MUNICIPAL CORPORATION, JABALPUR

v.

OM PRAKASH DUBEY

DECEMBER 5, 2006

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Labour Laws:

Constitution of India, 1950; Articles 12, 14, 16, 136/Madhya Pradesh Municipal Corporation Act, 1956:

Regularization of services of daily wagers—Municipal Corporation appointing large number of workmen without complying with the recruitment procedure in terms of Rules—Industrial Disputes—Awards—Challenge to—Contempt petition filed on ground that corporation discriminating amongst employees in regularizing their services—High Court directing the Corporation to make a proper gradation list of employees before considering their regularization—On appeal, Held: Corporation is a State in terms of Article 12 of the Constitution—Bound by constitutional provisions contained in Articles 14 and 16 of the Constitution and rules and regulations made thereunder—Principles of public employment as contained therein not complied with—High Court issued direction to the Corporation in exercise of its jurisdiction under Section 12 of 1971 Act without arriving at a finding that how the Corporation violated its order—Judgment of High Court is subject to correction by this Court in appeal—Hence set aside—Contempt of Courts Act, 1971—ss. 12 and 13—Industrial Disputes Act, 1947—Industrial Dispute.

Words and Phrases:

'Irregular appointment' and 'illegal appointment'—Distinction between—Discussed.

'Regularisation'—Meaning of in the context of service jurisprudence—Discussed.

A large number of employees were appointed by the Appellant-Municipal

A Corporation, Jabalpur on daily wages. The recruitment procedure, as laid down under the rules framed by the State of Madhya Pradesh had not been followed. An industrial dispute has been raised. Labour Courts, in their Awards, arrived at different conclusions. The Corporation purported to have laid down a policy decision to regularise the services of the employees. Several writ petitions B were filed by the aggrieved employees questioning the correctness or otherwise of the Awards. A contempt petition was also filed by the respondent-employee alone, *inter alia,* on the premise that the Corporation was making discrimination amongst the employees in the matter of regularisation of their services. High Court directing the Corporation to make a proper gradation list of the employees in question before regularizing their services. Hence C the present appeal.

Appellant-Corporation contended that the High Court committed a serious error in directing regularization of services of the employee, as the purported policy decision on the basis whereof the High Court passed its order framing a scheme of regularisation, has been superceded by issuing a D Circular by the State; and that having regard to the various decisions of this Court and in particular, the Constitution Bench Judgment in *Secretary, State of Karnataka & Ors.* v. *Umadevi (3) & Ors.,* the impugned judgment cannot be sustained.

E Allowing the appeal, the Court

HELD:1.1. Appellant is a "State" within the meaning of Article 12 of the Constitution of India. It, being a statutory authority, in the matter of recruitment of employees is bound by the constitutional provisions contained in Articles 14 and 16 of the Constitution as also the rules and regulations F framed by it. It did not have the last say as all appointments were subject to approval of the State of Madhya Pradesh, whose decision was to be final. Again, the concerned employees were recruited in terms of the extant rules. Prior to their appointment, no advertisement has been issued. The employment exchange had not been notified in regard to the existing vacancy. In short, the principle of 'public employment' laid down under Article 16 of the Constitution G of India has not been complied with. Regularisation, as is well known, is not a mode of appointment. Regularisation does not mean permanence.

[91-C-D-E]

Secretary, State of Karnataka & Ors. v. *Umadevi, 2 and Ors.* [2006] 4 SCC 44 : [2003] 10 SCALE 388, followed.

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1.2. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is State within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance of the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of the rules might not have been strictly adhered to. [94-E-F]

R.N. Nanjundappa **v.** *T. Thimmiah & Anr.* **[1972] 1 SCC 409;** *B.N. Nagarajan & Ors.* **v.** *State of Karnataka & Ors.* **[1979] 4 SCC 507;** *National Fetilizers Ltd. & Ors.* **v.** *Somvir Singh,* **[2006] 5 SCC 493;** *State of Gujarat & Anr.* **v.** *Karshanbhai K. Rabari & Ors.* **[2006] 6 SCC 21;** *Principal, Mehar Chand Polytechnic & Anr.* **v.** *Anu Lamba & Ors.* **[2006] 7 SCC 161** *Surinder Prasad Tiwari* **v.** *U.P. Rajya Krishi Utpadan Mandi Parishad & Ors.* **[2006] 7 SCC 684;** *Mineral Exploration Corpn. Employees' Union* **v.** *Mineral Exploration Corpn. Ltd. & Anr.* **[2006] 6 SCC 310 and** *State of Mysore & Anr.* **v.** *S.V. Narayanappa* **AIR (1967) SC 1071, referred to.**

