or publishes any writing which is calculated to improperly influence the Industrial Court, or a Labour Court or a Wage Board or to bring such Court, Board, or a member or a Judge thereof into disrepute or contempt or to lower its or his authority, or to interfere with the lawful process of any such Court or Board, such person shall be deemed to be guilty of contempt of such Court or Board, as the case may be.

(2) In the case of contempt of itself the Industrial Court shall record the fact constituting such contempt and make a report in that behalf to the High Court.

(3) In the case of contempt of a Wage Board or a Labour Court, such Board or Court shall record the fact constituting such contempt and make a report in that behalf to the Industrial Court; and thereupon the Industrial Court may, if it considers it expedient to do so, forward the report to the High Court.

(4) When any intimation or report in respect of any contempt is received by the High Court sub-section (2) or (3) the High Court shall deal with such contempt as if it were contempt of itself and shall have and exercise in respect of it the same jurisdiction, powers and authority in accordance with the same procedure and practice as it has and exercises in respect of contempt of itself."

6.1 Section 119A of the Bombay Industrial Relations Act, 1946 deals with contempt of Industrial Courts, Labour Courts and Wage Boards relating to omission to produce documents or to furnish any information, intentional insult, interruption etc., while Sec. 119B deals with other kinds of contempt of Labour Courts, Industrial Courts and Wage Boards. The provisions of Section 119B (4) put the matter beyond any pale of doubt by providing that in respect of any report of Industrial Court, Labour Court or Wage Board, the High Court shall deal with such contempt as if it were contempt of itself and shall have and exercise in respect of it the same jurisdiction, powers and authority in accordance with the same procedure and practice as it has and exercises in respect of contempt of itself. There cannot be a clearer statutory indication than this to show that the High Court has power to punish any person who commits contempt of Industrial Court, Labour Court or

Wage Board in exercise of its contempt jurisdiction under Article 215 of the Constitution of India as well as the provisions of Contempt of Courts Act, 1971.

[7] In fact, the question whether the High Court has power to punish for contempt of not only itself, but all the subordinate Courts as well as the Tribunals, is already concluded by the decision of the Supreme Court in Income Tax Appellate Tribunal Vs. V.K. Agarwal and anr. - (1999) 1 SCC 16, which unfortunately was not brought to the notice of the Division Bench in Muljibhai Bhurabhai's case. As noted above, every High Court under Article 215 of the Constitution is a Court of record and has all the powers of such a court including power to punish for contempt of itself. The High Court has power under this Article to punish, not merely for contempt of itself, but also for contempt of all courts and tribunals subordinate to it. This Court's jurisdiction and power to take action for contempt of subordinate courts is its inherent jurisdiction and is protected under Article 215. Dealing with the similar provision of Article 129 in context of the Supreme Court being a Court of record having all the powers of such Court including power to punish for contempt of itself, the Supreme Court has consistently held that it has power under Article 129 to punish, not merely for contempt of itself, but also for contempt of all courts and tribunals subordinate to it. In Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat, reported in (1991) 4 SCC 406, the Supreme Court examined at length its power to punish for contempt under Art. 129 of the Constitution and holding that it has supervisory jurisdiction over all courts in India and had wide power to interfere and correct the judgement and orders passed by any Court or Tribunal in the country, came to the conclusion that a Court of record has inherent power to punish for contempt of all Courts and Tribunals subordinate to it in order to protect the subordinate courts and tribunals. It was held that this power to protect was founded on the inherent power of a court of record to correct the judicial orders of the subordinate courts. It was also held that the inherent powers of a superior court of record have remained unaffected even after codification of contempt law. The view taken in Delhi Judicial Service Association's case (supra) was reiterated and reaffirmed in the case of Vinaychandra Mishra, In re, reported in (1995) SCC 584 in which it was held (in paragraphs 23 to 29 of the judgement) that since the Supreme Court had the power of judicial superintendence and control over all the courts and tribunals functioning in the country, it had a corresponding duty to protect and safe-guard the interests of all courts and tribunals to ensure that the flow of the stream of justice in the country remains unsullied by any interference or attack from any quarter. In the Income-tax Appellate Tribunal's case (supra), the Supreme Court referring to the aforesaid decisions held (paragraphs 11 and 12 of the judgement) that it was a consistent view of the Supreme Court that it had power under Article 129 to punish not merely for contempt of itself, but also for contempt of all courts and tribunals subordinate to it

and that there can be no doubt that the Court had jurisdiction to punish for the contempt of the Income-tax Appellate Tribunal. The High Court has powers similar to those of the Supreme Court under Article 129 conferred on it by Art. 215, which is also borne out from the following observations of the Supreme Court in Delhi Judicial Services Association's case (supra), which have been reproduced in paragraph 11 of the decision of the Supreme Court in Incom-tax Appellate Tribunal's case (supra).

"The Supreme Court being a court of record under Article 129 and having wide power of judicial supervision over all the courts in the country, must possess and exercise similar jurisdiction and power as the High Courts had prior to contempt legislation in 1926. Inherent powers of a superior court of record have remained unaffected even after codification of contempt law."

7.1 We have no doubt in our mind that if the above decision of Hon'ble the Supreme Court in Income-tax Appellate Tribunal case (supra), rendered on 17.11.1998, was brought to the notice of the High Court in Muljibhai Bhurabhai's case, there would have remained no occasion for the Bench to take the view that the proceedings for breach of award made by Labour Court/Industrial Tribunal are not maintainable under the Contempt of Courts Act, which view runs contrary to the ratio of the decision of the Supreme Court in Income Tax Appellate Tribunal case, that a Court of record has inherent power to punish for contempt of all courts and tribunals subordinate to it in order to protect these subordinate courts and tribunals. The decision in Muljibhai Bhurabhai's case to the extent it runs counter to the ratio of the decision of the Supreme Court in Income-tax Appellate Tribunal case (supra), cannot be treated as a binding precedent because it has been rendered without noticing the said decision of the Supreme Court and it would be a per incuriam decision. It has been held by the Supreme Court in Commissioner for Hindu Religious and Endowments & anr. Vs. C. Laxminarasimhaiah reported in 1990 Suppl. SCC 164 that a decision of the High Court given without noticing the decision rendered by the Supreme Court cannot be considered to be good law. There can therefore arise no question of referring the matter to a larger Bench when the field is directly covered by a decision of Hon'ble the Supreme Court in Income Tax Appellate Tribunal case (supra), which was not at all considered in the decision in Muljibhai's case by the earlier Bench.

[8] Following the ratio of the decision of the Supreme Court in Income Tax Appellate Tribunal (supra) we hold that this Court has power to punish under Article 215 and the Contempt of Courts Act, 1971, not only for contempt of itself but also for contempt of all courts and tribunals subordinate to it including Labour Courts and Industrial Tribunals. The preliminary objection raised on behalf of the respondents is, therefore, rejected in both these applications.