PARENTS ASSOCIATION OF STUDENTS

v.

M.A. KHAN AND ANOTHER

(Civil Appeal No. 7317 of 2008)

DECEMBER 16, 2008

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Contempt of Courts Act, 1971 – s.19 – Appeal under – Maintainability of, vis-a-vis maintainability of Special Appeal under Letters Patent of High Court – Order of High Court in writ petition filed by appellant against State of U.P.– Contempt petition alleging that by issuance of a subsequent G.O., the State committed contempt of High Court – Respondent No.1, who purportedly derived benefit from the G.O., also impleaded as contemnor, even though he was not a party in the writ petition of appellant – Interim order passed by Single Judge of High Court in exercise of its contempt jurisdiction staying operation of the disputed G.O.– Special appeal under Letters Patent of High Court –Dispute over maintainability of the special appeal – Division Bench of High Court held the special appeal maintainable – On appeal, held: No need to decide the larger question, namely, maintainability of appeal under s.19 of Contempt of Courts Act vis-a-vis maintainability of Special Appeal under Letters Patent of High Court, since matter already referred to larger Bench – However, ordinarily, if a person was not party to a lis and no direction was issued against him, a contempt petition against him would not lie – Single Judge of High Court, without any application of mind in this behalf, not only issued notice but also passed interim order which vitally affected respondent no.1 – Having regard to subsequent events, particularly pendency of a writ petition before High Court in a related issue, it would not be fair to allow the interim order passed by Single Judge of High Court to continue; assuming that the Division Bench had no jurisdiction

A *to entertain appeal – Orders of both Single Judge and Division Bench accordingly quashed – Single Judge directed to consider the merit of contempt matter only after disposal of the said writ petition pending before High Court – Education – Professional education – Fixation of fee – Letters Patent.*

B **Respondent No.1 runs a Medical College while respondent No.2 is Secretary, Medical Education, Government of U.P. Appellant, an Association of Parents whose wards had taken admission in different professional colleges including medical colleges, filed** C **writ petition for a direction upon the State of U.P. to regulate professional education so far as it, inter alia, relates to fixation of fee. A Single Judge of the High Court having regard to the decision of a 11 Judge Bench of this Court in *T.M.A. Pai Foundation* case noticed the averment** D **made on behalf of respondent No.2 that the "authorities are bound to act in the light of the judgment of the Apex Court and the various Government Orders" and accordingly while disposing of the writ petition directed the authorities "to ensure and stick on the fair statement** E **made on behalf of the respondents".**

Clarification as regards interpretation of various directions/ observations made in *T.M.A. Pai Foundation* fell for consideration before a Constitution Bench of this Court in *Islamic Academy of Education*. In *P.A. Inamdar's* F **case direction to constitute various Committees inter alia to determine the quantum of fees payable by the students for taking admission as also tuition and other fees to continue their studies in professional colleges, was reiterated.**

G **Subsequently, the State Government issued a Government order dated 7th September, 2006 permitting the Medical College run by Respondent No.1 to collect certain amount of fees for admission, which amount the said College collected from its students. At this stage a** H **contempt petition was filed by the appellant against the**

respondents contending that by issuance of the said G.O. dated 7th September, 2006 the State had committed contempt of Court. Respondent No.1 was also impleaded as contemnor even though he was not a party to the earlier writ petition. A

A Single Judge of the High Court issued notices to respondents for Contempt of Court and passed an interim order staying operation of the disputed Government order dated 7th September, 2006. An intra court appeal by way of Special Appeal was filed thereagainst by respondent No.1. Appellant disputed maintainability of the said special appeal. A Division Bench of the Court, however, held the said special appeal to be maintainable. B C

In appeal to this Court, appellant submitted that since an appeal in terms of s.19 of the Contempt of Courts Act, 1971 was maintainable, the special appeal filed by the respondent should have been dismissed *in limine* and that as prima facie the State committed an act of contempt in issuing the impugned GO. dated 7th September, 2006, respondent no.1 who was aware of the said order could be proceeded against for commission of contempt. D E

