

**IN THE HIGH COURT OF JAMMU AND KASHMIR  
AT SRINAGAR**

Reserved on: 15.05.2023

Pronounced on: 25.05.2023

**WP(C) No.2203/2022**

**CM No.5545/2022**

**CM No.5673/2022**

**RASHEED AHMAD PEERZADA**

**...PETITIONER(S)**

Through: - Mr. J. H. Reshi, Advocate.

Vs.

**CHAIRPERSON J&K SPECIAL TRIBUNAL  
AND OTHERS**

**...RESPONDENT(S)**

Through: - Mr. Mohsin Qadiri, Sr. AAG-for R1.  
Mr. Moomin Khan, Advocate-for R2 to R5  
Mr. Altaf Haqani, Sr. Adv. With  
Mr. Asif Wani, Advocate-for R6&R7.

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE**

**JUDGMENT**

**1)** The petitioner invokes extraordinary writ jurisdiction vested in this Court by Article 226 of the Constitution of India to seek a Writ of Certiorari to quash order dated 13<sup>th</sup> September, 2022, passed by the J&K Special Tribunal to the extent and in so far it effects the right of the petitioner to raise construction of his residential house in conformity with the building permission granted by the Srinagar Municipal Corporation ["SMC"]. The petitioner also calls in question order dated 14<sup>th</sup> September, 2022, passed by respondent No.4 i.e., Chief Enforcement Officer, SMC, Srinagar, whereby the petitioner has been directed to stop the construction work on spot.

2) Briefly put, the facts relevant to the disposal of controversy raised in this petition are that vide order No.121 of 2021 dated 3<sup>rd</sup> June, 2021, competent authority (Commissioner, SMC), granted building permission in favour of the petitioner for construction of three storied residential house and erection of compound wall after dismantling the existing house. Pursuant to the building permission granted, the petitioner started raising construction after dismantling the existing construction. Two neighbours of the petitioner, namely, Fayaz Ahmad Malik and Farooq Ahmad Wani, challenged the building permission granted by SMC in favour of the petitioner by way of a revision petition filed under Section 403 of the Jammu and Kashmir Municipal Corporation Act, 2000 [“the Act of 2000”]. It was alleged that the writ petitioner had started raising construction in violation of the building permission, in that, he had constructed a basement without there being any permission for such construction.

3) Be that as it may, the revision petition was contested by the writ petitioner. The Tribunal, after hearing both the parties and regard being had to the report of the Ward Officer, allowed the revision petition holding that the writ petitioner had raised construction in deviation to the permission and, therefore, had rendered himself to action under stipulation No.7 of the building permission dated 3<sup>rd</sup> June, 2021. The Tribunal, thus, remanded the matter to Commissioner, SMC, for taking action in accordance with his order of granting permission dated 3<sup>rd</sup> June, 2021 under intimation to the Tribunal. The revision petition was

decided by the Tribunal vide its order dated 8<sup>th</sup> April, 2022. Indisputably, the writ petitioner has not challenged this order of the Tribunal and, therefore, the same has attained finality.

4) It seems that the Commissioner, SMC, to whom the matter was remanded by the Tribunal, did not cancel or withdraw the permission granted by invoking stipulation No.7 of the building permission order. He, however, called upon the writ petitioner to remove the deviation/violation before he could be permitted to raise the construction. The writ petitioner obeyed the directions of the Commissioner, SMC, and removed the violation committed by him in the shape of construction of basement. The Joint Commissioner, Planning, SMC, vide his order dated 10<sup>th</sup> August, 2022, taking note of the fact that the writ petitioner had removed the violation and had also submitted an affidavit/undertaking sworn in before the Judicial Magistrate, 1<sup>st</sup> Class, Srinagar, that he shall fill up underground cavity/basement, directed respondent No.4 to allow the writ petitioner to construct the remaining portion of the structure as per the granted building permission. Respondent No.4 was also directed to ensure that the writ petitioner fills up the underground cavity/basement in full.

5) Feeling aggrieved by the manner in which SMC had acted in response to the order passed by the Tribunal while disposing of the revision petition, M/S Fayaz Ahmad Malik and Farooq Ahmad Wani filed a petition for initiating contempt proceedings against Mr. Ghulam Hassan, Joint Commissioner, SMC, for willful defiance of the orders

passed by the Tribunal. The matter was considered by the Tribunal and vide order impugned dated 13<sup>th</sup> September, 2022, the Tribunal, after hearing the petitioners therein and Mr. Ghulam Hassan, Joint Commissioner, SMC, kept the order dated 10<sup>th</sup> August, 2022 passed by the Joint Commissioner, SMC, in abeyance. The Tribunal also directed the Ward Officer to stop the construction forthwith. A further direction was issued to submit a status report containing complete measurements along with fresh photographs vis-à-vis construction in question. The matter was fixed for further proceedings on 18<sup>th</sup> October, 2022. It is this order which has been assailed by the writ petition in this petition.

