IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 24.01.2023

Judgment pronounced on : 10.02.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Letters Patent Appeal Nos. 6 to 50 of 2022

LPA No. 6 of 2022

G. Subramanian .. Appellant

Versus

1. Mr. K. Phanindra Reddy, I.A.S.,
   The Secretary
   Home Department
   The Government of Tamil Nadu
   Fort St. George
   Chennai - 600 009

2. Mr. C. Sylendra Babu, I.P.S.,
   The Director General of Police
   Post Box No.601
   Dr. Radhakrishnan Salai
   Mylapore, Chennai - 600 004

3. Mr. Sandeep Rai Rathore, I.P.S.,
   The Commissioner of Police
   Avadi, Chennai - 600 054

4. Mr. Krishna Murthy
The Inspector of Police
T-3, Korattur Police Station
Korattur, Chennai - 600 076 .. Respondents

LPA No. 6 of 2022:- Appeal filed under Clause 15 of Letters Patent against the order dated 04.11.2022 passed by the learned Judge in Contempt Petition No. 2115 of 2022.

For Appellants : Mr. N.L. Rajah, Senior Advocate
in LPA No. 6 of 2022

Mr. G. Rajagopalan, Senior Advocate
in LPA No. 9 of 2022

Mr. S .Ravi, Senior Advocate
in LPA No. 8 of 2022

Mr.Karthikeyan
Mr. B. Rabu Manohar in all cases

For Respondents : Mr. N.R. Elango, Senior Advocate
assisted by Mr. E. Raj Thilak
Additional Public Prosecutor
Mr. V.J. Priyadarsana
Government Advocate (Crl.side)
Mr. S. Balaji
Government Advocate (Crl.side)

COMMON JUDGMENT

R. MAHADEVAN, J.

These Letters Patent Appeals are filed assailing the common order dated 04.11.2022 passed by the learned Judge in Contempt Petition Nos.

2111, 2115, 2238, 2239 to 2243, 2249, 2272 to 2275, 2322 to 2350, 2362 to 2369 of 2022.

WRIT PROCEEDINGS

2. Writ Petition No.24540 of 2022 etc. batch, were filed by the appellants in these appeals, praying to issue a Writ of Mandamus directing the respondents herein to permit the members of Rashtriya Swayam Sevak Sangh (RSS) to conduct the procession (Route March) wearing their uniform (Dark olive green trousers, white shirt, cap, belt, black shoes) through various routes and times specified in the writ petitions, throughout the State.

3. According to the appellants / writ petitioners, they are holding various posts in RSS, which was formed in the year 1925. To commemorate the 75th year of Independence, the birth centenary of Bharat Ratna Dr. B.R. Ambedkar and Vijaydasami, they decided to take out procession on 02.10.2022 at various places and to conduct a public meeting on the same day. Accordingly, the appellants / writ petitioners have submitted their respective representations under Section 41(A) of the Chennai City Police Act, 1988 and Section 30(2) of the Police Act,

1861, as the case may be, requesting the authorities concerned to grant permission to them to conduct such procession and public meeting. However, no decision was taken on such representations and therefore, they have filed the writ petitions for the aforesaid relief.

4. Before the Writ Court, on behalf of the petitioners, reliance was placed on the provisions under Section 41 of the Chennai City Police Act, 1988, Section 30(2) of the Police Act, 1861, as well as the earlier order dated 07.11.2014 passed in W.P.No.28677 of 2014 etc., and contended that the non-consideration of the applications seeking permission is unlawful and it warrants interference.

DIRECTIONS ISSUED IN THE WRIT PETITIONS

5. Upon hearing the counsel for both sides, the learned Judge has disposed of the writ petitions viz., WP.No.24540 of 2022 etc. batch, , by order dated 22.09.2022, the relevant portion of which is quoted below for ready reference:

> *"8. All the petitioners sought for permission to take out procession and to conduct public meeting. Therefore, they do not fall under the category, those where a right is claimed as an essential part of the profession of any religion, since the petitioners do not claim that they seek to take out a procession as an essential part of any religious rite.*

Further the respondents are kept the petitions for seeking permission to conduct procession and public meeting pending without passing any orders for the past nearly one month.

9. The Hon'ble Supreme Court of India in the case of Mazdoor Kisan Shakti Sangathan Vs. The Union of India and anr in W.P.(Civil)No.1153 of 2017 by an order dated 23.07.2018 held that the fundamental right of the citizens to hold peaceful demonstrations and protest in order to bring out their grievances to the notice of the authorities in power so that the concerned authorities are awakened and attend to their grievances as well as take remedial measures. Therefore, there could not have been a complete ban on demonstration in the area in question. Undoubtedly, holding peaceful demonstration by the citizen in order to air its grievances and to ensure that these grievances are heard in the relevant quarters, is its fundamental right. This right is specifically enshrined under Article 19(1)(a) and 19(1)(b) of the Constitution of India. It confers a very valuable right on the citizens viz., right of free speech and it gives right to assemble peacefully without arms.

10. Insofar as the Union Territory of Puducherry is concerned, the Superintendent of Police (East), Puducherry by an order dated 16.09.2022 granted permission with certain conditions. The petitioners also under take before this Court that they will abide any conditions as imposed by this Court.

11. In view of the above order passed by the Hon'ble Supreme Court of India as well as various orders passed by this Court, it would be appropriate to direct the respondents to grant permission to conduct procession and to conduct public meeting on 02.10.2022 at various places subject to the following conditions on or before 28.09.2022:

i. During the program, nobody shall either sign songs or speak ill on any individuals, any caste, religion, etc.,

ii. Those who participate in the program shall not for any reason talk or express anything in favour of organizations banned by Government of India. They should also not indulge in any act disturbing the sovereignty and integrity of our country.

iii. The program should be conducted without causing any hindrance to public or traffic.

iv. The participants shall not bring any stick, lathi or weapon that may cause injury to any one.

v. The organizer(s) shall make adequate arrangements for drinking water and proper First Aid/Ambulance/Mobile Toilets/CCTV Cameras/Fire Fighting equipments etc., in consultation with the Police/Civic/Local Bodies as directed by the police.

vi. The procession shall proceed in any orderly manner along the sanctioned route keeping to the left and shall not halt on the way or cause impediment to the normal flow of traffic. The procession shall occupy only one-fourth of the road.

vii. The organizer(s) shall keep sufficient volunteers to help the police for regulation of traffic and the participants.

viii. The organizer(s) of procession/rally shall be responsible for ensuring that the route permitted to them by the Police Authorities is strictly followed.

ix. Only box type speakers should be used and output of the speakers should not exceed 15 watts ad within a radius of 30 meters only. Cone Speakers should not be used at any cost.

x. In the procession, the processionists shall not any manner offend the sentiments of any religious, linguistics, cultural and other groups.

xi. An undertaking to reimburse the cost for any damage that may occur enroute to any public/private property and an undertaking to bear the compensation/replacement costs as well, if are to be awarded to any other institution/person, who may apply for the same.

xii. If there is violation of any one of the conditions imposed, the concerned police officer is at liberty to take necessary action, as per law."

REVIEW APPLICATIONS

6. The State has filed Review Application Nos. 172 to 220 of 2022 before the Learned Judge seeking to review the order dated 22.09.2022 passed in WP No. 24540 of 2022 etc. batch. It was contended by the Review Applicants that the procession and public meeting sought to be conducted by the appellants on 02.10.2022 falls on Sunday on which date, Christians in large numbers will offer prayer in Churches. Further, there is no justification on the part of the appellants in choosing 02.10.2022 for taking out the proposed procession and conduct of public

meeting as it was a public holiday to commemorate Gandhi Jayanthi. Even otherwise, most of the routes suggested by the appellants are enroute Muslim dominated areas where mosques are located and if the procession is allowed to be conducted, there is every likelihood for communal confrontations on the grounds of religion and caste. It was also contended that some of the places chosen by the organisers are in a narrow street and it would result in traffic snarl and hardship to the general public who use to come out in large numbers on 02.10.2022, which happened to be a public holiday as well as Sunday. Above all, some of the routes chosen by the appellants fall within the prohibited zone which are not fit for granting permission to conduct procession and therefore, the applicants / State sought to review the order dated 22.09.2022 passed in the writ petitions. Placing reliance on the ***order dated 23.07.2018 passed by the Hon'ble Supreme Court in Writ Petition (Civil) No. 1153 of 2017 [Mazdoor Kisan Shakti Sangathan v. The Union of India and others]*** it was contended that the Review Applicants/State are competent to examine the request made by the appellants to carry on the procession and to conduct the public meeting. Whether to grant permission or not, keeping in view its likely effect or whether it would cause any obstruction to traffic or danger to human

safety or disturbance to public tranquilty etc., has to be best left open to the State. It was also the contention of the Review Applicants that certain political parties such as Viduthalai Chituthigal Katchi (VCK), Communist Party of India (CPI), Communist Party of Marxist (CPM) have also proposed to jointly hold "Human Chain Programme" on 02.10.2022 and therefore, it would be difficult for the Review Applicants to maintain law and order situation in the State, if the appellants are given permission to conduct the public meeting and procession on that day.

DIRECTIONS ISSUED IN THE REVIEW APPLICATIONS

7. When the Review Applications were listed for admission on 02.11.2022, the Learned Judge refused to review the order dated 22.09.2022 passed in WP No. 24540 of 2022 etc. batch and dismissed the Review Applications. For better appreciation, the order dated 02.11.2022 passed in Review Application Nos. 172 to 220 of 2022 is extracted below:

> *"All the petitions have been filed to review the order dated 22.09.2022 passed by this Court in W.P.No.24540 of 2022 etc., batch.*
>
> *2. This Court by an order dated 22.09.2022 in W.P.No.24540 of 2022 etc., batch, directed the petitioners/State to grant permission to the*

respective respondents to conduct procession and conduct public meeting on 02.10.2022 at various places all over Tamil Nadu on certain conditions.

3. Today when the matters are taken up for hearing, the learned State Public Prosecutor appearing for the petitioners submitted that out of 50 places, in three places, the respective respondents were granted permission to conduct procession and public meeting on 06.11.2022. Insofar as 23 places are concerned, respective respondents are permitted to conduct procession/public meeting in an indoor place. Insofar as 24 places are concerned, respective authorities found that there will be a law and order issue and rejected the requests in view of the intelligence report received from the authorities concerned. He further submitted that the respective respondents also approached this Court by way of Contempt Petitions and same are pending before this Court.

4. In view of the various orders passed by the authorities concerned, nothing survive in these Review Applications. Accordingly, all the Review Applications are closed. Consequently, the connected miscellaneous petitions are also closed."

CONTEMPT PETITIONS

8. Complaining non-compliance of the order dated 22.09.2022 passed in the writ petitions, Contempt Petition Nos. 2111, 2115, 2238, 2239 to 2243, 2249, 2272 to 2275, 2322 to 2350, 2362 to 2369 of 2022 were filed by the appellants / writ petitioners. It was contended that the order passed by the learned Judge was duly communicated to the respondents, but they rejected the representations of the appellants / writ petitioners, citing an incident that had taken place in Coimbatore subsequent to the order passed by this Court. It was also contended that the Government has imposed a ban on Popular Front of India and other

similar organisations. According to the contempt petitioners, the ban imposed on Popular Front of India has got nothing to do with the maintenance of law and order issue in the State. It was also contended that as against one of the orders passed by the respondents rejecting the request to grant permission, WP No. 24700 of 2022 was filed and this Court set aside the order of rejection and directed the respondents to grant permission to conduct the procession and public meeting to be held on 02.10.2022.

9. The contempt petitions were opposed by the respondents by contending that after the order dated 22.09.2022 was passed, the Union Government banned the organisation called "Popular Front of India" and other similar organisations for a period of five years on 28.09.2022. In view of such ban, there are threats from various quarters to the leaders of the organisation. In such circumstances, the Government assessed the situation in the context of the ban imposed by the Union Government and decided not to grant permission to the writ petitioners to take out the procession and public meeting. It was further contended that the respondents cannot be oblivious of the possibility of unrest and law and order problem in the State and in the given facts and circumstances, the

permission sought by the appellants / writ petitioners cannot be granted. The respondents also relied on the decision of the Hon'ble Supreme Court in ***Karnataka Live Band Restaurants Association v. State of Karnataka and others [2018 (4) SCC 372]*** to contend that it is the prime duty, rather statutory duty of the State Police Administration to maintain law and order problem and give precedence to the safety and morality of the people and the State.

10. During the hearing of the Contempt Petitions on 30.09.2022, a suggestion was made to convene the procession on any other alternative day, except 02.10.2022. Therefore, the appellants suggested four alternate dates to take out the procession and public meeting i.e., on 09.10.2022, 16.10.2022, 06.11.2022 and 13.11.2022. The respondents also, across the bar, submitted that the alternative dates given by the appellants will be considered and appropriate orders will be passed to enable them to take out the procession and conduct public meeting. Taking note of the submissions made on behalf of either side, the learned judge directed the respondents to permit the appellants / writ petitioners to conduct the procession and public meeting on the alternative dates suggested and to pass appropriate orders thereon. Accordingly, for

reporting compliance of the order, the contempt petitions were directed to be posted on 31.10.2022.

11. On 31.10.2022, when the contempt petitions were taken up for hearing, it was submitted on behalf of the respondents that the Director General of Police, in his order dated 29.10.2022, directed all the Commissioners of Police/Superintendents of Police to pass orders on the applications submitted by the appellants seeking permission to conduct the procession and public meeting. Thus, it was submitted that appropriate orders will be passed within a day or two. In view of such submission, the contempt petitions were directed to be posted on 02.11.2022 for reporting compliance. However, on 02.11.2022, when the Contempt Petitions were taken up for hearing, it was reported that out of 50 places in which the procession was slated to be conducted, permission was granted to conduct procession and public meeting only in 3 places on 06.11.2022. Even though permission was granted to conduct procession/public meeting in another 23 places, such permission was granted on condition that the procession/public meeting has to be conducted in an indoor place. The applications seeking permission to conduct procession/ public meeting in 24 other places were rejected by

citing law and order problem or on the basis of intelligence report allegedly received by the authorities concerned. In view of such submission, the learned judge directed the matters to be posted on 04.11.2022, on which date, the respondents were directed to submit the intelligence report relied on by them to reject the 24 other applications.

12. On 04.11.2022, when the contempt petitions were listed for hearing, the learned judge, after hearing the counsel for both sides, passed the following order:

> *"9. Therefore, this Court is inclined to grant permission to conduct procession and public meeting on 06.11.2022 on the following conditions:*
>
> *i. The procession and public meetings should be conducted in a compounded premises such as Ground or Stadium. It is made clear that while proceeding to conduct procession and public meeting, the participants shall go by walk or by their respective vehicles without causing any hindrance to the general public and traffic.*
>
> *ii. During the program, nobody shall either sing songs or speak ill on any individuals, any caste, religion, etc.,*
>
> *iii. Those who participate in the program shall not for any reason talk or express anything in favour of organizations banned by Government of India. They should also not indulge in any act disturbing the sovereignty and integrity of our country.*
>
> *iv. The program should be conducted without causing any hindrance to public or traffic.*
>
> *v. The participants shall not bring any stick, lathi or weapon that may cause injury to any one.*
>
> *vi. The organizer(s) shall make adequate arrangements for drinking water and proper First Aid/Ambulance/Mobile Toilets/CCTV Cameras/Fire Fighting equipments etc., in consultation with the Police/Civic/Local Bodies as directed by the police.*

> *vii. The organizer(s) shall keep sufficient volunteers to help the police for regulation of traffic and the participants.*
>
> *viii. Only box type speakers should be used and output of the speakers should not exceed 15 watts~ad within a radius of 30 meters only. Cone Speakers should not be used at any cost.*
>
> *ix. In the procession, the processionists shall not by any manner offend the sentiments of any religious, linguistics, cultural and other groups.*
>
> *x. An undertaking to reimburse the cost for any damage that may occur enroute to any public/private property and an undertaking to bear the compensation/replacement costs as well, if are to be awarded to any other institution/person, who may apply for the same.*
>
> *xi. If there is violation of any one of the conditions imposed, the concerned police officer is at liberty to take necessary action, as per law."*

Challenging the aforesaid order dated 04.11.2022 passed by the learned Judge, the appellants / writ petitioners have come up with the present Letters Patent Appeals.