1.3. There is another aspect of the matter which cannot be lost sight of. The Corporation may be bound by the decision of the High Court, but it was also bound by the direction of the State of Madhya Pradesh. If it had violated the direction of the State, in terms whereof its earlier policy decision stood reversed, it cannot be said to have committed a contempt of court. [98-F-G]

State of Orissa & Anr. **v.** *Aswini Kumar Baliar Singh,* **[2006] 6 SCC 759, referred to.**

2. This Court is not called upon to consider the implication of the Awards, which might have been passed in favour of the workmen. The Division Bench of the High Court, by reason of the impugned judgment had issued directions in exercise of its jurisdiction under Section 12 of the Contempt of Courts Act, 1971, without arriving at a finding as to how the Corporation has violated its order. It issued directions which are contrary to or inconsistent with the directions issued by a Single Judge of the High Court. The judgment of the Division Bench of the High Court is, thus, subject to correction by this Court both under Article 136 of the Constitution of India as also under Section 19 of the Contempt of Court Act. [99-B-C-D]

Modi Telefibres Ltd. & Ors. **v.** *Sujit Kumar Choudhary & Ors.,* **[2005] 7 SCC 40 and** *Vivek Sarin* **v.** *Multi Metal Udyog,* **[2005] 11 SCC 495, referred to.**

A *R.* v. *Serumaga,* **[2005] 2 All ELR 160, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5607 of 2006.

From the final Judgment and Order dated 18.8.2005 of the High Court of Madhya Pradesh at Jabalpur in Contempt Petition No. 70 of 2004.

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Ranjan Mukherjee for the Appellant.

Ravindra Shrivastava, C.G. Solshe, M. Mannan V.C. Solshe, Kunal Verma and Rajul Shrivastava for the Respondent.

C The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

Appellant is a Municipal Corporation constituted under the Madhya Pradesh Municipal Corporation Act, 1956 (for short, 'the Act'). Indisputably, D the terms and conditions of service of its employees are governed by statutory rules. Yet again in terms of Section 58 of the Act, the State of Madhya Pradesh may issue directions, which the Corporation is obliged to follow.

A large number of employees were appointed by the Corporation on daily wages. The terms and conditions of their appointment are not known. E It is, however, not disputed that recruitment procedure, as laid down by the rules framed by the State of Madhya Pradesh in terms of the said provisions of the Act, had not been followed. Industrial disputes were said to have been raised and different labour courts in their Awards arrived at different conclusions. The Municipal Corporation purported to have laid down a policy decision to regularise the services of the employees in terms whereof F those who had been working from a period prior to 31st December, 1983 were to be regularized according to seniority and availability of posts on fulfilling the eligibility criteria laid down therefor. Several writ petitions were filed questioning the correctness or otherwise of the said Awards. When the matter was pending before the High Court, the counsel appearing on behalf G of the Corporation brought to its notice about the said purported scheme of the State.

Respondent herein was one of the six petitioners in Writ Petition No.4739 of 1998, which was also disposed of together with other writ applications pending before the High Court. A contempt petition came to be filed by the

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respondent herein alone, although, as noticed hereinbefore, the scheme involved a large number of workmen who were parties before the High Court. The said contempt petition was filed, *inter alia*, on the premise that the Corporation had been making discrimination amongst the employees in the matter of regularisation of their services. By reason of the impugned judgment dated 18.8.2005, having regard to the submissions made before it on behalf of the parties, the High Court directed :