Disposing of the appeal, the Court

HELD:1. The controversy as regards exercise of jurisdiction of the appellate court under s.19 of the Contempt of Courts Act, 1971 is a vexed one. Whereas one line of decisions is that an appeal would be maintainable only when an order of punishment has been made, in another decision it has been held to be maintainable if the jurisdiction is excised by any court under the Contempt of Courts Act. The question has now been referred to a 3 Judge Bench. Therefore, there is no need for this two Judge Bench to decide the larger question, namely, maintainability of the appeal under Section 19 of the Contempt of Courts Act, 1971 *vis-a-vis* F G H

A **maintainability of the Special Appeal under the Letters Patent of the High Court, since the matter has been referred to a larger Bench. [Para 15] [746-E-F]**

T.M.A. Pai Foundation v. State of Karnataka, **(2002) 8 SCC 481];** *Islamic Academy of Education v. State of* B *Karnataka,* **[(2003) 6 SCC 697];** *P.A. Inamdar v. State of Maharashtra,* **[(2005) 6 SCC 537];** *Baradakanta Mishra v. Justice Gatikrushna Misra* **(1975) 3 SCC 535;** *Midnapore Peoples' Coop. Bank Ltd.* **(2006) 5 SCC 399;** *Babulal v. Municipal Corpn., Ratlam,* **[(2005) 13 SCC 101];** *R.N. Dey* C *v. Bhagyabati Pramanik* **(2000) 4 SCC 400 and** *Dharam Singh v. Guljari Lal & Ors.* **Civil Appeal No.18852 of 2005, referred to.**

2.1. The contemnor or the institution which Respondent No.1 represents, however, was not a party D **in the writ petition filed by appellant. If he was not a party, subject to statutory interdict, only in exceptional cases, he may be proceeded against under the Contempt of Courts Act, 1970. It is one thing to say that a direction having been issued upon the State Government;** E **issuance of a Government Order in exercise of its jurisdiction under Article 162 of the Constitution would attract the wrath of the Contempt of Courts Act; but it would be another thing to say that a party who merely derives benefit from such Government Order would also** F **be liable to be proceeded against under the Contempt of Courts Act despite the fact that he was not a party to the judgment. The Single Judge of the High Court did not address itself to this aspect of the matter at all. Ordinarily, a person if not a party to the lis and no direction having** G **been issued against him, a contempt petition against him would not lie. [Paras 16 and 17] [746-G-H; 747-A-D]**

2.2. It is one thing to say that a person claiming title or any other right is bound by a direction issued to another through or under whom he is claiming a right but H **it may not be correct to opine that a person who has**

nothing to do with the functions of the State would also be liable therefor. Without any application of mind in this behalf on the part of the High Court not only a notice has been issued but also an interim order has been passed which vitally affects the respondent No.1. A person aggrieved by an order must have a remedy. Technicalities of law should not be allowed to come on his way to move the higher courts. [Para 19] [748-C-E]

2.3. If *prima facie* two views are possible and unless it is firmly held that the respondent No.1 not only was bound by the directions issued by the High Court but he had also defied it willfully and deliberately, he cannot be punished for commission of contempt. If, prima facie, respondent no.1 cannot be punished for commission of contempt of the High Court, an interim order also should have not been passed. [Para 23] [749-C-E]

The State of Bihar v. Rani Sonabati Kumari **AIR (1961) SC 221 and** *Sushila Raje Holkar v. Anil Kak (Retd.)* **(2008) 7 SCALE 484, relied on.**

S.N. Banerjee v. Kuchwar Lime and Stone Co. Ltd. **AIR 1938 PC 295, referred to.**