13 (i) Mr. N.L. Rajah, learned Senior counsel appearing for the appellant in LPA No. 6 of 2022 would contend that three batch of writ petitions were filed seeking direction to the State to grant permission to conduct Route March followed by public meeting in 50 Districts. On 22.09.2022, the Writ Petitions were disposed of by giving positive directions to the respondents to permit the appellants to conduct the Route March followed by public meeting on 02.10.2022. However, the request to conduct the route march and public meeting was rejected by

the State, which has given rise to the filing of the contempt petitions. In the contempt petitions, instead of punishing the respondents for having violated the order passed in the writ petitions, the learned judge has issued fresh directions and disposed of the contempt petitions. For issuing such fresh directives, the learned judge has taken note of the submissions of the State citing law and order issue, whereby, the date already fixed has been altered by the Court on 06.11.2022, which was also accepted by the State. Despite direction on two occasions, a Report of Intelligence was filed stating that it would not be possible to grant permission in respect of 24 places due to law and order problem, however, permission was granted only in respect of 3 places and in respect of other 23 places in a compounded area. When that was brought to the notice of the learned judge, which submission of the State itself would amount to an admission of the non-compliance of the directions issued in the writ petitions, the learned judge passed the order dated 04.11.2022 modifying the directions already issued in the writ petitions to conduct Route March followed by public meeting.

(ii) Adding further, the learned Senior counsel submitted that the learned judge has no jurisdiction to modify the order passed in the writ petitions, while exercising the jurisdiction to punish the contemnors

in the contempt petitions inasmuch as the order in the writ petitions was passed after due contest by the parties.

(iii) Referring to paragraph 23 at page no.34 of the counter affidavit filed by the State, the learned Senior counsel would contend that the respondents, without any basis, have stated that the procession for the said purpose is not relevant anymore and the writ petitioners are asking this only to create a law and order problem and thereby affect the social harmony of the State. This submission made in the counter affidavit exposes the inability of the respondents to render adequate protection or to initiate pro-active measures to prevent the law and order situation. In any event, a candid admission has been made by the respondents to the effect that they are not in a position to comply with the directions issued in the writ petitions by assigning a specious plea, which ought not to have been entertained by the learned judge.

(iv) As regards the issue of maintainability of the Letters Patent Appeals, the learned Senior counsel heavily placed reliance on the decision of the Division Bench of this Court in ***Tamilnad Mercantile Bank Limited, Tuticorin v. Tamil Nadu Mercantile Bank Shareholders Welfare Association [2006 (2) CTC 97],*** wherein, it was held as follows:

"9.At the foremost, an objection was raised regarding the maintainability of the Letters Patent Appeals. According to the learned senior counsel for the respondents, inasmuch as the order under challenge was passed in a contempt petition filed under Section 10 of the Contempt of Courts Act, the proper remedy is to file Contempt Appeal under Section 19 of the Contempt of Courts Act and the Letters Patent Appeals filed under Clause 15 of the Letters Patent are not maintainable and all the appeals are liable to be dismissed.

10. Let us first consider the objection relating to the maintainability of the Letters Patent Appeals. The Tamilnad Mercanti1e Bank Shareholders Welfare Association filed Contempt Petition No.28 of 2005 under Section 10 of Contempt of Courts Act alleging violation of the order dated 23.12.2004 passed in O.A.No.1016 of 2004 in C.S.No.981 of 2004. We have already referred to the order passed in that application as well as the conclusion arrived at by the learned Judge in the contempt petition. A reading of the penultimate paragraph of the order of the Learned Judge (para 24) makes it clear that the Learned Judge has not imposed any punishment, but warned the respondent, viz., Chairman and Executive Officer, Tamilnad Mercanti1e Bank, and held that the proceedings of the Meeting and resolutions passed on 24.12.2004 are void, and directed the Bank to conduct a fresh Annual General Meeting by observing all the legal formalities and allowing the persons whose Power of Attorneys have been registered in the Registrar's Office to participate in the deliberations of the Annual General Meeting.

11.....

12. Section 19 of the Contempt of Courts Act, makes it clear that an appeal would lie against any order or decision in the exercise of jurisdiction to punish for contempt. In other words, only in the case of punishment, the affected party has right to file an appeal; if it is by a single Judge before a Bench of two Judges and if it is by a Division Bench before the Supreme Court. In the light of the above provisions, it is the claim of the Shareholders Welfare Association that the present appeals, invoking Clause 15 of the Letters Patent are not appropriate.

.....

16. On going through the relevant provision, viz., Section 19 of the Contempts of Courts Act, the judgement of the Supreme Court as well as other decisions referred to by the Division Bench in the above said case, we are in agreement with the view expressed by the Division Bench, and considering the fact that similar issue arises in our appeal and in the light of various directions issued by the Learned Judge and of the fact that the parties affected therein were not before the Learned Judge, we hold that the present Letters Patent Appeals under Clause 15 of the Letters Patents are maintainable."

By pointing out the aforesaid decision of the Division Bench of this Court, the learned Senior counsel would submit that the present Letters Patent Appeals are maintainable as against the order passed by the learned judge and therefore, the issues involved in these appeals are required to be adjudged on its own merits.

(v) The learned Senior counsel also drawn our attention to Paragraph 11 of the order dated 22.09.2022 passed in the writ petitions, wherein, the learned judge had come to the conclusion that '*in view of the above order passed by the Hon'ble Supreme Court of India as well as various orders passed by this Court, it would be appropriate to direct the respondents to grant permission to conduct procession and to conduct public meeting on 02.10.2022 at various places subject to the twelve (12) conditions thereof, on or before 28.09.2022'.* Inspite of such positive directions having been issued, it was flouted by the respondents by assigning untenable reasons. Again the learned judge fixed a date i.e., 06.11.2022 which was also agreed by the respondents and a direction was given to grant permission to conduct procession and public meeting on 06.11.2022. Even the altered and/or modified date for conducting the procession and public meeting, was not adhered to by the respondents. In such circumstances, the learned judge ought to have punished the

respondents for wilfully attempting to curtail the freedom of speech and expression guaranteed to the appellants. In a democratic State, the appellants were denied permission to conduct a lawful procession. The State has the duty to not only ensure that fundamental rights are not infringed, but also to take steps to protect such rights.

(vi) The learned Senior counsel would further contend that the order dated 04.11.2022 of the Learned Judge, modifying the earlier order dated 22.09.2022 passed in the writ petitions, that too after dismissing the review applications, is *per se* illegal and without jurisdiction under the Contempt of Courts Act, 1971. The positive directions issued by the learned judge in the writ petitions filed by the appellants, have been modified while passing the subsequent order dated 04.11.2022 in the contempt petitions. In the contempt petitions, the learned judge was only called upon to examine as to whether the order dated 22.09.2022 passed in the writ petitions, has been complied with by the respondents or not. Even though the learned judge has found that the directions issued in the writ petitions have not been complied with, on the specious plea of the respondents, by citing the Intelligence Report, he diluted the power to be exercised in the contempt proceedings, which is legally impermissible. Further, the learned Judge while passing the order dated 04.11.2022,

failed to take note of the fact that the RSS had taken similar public meetings and route march throughout the State on 02.10.2022 and no law and order problem had occasioned in other States. However, the State Government by citing the law and order problem, had denied permission to the appellants. In such circumstances, the learned judge ought to have held that the inability of the respondents in not adequately preventing law and order problem had led to the non-compliance of the order passed in the writ petitions, for which, the learned judge ought to have punished them. The denial of permission on the part of the respondents by citing law and order problem and inability to give adequate protection is an admission to the effect that the constitutional machinery had broken down and the respondents have exposed their inability to comply with the order passed in the writ petitions. This was not taken note of by the learned judge while modifying the earlier order passed in the writ petitions.

(vii) The learned Senior counsel proceeded to contend that when there is a wilful and wanton act perpetrated by the respondents in not complying with the order passed in the writ petitions, the Learned Judge ought to have pulled up and punished the respondents for thwarting the positive directions issued in the writ petitions. In any event, there cannot

be any better classical example of blatant disobedience of the order passed in the writ petitions by the respondents, while so, the Learned Judge ought to have imposed exemplary punishment on the respondents. The Learned Judge also failed to observe that the right to freedom of speech and expression to peaceful assemble without arms and to move without any restrictions, are fundamental rights guaranteed to the appellants / writ petitioners under Articles 19 (1) (a), 19 (1) (b) and 19 (1) (d) of the Constitution and that cannot be allowed to be snatched away by the respondents by not complying with the positive directions issued in the writ petitions. The Learned Judge also omitted to consider that in the guise of granting permission, the respondents have glaringly violated the directions issued in the writ petitions by directing the appellants / writ petitioners to conduct the procession indoors. For carrying a procession indoor, no such permission of the respondents is required and thus, the respondents had diluted the order passed in the writ petitions.

(viii) The learned Senior counsel for the appellants placed reliance on the decision of the Hon'ble Supreme Court in ***Prithawi Nath Ram v. State of Jharkhand and others [(2004) 7 Supreme Court Cases 261]*** wherein, it was held that while dealing with a Contempt Petition,

the Court is really concerned with the compliance of the order passed by it or not. It would not be permissible for a Court to re-examine the correctness of the earlier decision, which had not been assailed and to take a view different than what was taken in the earlier order. In such an event, the aggrieved party can always approach the Court for implementation of the earlier order by approaching the Court which passed the order, or for invoking the appellate jurisdiction.

(ix) The learned senior counsel also placed reliance on the decision of the Hon'ble Supreme Court in ***Midnapore Peoples Cooperative Bank and others v. Chunilal Nanda and others [(2006) 5 Supreme Court Cases 399],*** wherein, it was held as follows:

> *"15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:-*
>
> *(i) Orders which finally decide a question or issue in controversy in the main case*
>
> *(ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case*
>
> *(iii) Orders which finally decide a collateral issue or question which is not the subject matter of the main case*
>
> *(iv) Routine orders, which are passed to facilitate the progress of the case till its culmination in the final judgment*
>
> *(v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.*
>
> *16. The term 'judgment' within the meaning of Clause 15 of the Letters Patent will take into its fold not only the judgments, as defined in Section 2 (9) CPC and orders enumerated in order 43 Rule 1*

> *of CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders, which will fall under categories (i) to (iii) above, are therefore, judgments for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not judgments for the purpose of filing appeals provided under the Letters Patent."*

With these averments, the learned senior counsel appearing for the appellants sought to allow these appeals by setting aside the order of the learned Judge in the contempt petitions.

14. (i) Mr. G. Rajagopal, learned Senior counsel appearing for the appellant in L.P.A. No. 9 of 2022 would vehemently contend that the order passed by the Learned Judge in the contempt petitions, by modifying the order passed in the writ petitions, is legally not sustainable. According to the learned Senior counsel, the State has filed Review Application Nos.172 to 220 of 2022 to review the order dated 22.09.2022 passed in WP No. 24540 of 2022 etc., batch. The Learned Judge dismissed the Review Applications on 02.11.2022. While so, the respondents have no other option, but to comply with the order passed in the writ petitions on 22.09.2022. However, the respondents were emboldened to pass orders of rejection rejecting the legitimate claim

made by the appellants to peacefully take out a procession and public meeting on 02.10.2022. While so, by citing the glaring violation committed by the respondents in not complying with the order dated 22.09.2022, Contempt Petitions were filed. In fact, in Para No.6 of the order dated 22.09.2022 passed in the writ petitions, the Learned Judge also considered the effect of Section 30(2) of the Police Act, 1861, besides placing reliance on a similar matter in the batch of Writ Petitions in W.P. No. 28677 of 2014 etc. wherein it was held that as per the provisions u/s.41(3)(a) of the CCP Act, a person intending to take out a procession, may make an application to the Commissioner seeking permission, even if a prohibitory order is in force u/s.41(2) of the Act. As per section 41(3)(b) of the Act, the grant of permission for convening an assembly or meeting and promoting a procession, is the rule and the refusal is the exception. Both the provisions do not confer any power upon the police to issue an order prohibiting any assembly or procession. It merely enables the District Superintendent of Police to require, by a general or special note, all persons who want to hold an assembly or organise a procession, to apply for a licence, the learned senior counsel contended. The Learned Judge, having placed reliance on the statutory provisions quoted in the earlier order passed in a batch of writ petitions

and having issued positive directions to the respondents, ought to have directed the respondents to comply with those directions instead of modifying them, while disposing of the contempt petitions.

(ii) The learned senior counsel placed reliance on the Order dated 23.07.2018 passed by the Hon'ble Supreme court in ***W.P. (Civil) No. 1153 of 2017 in Mazdoor Kisan Shakti Sangathan v. Union of India and others*** wherein it was held that the fundamental right of the citizens is to hold peaceful demonstrations and protest in order to bring out their grievances to the notice of the authorities in power so that the concerned authorities are awakened and attend to their grievances as well as take remedial measure.

(iii) The learned senior counsel also invited the attention of this Court to the permission granted by the respondents to Mr. Thirumalavan of Viduthalai Chiruthaigal Katchi to organise a 'Social Harmony Human Chain Movement" on 11th October 2022. Further, on 15th October 2022, the respondents permitted the Ruling Party members to organise a protest against the "Hindi imposition" by the Union Government. The respondents, having permitted similar organisations to conduct protest meeting or human chain protest, ought to have granted similar

permission to the appellants as well. The Learned Judge without taking note of the same, has modified the order passed in the writ petitions, which calls for interference by this Court.

15. (i) Mr.S.Ravi, learned Senior counsel appearing for the appellant in LPA No. 8 of 2022, at the outset, would contend that the inability of the respondents to take pro-active measures to curb the law and order problem, if any, and to grant permission to the appellants to peacefully organise the march, has not been taken note of by the learned judge while dealing with the contempt petitions filed by the appellants. According to the learned Senior counsel, by order dated 22.09.2022, the Learned Judge directed the respondents to grant permission to conduct procession and public meeting on 02.10.2022 by imposing certain conditions to be adhered to by the appellants. The directions 6, 7, 8 and 11 issued in the order dated 22.09.2022 by the Learned Judge clearly show that permission has to be granted to take out the procession in the public road and that too in the sanctioned route. The order dated 22.09.2022 passed by the learned judge has become final inasmuch as the Review Application Nos. 172 to 220 of 2022 filed by the respondents have been dismissed by the Learned Judge on 02.11.2022 at the time of

admission itself, while so, there is no scope for altering or modifying the order dated 22.09.2022.

(ii) The learned Senior counsel further submitted that permission to conduct the procession (route march) and public meeting was granted by the Superintendent of Police of 3 Districts and in all those places, processions were conducted in public road peacefully strictly in compliance with the directions issued by the Learned Judge in the order dated 22.09.2022 passed in the batch of writ petitions. In 23 other places, permission was granted with a condition to conduct the procession indoor. The learned judge did not issue any such direction to permit the procession indoor in the order dated 22.09.2022 passed in the Writ Petitions, but the respondents modified the order passed by the learned judge by substituting their own conditions. While so, the learned judge ought to have dealt with the respondents for having violated the order passed in the writ petitions, but he has modified the earlier order, which is legally impermissible.

(iii) The learned senior counsel further contended that by virtue of the order dated 04.11.2022, the learned judge has not only modified the earlier order dated 22.09.2022 passed in the writ petitions, but also virtually upheld and given a seal of approval to the order passed by the

Superintendent of Police/Commissioners of Police of Coimbatore, Pollachi, Nagercoil, Palladam, Mettupalayam and Arumannai as the case may be. In effect, the Learned Judge accepted the orders passed by the aforesaid authorities by citing the sensitiveness involved in granting permission. In fact, the Learned Judge, in para No.9 of the order dated 04.11.2022 completely modified the earlier order dated 22.09.2022 passed in the writ petitions and directed the appellants to hold such procession or public meeting in a premises having a compound wall or a ground or stadium. On the contrary, the earlier order dated 22.09.2022 was passed permitting the appellants to take out the procession in the sanctioned route or the route indicated by the appellants and it was also agreed by the respondents. While so, the denial of permission by the respondents would amount to diluting the order dated 22.09.2022 and it is *per se* contemptuous, which was lost sight of by the Learned Judge.