> "Considering the contention of the non-applicant and after hearing the applicant, it will be appropriate if respondent is permitted to prepare a fresh gradation list as per date of engagement of all the daily rated employees. The gradation list shall also reflect education qualifications of all respective employees. Aforesaid gradation list be prepared by the respondent within a period of 45 days from today and shall be published on a notice board of the Municipal Corporation inviting objection, if any from the employees. A period of 15 days shall be given to the employees to submit their objection. If any objection is filed by any of the employees in respect of gradation list, it shall be considered and decided by the respondent within a period of two weeks thereafter. Then a final gradation list shall be published in the notice board of the Corporation. Thereafter, respondent shall take the exercise for regularisation of the employees as directed by this Court in Ramdhar Case (W.P.No.1464/01) Decided on 27.2.2003). Aforesaid exercise shall be completed within a period of three months.
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> From the perusal of the order of the Commissioner dated 10.8.2005, it appears that some of the officers of the Municipal Corporation joined hands with the employees and manipulated the gradation list and or issued regularisation orders which are contrary to the directions issued by this Court in Ramadhar case. All the concerned employees who are responsible for the aforesaid mischief deserve an appropriate action by the Commissioner, Municipal Corporation, in these circumstances, Commissioner, Municipal Corporation is directed to take departmental action against all the erring officers who have played mischief or played some *malafide* rate (sic) in issuing the order of regularisation which are contrary to the directions issued by this Court in Ramadhar Case or have manipulated the things for the purpose of issuing regularisation orders of the employees who were not eligible for the regularisation. Aforesaid action shall be taken by the Commissioner, Municipal Corporation within a period of three months

A from today. In case some action is to be taken by the State, an appropriate step shall be taken by him in this regard drawing attention of the State within a period of 30 days from today.

The Commissioner, Municipal Corporation shall be responsible for the compliance of this order. A compliance report of this order be B sent to the Registry of this Court within a period as fixed by this Court hereinabove.

Report filed in a sealed cover is returned to Shri Sharad Verma, learned counsel."

C The Municipal Corporation is, thus, before us.

Mr. Ranjan Mukherjee, learned counsel appearing on behalf of the appellant would submit that the High Court committed a serious error in issuing the aforesaid directions, as the purported policy decision dated 31.3.1997, on the basis whereof the High Court passed its order framing a D scheme of regularisation on 27.2.2003, has been superceded by the State by issuing a circular dated 12.4.2005, *inter alia*, stating :

"Appointments made on the above daily wage were not made keeping in view the provisions of Departmental Recruitment Rules and other reservation provisions, rather employees were engaged as per the E requirement of the work. Supreme Court has made the observation in regard to the civil posts of daily wage employees/workers and regularisation in the services in the Case No.3492/1996 titled *State of Himachal Pradesh* v. *Suresh Kumar Verma* and such regularisation had been deemed violation of Articles 14 and 16 of the Constitution. F It has also been observed in the above case by the Supreme Court that appointment made on the basis of daily wages could not be deemed the appointment made as per the relevant recruitment rules against the Civil Posts and appointment could be made against the Civil Posts only after following the procedure of recruitment as per the relevant recruitment rules. Above ruling laid down by the Supreme G Court has already been submitted to all the Departments/ Appointing Authorities *vide* even numbered memo dated 01.11.2004 of this Department."

The learned counsel would contend that having regard to the various decisions of this Court and in particular, the Constitution Bench Judgment in H

Secretary, State of Karnataka & Ors. v. *Umadevi, 3 and Ors.*, [2006] 4 SCC 1 the impugned judgment cannot be sustained. A

Mr. Ravindra Shrivastava, learned Senior Counsel appearing on behalf of the respondent, on the other hand, would contend that the High Court issued direction to regularise the services of the workmen, keeping in view different Awards passed in their favour by the Labour Court as also the policy decision adopted by the appellant itself. It was further submitted that in this case the directions contained in paragraph 53 of the decision of the issued by the Constitution Bench of this Court in *Umadevi* (supra), shall be applicable. B

Appellant is a "State" within the meaning of Article 12 of the Constitution of India. It, being a statutory authority, in the matter of recruitment of employees is bound by the constitutional provisions contained in Articles 14 and 16 of the Constitution as also the rules and regulations framed by it. Indisputably, it did not have the last say as all appointments were subject to approval of the State of Madhya Pradesh, whose decision was to be final. Indisputably again, the concerned employees were recruited in terms of the extant rules. Prior to their appointment, no advertisement has been issued. The employment exchange had not been notified in regard to the existing vacancy. In short, the principle of 'public employment' laid down under Article 16 of the Constitution of India has not been complied with. Regularisation, as is well known, is not a mode of appointment. Regularisation, again indisputably, does not mean permanence. However, having noticed that different Benches of this Court had been passing different orders, in *Secretary, State of Karnataka & Ors.* v. *Umadevi (2) & Ors.* [2006] 4 SCC 44 : (2003) 10 SCALE 388, a Three Judge Bench referred the matter to the Constitution Bench. In *Umadevi (3)* (supra), the Constitution Bench held : C D E F