3. In a case of this nature, this Court is also not precluded from taking into consideration the subsequent events. This Court may in appropriate cases and in particular a case of this nature and keeping in view the subsequent events may either refuse to interfere with the impugned judgment or quash both the orders of the Division Bench and the Single Bench on the legal principle that if setting aside of an illegal order gives rise to another illegal order both orders may be quashed. Having regard to the subsequent events, and in particular, as the decision as to the Committee's power to fix fees is justiciable or not is pending consideration before the High Court in a writ petition, it would not be fair to allow the interim order passed by the Single Judge of the High

A **Court to continue; assuming that the Division Bench had no jurisdiction to entertain the appeal. While, therefore, quashing both the orders, Single Judge is requested to consider the merit of contempt matter only after disposal of the said Writ Petition pending before the High Court.**
B **[Paras 22 and 26] [749-A-B; 752-B-D]**

Chandra Singh v. State of Rajasthan & Anr. **(2003) 6 SCC 545 and** *Dove Investments Pvt. Ltd. & Ors. v. Gujarat Industrial Investments Corporation Ltd. & Anr.* **(2006) 2 SCC 619, relied on.**

C **Case Law Reference:**

(2002) 8 SCC 481	**referred to**	**Para 4**
(2003) 6 SCC 697	**referred to**	**Para 5**
(2005) 6 SCC 537	**referred to**	**Para 5**
(2006) 5 SCC 399	**referred to**	**Para 12**
D **2005) 13 SCC 101**	**referred to**	**Para 12**
(1975) 3 SCC 535	**referred to**	**Para 14**
(2000) 4 SCC 400	**referred to**	**Para 14**
AIR 1938 PC 295	**referred to**	**Para 18**
E **(2003) 6 SCC 545**	**relied on**	**Para 22**
(2006) 2 SCC 619	**relied on**	**Para 22**
AIR (1961) SC 221	**relied on**	**Para 23**
(2008) 7 SCALE 484	**relied on**	**Para 24**

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7317 of 2008.

From the Judgment and final Order dated 17.10.2006 of the High Court of Judicature at Allahabad in Special Appeal No 748 of 2006.

G S.N. Shukla, Deep Shikha Bhavati and B.D. Sharma for the Appellant.

A. Mariaputham for M/s. Arputham Arun & Co.

The Judgment of the Court was delivered by

H **S.B. SINHA, J.** 1.Leave granted.

2. The question which arises for consideration in this appeal is as to whether a Special Appeal from an interim order passed by the court in exercise of its contempt jurisdiction is maintainable.

The said question arises in the following circumstances:-

3. Appellant-herein is an Association of Parents of the Wards who have taken admission in different professional colleges including medical colleges. Respondent No.1 is a Secretary of Era's Lucknow Medical College and Hospital while respondent No.2 is the Secretary, Medical Education, Government of U.P.

4. A writ petition was filed by the appellant against the State of U.P. and others wherein a learned Single Judge of the High Court having regard to the decision of a 11 Judge Bench of this Court in *T.M.A. Pai Foundation v. State of Karnataka,* [(2002) 8 SCC 481] while disposing of the writ petition on 31st August, 2006, directed as under:-

> "Learned counsel appearing on behalf of the respondent No.2 Sri Sanjay Bhasin, informs that the authorities are bound to act in the light of the judgment of the Apex Court and the various Government Orders i.e. Government order dated 15.7.2003 and 13.7.2005 issued in the light of the judgment of this Court at Allahabad.
>
> In the light of the above no further directions are required to be issued by this Court. In the circumstances, the authorities must ensure and stick on the fair statement made on behalf of the respondents.
>
> With these observations the writ petition is finally disposed of."

5. Indisputably clarification as regards interpretation of various directions/observations made in *T.M.A. Pai Foundation* (supra) fell for consideration before a Constitution Bench of this Court in *Islamic Academy of Education v. State of Karnataka,* [(2003) 6 SCC 697]. The mater did not stop

A there. Another Seven Judge Bench was constituted to interpret the directions issued in *Islamic Academy of Education* (supra) *vis-a-vis T.M.A. Pai Foundation* (supra).