(iv) The learned senior counsel for the appellants placed reliance on the decision of the Hon'ble Supreme Court in ***Union of India and others v. Subedar Devassy PV [(2006) 1 Supreme Court Cases 613]*** wherein it was held that while dealing with an application for contempt, the Court is really concerned with the question as to whether the earlier decision, which has received its finality had been complied with or not. It

would not be impermissible for a Court to examine the correctness of the earlier decision, which had not been assailed and to take a different view from what was taken in the earlier decision. According to the learned senior counsel, the said decision of the Hon'ble Supreme Court squarely applies to the facts of the present case where the learned judge has completely modified the earlier order passed in the writ petitions and issued fresh directives in the contempt proceedings, which is legally impermissible. The relevant portion of the said judgment is reproduced below:

> *"2. While dealing with an application for contempt, the court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a court to examine the correctness of the earlier decision which had not been assailed and to take a view different from what was taken in the earlier decision. A similar view was taken in K.G. Derasari vs. Union of India [2001] 10 SCC 496. The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher court. The court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order. Though strong reliance was placed by learned counsel for the appellants on a three-Judge Bench decision in Niaz Mohd. vs. State of Haryana, [1994] 6 SCC 332 we find that the same has no application to the facts of the present case. In that case the question arose about the impossibility to obey the order. If that was the stand of the appellants, the least it could have done was to assail correctness of the judgment before the higher court.*
>
> *3. The above position was highlighted in Prithawi Nath Ram v. State of Jharkhand (2004) 7 SCC 261.*

4. On the question of impossibility to carry out the direction, the views expressed in T.R. Dhananjaya v. J. Vasudevan [1995] 5 SCC 619 need to be noted. It was held that when the claim inter se had been adjudicated and had attained finality, it is not open to the respondent to go behind the orders and truncate the effect thereof by hovering over the rules to get around the result, to legitimise legal alibi to circumvent the order passed by a court.

5. In Mohd. Iqbal Khanday v. Abdul Majid Rather, [1994] 4 SCC 34, it was held that if a party is aggrieved by the order, he should take prompt steps to invoke appellate proceedings and cannot ignore the order and plead about the difficulties of implementation at the time contempt proceedings are initiated.

6. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible.

7. We notice that pursuant to the direction given by the High Court, the exercise directed to be undertaken was in fact undertaken. The respondent was given promotion and in the meantime he has retired. That being so, it is not necessary to go into the correctness of the direction given, except clarifying the position in law.

8. The appeal is accordingly disposed of. No costs."

(v) For the same proposition as to how a contempt petition has to be dealt with, the learned Senior counsel placed reliance on the decision of the Division Bench of this Court in ***Tamilnad Mercantile Bank Limited vs. Tamilnad Mercantile Bank Shareholders' Welfare Association [(2006) 2 CTC 97]*** mentioned supra. By pointing out the

said decision, the learned Senior counsel would contend that the instant Letters Patent Appeals filed by the appellants are maintainable. To substantiate the same, the learned Senior counsel also placed reliance on the decision of the Division Bench of this Court in ***Arumuganainar vs. Jeenath Roadways, [2006 (1) CTC 247].*** The learned Senior counsel therefore prayed for allowing the Letters Patent Appeals as prayed for.

16. (i) Opposing the Letters Patent Appeals, Mr.N.R.Elango, learned Senior counsel appearing for the respondents would vehemently contend that the instant appeals are not maintainable. According to the learned Senior counsel, when the Contempt Petitions were dismissed by concluding that there is no wilful disobedience on the part of the respondents, the appellants have no right to file Contempt Appeals. In other words, the contempt proceedings initiated by the appellants have been finally concluded. If at all the appellants have any grievance against the order passed by the learned judge, they have to prefer an appeal before the Hon'ble Supreme Court and the present appeals are not maintainable. In other words, the appellants are attempting to achieve something indirectly which they cannot achieve directly by filing appeals before the Hon'ble Supreme Court. Even though the order passed by the

Learned Judge is a final order, a part of the order, is interlocutory in nature and it does not affect the right of the appellants forever. In this context, the learned Senior counsel placed reliance on the decision of the Hon'ble Supreme Court in ***Madhu Limaye v. State of Maharashtra [(1977) 4 Supreme Court Cases 551]*** wherein in Para No.12 it was held thus:-

> *"12. Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. In volume 22 of the third edition of Halsbury's Laws of England at page 742, however, it has been stated in para 1606*
>
> *"..... a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of two words must therefore be considered separately in relation to the particular purpose for which it is required."*
>
> *In para 1607 it is said :*
>
> *"In general a judgment or order which determines the principal matter in question is termed "final"."*
>
> *In para 1608 at pages 744 and 745 we find the words*
>
> *"An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the- final judgment are to be worked out, is termed "interlocutory". An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals."*

By pointing out the above decision, the learned senior counsel for the respondents submitted that the same makes it clear that a judgment or an order may be final for one purpose and interlocutory for another or final as to part and interlocutory as to part. In the present case, the direction

issued by the Learned Judge in the contempt petitions regarding the conduct of procession followed by public meeting is in the nature of an interlocutory order and does not violate the rights of the appellants in any manner.

(ii) The learned Senior counsel for the respondents also submitted that it is not as if the request for granting permission to take out the procession followed by public meeting has been denied in toto. Even as admitted by the appellants, wherever permission could be granted, the authorities have granted it and procession was also conducted on 06.11.2022. Therefore, the learned Senior counsel would submit that the order passed in the Contempt Petitions can only be construed as an interim measure to balance the right of the parties and consequently, the present Letters Patent Appeals are not maintainable.

(iii) The learned senior counsel for the respondents ultimately submitted that the order passed by the Learned Judge in the contempt petitions is not a final decision determining the dispute between the parties. In fact, during the pendency of these appeals, the appellants themselves have come forward with a representation dated 23.12.2022 seeking permission to conduct procession followed by public meeting on 29.01.2023 or any other date. On the other hand, they have filed the

present appeals only to pressurize the authorities to give permission to them to conduct the procession and public meeting. The representation dated 23.12.2022 submitted by the appellants would make it clear that the intention of the appellants is not to exercise their legal right as provided under the Constitution, but to mount acute pressure upon the authorities to give them permission to conduct the procession notwithstanding the prevailing law and order problem in the State. Further, in the representation dated 23.12.2022, it has been stated that the appeals are pending before this Court and they are posted for further hearing on 05.01.2023. This content in the representation dated 23.12.2022 would clearly expose that the appellants threatened the authorities to grant them permission and the appellants have not come forward with clean hands.

(iv) The learned Senior counsel further contended that the appellants intended to take out the procession followed by the public meeting on 02.10.2022 alleging that it coincides with the 75th year of Independence, Gandhi Jayanthi, Dr. Ambedkar Jayanthi and Vijayadasami. Such an object with which the procession was sought to be conducted is no longer available and relevant for the appellants. On the other hand, the appellants are precipitating the claim to conduct the

procession only to create law and order problem and to affect the social harmony in the State. In any event, if the appellants approach the concerned authorities to grant them permission to take out the procession followed by the public meeting at an appropriate time, it will be considered and necessary permission will be granted to them.

(v) The learned Senior counsel for the respondents further contended that the averment of the appellants that there is no law and order problem at all being confronted by the appellants, but the permission to take out the procession followed by public meeting was unlawfully denied, cannot be countenanced. Similarly, there was no law and order problem when the appellants have taken out procession in other State, is not correct. In fact, on 12.10.2022, when the appellants have taken out a procession at Haveri District, Karnataka, unrest prevailed during which the workers of the appellants' organisers were assaulted. In this context, 20 people were arrested and investigation is being conducted. Similarly, there were various other incidents reported across the Country when the procession was carried out by the appellants' organisation. In one such procession, petrol bombs were hurled against the organisers and their allied political parties. Therefore, it cannot be said that the processions taken out by the appellants are free

from any untoward incident and consequently, the apprehension raised by the respondents to grant permission to the appellants is wholly justified.

(vi) The learned senior counsel also submitted that at the relevant time when permission was sought for by the appellants, on the basis of tip off, the National Investigation Agency had conducted raids in several places owned by Popular Front of India and consequently, the organisation itself was banned. After such raids, sporadic instances were reported throughout the State and several cases have been registered throughout the breadth and length of the State. The learned Senior counsel has also taken us through the details of the cases registered on 14.10.2022 in page Nos. 35 to 48 of the common counter affidavit and submitted that 48 cases were registered across the State pursuant to the raids conducted by the National Investigation Agency and this had led to a grave situation, which is not congenial for granting permission to the appellants to take out procession.

(vii) Refuting the allegation raised by the appellants that some other political parties were given permission to carry out human right protest etc., the learned senior counsel submitted that the President of Valparai Dravida Thotta Tholilalar Munnetra Sangam sought permission

to take out a procession to address their grievance relating to revised wages, but the Commissioner of Police as well as Superintendent of Police, Coimbatore District rejected their request by citing law and order problems. Therefore, it cannot be said that the appellants alone have been discriminated by denying permission.

(viii) In effect, it is the submission of the learned senior counsel for the respondents that the learned judge, on considering the reasons assigned by the respondents for not complying with the order passed in the writ petitions, accepted the same and held that there was no wilful disobedience on the part of the authorities. At the same time, the learned judge also directed the respondents to permit the appellants to conduct the public meeting on 06.11.2022. The appellants did not take out any procession on 06.11.2022 inspite of granting permission to them but cancelled the procession for the reasons best known to them. In any event, if any of the right of the appellants has been violated or inconvenience has been caused due to the order passed by the learned judge, the same is not a final order or it will not cause any prejudice to the right of the appellants. While so, the Letters Patent Appeals are not maintainable and they are liable to be dismissed.

17. In reply, Mr. N.L. Rajah, learned Senior counsel appearing for the appellant in LPA No. 6 of 2022 submitted that the route march is an annual event carried out by the appellant's organisation. Such route march is being conducted every year from Jammu and Kashmir to Kanyakumari without any problem. The averment that the appellant is trying to create law and order situation in the State is in bad taste and it is not based on any material evidence. The appellant has been peacefully carrying out route march for several years, while so, the respondents are not justified in denying permission to the appellant by citing law and order problem. The learned Senior counsel therefore prayed for allowing the Letters Patent Appeals.

DISCUSSION & FINDINGS

18. We have heard the learned Senior counsels appearing for the respective appellants as well as the respondents and also perused the materials placed on record.

19. The first question that arises for consideration relates to the maintainability of these Letters Patent Appeals against the order passed in the contempt petitions. The legal position on the maintainability of the

Letters Patent Appeal under clause 15 of the Letters Patent against an order passed in exercise of contempt jurisdiction, is now no longer *res integra*. The decisions of this Court in ***Arumuganianar v. Jeenath Roadways, [2005 SCC Online Mad 637 : (2006) 1 CTC 247] and Tamilnad Mercantile Bank Limited, Tuticorin v. Tamil Nadu Mercantile Bank Shareholders Welfare Association [2006 (2) CTC 97]***, wherein the very same question was considered by respective Division Benches of this Court, would make it rather clear that a Letters Patent Appeal (LPA) is maintainable against the order passed in the contempt jurisdiction. In the said decisions, the issue regarding the maintainability of LPA under Clause 15 of the Letters Patent was considered in the backdrop of section 19 of the Contempt of Court Act, 1971, which deals with appeal that can be filed by the contemnors punished for contempt in a contempt petition. The following paragraphs of the decisions are extracted for useful reference:

<u>Arumuganianar case (cited supra)</u>

"6. relevant portion of Section 19 of the Contempt of Courts Act, 1971 is as follows:

"19. Appeals.— (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt:

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

7. Clause 15 of the Letters Patent of the Madras High Court is as follows:

> *"15. Appeal from the Courts or Original Jurisdiction to the High Court in its appellate jurisdiction.— And We do further ordain that an appeal shall lie to the said High Court of Judicature at Madras from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of the superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything herein before provided an appeal shall lie to the said High Court from a judgment of one judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act made (on or after the 1st day of February, 1929), in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said HighCourt, where the Judge who passed the judgment declares that the case is a fit one for appeal, but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us. Our Heirs of Successors in Our or Their Privy Council as hereinafter provided."*

8. Learned counsel appearing for the respondent has placed reliance upon paragraph 148 of the decision in P.S. Sathappan (Dead) by LRs. v. Andhra Bank Ltd. and others, 2004 (5) CTC 209: 2004 (11) SCC 672, which according to the learned counsel for the respondent, summed up the conclusion in the said decision. In paragraph 148, it has been stated:

> *"148. The upshot of our decision would be:*
>
> *(1)Finality clause contained in a statute, unless attached to an order passed in appeal, would not take away the right of appeal expressly provided for under the special statute.*
>
> *(2)Letters Patent being a subordinate legislation has the force of law but the same is subject to an Act of Parliament.*
>
> *(3)If an appeal is maintainable under sub-section (1) of Section 104 of the Code, no further appeal therefrom would be*

maintainable in terms of sub-section (2) thereof.

(4)A right of appeal being creature of a statute, it may provide for a limited right of appeal or limiting the applicability thereof.

(5)Clause 15 of the Letters Patent cannot override the bar created under Section 104 of the Code. Section 104(1) of the Code must be read with sub-section (2) of Section 104; and by reason thereof saving clause in relation to the Letters Patent would not be attracted. An attempt should be made to uphold a right of appeal only on harmonious construction of Sections 4, 104 and other provisions of the Code.

(6)However, when an appeal is provided for under a special Act, Section 104 of the Code shall have no application in relation thereto as it merely recognises such right but does not provide for a right of appeal.

(7)If a higher status is given to a Letters Patent over a law passed by Parliament including the Code of Civil Procedure, the same would run contrary to the history of the Letters Patent as also the parliamentary Acts.

(8)The judgment of this Court must be read as a whole and the ratio therefrom is required to be culled out from reading the same in its entirety and not only a part of it."

9. In our opinion, the aforesaid submission made by the counsel for the respondent, is not correct. The conclusion, as summarised in paragraph 148 of the judgment, reflects merely the minority view expressed by S.B. Sinha, J. , for himself and for N. Santosh Hegde, J. , A careful reading of the entire decision clearly indicate that the conclusion, as per paragraph 148, obviously is not the conclusion of the majority opinion. The majority opinion is contained in paragraphs 1 to 35, whereas the minority view is reflected in paragraphs 36 to 150 and the order of the Court is contained in paragraph 151, which is to the following effect:

"151. In view of the majority judgment, the order of the High Court is set aside and these appeals are allowed with no order as to costs. The matters are remitted back to the High Court for decision on merits."

10. The minority view can be of no assistance. On the other hand, it was observed in the majority decision as follows:

"32. Further it is settled law that between a special law and a general law the special law will always prevail. A Letters Patent is a special law for the High Court concerned. The Civil Procedure Code is a general law applicable to all Courts. It is well-settled law, that in the event of a conflict between a special law and a

general law, the special law must always prevail. We see no conflict between the Letters Patent and Section 104 but if there was any conflict between a Letters Patent and the Civil Procedure Code then the provisions of the Letters Patent would always prevail unless there was a specific exclusion. This is also clear from Section 4 of the Civil Procedure Code which provides that nothing in the Code shall limit or affect any special law. As set out in Section 4, C.P.C. only a specific provision to the contrary can exclude the special law. The specific provision would be a provision like Section 100-A.