> "During the course of the arguments, various orders of the courts either interim or final were brought to our notice. The purport of those orders more or less was the issue of directions for continuation or absorption without referring to the legal position obtaining. Learned counsel for the State of Karnataka submitted that chaos has been created by such orders without reference to the legal principles and it is time that this Court settled the law once and for all so that in case the Court finds that such orders should not be made, the courts, especially, the High Courts would be precluded from issuing such directions or passing such orders. The submission of learned counsel for the respondents based on the various orders passed by the High G H

A Court or by the Government pursuant to the directions of the Court also highlights the need for settling the law by this Court. The bypassing of the constitutional scheme cannot be perpetuated by the passing of orders without dealing with and deciding the validity of such orders on the touchstone of constitutionality. While approaching the questions falling for our decision, it is necessary to bear this in mind and to bring about certainty in the matter of public employment. The argument on behalf of some of the respondents is that this Court having once directed regularisation in *Dharwad* case all those appointed temporarily at any point of time would be entitled to be regularised since otherwise it would be discrimination between those similarly situated and in that view, all appointments made on daily wages, temporarily or contractually, must be directed to be regularised. Acceptance of this argument would mean that appointments made otherwise than by a regular process of selection would become the order of the day completely jettisoning the constitutional scheme of appointment. This argument also highlights the need for this Court to formally lay down the law on the question and ensure certainty in dealings relating to public employment. The very divergence in approach in this Court, the so-called equitable approach made in some, as against those decisions which have insisted on the rules being followed, also justifies a firm decision by this Court one way or the other. It is necessary to put an end to uncertainty and clarify the legal position emerging from the constitutional scheme, leaving the High Courts to follow necessarily, the law thus laid down."

Referring to a large number of decisions which have been rendered by different Benches of this Court from time to time, the Constitution Bench categorically opined :

"While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain - not at arms length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the

constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution."

By way of clarification, however, in paragraph 53 of its judgment this Court clarified :

"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa, R.N. Nanjundappa* and *B.N. Nagarajan* and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued

A to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

The question which, thus, arises for consideration, would be : Is there any distinction between 'irregular appointment' and 'illegal appointment'? The distinction between the two terms is apparent. In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer, which is State within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one; whereas there may be cases where, although, substantial compliance of the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of the rules might not have been strictly adhered to.

In *R.N. Nanjundappa* v. *T. Thimmiah & Anr.*, [1972] 1 SCC 409, this Court held :

"The contention on behalf of the State that a rule under Article 309 for regularisation of the appointment of a person would be a form of recruitment read with reference to power under Article 162 is unsound and unacceptable. The executive has the power to appoint. That power may have its source in Article 162. In the present case the rule which regularised the appointment of the respondent with effect from February 15, 1958, notwithstanding any rules cannot be said to be in

exercise of power under Article 162. First, Article 162 does not speak of rules whereas Article 309 speaks of rules. Therefore, the present case touches the power of the State to make rules under Article 309 of the nature impeached here. Secondly when the Government acted under Article 309 the Government cannot be said to have acted also under Article 162 in the same breath. The two articles operate in different areas. Regularisation cannot be said to be a form of appointment. Counsel on behalf of the respondent contended that regularisation would mean conferring the quality of permanence on the appointment whereas counsel on behalf of the State contended that regularisation did dot mean permanence but that it was a case of regularisation of the rules under Article 309. Both the contentions are fallacious. *If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment.* To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

[Emphasis supplied]

Yet again, in *B.N. Nagarajan & Ors.* v. *State of Karnataka & Ors.*, [1979] 4 SCC 507, this Court followed the said dicta stating :