In *P.A. Inamdar v. State of Maharashtra,* [(2005) 6 SCC 537] wherein direction to constitute various Committees *inter* B *alia* to determine the quantum of fees payable by the students for taking admission as also tuition and other fees to continue their studies in professional colleges, was reiterated.

6. Respondent No.1 was not a party to the said writ petition. It, however, approached the Committee for C determination of the quantum of fees which could be collected from the students. The Committee refused to go into the said question opining that for the year in question i.e. 2003-04 it had no jurisdiction to decide the same.

7. Relying on or on the basis of the said opinion of the D Committee the first respondent approached the Government of the State. A Government order was issued on 7th September, 2006 permitting the College to collect Rs.2,96,000.00 as fees for admission. The College indisputably collected the said amount from the students.

E

8. It is at this stage that a contempt petition was filed by the appellant against the contemnors-respondents contending that by issuance of the said G.O. dated 7th September, 2006 the State had committed contempt of Court. 1st respondent was impleaded as a respondent-contemnor on the plea that he F was also bound by the earlier decision of the Court. However, he was not a party to the writ petition.

9. A learned Single Judge of the High Court by his order dated 13th September, 2006 while opining that a prima facie case for initiating contempt proceedings under the Contempt G of Court Act has been made out, passed the following interim order :-

"After considering the argument on behalf of the both sides this Court is of the view that issuing of the Government H Order dated 7.9.2006 prima facie indicates the

commission of contempt of Court.

Let notice be issued to the opposite party no.1 and 2.

They shall file counter affidavit within three weeks. Rejoinder affidavit maybe filed within a week thereafter.

List immediately thereafter.

In the meanwhile, the operation of the disputed Government order dated 7.9.2006 shall remain stayed and any consequential action taken by way of notices to students shall also remain stayed.

The Court is passing this order in view of the observation of the Apex Court in *Mohammad Idris and another vs. Rustam Jehangir Bapuji and others,* AIR 1984 SC 1826 where it was observed that the clear breach of undertaking given by the petitioner, the Court could also issue appropriate direction to close breach."

10. An intra court appeal by way of Special Appeal was filed thereagainst by the respondent No.1. Appellant herein raised a question of maintainability of the said appeal. A Division Bench of the Court (Coram : Hon'ble Jagdish Bhalla, J. and Hon'ble D.V. Sharma, J.) on 17th October, 2006 held the said appeal to be maintainable but did not assign any reason in support thereof immediately, but stated :-.

"In this Special; Appeal, the Stamp Reporter has reported that it has been presented beyond 4 days of the statutory period. Admittedly, on 13th September, 2006 the appellant was not being represented before the learned Single Judge. However, notices were issued on 13.9.2006, which was served upon the appellant on 21st September, 2006. Therefore, it cannot be said that appeal has been filed beyond 4 days of the period prescribed by the Limitation Act.

By the order dated 13.9.2006 passed in Criminal Misc. Case No.2053 of 2006 (contempt jurisdiction) the

A Hon'ble Single Judge was pleased to issue notices calling upon the respondents including the appellant to file counter affidavit and stayed the operation of the Government order dated 7.9.2006 together with the consequential actions taken by way of notices to students.

B A preliminary objection has been raised by Sri S.N. Shukla, Advocate appearing for the opposite party no.1 with respect to maintainability of the instant Special Appeal. According to him, there is no provision of filing Special Appeal arising out of the contempt petition. He C has next contended that the respondent has received copy of the Special Appeal at about 3 PM whereas the affidavit of service shows the time as 12:15 PM.

Having heard the learned counsel for the parties, we would have dictated the order in the open Court on account D of paucity of time we are dictating only the operative portion of the order and the reasons would follow :-

Admit.

Issue Notice.

E Ten days time is allowed for filing objection to the affidavit in support of the appeal. Till further orders of the Court the order dated 13.9.2006 so far as it relate to the appellant shall remain stayed. It would be for the parties Counsel to inform this order to the Hon'ble Contempt Judge."