34. We find ourselves in respectful agreement with the reasoning of this Court in the aforesaid decision. The same reasoning would apply in respect of the submission that if it is held that Section 104(2) did not bar a Letters Patent appeal an anomalous situation would arise inasmuch as if the matter were to come to the High Court a further appeal would be permitted but if it went to the District Court a further appeal would not lie. An appeal is a creature of a statute. If a statute permits an appeal, it will lie. If a statute does not permit an appeal, it will not lie. Thus, for example, in cases under the Land Acquisition Act, the Guardians and Wards Act and the Succession Act, a further appeal is permitted whilst under the Arbitration Act a further appeal is barred. Thus different statutes have differing provisions in respect of appeals. There is nothing anomalous in that. A District Court cannot be compared to a High Court which has special powers by virtue of Letters Patent. The District Court does not get a right to entertain a further appeal as it does not have "any law for the time being in force" which permits such an appeal. In any event we find no provisions which permit a larger Bench of the District Court to sit in appeal against an order passed by a smaller bench of that Court. Yet in the High Court even, under Section 104 read with Order 43, Rule 1, C.P.C., a larger Bench can sit in appeal against an order of a Single Judge. Section 104, itself contemplates different rights of appeals. Appeals saved by Section 104(1) can be filed. Those not saved will be barred by Section 104(2). We see nothing anomalous in such a situation. Consequently the plea of discrimination urged before us must be rejected."

11. In our opinion, there is nothing in the majority view which in any way postulates that the appeal under Clause 15 of the Letters Patent would be barred merely because the impugned order in the contempt petition is not appealable under Section 19 of the Contempt of Courts Act.

12. On the other hand it seems that the question as to whether such appeal would be maintainable has been directly raised and decided in several decisions of this Court.

13. The Division Bench of this Court by the judgment dated 14.8.1990 in Vidya Charan Shukla v. Tamil Nadu Olympic Association and another, (C.A. No. 5 of 1990 and Letters Patent Appeal No. 123 of 1990) while holding that an appeal under Cl. 15 of Letters Patent would lie against any order or decision passed in exercise of the contempt jurisdiction of the High Court provided such an order or decision is a 'judgment' and satisfied the other requirements of Clause 15 of the Letters Patent, has observed as follows:

> *"Various judgments, where recourse to an appeal under the Letters Patent has not been permitted, dealt with cases where the Act provided an express prohibition or exclusion of an appeal under any other law. That was the petition in Union of India v. Mohindra Supply Co., AIR 1962 SC 256, which concerned with the provisions contained in Section 39(2) of the Arbitration Act, and South Asia Industries (P) Limited v. S. B. Sarup Singh, AIR 1965 SC 1442, dealing with the Delhi Rent Control Act. Section 100-A of the Code of Civil Procedure is again one of such instances where recourse to the Letters Patent cannot be had. Since, in our opinion Section 19 (1) of the Act cannot be construed to be destructive of the valuable right of an appeal granted by Clause 15 of the Letters Patent and there is no provision contained in the Contempt of Courts Act abrogating or excluding the provisions of Clause 15 of the Letters Patent, we hold that except to the extent of the occupied field covered by Section 19(1) of the Act, an appeal under Clause 15 of the Letters Patent would lie against any order or decision passed in exercise of the contempt jurisdiction of the High Court, provided such an order or decision is a 'judgment' and satisfied the other conditions laid down in Clause 15 of the Letters Patent and does not fall in any of the excluded categories. We therefore, overrule the preliminary objection relating to the non-maintainability of the appeal under Clause 15 of the Letters Patent on the facts of the instant case."*

14. The aforesaid decision was followed in R. Rajagopal v. M.P. Chellamuthu & 3 Others, 1993 (2) LW 225, wherein it was observed:

> *"We are in entire agreement with the above view expressed by the Division Bench of this Court in Vidya Charan Shukla v. Tamil Nadu Olympic Association and another, C.A. No. 5 of 1990 and Letters Patent Appeal No. 123 of 1990. Inasmuch as by the order under appeal, the learned Single Judge has declared that the first respondent is entitled to quarry sand in the area in question for a period of 3 1/2 months and directed respondents 2 to 4 to permit the first respondent, to quarry sand for a period of 3 1/2 months from 1.5.1993. We are inclined to hold that such an order is a 'Judgment' for the purpose of Clause 15 of the Letters Patent and*

that the order under appeal satisfies the conditions prescribed in Clause 15 of the Letters Patent. In these circumstances, we have no hesitation in holding that the present appeal is maintainable under Clause 15 of the Letters Patent."

15. In our opinion, the effect of the aforesaid decisions have not been shaken in any subsequent decision of the Supreme Court or of the Madras High Court. On the other hand, the observations made by the Supreme Court in J. S. Parihar v. Ganpat Duggar and others, 1996 (6) SCC 291, in paragraphs 4 and 6 supports the views expressed by this Court.

16. In the above view of the matter, we are of the opinion that the present appeal is maintainable. It is therefore not necessary to consider the alternative submission made by the counsel for the appellant relying upon a Division Bench decision of the Calcutta High Court Hooghly District Central Cooperative Bank Ltd. v. Anoj Kumar Roy, 1997 Crl. D 864, that such an order is even appealable under Section 19 of the Contempt of Courts Act."

Tamilnad Mercantile Bank Limited's case (cited supra)

"13. Mr. A.L. Somayaji, learned Senior Counsel for the appellant Bank by drawing our attention to the recent decision of Division Bench of this Court S. Arumuganainar v. M/S. Jeenath Roadways, 2006 (1) CTC 247 : 2005 (4) LW 398, wherein the Division Bench considered an identical issue, contended that the present Letters Patent Appeals are maintainable. In that case, the appellant awarded a contract to the respondent for a period of two years in respect of three tanker lorries with effect from 1.9.2000 and in respect of six tanker lorries with effect from 1.11.2000. Detecting some serious violations in respect of two tanker lorries, show cause notices were issued on 31.05.2003 and reply was furnished by the respondent claiming that the malpractice was committed by the concerned drivers without the knowledge and connivance of the respondent. On 20.6.2003, an order blacklisting the tanker lorries was passed. Questioning the same Writ Petitions were filed.

14. Pending the Writ Petitions, the respondent filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996, numbered as O.A. No. 724 of 2003, in which an order was passed on 5.9.2003 staying the operation of the order dated 20.6.2003, except the two tanker lorries involved in the malpractice. While considering the miscellaneous petitions, the writ petitions were taken up for hearing and by common

order dated 16.9.2003, the writ petitions were dismissed. Thereafter, the respondent filed Writ Appeal Nos. 3797 and 3798 of 2003 on 28.10.2003. By the time when the writ appeals were taken up, the respondent had also filed O. P. No. 709 of 2003 for appointment of an Arbitrator. Taking note of all the subsequent developments, the Division Bench, disposed of the writ appeals as infructuous. On 21.01.2004, the respondent filed Contempt Petition No. 53 of 2004, alleging violation of the interim order of stay dated 5.9.2003 in O.A. No. 724 of 2003. A reply was filed narrating the developments stage by stage. The respondent also filed a rejoinder. A further reply affidavit was filed. The contempt petition was taken up for hearing on 20.6.2004 and disposed of on 29.6.2004. After noticing the contentions raised by both the parties, the learned single Judge closed the contempt petition with the following directions:

> *"(i) The respondent is hereby directed to give contract work, i.e., transporting the petroleum products to the petitioner, for 6 tanker lorries only, which they have been giving to the petitioner prior to 31.5.2003, for a period of 5 months, commencing from 15.7.2004.*
>
> *(ii) Awarding of contract for further period beyond 5 months, as it is said to have been given to the other tanker lorry owners, may also be considered to the petitioner also."*

15. Aggrieved by the said directions, the respondent therein filed appeal in L.P.A. No. 18 of 2004, invoking Clause 15 of the Letters Patent. A preliminary objection has been raised on behalf of the respondent in the appeal regarding maintainability of the appeal. On behalf of the appellant it was contended that under Section 19 of the Contempt of Courts Act, an appeal can only be filed against the order convicting/ punishing a person under the Contempt of Courts Act and since in the present case the appellant has neither been convicted nor punished, the appeal under Section 19 cannot be filed. It is further contended that the Contempt of Courts Act is a special statute containing specific provisions regarding filing of appeal and if the order passed is not appealable in terms of Section 19, no such appeal can be filed. In the factual situation, the Division Bench, after referring Section 19 of the Contempt of Courts Act, Clause 15 of the Letters Patent of the Madras High Court and various decisions of the Supreme Court as well as this Court, ultimately concluded that the Letters Patent Appeal is maintainable and considering the rival contentions raised by both side, disposed of the appeal on merits. It is worthwhile to note that the Division Bench elaborately considered the majority view of the Supreme Court in the case of P.S. Sathappan (Dead) by LRs. v. Andhra Bank Ltd. and others, 2004 (5) CTC 209 2004 (11) SCC 672, and para 10 of the judgement of the Division Bench reads as follows:

"32. . Further, it is settled law that between a special law and a general law the special law will always prevail. A Letters Patent is a special law for the High Court concerned. The Civil Procedure Code is a general law applicable to all Courts. It is well-settled law, that in the event of a conflict between a special law and a general law, the special law must always prevail. We see no conflict between the Letters Patent and Section 104, but if there was any conflict between a Letters Patent and the Civil Procedure Code then the provisions of the Letters Patent would always prevail unless there was a specific exclusion. This is also clear from Section 4 of the Civil Procedure Code which provides that nothing in the Code shall limit or affect any special law. As set out in Section 4, C.P.C. only a specific provision to the contrary can exclude the special law. The specific provision would be a provision like Section 100-A.

34. We find ourselves in respectful agreement with the reasoning of this Court in the aforesaid decision. The same reasoning would apply in respect of the submission that if it is held that Section 104(2) did not bar a Letters Patent appeal an anomalous situation would arise inasmuch as if the matter were to come to the High Court a further appeal would be permitted but if it went to the District Court a further appeal would not lie. An appeal is a creature of a statute. If a statute permits an appeal, it will lie. If a statute does not permit an appeal, it will not lie. Thus, for example, in cases under the Land Acquisition Act, the Guardians and Wards Act and the Succession Act, a further appeal is permitted whilst under the Arbitration Act a further appeal is barred. Thus different statutes have differing provisions in respect of appeals. There is nothing anomalous in that. A District Court cannot be compared to a High Court which has special powers by virtue of Letters Patent. The District Court does not get a right to entertain a further appeal as it does not have "any law for the time being in force" which permits such an appeal. In any event we find no provisions which permit a larger Bench of the District Court to sit in appeal against an order passed by a smaller Bench of that Court. Yet in the High Court even under Section 104 read with Order 43, Rule 1, C.P.C., a larger Bench can sit in appeal against an order of a Single Judge. Section 104 itself contemplates different rights of appeals. Appeals saved by Section 104(1) can be filed. Those not saved will be barred by Section 104 (2). We see nothing anomalous in such a situation. Consequently, the plea of discrimination urged before us must be rejected."

After referring the above passage, the Division Bench has concluded—

> *"11. In our opinion, there is nothing in the majority view which in any way postulates that the appeal under Clause 15 of the Letters Patent would be barred merely because the impugned order in the contempt petition is not appealable under Section 19 of the Contempt of Courts Act."*

In addition to the same, they also relied on a Division Bench decision of this Court dated 14.8.1990 in Vidya Charan Shukla v. Tamil Nadu Olympic Association, C.A. No. 5 of 1990 and Letters Patent Appeal No. 123 of 1990; R. Rajagopal v. M.P. Chellamuthu and 3 others, 1993 (2) LW 225; and J. S. Parihar v. Ganpat Duggar and others, 1996 (6) SCC 291, and concluded that the Letters Patent Appeal is maintainable.

16. On going through the relevant provision, viz., Section 19 of the Contempts of Courts Act, the judgment of the Supreme Court as well as other decisions referred to by the Division Bench in the above said case, we are in agreement with the view expressed by the Division Bench, and considering the fact that similar issue arises in our appeal and in the light of various directions issued by the Learned Judge and of the fact that the parties affected therein were not before the Learned Judge, we hold that the present Letters Patent Appeals under Clause 15 of the Letters Patents are maintainable."

20. It is also relevant to note the decision in ***Shantha V. Pai v. Vasanth Builders, Madras [1990 SCC Online Mad 389],*** wherein the Division Bench of this Court has considered the ambit of Clause 15 of Letters Patent vis-à-vis the dismissal of a contempt petition. The following paragraphs from the said judgement are relevant for the discussion being undertaken in the present case, and are extracted:

> *" 18. The Letters Patent of the High Court does not define as to what a "judgment" is. However, the meaning and scope of the expression "judgment" within the meaning of clause 15 of the Letters Patent has come up for consideration before this Court in a number of cases as also before the other High Courts in the country and the Supreme Court of India. The near unanimity of the view appears to be that the expression "Judgment" in clause 15 has to be given a rather liberal construction*

and that an order of a single Judge will amount to a "judgment" if that order finally determines some claim of right of the aggrieved party, irrespective of the fact whether the said order is made in the main cause or suit or in the proceedings incidental or ancillary thereto. Even if the order does not finally dispose of the suit, pro tanto, it would still be a "judgment" if it determines some vital rights of the parties in regard to the matter in controversy and decides some bone of contention as between the parties. A Full Bench of the Delhi High Court, in Begum Aftab Zahani v. Shri Lal Chand Khanna, AIR 1969 Delhi 85, explained the ambit and scope of the expression "Judgment" within the meaning of clause 10 of the Letters Patent (Lahore) (which is in pari materia to clause 15 of the Letters Patent) in the following words at page 39:

> *"We feel that we have to construe the word 'judgment' in Section 10 of the Act in its own context and in the background of its own statutory scheme and that the ratio of the Privy Council decision merely goes to suggest that the word 'judgment' as used in the Letters Patent may not be restricted to the literal definition of the expression 'judgment as contained in the Civil P.C. The Letters Patent when providing for appeals from Judgments in our view, contemplates judgments which have both the effect of a decree as defined in the Code and of such order as may affect the merits of a controversy between the parties by determining some disputed right or liability. A judgment may thus be either final or preliminary or interlocutory. In order to decide whether an adjudication should be treated as a 'judgment' within the meaning of clause 10 of the Letters Patent, we feel that regard should be had not to the form of the adjudication but to its effect upon the suit or the civil proceeding in which it is made. If its effect, whatever its form and whatever the nature of the proceeding in which it is made, is to put an end to the suit or proceeding, or of its effect, if not complied with, is to put an end to the suit or proceeding, the adjudication is indisputably a 'judgment' within the meaning of this clause. Other decisions or determinations adjudication upon a disputed controversy on the merits in a suit or proceeding may also appropriately fall within the contemplation of the word 'judgment'. It is not possible to lay down any definite rule which would meet the requirements of all cases and all that we may say is that in determining whether an order or decision constitutes a 'judgment' or not, the Court has to take into consideration the nature of the order and its effect upon the suit or the civil proceeding in which it is made. Each case would thus depend on its own peculiar facts and circumstances."*

19. In ***Shanti Kumar v. H. Ins. co., New York, (1974) 2 SCC 387 : AIR 1974 SC 1719,*** *after a detailed discussion about the meaning of the expression 'Judgment' within the meaning of Cl. 15 of the Letters Patent (Bombay) their Lordships opined that in order to find out whether an order is required to be found is whether the order affects the merits of the action between the parties by determining some right or liability between them. According to their Lordships, nature and effect of the order has to be examined in order to ascertain whether there has been determination of anv vital right or liability of the parties in the controversy in the proceedings.*

20.In Palaniappa v. Krishnamurthy (FB), AIR 1968 Mad 1, a Full Bench of this Court, after exhaustively dealing with the question, formulated four tests to determine whether an order of a single Judge is a "Judgment" or not, under clause 15 of the Letters Patent. In the words of the Full Bench at page 8:

> *".....The tests are (1) whether the order or judgment of the single Judge terminates the suit or proceeding? ; (2) whether it affects the merits of the controversy between the parties in the suit itself? ; (3) a test that can be considered a refinement of test No. 2, but which upon juristic principle should be separately stated, namely, whether it determines some right or liability as between the two parties? ; and (4) the negative test that has found express recognition in the dicta of White, C. J. , with reference to (1905) ILR 29 Bom 249, and has not been disapproved by their Lordships of the Supreme Court in Asrumati Debi's case, 1953 SCR 1159 : (AIR 1953 SC 198), but which, instead, would appear to have been impliedly approved, namely, whether, apart from the actual words in the lis or proceeding, 'a conceivable order' or an order to the contrary effect, would have disposed of the suit and would come within the definition of 'judgment'. "*

21.The controversy now appears to have been set at rest by the apex court in Shah Babulal Khimji v. Jayaben, (1981) 4 SCC 8 : AIR 1981 SC 1786, wherein after a review of various judgments, their Lordships observed at page 1817:

> *"In order to determine whether an order passed by a trial Judge can be said to be a 'judgment' the following considerations must prevail with the Court:-*

That the trial Judge being a senior court with vast experience of various branches of law occupying a very high status should be trusted to pass discretionary or interlocutory orders with due regard to the well-settled principles of civil justice. Thus, any discretion exercised or routine orders passed by the trial Judge in the course of the suit which

may cause some inconvenience or, to some extent, prejudice one party or otherwise the appellate court (Division Bench) will be flooded with appeals, from all kinds of orders passed by the trial Judge. The Court must give sufficient allowance to the trial Judge and raise a presumption that any discretionary order which he passed must be presumed to be correct unless it is exfacio legally erroneous or causes grave and substantial injustice. That the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the question in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings."

and went on to add:

"Whenever a trial Judge decides a controversy which affects valuable rights of one of the parties, it must be treated to be a judgment, within the meaing of the Letters Patent." and then held:

> *"Thus, in other words every interlocutory order cannot be regarded as a Judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. Similarly, orders passed by the trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate Court in appeal against the final judgment."*

22. From a review of the aforesaid judgments, it clearly emerges that the expression "Judgment", within the meaning of clause 15 of the Letters Patent, implies an order which effectively decides some right or liability in controversy between the parties to the main proceedings, irrespective of the fact whether such an order is final or made at any interlocutory stage. The nature of the order has to be examined to ascertain whether there has been determination of any right or liability between the parties. Thus, the nature of the order passed and its effect is the determinative factor, to find out whether or not a particular order qualifies the test of being a "Judgment" within the meaning of clause 15 of the Letters Patent. Does an order or decision of the trial Judge refusing to punish an alleged contemner for contempt amount to a "Judgment" within the meaning of clause 15 of the Letters Patent? Does such an order determine any right or liability of the parties to the proceedings?