"Apart from repelling the contention that regularisation connotes permanence, these observations furnish the second reason for rejection of the argument advanced on behalf of the promotees and that reason is that when rules framed under Article 309 of the Constitution of India are in force, no regularisation is permissible in exercise of the executive powers of the Government under Article 162 thereof in contravention of the rules. The regularisation order was made long after the Probation Rules, the Seniority Rules and the Recruitment Rules were promulgated and could not therefore direct something which would do violence to any of the provisions thereof. Regularisation in the present case, if it meant permanence operative from November 1, 1956, would have the effect of giving seniority to

promotees over the direct recruits who, in the absence of such regularisation, would rank senior to the former because of the Seniority Rules read with the Probation Rules and may in consequence also confer on the promotees a right of priority in the matter of sharing the quota under the Recruitment Rules. In other words, the regularisation order, in colouring the appointments of promotees as Assistant Engineers with permanence would run counter to the rules framed under Article 309 of the Constitution of India. What could not be done under the three sets of Rules as they stood, would thus be achieved by an executive fiat. And such a course is not permissible because an act done in the exercise of the executive power of the Government, as already stated, cannot override rules framed under Article 309 of the Constitution."

This aspect of the matter has been considered in *National Fetilizers Ltd. & Ors.* v. *Somvir Singh,* [2006] 5 SCC 493, stating :

"The contention of the learned counsel appearing on behalf of the respondents that the appointments were irregular and not illegal, cannot be accepted for more than one reason. They were appointed only on the basis of their applications. The Recruitment Rules were not followed. Even the Selection Committee had not been properly constituted. In view of the ban on employment, no recruitment was permissible in law. The reservation policy adopted by the appellant had not been maintained. Even cases of minorities had not been given due consideration.

The Constitution Bench thought of directing regularisation of the services only of those employees whose appointments were irregular as explained in *State of Mysore* v. *S.V. Narayanappa, R.N. Nanjundappa* v. *T. Thimmiah and B.N. Nagarajan* v. *State of Karnataka,* wherein this Court observed: [*Umadevi (3)* case, SCC p. 24, para 16]

> "*16.* In *B.N. Nagarajan* v. *State of Karnataka* this Court clearly held that the words regular or regularisation do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments."

{See also *State of Gujarat & Anr.* v. *Karshanbhai K. Rabari & Ors.*, [2006] 6 SCC 21.}

Yet, recently in *Principal, Mehar Chand Polytechnic & Anr.* v. *Anu Lamba & Ors.*, [2006] 7 SCC 161, it was held :

> "The respondents did not have legal right to be absorbed in service. They were appointed purely on temporary basis. It has not been shown by them that prior to their appointments, the requirements of the provisions of Articles 14 and 16 of the Constitution had been complied with. Admittedly, there did not exist any sanctioned post. The Project undertaken by the Union of India although continued for some time was initially intended to be a time-bound one. It was not meant for generating employment. It was meant for providing technical education to the agriculturists. In the absence of any legal right in the respondents, the High Court, thus, in our considered view, could not have issued a writ of or in the nature of mandamus."

This Court, in *Surinder Prasad Tiwari* v. *U.P. Rajya Krishi Utpadan Mandi Parishad & Ors.*, [2006] 7 SCC 684, held :

> "Our constitutional scheme clearly envisages equality of opportunity in public employment. The Founding Fathers of the Constitution intended that no one should be denied opportunity of being considered for public employment on the ground of sex, caste, place of birth, residence and religion. This part of the constitutional scheme clearly reflects strong desire and constitutional philosophy to implement the principle of equality in the true sense in the matter of public employment.
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> In view of the clear and unambiguous constitutional scheme, the courts cannot countenance appointments to public office which have been made against the constitutional scheme. In the backdrop of constitutional philosophy, it would be improper for the courts to give directions for regularisation of services of the person who is working either as daily-wager, *ad hoc* employee, probationer, temporary or contractual employee, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution. In our constitutional scheme, there is no room for back door entry in the matter of public employment."

We are, however, not oblivious that another Division Bench of this

A Court in *Mineral Exploration Corpn. Employees' Union* v. *Mineral Exploration Corpn. Ltd. & Anr.*, [2006] 6 SCC 310, to which our attention has been drawn by Mr. Shrivastava, held :

> "We, therefore, direct the Tribunal to decide the claim of the workmen of the Union strictly in accordance with and in compliance
B with all the directions given in the judgment by the Constitution Bench in Secy., *State of Karnataka* v. *Umadevi (3)* and in particular, paras 53 and 12 relied on by the learned Senior Counsel appearing for the Union. The Tribunal is directed to dispose of the matter afresh within 9 months from the date of receipt of this judgment without
C being influenced by any of the observations made by us in this judgment. Both the parties are at liberty to submit and furnish the details in regard to the names of the workmen, nature of the work, pay scales and the wages drawn by them from time to time and the transfers of the workmen made from time to time, from place to place and other necessary and requisite details. The above details shall be
D submitted within two months from the date of the receipt of this judgment before the Tribunal."