F

Reasons in support of the said order were assigned later on but the date thereof was stated to be 17th October, 2006 itself. A certified copy of the said order was made available to the appellant on or about 15th January, 2007.

G 11. Appellant is, thus, before us.

12. Mr. S.N. Shukla, learned counsel appearing on behalf of the appellant would submit that as in view of the decision of this Court in *Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda,* [(2006) 5 SCC 399] an appeal in terms of Section 19

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of the Contempt of Courts Act, 1970 would be maintainable, the special appeal filed by the respondent should have been dismissed in limine. It was urged that as the special appeal itself was not maintainable, any interlocutory order passed therein should be held to be a nullity. It was pointed out that in any event as merely a show cause notice had been issued by the learned Single Judge by an order dated 31st August, 2006, no appeal lay thereagainst. As the decision of the learned Single Judge dated 31st August, 2006 was binding on the State of Uttar Pradesh and as *prima facie* the State has committed an act of contempt in issuing the impugned GO. dated 7th September, 2006, the first respondent herein who was aware of the said order could be proceeded against for commission of *contempt*. Reliance in this behalf has been placed on *Babulal v. Municipal Corpn., Ratlam,* [(2005) 13 SCC 101], where it was held :-.

> "2. The High Court appears to have proceeded on the basis that it was settled law that a person not a party to the original proceedings cannot be proceeded against in contempt. The issue is a debatable one, particularly having regard to the law on the issue particularly in *S.N. Banerjee v. Kuchwar Lime and Stone Co. Ltd.* The order of the High Court is set aside and the matter is remanded back for reconsideration of the issue."

13. Mr. A. Mariarputham, learned counsel appearing on behalf of respondent No.1, on the other hand would contend :-

(i) A valuable right of the appellant to receive fees from the students having been taken away by reason of the order passed by the learned Single Judge the Special Appeal was maintainable.

(ii) As it is accepted that an appeal under Section 19 of the Contempt of Courts Act would have otherwise been maintainable before a Division Bench, it did not matter whether the Division Bench exercised its jurisdiction under Section 19 of the Contempt of

A Courts Act or under the Letters Patent of the High Court.

(iii) In view of the subsequent event, namely – determination of the same amount of fees by the Committee which has also received the approval
B of the Government having been questioned before the High Court in a writ petition and the matter is pending judgment, this Court should not interfere with the impugned order.

14. The controversy as regards exercise of jurisdiction of
C the appellate court under Section 19 of the Contempt of the Court Act is a vexed one. Whereas one line of decisions beginning from *Baradakanta Mishra v. Justice Gatikrushna Misra,* [(1975) 3 SCC 535] till *Midnapore Peoples' Coop. Bank Ltd.* (supra) is that an appeal would be maintainable only
D when an order of punishment has been made, in *R.N. Dey v. Bhagyabati Pramanik,* [(2000) 4 SCC 400] it has been held to be maintainable if the jurisdiction is excised by any court under the Contempt Courts Act.

15. The question, we may notice, has been referred to a
E 3 Judge Bench in *Dharam Singh v. Guljari Lal & Ors.* [Civil Appeal No.18852 of 2005).

We, therefore, need not decide the larger question, namely, maintainability of the appeal under Section 19 of the Contempt
F of Courts Act, 1970 *vis-a-vis* maintainability of the Special Appeal under the Letters Patent of the High Court, since the matter has been referred to a larger Bench.

16. We, however wish to deal with the basic issue. Appellant filed the writ petition, inter alia, for a direction upon
G the State to regulate professional education so far as it, inter alia, relates to fixation of fee. First Respondent admittedly runs a professional institution. It, subject to any law, would be bound by the decision of this Court in *T.M.A. pai* (supra). The contemnor or the institution which he represents, however, was
H not a party. If he was not a party, subject to statutory interdict,

only in exceptional cases, he may be proceeded against under the Contempt of Courts Act, 1970. It is one thing to say that a direction having been issued upon the State Government; issuance of a Government Order in exercise of its jurisdiction under Article 162 of the Constitution of India would attract the wrath of the Contempt of Courts Act; but it would be another thing to say that a party who merely derives benefit from such Government Order would also be liable to be proceeded against under the Contempt of Courts Act despite the fact that he was not a party to the judgment.