23. The proceedings which were initiated by the appellant herein were proceedings to punish the alleged contemner (respondent herein) for having flouted the orders of this Court under the Act. Contempt

proceedings are, a matter between the Court and the alleged contemner and the person who the machinery of the Court for punishing an alleged contemner, only brings to the notice. of the Court certain facts which in his opinion, constitute contempt of court He has no other role. The only two parties, therefore, in a contempt proceedings are the Court and the alleged contemner and even if the proceedings have been initiated at the instance of an applicant, he is only an informant of the Court and cannot be treated as a party-juris, entitled to any order of commitment of the opponent as of right. If the trial Judge, whose attention has been drawn by the appellant to certain facts which, in the opinion of the applicant, amount to flouting of the orders of the Court, finds that its order has not been disobeyed, obviously he would refuse to punish the alleged contemnor, as no vindication of his own order has become necessary. The trial Judge would, under these circumstances, reject the application and refuse to commit the alleged contemner. In doing so, the trial Judge would not be determining any right of the applicant, nor imposing any liability on him. Such an order cannot, therefore, be said to be a "judgment" within the meaning of clause 15 of the Letters Patent It is elementary that the right of appeal can only be available to an aggrieved party and an aggrived party for the purposes of proceedings for contempt of Court has been held to be only the party who has been punished for contempt, and not the party whose application has been rejected. See 1988 SCC (Cri) 546. The power of the High Court to institute proceedings for contempt and punish, where necessary, is a special jurisdiction which is inherent in all courts of record. Such proceedings are not governed either by the Code of Criminal Procedure or the Code of Civil Procedure. The jurisdiction is inherent in the Court so as to uphold the majesty and dignity of the Law Court and the image of the same in the mind of the public at large. This jurisdiction is necessary because the administration of justice cannot be effective unless respect for it is fostered and maintained. Courts cannot function properly unless they are allowed to keep their dignity and unless there vests in them a power to enforce discipline and respect in its administration of justice and to enforce its orders. Disobedience of its orders wilfully, interferes and shakes the very pillars of administration of justice and the party guilty of such disobedience has to be punished for committing contempt of Court. Recourse to jurisdiction to punish the contemner for committing contempt of Court, however, is not meant for settling private scores, or to wreak private vengeance. So far as the private rights of the parties are concerned, they have to be settled through appropriate proceedings and not by invoking the contempt jurisdiction. It is the Court which is the sole and exclusive Judge of what amounts to a contempt of Court and in case the Court itself finds that nothing has been done, which necessitates the exercise of its contempt jurisdiction, it is not open to any party to insist that the alleged

contemnor must be punished. To proceed or not to proceed against the alleged contemnor is a matter of Court's discretion and an applicant has no right to ask for the discretion to be exercised in a particular manner. Generally speaking, words and acts obstructing administration of justice are considered as criminal contempt, whereas disobedience of the orders or the process of court are classified as contempt in procedure of civil contempt. But, in either case, the matter essentially is between the Court and the alleged contemnor. Even where it is a civil contempt and the order is inter parties, to the extent that the Court is moved by the applicant, it does not make the applicant a party to the proceedings and the matter remains exclusively between the Court and the alleged contemnor. In Collector of Bombay v. Issac Penhas, AIR 1948 Bom 103, a Full Bench of the Bombay High Court (prior to the coming into force of the 1971 Act) held that an appeal lies to the Court within the meaning of clause 15 of the Letters Patent from the order of a single Judge committing a party to prison or ordering him to pay a fine for disobedience of the order of Court because such an order is final. The Bench went on to observe at page 105:

> *".....it would be vexatious if a party to litigation could pursue applications to commit his opponent for contempt of Court to the Court of Appeal, when the trial Court's whose process it was alleged had been disobeyed was of opinion that no vindication of its own order was necessary."*

24. The Full Bench noticed the earlier Division Bench Judgment of the same High Court in Narendrabhai v. Chinubhai, AIR 1936 Bom 314, wherein it had been opined at page 315:

> *"Does the order appealed from decide any question between the parties and determine any right or liability? On the notice of motion there was, in my opinion, no question between the parties. Proceedings for contempt are matters entirely between the Court and the person alleged to have been guilty of contempt. No party has any statutory right to say that he is entitled as a matter of course to an order for committal because his opponent is guilty of contempt. All that he can do is to come to the Court and complain that the authority of the Court has been flouted, and if the Court thinks that it was so, then the Court in its discretion takes action to vindicate its authority. It is, therefore, difficult to see how an application for contempt raises any question between the parties, so that any order made such an application by which the Court in its discretion refused to take any action against the party alleged to be in the wrong can be said to raise any question between the parties."*

25. We are in respectful agreement with the aforesaid exposition of law. As against the aforesaid judgments, learned Counsel for the appellant placed reliance on In Re Govind Swaminathan, AIR 1955 Mad 121 (1955 Cri LJ 505) to urge that a Letters Patent Appeal was competent under clause 15 of the Letters Patent even where the Court had refused to punish the alleged contemnor for contempt. That judgment, however, does not lay down any such proposition as is canvassed and, as a matter of fact, we find that judgment to be quite irrelevant for the purpose of deciding the maintainability of an appeal under clause 15 of the Letters Patent, at the Instance of a party whose application to punish the alleged contemner had been rejected by the trial Judge.

26. Reliance placed on Noorali Babul Thanewala v. Sh. K.M.M. Shetty, JT 1989 (4) sc 573 (1990 Cri LJ 316) also, in our opinion, is quite misplaced. What was laid down in that case was that breach of an injunction or breach of an undertaking given to a Court by a person in a civil proceeding on the faith of which the court sanctioned a particular course of action is misconduct, amounting to contempt. There is no quarrel with that proposition. In the case before the Supreme Court, the violation was of the undertaking given to the Court and a finding was recorded about the breach of that undertaking which resulted in the alleged contemnor being committed for contempt of court for wilful disobedience of the undertaking given by him. Besides being directed to pay fine, he was also directed to deliver vacant possession of the premises. That judgment does not deal with the proposition under consideration.

27. As a result of the aforesaid discussion, we hold that a Letters Patent Appeal under cl. 15 would not lie against any order passed in exercise of the contempt jurisdiction by the High Court where the trial judge refuses to take cognizance of an application seeking to punish the opposite party for contempt of Court or where it rejects the application after being satisfied that its order had not been flouted and was of the opinion that no vindication of its order was called for by committing the alleged contemner for contempt of Court. Since in the instant case, the learned trial Judge, after a detailed discussion, came to the conclusion that his order had not been violated or flouted by the respondent and in exercise of his proper judicial discretion, refused to commit the respondent for the alleged contempt of Court, such an order of refusal is not a "judgment" within the meaning of cl. 15 of the Letters Patent and as such, is not appealable under that clause. The second preliminary objection also, therefore, succeeds and the appeal is held to be not maintainable under clause 15 of the Letters Patent either."

21. We have given our anxious consideration to the above judgements and the principle that would emerge from the same is that a Letters Patent Appeal would lie under Clause 15 against the order passed in the contempt jurisdiction (if the decision is a "judgment" determining the rights of parties one way or the other), except when there is a dismissal simpliciter of the contempt petition on the ground that there is no wilful disobedience of the order in respect of which contempt petition is preferred.

22. The next question that arises for consideration is on the contention made by Mr.N.R.Elango, learned Senior counsel appearing for the respondents that the appeal is not maintainable as it does not decide finally the rights of parties. The sum and substance of his contention is that as the order dated 04.11.2022 appealed in the present LPAs is interlocutory for the most part, as it does not finally decide the rights of the parties in the contempt petitions. In this regard, he placed heavy reliance on the judgement of the Hon'ble Supreme Court in ***Midnapore Peoples Cooperative Bank and others v. Chunilal Nanda and others [(2006) 5 Supreme Court Cases 399],*** and drew inspiration from paragraphs 15 and 16 of the said judgment to state that "*Orders*

which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties", are not judgments for the purpose of filing appeals provided under the Letters Patent. Thus, the submission of the learned senior counsel for the respondents is that the learned judge, on considering the reasons assigned by the respondents for not complying with the order passed in the writ petitions, accepted the same and held that there was no wilful disobedience on the part of the authorities. At the same time, the learned judge also directed the respondents to permit the appellants to conduct the public meeting on 06.11.2022, and that, in any event, if any of the rights of the appellants has been violated or inconvenience has been caused due to the order passed by the learned judge, the same is not a final order or it will not cause any prejudice to the rights of the appellants and as such, the Letters Patent Appeals are not maintainable and they are liable to be dismissed. This submission while appearing to be superficially plausible, would be a specious argument on two counts:

First, the order passed in the contempt petitions was not a mere dismissal of the contempt petition recording that there was no wilful disobedience on the part of the authorities but one where the very many directions made in the writ petitions, were altered on the basis of the

facts which had been submitted by the State authorities in the contempt petitions. While the State was at liberty to defend its case to prove that there was no wilful disobedience of the order passed in the writ petitions on the basis of its own facts and reasons, it was not open to the learned judge to have altered the very foundation of the decision passed in the writ petitions and sit in appeal over his own order;

Second, the order passed in the writ petitions had finally decided the issue under consideration which was whether permission for the procession should have been granted to the writ petitioners and the Learned Judge has in his order granted a positive direction to the authorities to grant permission to the writ petitioners to carry out the procession. Further, the review applications filed by the authorities had also been dismissed. Thus, the modification of this decision would directly affect the rights of the parties which had been finally decided in the order passed in the writ petitions, which order had attained finality on account of the dismissal of the review applications and on the basis of the fact that the said order passed in the writ petitions was not appealed in a manner known to law. To view

such modification as only causing "some inconvenience to the parties" would be viewing it from an extremely narrow lens. Adopting a view that modification of the rights of the parties is only causing inconvenience to them and not altering their rights and hence, will only be an interlocutory order and would not qualify as a judgement for the purpose of clause 15 of the Letters Patent is a course, not sustainable in law.

23. Further, as rightly contented by the learned senior counsel for the appellants, even when the order in the contempt proceedings is not determinative of final rights of the parties, yet, when it decides or has the effect of finally determining the issue in the main case, it is to be treated as "judgment" for the sustainability of the appeals under the Letters Patent as held in paragraphs 15 and 16 of the Judgment in ***Midnapore Peoples Cooperative Bank (cited supra).*** That apart, it would be useful to refer to paragraph 11 of the said judgment which reads as follows:

> "***11.****The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarised thus:*
>
> *I. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.*
>
> *II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the*

contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of "jurisdiction to punish for contempt" and, therefore, not appealable under Section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases)."

24. The judgment in **V.M. Manohar Prasad v. N. Ratnam Raju [(2004) 13 SCC 610 : 2006 SCC (L&S) 907 : 2003 SCC OnLine SC 1144],** also lays down the same proposition in the following paragraph:

"***8.****The learned counsel for the employees in some of the appeals, submit that the Division Bench has held that no appeal would lie against the order of the Contempt Judge since no one was punished for contempt. We find the argument to be fallacious. If a direction is given by a court without jurisdiction, against such orders an appeal would lie to a court normally exercising the appellate jurisdiction. Secondly, this ground loses importance in view of the fact that in some of the matters the authorities and the State have filed appeals directly against the order*

> *passed by the learned Judge disposing of contempt matter, directing the authorities and the State Government to sanction the posts. No such direction could be given in contempt proceedings."*

Thus, applying the principles as enunciated in the three judgments viz., ***Arumuganainar, Tamilnad Mercantile Bank and Shantha V Pai (cited supra),*** it would be clear that in the present facts and circumstances, where it is not a case that the learned judge had refused to simpliciter close the contempt on the ground of no wilful disobedience, and that, the order under appeals is one that determines the rights of the parties, thereby being a "judgment", falling within the ambit of Clause 15 of the Letters Patent, the present appeals are maintainable in law.

25. Now, proceeding further to examine the correctness of the order appealed against, at the very first blush itself, it is rather apparent that the order passed in the writ petitions on 22.09.2022, was modified by the order passed in the contempt petitions, having a direct bearing on the rights of the parties. The specific observation contained in the order passed in the writ petitions that-

> *"11.In view of the above order passed by the Hon'ble Supreme Court of India as well as various orders passed by this Court, it would be appropriate to direct the respondents to grant permission to conduct procession and to conduct public meeting on 02.10.2022 at various places subject to the following conditions on or before 28.09.2022:-……."*.

if contrasted with the order passed in the contempt petitions starting with the first direction therein that-

> *"9.Therefore, this Court is inclined to grant permission to conduct procession and public meeting on 06.11.2022 on the following conditions:*
> *i.The procession and public meetings should be conducted in a compounded premises such as Ground or Stadium. It is made clear that while proceeding to conduct procession and public meeting, the participants shall go by walk or by their respective vehicles without causing any hindrance to the general public and traffic. ...".,*

while also denying permission to the writ petitioners to conduct public meetings or processions in 6 places, namely, Coimbatore, Pollachi, Nagercoil, Palladam, Mettupalayam, Arumanai, stating that –

> *"6……Therefore, it is not the right time to permit the respective petitioners to conduct procession and public meeting on 06.11.2022 in the above-mentioned places",*

would show that the Learned Judge had on application of mind on the fresh facts brought before him by the State, altered the ratio of the decision made in the writ petitions, by virtually sitting in appeal over his own order dated 22.09.2022. In other words, what was permitted by way of one order, was sought to be curtailed and restricted on the basis of the facts put forth by the State in a manner as to modify the very core of the order passed in the writ petitions. Further, when the only question that was raised in the writ petitions, was limited to, whether permission must be granted to the writ petitioners and such question had been decided

finally in the writ petitions, there was no scope for any interim measures or interlocutory orders either in the writ petitions or in the contempt petitions. If at all there was any need or scope for altering the directions issued in the writ petitions, the same could have been done in the review applications preferred by the State authorities. Once the said review applications were dismissed without there being any modification or alteration of the order passed in the writ petitions, the order in the contempt petitions should have been limited to the exercise of seeing if there was any wilful disobedience or non-compliance of the order passed in the writ petitions.