The said directions were issued keeping in view the peculiar facts, wherewith we are not concerned. The attention of this Court furthermore was not drawn to the judgment of this Court rendered in *R.N. Nanjundappa*
E (supra), *State of Mysore & Anr.* v. *S.V. Narayanappa,* AIR (1967) SC 1071 and *B.N. Nagarajan* (supra).

We may notice that the decision of this Court in *B.N. Nagarajan* (supra) was rendered by a Three Judge Bench. Evidently, the attention of the Court had also not been drawn to the decision of this Court in *National Fetilizers*
F *Ltd.* (supra).

There is another aspect of the matter which cannot be lost sight of. The Corporation may be bound by the decision of the High Court, but it was also bound by the direction of the State of Madhya Pradesh. If it had violated
G the direction of the State, in terms whereof its earlier policy decision stood reversed, it cannot be said to have committed a contempt of court. The question recently came up for consideration in *State of Orissa & Anr.* v. *Aswini Kumar Baliar Singh,* [2006] 6 SCC 759, wherein a Division Bench of this Court held that the Court is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default
H in complying with the directions in the judgment and order. It was held :

"In the instant case, the action taken by the respondent in purported violation of the Court's order arose owing to a subsequent cause of action, namely, orders passed by the State of Orissa and unless the said orders were set aside, the Inspector of Schools can be said to have flouted the order of the High Court....."

We are in this case not called upon to consider the implication of the Awards, which might have been passed in favour of the workmen. The Division Bench, by reason of the impugned judgment had issued directions in exercise of its jurisdiction under Section 12 of the Contempt of Courts Act, 1971, without arriving at a finding as to how the Corporation has violated its order. It issued directions which are contrary to or inconsistent with the directions issued by a learned Single Judge by an order dated 27.2.2003.

The judgment of the Division Bench is, thus, subject to correction by this Court both under Article 136 of the Constitution of India as also under Section 19 of the Contempt of Court Act.

Recently in *R.* v. *Serumaga,* [2005] 2 All ELR 160, it was opined :

"Section 13 of the 1960 Act provides as follows :

'(1) Subject to the provisions of this section, an appeal shall lie under this section from any order or decision of a court in the exercise of jurisdiction to punish for contempt of court (including criminal contempt); and in relation to any such order or decision the provisions of this section shall have effect in substitution for any other enactment relating to appeals in civil or criminal proceedings.

(2) An appeal under this section shall lie in any case at the instance of the defendant and, in the case of an application for committal or attachment, at the instance of the applicant; and the appeal shall lie ... (bb) from an order or decision of the Crown Court to the Court of Appeal ...

(3) The court to which an appeal is brought under this section may reverse or vary the order or decision of the court below; and make such other order as may be just ...'

We have considered two interpretations of s 13(1). The narrow interpretation is to the effect that it is not triggered until the contemnor has been convicted of, and sentenced for, the contempt. The broad

A interpretation is that the language 'any order or decision ... in the exercise of jurisdiction to punish for contempt' is sufficiently wide to relate also to orders or decisions made in the course of proceedings which may result in a conviction of and sentence for contempt. But we have come to the conclusion that the broad interpretation is the correct one. The statutory language permits it. It provides a remedy B in a case of unjustifiably prolonged custody, and it does so without impinging on cases where the allegation is of an offence other than contempt of court. Moreover, there are exceptional features which surround summary proceedings for contempt which, as the authorities make clear, demand an enlarged process of judicial scrutiny...."

C {See also *Modi Telefibres Ltd. & Ors.* v. *Sujit Kumar Choudhary & Ors.*, [2005] 7 SCC 40 and see also *Vivek Sarin* v. *Multi Metal Udyog,* [2005] 11 SCC 495.}

We, therefore, for the reasons aforementioned, are unable to uphold the D impugned order which is accordingly set aside.

The appeal is allowed with the aforementioned observations and directions. No costs.

S.K.S. Appeal allowed.

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