17. The learned Single Judge did not address itself to this aspect of the matter at all. Ordinarily, a person if not a party to the lis and no direction having been issued against him, a contempt petition against him would not lie. Whether an exceptional case has been made out against him is yet to be determined.

18. In *S.N. Banerjee v. Kuchwar Lime and Stone Co. Ltd.*, [AIR 1938 PC 295], it has been observed :-

> "The question whether a contempt committed not by any person inhibited by injunction for breach of that injunction but by a person said to have aided and abetted a person so inhibited in breaking the injunction is of such a criminal nature as to prevent an appeal has given rise to much controversy, controversy which in the present case this Board does not think it necessary to resolve. The respondents themselves when petitioning the Court asked the Court to issue notice upon the opposite parties to show cause why they should not be committed for contempt for disobedience of the injunction. Strictly speaking this was a wrong remedy to ask against Ghose and Banerjee. The injunction was not binding on them and they had never disobeyed it. The petition should have asked that they be committed for aiding and abetting the Secretary of State in his disobedience. Indeed on the authority of 1848) – 11 Beav 180 and 181, the High Court might well have dismissed the petition against those two appellants and

A left the petitioners to apply again in proper form. Though the High Court did not do so but treated the petition as if application had been made to commit those appellants for contempt in aiding and abetting the Secretary of State, yet their Lordships do not think, the respondents have any B cause of complaint if the Court in admitting the appeal treated the case (as the respondents themselves had done) as being a petition for breach of the injunction and gave a certificate as in a civil matter."

19. It is one thing to say that a person claiming title or any C other right is bound by a direction issued to another through or under whom he is claiming a right but it may not be correct to opine that a person who has nothing to do with the functions of the State would also be liable therefor. In any event, the issue admittedly is a debatable one. It is required to be gone into. D Without any application of mind in this behalf on the part of the High Court not only a notice has been issued but also an interim order has been passed which vitally affects the respondents No.1.

A person aggrieved by an order must have a remedy. E Technicalities of law should not be allowed to come on his way to move the higher courts.

20. If Mr. Mishra is correct in his contention that an appeal was maintainable under Section 19 of the Contempt of Courts Act, such an appeal would also lie before a Division Bench of F the High Court. It may, subject to just exceptions, not matter much as to whether an appeal is entertained under the said provision or under the Letters Patent of the High Court. The Division Bench of the High Court, therefore, could entertain an appeal subject, of course, to allocation subject matters by the G Chief Justice of High Court.

21. There cannot, however, be any doubt or dispute that this Court has the jurisdiction to interfere with both the orders under Article 136 of the Constitution of India.

22. Once the counsel for the parties are heard at great H

length, this Court may in appropriate cases and in particular a case of this nature and keeping in view the subsequent events may either refuse to interfere with the impugned judgment or quash both the orders of the Division Bench and the Single Bench on the legal principle that if setting aside of an illegal order gives rise to another illegal order both orders may be quashed. [See *Chandra Singh v. State of Rajasthan & Anr.* [(2003) 6 SCC 545] and *Dove Investments Pvt. Ltd. & Ors. v. Gujarat Industrial Investments Corporation Ltd. & Anr.* [(2006) 2 SCC 619].

23. The question as to whether a person, although not a party in the original writ proceedings, could be proceeded against, is a debatable one. Such a question, therefore, was required to be determined at the threshold. If *prima facie* two views are possible and unless it is firmly held that the respondent No.1 not only was bound by the directions issued by the High Court but he had also defied it willfully and deliberately, he cannot be punished for commission of contempt.