26. Moreover, the relief sought for in the writ petitions being in the nature of a route-march, which by its very nature included taking out a procession on the route specified, could not have been altered to a meeting that would have to take place within a compounded place like a stadium or a closed place or indoors. That means, the very nature of assembly as requested for in the representations leading to the filing of writ petitions and culminating in the order passed thereof, would stand altered by the decision taken by the authorities in direct violation of the order passed in the writ petitions as they had decided to adopt a different

course of action than that ordered in the writ petitions. The only course open to them would have been to either challenge the order passed in the writ petitions by way of an appeal or to comply with the order made in the writ petitions. The facts make it clear that they chose to do neither, and in the circumstances, there had been a clear disobedience which can only said to be wilful as their action was clearly guided by knowledge of the order passed in the writ petitions as well as consciously adopting a different course of action than that specified in the writ petitions, as the authorities had rejected the request of the writ petitioners. Such being the case, the contempt petitions should have been decided within the precincts of these facts, and should have concerned itself only with wilful disobedience or non-compliance of the order passed in the writ petitions. Viewing from that angle, the contempt petitions should have been allowed and appropriate proceedings should have been initiated. However, in the present case, not only have the contempt petitions been dismissed in effect, but the very directions issued in the writ petitions had been modified in the contempt petitions on the basis of the new facts that had been brought before the court by the State authorities for reasoning out as to why they had not complied with the order passed in the writ petitions. The directions found in clauses (vi), (vii), (viii) and

(xi) of Paragraph 11 of the order in the writ petitions are not found in the order passed in the contempt petitions as the concept of route-march, which was sought to be conducted by the writ petitioners, was modified and done away with to be substituted by a meeting to be conducted in a compounded premises. Contrary to the order passed in the writ petitions, the learned judge himself stated that it was not the right time to hold procession in six places and further stated that in the remaining 44 places, public meetings could be held on 06.11.2022 in a compounded place.

27. The question whether an order passed in the writ petitions can be altered so as to modify its fulcrum, has been the subject matter of various decisions of this court. It is trite law that in a contempt jurisdiction, the court must concern itself the compliance or disobedience of the order passed in the writ petitions and it cannot either enlarge the scope of the order passed in the writ petitions nor can it restrict or curtail the rights of the parties already granted in the writ petitions or modify or alter either the reasoning or the ratio of the order passed in the writ petitions. The judgement in ***Union of India and others v. Subedar Devassy PV, [2006 1 Supreme Court Cases 613]*** is extracted hereunder

to substantiate the above position of law:

> *"2. While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a Court to examine the correctness of the earlier decision which had not been assailed and to take a view different from what was taken in the earlier decision. A similar view was taken in K.G. Derasari v. Union of India, 2001 (10) SCC 496: 2002 SCC (L & S) 756. The Court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgement or order. If there was no ambiguity or indefiniteness in the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher Court. The Court exercising contempt jurisdiction cannot take upon itself the power to decide the original proceedings in a manner not dealt with by the court passing the judgement or order. Though strong reliance was placed by learned counsel for the appellants on a three-judge Bench decision in Niaz Mohd. v. State of Haryana, 1994 (6) SCC 332, we find that the same has no application to the facts of the present case. In that case the question arose about the impossibility to obey the order. If that was the stand of the appellants, the least it could have done was to assail correctness of the judgement before the higher Court. "*
>
> *"6. If any party concerned is aggrieved by the order which in its opinion is wrong or against the rules or its implementation is neither practicable nor feasible, it should always either approach the Court that passed the order or invoke jurisdiction of the appellate Court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. While dealing with an application for contempt, the Court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test the correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible."*

28. The following judgments may also be of relevance:

A. In ***Jhareswar Prasad Paul v. Tarak Nath Ganguly [(2002) 5 SCC 352 : 2002 SCC (L&S) 703 : 2002 SCC OnLine SC 583]***, the Hon'ble Apex Court has held as follows:

> "***11.****The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law, since the respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of court is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order. If the judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the judgment or order. If this limitation is borne in mind then criticisms which are sometimes levelled against the courts exercising contempt of court jurisdiction "that it has exceeded its powers in*

granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute" in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts."

B. In ***Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda*, *(2006) 5 SCC 399 : 2006 SCC OnLine SC 628***, it was held as follows:

"***21.****There was also no justification for the further direction by the learned Single Judge in the contempt proceedings, that too by an interlocutory order, that the complainant should immediately and forthwith be reinstated into the service of the Bank, and shall be deemed to be in the service of the Bank all through, that the employee shall not be prevented in any manner from discharging his duties and that he shall be paid all arrears of salary within four weeks, and that the suspension order shall be deemed to have been revoked. These were totally outside the scope of the proceedings for contempt and amounted to adjudication of rights and liabilities not in issue in the contempt proceedings. At all events, on the facts and circumstances, there was no disobedience, breach or neglect on the part of the Bank and its President and Secretary, to provoke the Court to issue such directions, even assuming that such directions could be issued in the course of the contempt proceedings. Hence, Directions 2 and 3 and the direction relating to revocation of suspension are liable to be set aside."*

C. ***V.M. Manohar Prasad v. N. Ratnam Raju, [(2004) 13 SCC 610 : 2006 SCC (L&S) 907 : 2003 SCC OnLine SC 1144],*** in which, it was observed as under:

"***7.****On the basis of what has been indicated above, the first submission is that there is no violation of the order passed by the learned Single Judge directing regularisation of the employees, since the said order has not been violated in any manner. The matter was considered in the light of the scheme for regularisation dated 24-4-1994. Secondly, it is submitted that the Contempt Court had no jurisdiction to issue any direction providing any substantive relief to the petitioners moving the contempt*

petition. In support of this contention reliance has been placed upon decisions of this Court in Jhareswar Prasad Paul v. Tarak Nath Ganguly [(2002) 5 SCC 352 : 2002 SCC (L&S) 703] and Notified Area Council v. Bishnu C. Bhoi [(2001) 10 SCC 636 : 2002 SCC (L&S) 1018] . There is no doubt about the position under the law that in contempt proceedings no further directions could be issued by the court. In case it is found that there is violation of the order passed by the court the court may punish the contemnor otherwise notice of contempt is to be discharged. An order passed in the contempt petition, could not be a supplemental order to the main order granting relief."

D. In ***Director of Education v. Ved Prakash Joshi*, *[(2005) 6 SCC 98 : 2005 SCC (Cri) 1357 : 2005 SCC (L&S) 812 : 2005 SCC OnLine SC 1035]*,** it was held as under:

"***7.****While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a court to examine the correctness of the earlier decision which had not been assailed and to take a view different than what was taken in the earlier decision. A similar view was taken in K.G. Derasari v. Union of India [(2001) 10 SCC 496 : 2002 SCC (L&S) 756] . The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher court. The court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order. Right or wrong the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt, the court cannot traverse beyond the order, non-compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional directions or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside."*

E. In ***Bihar Finance Service House Construction Coop. Society Ltd. v. Gautam Goswami, [(2008) 5 SCC 339 : 2008 SCC OnLine SC 450],*** the Hon'ble Apex Court has held as follows:

> "***32.****While exercising the said jurisdiction this Court does not intend to reopen the issues which could have been raised in the original proceeding nor shall it embark upon other questions including the plea of equities which could fall for consideration only in the original proceedings. The court is not concerned with as to whether the original order was right or wrong. The court must not take a different view or traverse beyond the same. It cannot ordinarily give an additional direction or delete a direction issued. In short, it will not do anything which would amount to exercise of its review jurisdiction. (See Director of Education v. Ved Prakash Joshi [(2005) 6 SCC 98 : 2005 SCC (Cri) 1357 : 2005 SCC (L&S) 812 : AIR 2005 SC 3200] and K.G. Derasari v. Union of India [(2001) 10 SCC 496 : 2002 SCC (L&S) 756] .)*
>
> ***33.****This Court while exercising its jurisdiction under the Contempt of Courts Act or Article 129 of the Constitution of India must strive to give effect to the directions issued by this Court. When the claim of the parties had been adjudicated upon and has attained finality, it is not open for any party to go behind the said orders and seek to take away and/or truncate the effect thereof. (See T.R. Dhananjaya v. J. Vasudevan [(1995) 5 SCC 619 : 1995 SCC (L&S) 1265 : (1995) 31 ATC 177] .)*
>
> ***34.*** *In Prithawi Nath Ram v. State of Jharkhand [(2004) 7 SCC 261] this Court held: (SCC p. 264, para 5)*
>
> > "*5. While dealing with an application for contempt, the court is really concerned with the question whether the earlier decision which has received its finality had been complied with or not. It would not be permissible for a court to examine the correctness of the earlier decision which had not been assailed and to take a view different than what was taken in the earlier decision."*
>
> *It was furthermore observed: (Prithawi Nath Ram case [(2004) 7 SCC 261] , SCC p. 264, para 6)*
>
> > "*6. On the question of impossibility to carry out the direction, the views expressed in T.R. Dhananjaya v. J. Vasudevan [(1995) 5 SCC 619 : 1995 SCC (L&S) 1265 : (1995) 31 ATC 177] need to be noted. It was held that when the claim inter se had been adjudicated and had attained finality, it is not open to the respondent to go behind the orders and truncate the effect*

> *thereof by hovering over the rules to get around the result, to legitimise legal alibi to circumvent the order passed by a court."...*

F. In ***Sudhir Vasudeva v. M. George Ravishekaran, [(2014) 3 SCC 373 : 2014 SCC OnLine SC 103 at page 381],*** the Hon'ble Apex Court held as follows:

> "***19.*** *The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or wilful violation of the same. Decided issues cannot be reopened; nor can the plea of equities be considered. The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the Bar, namely, Jhareswar Prasad Paul v. Tarak Nath Ganguly [(2002) 5 SCC 352 : 2002 SCC (L&S) 703], V.M. Manohar Prasad v. N. Ratnam Raju [(2004) 13 SCC 610 : 2006 SCC (L&S) 907],Bihar Finance Service House ConstructionCoop. Society Ltd. v. Gautam Goswami [(2008) 5 SCC 339] and Union of India v. Subedar Devassy PV[(2006) 1 SCC 613] ."*

G. ***V.Senthur and another v. M.Vijayakumar, I.A.S, [2021 SCC OnLine SC 846],*** in which, it was held as follows:

> "***15.****There can be no quarrel with the proposition that in a contempt jurisdiction, the court will not travel beyond the original judgment* and *direction; neither would it be permissible for the court to issue any supplementary or incidental directions, which are not to be found in the original judgment* and *order. The court is only concerned with the wilful or deliberate non-compliance of the directions issued in the original judgment* and *order.*
>
> ***16.****At the outset, we may clarify that in the present proceedings, we are only concerned with the contempt of the order passed by this Court dated 22nd January 2016.*
> …..
>
> ***28.*** *At the cost of repetition, we may clarify that though various arguments were advanced with regard to the merits of the matter by the learned Senior Counsel appearing on behalf of the respondent authorities, we cannot go into those aspects inasmuch as we are exercising limited jurisdiction of contempt…."*

29. Thus, in the light of the discussion made hereinabove, this court holds that the present LPAs are maintainable in law, on the basis of the principles as elucidated in the previous paragraphs of this order. Further, this court has no hesitation to hold that the order dated 22.09.2022 passed in the writ petitions has been fundamentally modified in the order passed in the contempt petitions on 04.11.2022 and it would not be an overstatement to say that what has been given by one hand, has been taken away by another, the effect of which would be that the order passed in the contempt petitions is nothing but a veiled attempt to sit in

judgement/appeal over the order passed in the writ petitions which is not permissible in law.

A WORD ON CONSTITUTIONAL FREEDOM AND REASONABLE RESTRICTIONS

30. It is the duty of every State to protect its citizens from threat of disruption and violence to ensure public tranquility and peace. Such duty flows from the conjoint reading of the fundamental rights of citizens as envisaged in Article 19 of the Constitution, along with the Directive Principles of State Policy and the entries in List II of the Seventh Schedule. Reliance was placed on the Judgment of the Hon'ble Apex Court in ***Karnataka Live Band Restaurants Association (cited supra)*** to contend that it is the prime duty, rather statutory duty of the State Police Administration to maintain law and order problem. Article 19 (1)(c) of the Constitution guarantees every citizen to form an association. It goes without saying that the object of the association must be lawful and in consonance with the constitutional scheme. Articles 19 (1) (a), (b) and (d) guarantee the right to freedom of speech and expression, to assemble and to move freely throughout the territory of India. The word "expression" under Article 19 (1) (a) is exhaustive and encompasses

within it the meaning demonstration. The demonstration could be either by use of speech or otherwise. A mere assembly of persons at a particular place to express their solidarity with an ideology or for common cause, even without use of any language can amount to demonstration, which of course will then fall under Article 19 (1) (b) of the Constitution. Therefore, it is very clear that it is within the fundamental right of the organization to conduct such processions at public places including public roads and meetings as they are well within the constitutional scheme. On this aspect, a reference can be had to the following judgments:

A. Kameshwar Prasad v. State of Bihar [1962 Supp (3) SCR 369 : AIR 1962 SC 1166 : (1962) 1 LLJ 294]*,* in which, it was held as follows:

> "***13.****The first question that falls to be considered is whether the right to make a "demonstration" is covered by either or both of the two freedoms guaranteed by Article 19(1)(a) and 19(1)(b). A "demonstration" is defined in the Concise Oxford Dictionary as "an outward exhibition of feeling, as an exhibition of opinion on political or other question especially a public meeting or procession". In Webster it is defined as "a public exhibition by a party, sect or society ... as by a parade or mass-meeting". Without going very much into the niceties of language it might be broadly stated that a demonstration is a visible manifestation of the feelings or sentiments of an individual or a group. It is thus a communication of one's ideas to others to whom it is intended to be conveyed. It is in effect therefore a form of speech or of expression, because speech need not be vocal since signs made by a dumb person would also be a form of speech. It has however to be recognise that the argument before us is confined to the rule prohibiting demonstration*

which is a form of speech and expression or of a mere assembly and speeches therein and not other forms of demonstration which do not fall within the content of Article 19(1)(a) or 19(1)(b). A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Article 19(1)(a) and 19(1)(b). It is needless to add that from the very nature of things a demonstration may take various forms; It may be noisy and disorderly, for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Article 19(1)(a) or (b). It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievances."