**6)** Mr. J. H. Reshi, learned counsel for the petitioner, has raised two points for consideration of this Court; one whether the J&K Special Tribunal is vested with power and jurisdiction to initiation contempt proceedings against the violators of its orders and punish them for committing contempt; and second, whether the Tribunal, in exercise of contempt jurisdiction, if any vested in it, can issue fresh directions.

**7)** Having heard learned counsel for the parties and perused the material on record, the first question that calls for determination by this Court relates to the contempt jurisdiction of the Tribunal.

**8)** The answer to this question is not far to be sought. The Jammu and Kashmir Special Tribunal is constituted under Section 4 of the Jammu and Kashmir Special Tribunal Act, 1988 [“the Act of 1988”]. Section 3 of the Act of 1988 provides that notwithstanding anything

contained in any law made by the State Legislature, but save as otherwise provided in sub-section (2), an appeal, revision or review petition, which under any such law lies to the Government or a Minister, shall, from such date as may be appointed by the Government by a notification in the Government Gazette, lie or be so preferred, brought, made or presented to the Tribunal. It is further provided that any reference in any provisions of such law, providing for appeal, revision or review, to the Government or Minister, shall be construed as a reference to the Tribunal. By virtue of sub-section (2) of Section 3, appeals, revisions or review petitions arising out of or under the provisions of the Jammu and Kashmir Grant of Permanent Resident Certificate (Procedure) Act, 1963, have been excluded from the purview of the Act of 1988. The Tribunal has also been conferred all the jurisdiction, powers and authority in relation to such appeals, revision and review petitions as the Legislature may by law provide.

9) This brings me to Section 403 of the Act of 2000, which, for facility of reference, is reproduced as under:

**“403.Power of revision.** The Government may at any time, for the purposes of satisfying itself as to the correctness, legality, propriety or regularity of any proceeding or order passed by any officer of the Government or the Commissioner or any officer subordinate to him, call for and examine the record and may pass such order with reference thereto as it may think fit.

10) As would be seen, Section 403 of the Act of 2000 confers power of revision on the Government, which may, at any time, call for and examine the record for the purposes of satisfying itself as to the

correctness, legality, propriety or regularity of any proceeding or order passed by any officer of the Government or the Commissioner or any officer subordinate to him and pass such order with reference thereto as it may deem fit. The order of demolition passed either by the Commissioner or any officer subordinate to him is, thus, amenable to revisional jurisdiction of the Government.

**11)** By operation of Section 3 of the Act of 1988, the power of revision is exercisable by the Tribunal. The Act of 1988 is a brief legislation containing only 10 Sections. Sections 3 and 4 are already dealt with. Section 5 pertains to the eligibility for appointment of a Chairman or a Member of the Tribunal. Section 6 relates to the functions to be discharged by the Tribunal. Section 7 pertains to the procedure to be followed in pending appeals. Section 8 gives protection to the Chairman and the members by declaring them to be public servants within the meaning of Section 21 of RPC. Section 9, which is of significance for us, deals with power of the Government to make rules.

Section 9 reads thus:

**“Power to make rules.** The Government may, by notification in the Government Gazette, make rules for carrying out the purposes of this Act.”

**12)** There should be no denying the fact that the primary and foremost purpose for creation of the Tribunal is to perform, in place of Government or Minister to the Government, adjudicatory function of hearing appeals, revision and review petitions arising under any law made by the State Legislature. The procedure to perform this vital

adjudicatory function has been spelled out in the Jammu and Kashmir Special Tribunal Rules, 1986, framed under Section 9 of the Act of 1988. Rule 21 of the said Rules is relevant in the context of controversy on hand and the same is, thus, set out below:

21. The Tribunal constituted under Section 4 of the Act shall have the powers of the Civil Court in respect of the following matters:

- a) summoning and enforcing the attendance of any person or witness and examining him on oath or solemn affirmation;
- b) requiring the discovery or production of any document relating to subject-matter;
- c) receiving evidence on affidavits;
- d) issuing commissions for the examination of witnesses, documents or other books relating to the subject-matter;
- e) to punish a person for contempt in relation to itself or any member thereof; and
- f) to do all things necessary for and incidental to the discharge of its functions under the Act.