If, *prima facie,* appellant cannot be punished for commission of contempt of the High Court, an interim order also should have not been passed.

We draw inspiration in this regard from a decision of this Court in *The State of Bihar v. Rani Sonabati Kumari* [AIR 1961 SC 221] which has since been followed in a large number of cases.

24. Recently in *Sushila Raje Holkar v. Anil Kak (Retd.)* [2008 (7) SCALE 484], it was held :

> "19. It may be true that this Court upon hearing the parties, by the order dated 1.5.2007 granted the respondent 15 days' time to deposit all arrears of rent at the rate of Rs.50,000/- per month including the rent for the month of April 2007. We are not concerned with the implementation of the said order as violation thereof is not the subject matter of the contempt proceedings pending before us.
>
> The order of this Court properly construed, therefore, would

A mean that the admitted lease would cover only 16,000 square feet of land. Different phraseologies like "entire" and "admitted" have been used by this Court. Construction of the said order, therefore, must be resorted to upon reading the same in its entirety. It is a well settled principle B of law that if two interpretations are possible of the order which is ambiguous, a contempt proceeding would not be maintainable. In *The State of Bihar v. Rani Sonabati Kumari* [AIR 1961 SC 221], it was stated:

> 'The second contention urged was that even if on C a proper construction of the order, read in the light of the relevant pleadings, the State Government was directed to abstain from publishing a notification under Section 3(1) of the Act, still, if the order was ambiguous and equivocal and D reasonably capable of two interpretations, a party who acted on the basis of one of such interpretations could not be held to have willfully disobeyed the order. Stated in these terms, the contention appears unexceptionable. For its being E accepted in any particular case, however, two conditions have to be satisfied: (1) that the order was ambiguous and was reasonably capable of more than one interpretation, (2) that the party being proceeded against in fact did not intend to disobey the order, but conducted himself in accordance with F his interpretation of the order.'

This aspect of the matter has been considered by this Court in *Purnendu Mukhopadhyay and Ors. v. V.K. Kapoor and Anr.* [(2007) 12 SCALE 549] {See also G *Maruti Udyog Limited v. Mahinder C. Mehta and Ors.* [(2007) 11 SCALE 750]}"

25. Strong reliance has been placed by Mr. Mishra on *Midnapore Peoples' Coop. Bank Ltd. & Ors.* (supra), wherein it has, inter alia, been held :

H "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).

XXX XXX XXX

15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories :

(i) to (iii) ...

(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."

26. We may, however, notice that in an earlier decision of this Court in *R.N. Dey & Ors.* (supra) it was opined :

"In our view the aforesaid contention for the learned counsel for the respondents requires to be rejected on the ground that after receipt of the notice, officers concerned tendered unconditional apology and after accepting the same, the High Court rejected the prayer for discharge of the rule issued for contempt action. When the court either *suo motu* or on a motion or a reference, decides to take action and initiate proceedings for contempt, it assumes jurisdiction to punish for contempt. The exercise of jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt and if the order is passed not discharging the rule issued in contempt proceedings, it would be an order or decision in exercise of its jurisdiction to punish for contempt. Against such

A order, appeal would be maintainable."

27. As indicated hereinbefore, the matter is pending before a Three Judge Bench.

In a case of this nature, this Court is also not precluded from taking into consideration the subsequent events. Having
B regard to the subsequent events, and in particular as, the decision as to the Committee's power to fix fees is justiciable or not is pending consideration, it would not be fair to allow the interim order passed by the learned Single Judge to continue; assuming that the Division Bench had no jurisdiction to
C entertain the appeal and consequently pass the interim order staying the operation of the order of the learned Single Judge. While, therefore, quashing both the orders, we would request the learned Single Judge to consider the merit of contempt matter only after disposal of the Writ Petition No.2117 (M/S) of
D 2006.

27. Appeal is disposed of accordingly. No costs.

B.B.B Appeal disposed of.