B. ***Mazdoor Kisan Shakti Sangathan v. Union of India*, *[(2018) 17 SCC 324 : 2018 SCC OnLine SC 724],*** wherein, it was observed as under:

"***48.****We may state at the outset that none of the parties have joined issue insofar as law on the subject is concerned. Undoubtedly, holding peaceful demonstrations by the citizenry in order to air its grievances and to ensure that these grievances are heard in the relevant quarters, is its fundamental right. This right is specifically enshrined under Articles 19(1)(a) and 19(1)(b) of the Constitution of India. Article 19(1)(a) confers a very valuable right on the citizens, namely, right of free speech. Likewise, Article 19(1)(b) gives the right to assemble peacefully and without arms. Together, both these rights ensure that the people of this country have the right to assemble peacefully and protest against any of the actions or the decisions taken by the Government or other governmental authorities which are not to the liking. Legitimate dissent is a distinguishable feature of any democracy. Question is not as to whether the issue raised by the protestors is right or wrong or it is justified or unjustified. The fundamental aspect is the right which is conferred upon the affected people in a democracy to voice their grievances. Dissenters may be in minority. They have a right to express their views. A particular cause which, in the first instance, may appear to be insignificant or irrelevant may gain momentum and acceptability when it is duly voiced and debated. That is the reason that this Court has always protected the valuable right of peaceful and orderly demonstrations and protests.*

49.*In Babulal Parate v. State of Maharashtra [Babulal Parate v. State of Maharashtra, AIR 1961 SC 884 : (1961) 2 Cri LJ 16 : (1961) 3 SCR 423] , this Court observed: (AIR p. 891, para 31)*

> *"31.The right of citizens to take out processions or to hold public meetings flows from the right in Article 19(1)(b) to assemble peaceably and without arms and the right to move anywhere in the territory of India."*

50.*In Kameshwar Prasad v. State of Bihar [Kameshwar Prasad v. State of Bihar, 1962 Supp (3) SCR 369 : AIR 1962 SC 1166] the Court was mainly dealing with the question whether the right to make a demonstration is protected under Articles 19(1)(a) and (b) and whether a government servant is entitled to this right. This Court held: (AIR p. 1171, para 13)*

> *"13.... A demonstration might take the form of an assembly and even then the intention is to convey to the person or authority to whom the communication is intended the feelings of the group which assembles. It necessarily follows that there are forms of demonstration which would fall within the freedoms guaranteed by Articles 19(1)(a) and 19(1)(b). It is needless to add that from the very nature of things a demonstration may take various forms; it may be noisy and disorderly, for instance stone-throwing by a crowd may be cited as an example of a violent and disorderly demonstration and this would not obviously be within Article 19(1)(a) or (b). It can equally be peaceful and orderly such as happens when the members of the group merely wear some badge drawing attention to their grievances."*

51.*The Supreme Court has also gone beyond upholding the right to protest as a fundamental right and has held that the State must aid the right to assembly of the citizens. In the Constitution Bench judgment, Himat Lal K. Shah v. Commr. of Police [Himat Lal K. Shah v. Commr. of Police, (1973) 1 SCC 227 : 1973 SCC (Cri) 280] , while dealing with the challenge to the Rules framed under the Bombay Police Act regulating public meetings on streets, held that the Government has power to regulate which includes prohibition of public meetings on streets or highways to avoid nuisance or disruption to traffic and thus, it can provide a public meeting on roads, but it does not mean that the Government can close all the streets or open areas for public meetings, thus denying the fundamental right which flows from Articles 19(1)(a) and (b). The Court held: (SCC pp. 239 & 248, paras 33 & 70)*

> *"33.This is true but nevertheless the State cannot by law abridge or take away the right of assembly by prohibiting assembly on every public street or public place. The State can only make regulations in aid of the right of assembly of each citizen and can*

only impose reasonable restrictions in the interest of public order.

*****

70.Public meeting in open spaces and public streets forms part of the tradition of our national life. In the pre-Independence days such meetings have been held in open space and public streets and the people have come to regard it as a part of their privileges and immunities. The State and the local authority have a virtual monopoly of every open space at which an outdoor meeting can be held. If, therefore, the State or Municipality can constitutionally close both its streets and its parks entirely to public meetings, the practical result would be that it would be impossible to hold any open-air meetings in any large city. The real problem is that of reconciling the city's function of providing for the exigencies of traffic in its streets and for the recreation of the public in its parks, with its other obligations, of providing adequate places for public discussion in order to safeguard the guaranteed right of public assembly. The assumption made by Justice Holmes is that a city owns its parks and highways in the same sense and with the same rights as a private owner owns his property with the right to exclude or admit anyone he pleases. That may not accord with the concept of dedication of public streets and parks. The parks are held for public and the public streets are also held for the public. It is doubtless true that the State or local authority can regulate its property in order to serve its public purposes. Streets and public parks exist primarily for other purposes and the social interest promoted by untrammelled exercise of freedom of utterance and assembly in public street must yield to social interest which prohibition and regulation of speech are designed to protect. But there is a constitutional difference between reasonable regulation and arbitrary exclusion."

52.*While adjudicating with respect to the validity of police action against protestors, this Court again reiterated that right to protest was a fundamental right guaranteed to the citizens under Article 19. In Ramlila Maidan Incident, In re [Ramlila Maidan Incident, In re, (2012) 5 SCC 1 : (2012) 2 SCC (Civ) 820 : (2012) 2 SCC (Cri) 241 : (2012) 1 SCC (L&S) 810] , the Court observed that the right to assembly and peaceful agitations were basic features of a democratic system and the Government should encourage exercise of these rights: (SCC p. 99, para 245)*

"*245. Freedom of speech, right to assemble and demonstrate by holding dharnas and peaceful agitations are the basic features of a democratic system. The people of a democratic country like ours have*

a right to raise their voice against the decisions and actions of the Government or even to express their resentment over the actions of the Government on any subject of social or national importance. The Government has to respect and, in fact, encourage exercise of such rights. It is the abundant duty of the State to aid the exercise of the right to freedom of speech as understood in its comprehensive sense and not to throttle or frustrate exercise of such rights by exercising its executive or legislative powers and passing orders or taking action in that direction in the name of reasonable restrictions. The preventive steps should be founded on actual and prominent threat endangering public order and tranquillity, as it may disturb the social order. This delegated power vested in the State has to be exercised with great caution and free from arbitrariness. It must serve the ends of the constitutional rights rather than to subver t them."

…….

54.*The right to protest is, thus, recognised as a fundamental right under the Constitution. This right is crucial in a democracy which rests on participation of an informed citizenry in governance. This right is also crucial since it strengthens representative democracy by enabling direct participation in public affairs where individuals and groups are able to express dissent and grievances, expose the flaws in governance and demand accountability from the State authorities as well as powerful entities. This right is crucial in a vibrant democracy like India but more so in the Indian context to aid in the assertion of the rights of the marginalised and poorly represented minorities."*

C. *Himat Lal K. Shah v. Commr. of Police, [(1973) 1 SCC 227 : 1973 SCC (Cri) 280],* in which, it was held as follows:

65. *In Lowdens v. Keaveney [(1903) 2 IR 82] Gibson, J., said that a procession is prima facie legal and that it differs from "the collection of a stationary crowd" but that a procession may become a nuisance if the right is exercised unreasonably or with reckless disregard of the rights of others.*

……

67.*This dictum was quoted and approved by the U.S. Supreme Court Davis v. Massachusetts [(1897) 167 US 43] . But later decisions of the U.S. Supreme Court have politely distinguished the case. In Hague v. CIO [307 US 496, 515-516] Justice Roberts, speaking for the majority, said:*

"*Wherever the title of streets and parks may rest, they have*

immemorially been held in trust for the use of the public and time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute but relative, and must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied."

……

69.*Freedom of assembly is an essential element of any democratic system. At the root of this concept lies the citizens right to meet face to face with others for the discussion of their ideas and problems — religious, political, economic or social. Public debate and discussion take many forms including the spoken and the printed word, the radio and the screen. But assemblies face to face perform a function of vital significance in our system, and are no less important at the present time for the education ofthe public and the formation of opinion than they have been in our past history. The basic assumption in a democratic polity is that Government shall be based on the consent of the governed. But the consent of the governed implies not only that the consent shall be free but also that it shall be grounded on adequate information and discussion. Public streets are the "natural" places for expression of opinion and dissemination of ideas. Indeed it may be argued that for some persons these places are the only possible arenas for the effective exercise of their freedom of speech and assembly.*

70.*Public meeting in open spaces and public streets forms part of the tradition of our national life. In the pre-Independence days such meetings have been held in open space and public streets and the people have come to regard it as a part of their privileges and immunities. The State and the local authority have a virtual monopoly of every open space at which an outdoor meeting can be held. If, therefore, the State or Municipality can constitutionally close both its streets and its parks entirely to public meetings, the practical result would be that it would be impossible to hold any open-air meetings in any large city. The real problem is that of reconciling the city's function of providing for the exigencies of traffic in its streets and for the recreation of the public in its parks, with its other obligations, of providing adequate places for public discussion in order to safeguard the guaranteed right of public assembly. The assumption made by Justice Holmes is that a city owns its parks and highways in the same sense and with the same rights as a private owner owns his property with the right to exclude or admit*

anyone he pleases. That may not accord with the concept of dedication of public streets and parks. The parks are held for public and the public streets are also held for the public. It is doubtless true that the State or local authority can regulate its property in order to serve its public purposes. Streets and public parks exist primarily for other purposes and the social interest promoted by untrammelled exercise of freedom of utterance and assembly in public street must yield to social interest which prohibition and regulation of speech are designed to protect. But there is a constitutional difference between reasonable regulation and arbitrary exclusion.

71.*The framers of the Constitution were aware that public meetings were being held in public streets and that the public have come to regard it as part of their rights and privileges as citizens. It is doubtful whether, under the common law of the land, they have any such right or privilege but, nobody can deny the de facto exercise of the right in the belief that such a right existed. Communis error facit jus (common error makes the law). This error was grounded on the solid substratum of continued practice over the years. The conferment of a fundamental right of public assembly would have been an exercise in futility, if the Government and the local authorities could legally close all the normal places, where alone, the vast majority of the people could exercise the right. Our fundamental rights of free speech and assembly are modelled on the Bill of Rights of the Constitution of the U.S.A. [see Express Newspapers (P) Ltd. v. Union of India] [AIR 1958 SC 578 : 1959 SCR 120, 121 : 1958 SCJ 1113] . It would be relevant then to look to the ambit and reach of those rights in the United States to determine their content and range in India. On closer analysis, it will be found that the basis of Justice Roberts' dictum in Hague v. CIO case is the continued de facto exercise of the right over a number of years. I think the same reasoning can be applied here."*

D. "On appeal Iqbal Ahmad, J., as he then was, considered that the case did not depend upon custom though apparently he was of opinion that the alleged custom was proved. But founding himself upon a decision of this Board in Manzur Hasan v. Muhammed Zaman [(1924) 52 I.A. 61.] that in India there was a right to conduct a religious procession "with its appropriate observances" through the public streets, and being of opinion that to carry tazias of the height claimed was an appropriate observance he came to the conclusion that the plaintiffs had established their right. It remained, however, to consider the defence that the acts complained of had been done under statutory authority, a defence which seems to have been seriously argued for the first time on appeal. The learned Judge was of opinion that section 19 of the Indian Electricity Act applied to the plaintiffs' case "(1) A licensee shall in exercise of any of the powers conferred by or under this Act cause as little damage

detriment, and inconvenience as "may be, and shall make full compensation for any damage detriment or inconvenience caused by him or by anyone employed by him." The effect of this section was to make the exercise of the powers of the Company conditional on their not interfering with the rights of others; and as the plaintiffs had the right to carry tazias of the height claimed, they were entitled to the declaration and injunction asked for, subject to the rights of the Magistrate to give orders under section 144 of the Code of Criminal Procedure. Bajpai, J., in substance agreed.

Their Lordships are unable to accept the reasons given by the learned judges. They agree that it is unnecessary to consider the question of custom. The plaintiffs have the right as members of the public to take part in religious processions in the streets: subject of course to the rights of other members of the public to pass and repass along the same streets and subject to the powers of the appropriate authorities of controlling traffic and preventing disturbance. This right as a normal user of the highway does not originate in custom. Whether a highway could be dedicated subject to such a custom need not be considered. It is not alleged in the present case, and it is difficult to see how such a situation could arise. The rights of the plaintiffs therefore are no more and no less than the rights of any member of the public, and subject to questions of danger or disorder there seems no reason why a member of the public should not convey along an open street as part of a normal use of the street articles of any height. ……."

D. ***Chandu Sajan Patil v. Nyahalchand Panamchand, [1948 SCC OnLine Bom 64 : AIR 1950 Bom 192 : (1950) 52 Bom LR 214]*****,** in which, it was observed as under:

"***2.****It is important to note that the suit was filed for a declaration without claiming any special damages, and it is not disputed that a suit for a declaration as to the right of a subject with regard to a public thoroughfare would always lie if special damages are claimed. But the difficulty arises when the suit is for a mere declaration. If there is an obstruction to a public thoroughfare, it constitutes a public nuisance, no special private rights are affected, and the public as a whole is interested in the removal of the nuisance. Therefore, the law has provided that in case of a public nuisance no suit would lie at the instance of a private party unless he can shew that he has suffered damages over and above what the public at large had suffered. Under S. 91, Civil P.C., only the Advocate General, or two or more persons having obtained the consent in writing of the Advocate General, can institute a suit in respect of a*

public nuisance. But it must be borne in mind that a public nuisance may also affect private and individual rights. Every citizen has the right to use a public thoroughfare in a lawful manner. Equally so has a community or a section of a community, and if such a right is threatened or taken away, there is no reason why a suit should not lie for a declaration of such a right. This Court in Sathu v. Ibrahim, 2 Bom. 457 held that a civil suit in respect of an obstruction to a public road could not be maintained unless the plaintiffs could prove some particular damage to themselves personally in addition to the general inconvenience occasioned to the public. Sir Michael Westropp, C.J. and Melvill, J. who decided that case followed English precedents as to procedure, and at p. 459 the Chief Justice points out that, speaking generally, no action can, in England, be maintained for a public injury. Therefore, action did not lie for obstructing a man's passage in a highway, because, ordinarily, he has no more damage than others of the Queen's subjects; but the party causing the obstruction must be proceeded against by indictment. If, however, the person had sustained more particular damage by the nuisance than the public in general, then he might sue the party causing it. This decision was followed in Kazi Sujaudin v. Madhavdas, 18 Bom. 693,Virupaxappa v.Sherif Sab, 11 Bom. L.R. 372 : (2 I.C. 494) and in Venkatesh Appashet v. Abdul Kadir, 42 Bom. 438 : (A.I.R. (5) 1918 Bom. 162). It may be noted that Sir Michael Westropp did not consider the question as to whether a subject had the right to take out a procession or join in one on a public highway. On the contrary, the learned Chief Justice emphasised the fact that His Majesty's subjects at large had the right to pass and repass along a public highway so long as they did so peaceably and properly. The only point on which that decision turned was a purely procedural one, whether a suit would lie for the declaration of such a right without an averment of special damages. The question with regard to the right of taking out a procession was incidentally considered by Heaton, J., both in Virupaxappa v. Sherif Sab (11 Bom. L.R. 372 : 2 I.C. 194) and in Venkatesh Appashet v. Abdul Kadir, 42 Bom. 438 : (A.I.R. (5) 1918 Bom. 162), and according to that learned Judge, a man had the right to use the streets as a thoroughfare, i.e., for the purpose for which streets were made, but he had no right to pass along a street playing music. We may point out that the right to play music has nothing to do with the right of taking out a procession. The question of music is more a question as to what are the appropriate observances that go with a particular procession. But a discordant and rather a significant note in view of what the Privy Council subsequently decided, was struck by Sir Basil Scott, C.J., sitting with Batchelor, J., in Baslingappa v. Dharmappa, 34 Bom. 571 : (7 I.C. 663). In that case the plaintiffs sued on behalf of themselves and of other members of the religious community to have a declaration of the right of marching in procession with a car along a particular public road to certain temples and for an injunction

restraining the defendants from interfering with the plaintiffs. The learned Chief Justice considered the decisions Satku v. Ibrahim, 2 Bom. 457 and Kazi Sujaudin v.Madhavdas, 18 Bom. 598, but distinguished them by holding that those cases dealt with the question of the removal of a public nuisance. But the case before him was a suit for the declaration of the right of an individual community to use the public road. According to him, although a declaratory suit might not lie for the removal of a public nuisance it would certainly lie for asserting an individual right to use the public road. In coming to this conclusion, he relied on a decision in Sadagopachariar v. Rama Rao, 26 Mad. 376, which had been confirmed in appeal by the Privy Council. That case laid down that the right to conduct a religious procession through the public streets is a right inherent in every person, provided he does not thereby invade the rights of property enjoyed by others, or cause a public nuisance or interfere with the ordinary use of the streets by the public, and subject to directions or prohibitions for the prevention of obstructions to thoroughfares or breaches of the peace, and further that every member of the public and every sect has a right to use the streets in a lawful manner, and it lies on those who could restrain him in its exercise to show some law or custom having the force of law depriving him of the privilege. This case, therefore, enunciated two important principles: The inherent right, apart from any custom, of every person to conduct a religious procession along a public thoroughfare, and also the inherent right of every subject to use public streets in a lawful manner. That decision was affirmed by the Privy Council in Sadagopa Chariar v. Rama Rao, 34 I.A. 93 : (30 Mad. 185 P.C.). Then comes the decision of the Privy Council in Manzur Hasan v. Muhammad Zaman, 52 I.A. 61 : (A.I.R. (12) 1925 P.C. 36), which set at rest the conflict of decisions between the different High Courts in India with regard to the right of conducting a religious procession through a public street. Lord Dundedin in delivering the judgment of the Board first considered the question whether there was a right to conduct a religious procession with its appropriate observances along the high-way, and the answer he gave was in the affirmative. Then he considered two other questions: one whether one sect can claim exclusive use of the highway for its worship. That claim was negatived. The other question was whether a civil suit lies against those who would prevent a procession with its observances and then the Privy Council points out that there was a discrepancy between Bombay decisions and Madras and Calcutta decisions. Their Lordships referred to the judgment of Westropp, C.J. and Melvill, J. in Satku v. Ibrahim, (2 Bom. 457), and pointed out that decision proceeded entirely on English authorities which laid down the difference between proceedings by indictment and by civil action, and they observed that such a way of deciding a case was inadmissible, as the distinction between indictment and action in regard to what was done on a highway

was a distinction peculiar to English law and ought not to be applied in India. The Madras and Calcutta view was that a suit for a declaration would lie without proof of special damages, and their Lordships accepted that view as the correct view. It is perfectly true that the Privy Council was considering a case of a religious procession and the observations of their Lordships are naturally with reference to religious processions. The question we will have to consider is whether these observations have a wider import or they must be strictly confined to their context. A later decision of the Privy Council in Martin & Co. v. Faiyaz Husain, 47 Bom. L.R. 575 : (A.I.R. (31) 1944 P.C. 33), laid down another important principle that the right to take out a religious procession was not dependent upon any custom, but was an inherent right, subject, of course, to the rights of other members of the public to pass and repass along the same streets and subject to the powers of the appropriate authorities controlling traffic and preventing disturbances. Here, again, the question would arise whether the inherent right of the members of the public is confined to taking out a religious procession or whether it extends even to non-religious processions.

3.*It is difficult to see what is the distinction in principle between the right of conducting a religious procession along a public thoroughfare and the right of conducting a non-religious procession. The right, it seems to us, depends upon the lawful and reasonable user of a highway. Can it be said that conducting a non-religious procession along a thoroughfare is a less lawful and reasonable user of a highway than conducting a religious procession? It has been suggested that the Privy Council in Manzur Hasan v. Mohammad Zaman, 52 I.A. 61 : (A.I.R. (12) 1925 P.C. 36), confined its decision to religious processions because of the peculiar conditions prevailing in India. If that were so, the Privy Council would have been at pains to make it clear that their decision should not be extended beyond what it actually decided. The observations of the Privy Council seem to us more of a general character rather than as being confined to its particular context. Further if, religious processions are a peculiar feature of Indian life, equally so are non-religious processions. A marriage procession going through a public road is as familiar a sight if not more than a religious procession. The principle that emerges according to us from the two Privy Council decisions in Manzur Hasan v. Muhammad Zaman, 52 I.A. 61 : (A.I.R. (12) 1925 P.C. 36) and Martin & Co. v. Faiyaz Husain, 47 Bom. L.R. 575 : (A.I.R. (31) 1944 P.C. 33), is that when a subject has an inherent right with regard to the user of a highway, he can maintain a suit for declaration of that right without proof of special damages. The Privy Council does not lay down that the only inherent right that a subject has is to join in a religious procession or to conduct a religious procession, and no authority has been cited to us which holds that the right to conduct a non-religious procession is not*

as much an inherent right as to conduct a religious procession. On the contrary, there are several decisions to which we shall presently refer which have put non-religious processions on the same footing as religious processions. In Sivappachari v. Mahalinga Chetti, 1 M.H.C. 50, the plaintiff sued the defendants for having forcibly stopped a marriage procession which he was conducting on a public highway. The District Munsif awarded damages to the plaintiff. The Additional Principal Sadar Amin in appeal disallowed the plaintiff's claim on the ground that the persons of the plaintiff's caste had no right to institute such marriage processions. The High Court disagreed with the opinion of the Additional Principal Sadar Amin that the procession was one which the plaintiff was unauthorised to institute, and it added that the procession being one which was conducted by the plaintiff on the public highway, his right so to make use of the highway could only be questioned by the Magistrate, who, for the preservation of the peace, might if he saw sufficient grounds, interdict the procession. The defendants had no right of preventing the plaintiff from carrying out the procession. Sundaram v. The Queen, 6 Mad. 203 (F.B.), is a case of religious procession which was referred to with approval by the Privy Council in Manzur Hasan v. Muhammad Zaman, 52 I.A. 61 : (A.I.R. (12) 1925 P.C. 36). But the learned Chief Justice Sir Charles A. Terner at p. 215 refers to the decision of the Sadar Court in Sambalinga Murti v. Vembara Govinda Chetti, (1857) M.S.D. 233. In that case a guru of the Devanga caste sued to establish his right to be carried in a palanquin in procession through certain streets in Salem attended by his disciples with bands of music. The defendants pleaded that it was contrary to custom for people of the plaintiff's caste to go in procession through streets inhabited by the people of the defendants' caste, and a Full Bench of the Sadar Court held that the right claimed was a natural right inherent in every subject of the State, and it lay on those who sought to restrain the plaintiff in his exercise of it to prove some law or custom having the force of law depriving him of the right. Therefore, the lawful user of a highway is a natural right inherent in every subject. It is not for the plaintiff to establish that right, but it is for the other side to prove some law or custom which would deprive him of that right. Velan Pakkiri Taragan v. Subbayan Samban, 42 Mad. 271 : (A.I.R. (6) 1919 Mad. 674 F.B.), was again a case of marriage procession, and the plaintiffs filed the suit against the defendants for a declaration that they were entitled to conduct their marriage procession along the public road, and the Court held that such a suit would lie without allegation of proof of special damage. In Muhammad Jalil Khan v. Ram Nath Katna, 53 ALL. 484 : (A.I.R. (18) 1931 ALL. 341), Sulaiman and Young, JJ., were dealing with a case of religious procession, but at page 490 they do say that taking out of a procession accompanied with music, whether as a part of religious worship or not, is within the civil rights of a community, but not

an exclusive use of the highway for worship. In English law, to organise or take part in a procession on a public highway is not necessarily a nuisance. It is only a nuisance when such a procession constitutes an unreasonable user of the highway or would naturally result in an obstruction. (See Halsbury, Vol. XVI, p. 362). Our attention has been drawn to a decision of this Court reported in Sangabasavaswami v. Baburao Ganesh, 48 Bom. L.R. 100 : (A.I.R. (33) 1946 Bom. 353). In that case Sir Harilal Kania, Ag. C.J., in his judgment took the view that the right of the members of the public to carry a religious procession through the public streets does not extend to processions which are not religious. But with very great respect, that observation of the Acting Chief Justice was entirely obiter because the suit was founded only on the claim to take out avyasantol procession which the plaintiffs alleged was a religious procession. The lower appellate Court held as a fact that the procession which the plaintiffs wanted to carry out was not a religious procession, and Kania, J., held that in second appeal the High Court was bound by that finding of fact. The plaintiffs did not allege in the alter, native that they had a right to take out a non-religious procession and therefore the question of that right did not at all arise for determination. Besides, this point was apparently not fully argued because the judgment mentions that
"*in answer to Court Mr. Desai admitted that in no decided case he had found such a general right admitted, conceded or upheld."*

4.*The question really, therefore, resolves itself into this. Has a citizen or a community or a section of a community an inherent right to conduct a non-religious procession through a public road? If he has such a right, and in our opinion he undoubtedly has, then it must inevitably follow that he has also the right to file a declaratory suit without proof of special damages. It must be made clear that any such inherent right is subject to the right of other citizens also to use the highway in a lawful manner and also subject to any orders issued by the State for the purpose of preventing breaches of public peace and for maintaining law and order. The question whether a procession has a right to play music or not is always a question of fact. It would depend upon whether music is an appropriate observance of that particular procession, and Bavdekar and Dixit, JJ., were right in not adding the words "accompanied by music" to the question they have submitted to us."*

31. Now, coming to the second part of Article 19 (2) as to whether the State is entitled to restrict such processions and meetings. Even though the State has the right to impose restrictions, it cannot

prohibit them totally, but only impose reasonable restrictions. Since the organization has the right to conduct peaceful procession and meetings in public place, the State under the guise of new intelligence input, cannot seek to impose any condition which has the effect of perpetually banning or infringing the fundamental rights of the organization citing law and order problem, after the order passed in the writ petitions, which attained finality. We have already held that it is the duty of the State to maintain law and order situation. It is also the bounden duty of the State to provide adequate security to a lawful claim and to ensure that the fundamental rights guaranteed under the Constitution are not abridged. That apart, the ideology of every organization or political outfit in the State need not be identical or acceptable to another. Just because, there are other outfits that have a different ideology, the permission sought cannot be denied. The decisions of the State must be in public interest rather than on ideology and political understanding and affiliation. At this juncture, it would be useful to refer to the following judgments of the Apex Court:

(I) ***Gulam Abbas v. State of U.P., [(1982) 1 SCC 71 : 1982 SCC (Cri) 82]*** **,** wherein, it was held as follows:

"***33.****The instant case, as we have held above, is one where the entitlement of the Shias to their customary rights to perform their religious ceremonies and functions on the plots and structures in question has been established and is the subject-matter of a judicial pronouncement and decree of civil court of competent jurisdiction as also by reason of these properties having been registered as Shia Wakfs for performance of their religious ceremonies and functions and their complaint has been that the power under Section 144 is being exercised in utter disregard of the lawful exercise of their legal rights and every time instead of exercising the power in aid of their rights it is being exercised in suppressing their rights under the pretext of imminent danger to peace and tranquillity of the locality. Having elaborated the principles which should guide the exercise of that power we hope and trust that in future that power will be exercised by the executive magistracy in defence of such established rights of the petitioners and the Shia community and instead of prohibiting or suspending the exercise of such rights on concerned occasions on the facile ground of imminent danger to public peace and tranquillity of the locality the authorities would make a positive approach to the situation and follow the dictum of Turner, C.J. that if they are satisfied that the exercise of the rights is likely to create a riot or breach of peace it would be their duty to take from those from whom disturbance is apprehended security to keep the peace. After all the customary rights claimed by the petitioners partake of the character of the fundamental rights guaranteed under Articles 25 and 26 of the Constitution to the religious denomination of Shia Muslims of Varanasi, a religious minority, who are desirous of freely practising their religious faith and perform their rites, practices, observances and functions without let or hindrance by members belonging to the majority sect of the community, namely, Sunni Muslims, and as such a positive approach is called for on the part of the local authorities. It is only in an extremely extraordinary situation, when other measures are bound to fail, that a total prohibition or suspension of their rights may be resorted to as a last measure."*

(II) ***Mazdoor Kisan Shakti Sangathan v. Union of India, [(2018) 17 SCC 324 : 2018 SCC OnLine SC 724 at page 374]***, in which, it was held as under:

"***68.****The reading of these orders, thus, would indicate that there is no absolute prohibition from holding public meetings, processions, demonstrations, etc. Such activities are to be restricted in larger public interest and, therefore, before any group of persons or person wants to*

carry out any such processions and dharnas, it has to take prior written permission. This clearly implies that whenever such a request is made, the authority is to examine the same and take a decision as to whether it should allow the proposed demonstration, public meeting, etc. or not, keeping in view its likely effect, namely, whether it would cause any obstruction to traffic or danger to human safety or disturbance to public tranquillity, etc. If requests made are considered and then allowed or rejected keeping in view the aforesaid considerations, there cannot be any quarrel as to the validity of such an order made under Section 144 CrPC. That is, however, not the ground reality.

69.*No doubt, an order passed under Section 144 CrPC remains valid for a period of sixty days which is the limit prescribed in that provision. However, just before the expiry of one order, another identical order is passed. Such repeated orders, in continuum, have created a situation of perpetuity. It is argued on behalf of the respondents that as there is no change in the situation, which remains the same insofar as sensitivity of this area and specific/peculiar conditions prevailing, such orders in repetitive form are necessitated. Even if we accept this position and proceed on that basis, this would only mean continuous regulation of the proposed public meetings, processions, demonstrations, etc. by not allowing the same in "unrestricted" manner. However, in reality no such activities are allowed at all and, therefore, the situation which is created amounts to "banning" these public meetings, demonstrations, dharnas, etc. altogether rather than "regulating" the same.*

70.*In the aforesaid conspectus, here also the Commissioner of Police, New Delhi and other official respondents can frame proper guidelines for regulating such protests, demonstrations, etc. As noted above, the orders issued under Section 144 prohibit certain activities in the nature of demonstrations, etc. "without permission", meaning thereby permission can be granted in certain cases. There can, therefore, be proper guidelines laying down the parameters under which permission can be granted in the Boat Club area. It can be a very restrictive and limited use, because of the sensitivities pointed out by the respondents and also keeping in mind that Ramlila Maidan is available and Jantar Mantar Road in a regulated manner shall be available as well, in a couple of months. Thus, the proposed guidelines may include the provisions for regulating the numbers of persons intending to participate in such demonstrations, prescribing the minimum distance from the Parliament House, North and South Blocks, Supreme Court, residences of dignitaries, etc. within which no such demonstrations would be allowed; imposing restrictions on certain routes where normally the Prime Minister, Central Ministers, Judges, etc. pass through; not permitting any demonstrations when foreign dignitaries are visiting a particular*

place or pass through the particular route; not allowing firearms, lathis, spears, swords, etc. to be carried by demonstrators; not allowing them to bring animals or pitch tents or stay overnight; prescribing time-limits for such demonstrations; and placing restrictions on such demonstrations, etc. during peak traffic hours. To begin with, authorities can permit those processions and demonstrations which are innocuous by their very nature. Illustratively, school children carrying out procession to advance some social cause or candle march by peace-loving group of persons against a social evil or tragic incident. These are some of the examples given by us to signify that such demonstrations can be effectively regulated by adopting various measures instead of banning them altogether by rejecting every request for such demonstrations. We, therefore, feel that in respect of this area as well the authorities can formulate proper and requisite guidelines. We direct the Commissioner of Police, New Delhi, to undertake this exercise, in consultation with other authorities, within two months from today."

32. Therefore, in the given factual matrix and applying the aforesaid legal proposition, we are of the view that the State authorities must act in a manner to uphold the fundamental right to freedom of speech, expression and assembly as regarded one of the most sacrosanct and inviolable rights envisaged in our Constitution. The State's approach towards citizens' right can never be adversarial in a welfare State and it must be considered for granting permission for peaceful rallies, protest, processions or meeting so as to maintain a healthy democracy where the constitution reigns supreme and the fundamental rights of citizens are placed at a lofty pedestal.

33. In the result, the order dated 04.11.2022 passed in the contempt petitions, which is under challange in the present LPAs, is set

aside, and the order dated 22.09.2022 passed in the writ petitions stand restored and would be enforceable. As the dates on which the appellants wanted to conduct the route-march, have passed, it is only appropriate that a direction be issued in this regard. Accordingly, the appellants are directed to approach the State authorities with three different dates of their choice for the purpose of holding the route-march/peaceful procession and the State authorities are directed to grant permission to the appellants on one of the chosen dates out of the three. The organization shall ensure that strict discipline is followed at their end and that there is no provocation or incitement on their part. The State on the other hand has to take adequate safety measures and make traffic arrangements to ensure that the procession and the meeting shall go on peacefully.

34. Accordingly, all the Letters Patent Appeals are allowed. No costs.

(R.M.D., J.) (M.S.Q., J.)

10.02.2023

Index : Yes / No
Internet: Yes / No
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R. MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

rsh

Pre-delivery Common Judgment in
LPA Nos. 6 to 50 of 2022

10.02.2023