**13)** From a plain reading of Rule 21, it is evident that the Tribunal has been vested with powers of civil court, *inter alia*, to punish a person for contempt in relation to itself or any member thereof. Before proceeding further, I deem it appropriate to mention that the petitioner has not called in question the vires of Rule 21. As is further evident that a civil court under the Code of Civil Procedure or under the Contempt of Courts Act, 1971, is not vested any specific power to punish a person for committing contempt of itself. Rule 21(e) clearly and unequivocally treats the Tribunal as 'civil court' when it lays down that the Tribunal shall have all the powers of civil court in respect of contempt of itself and any of its members. It would signify that like a civil court subordinate to High

Court, the Tribunal may refer the matter to High Court for punishing a person who commits contempt of the Tribunal, civil or criminal. The only power which is traceable under the Code of Civil Procedure in this regard is the power of the Civil Court to punish for disobedience of its interim orders of injunction. Order 39 Rule 2-A of CPC confers such power. At this stage, it would be proper to set out Order 39 Rule 2-A as well to appreciate the power of the civil court to deal with disobedience of the interim orders passed by it in the civil litigation pending before it:

**“2-A. Consequences of disobedience or breach of injunction.-**

(1) In the case of disobedience of any injunction granted or other order made under Rule 1 or Rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison, for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.

**14)** From the above discussion based on the plain reading of the relevant provisions, it is abundantly clear that the J&K Special Tribunal, which is a creature of the Act of 1988, has not been specifically conferred any power to punish a person for committing contempt of itself or any member thereof. The powers given under clause (e) of Rule



21 (supra) are not more than the powers which are vested in the Civil Court in respect of its contempt. It is, thus, held that while the Tribunal shall have power to punish a person for disobedience of its interim orders, it shall lack jurisdiction or competence to initiate an action for proceeding against a person to punish him for contempt, either in relation to itself or any member thereof. The Contempt of Courts Act, 1971 does not confer such power either on the Tribunal or on the Civil Court. Article 215 of the Constitution of India confers contempt jurisdiction on the High Court to punish for contempt of itself or any court subordinate thereto.

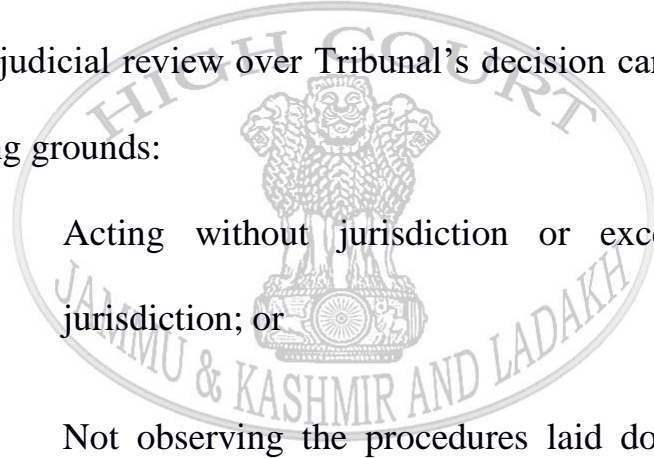
**15)** Indisputably, the Tribunal performs adjudicatory function. The Tribunal is a creation of statute i.e., an Act of State Legislature and derives its jurisdiction and competence from it. I have gone through each provision of the Act of 1988 and entire body of rules framed thereunder but could not trace out, directly or indirectly, any power of contempt conferred on the Tribunal. Rule 21 is already explained hereinabove. Similarly, J&K Municipal Corporation Act, which confers upon the Government the power of revision under Section 403, which, in terms of Section 3 of the Act of 1988, is exercisable by the Tribunal, contains no provision in relation to contempt of revisional authority. That being the clear position emerging from the relevant statutory provisions, it is difficult for this Court to concede any contempt jurisdiction in favour of the Tribunal in the absence of specific statutory prescription.

**16)** Having held thus, the next question that begs determination in this matter is whether Tribunal can be regarded as a “court subordinate to High Court” so as to attract the applicability of Article 215 of the Constitution of India and Section 12 of the Contempt of Courts Act, 1971.

**17)** Wade & Forsyth in Administrative Law, 2009 Edition, prescribes following testes to be applied to determine the legal status of a Tribunal:

- (i) Every Tribunal is constituted by an Act of Parliament or an Act of State Legislature;
- (ii) Decisions of the Tribunals are judicial and not administrative;
- (iii) Tribunals not only deal with cases in which Government is a party but also adjudicates the dispute between the private parties;
- (iv) The Tribunals are independent in the matter of adjudication and are not subject to administrative interferences. No authority can dictate to Tribunal as to how and in what manner they should decide;
- (v) Tribunal is vested with adjudicatory powers which it derives from Statute;

**18)** Apart from Administrative Tribunals constituted under Article 323A and 323B of the Constitution, there are Tribunals constituted under various legislations to deal with complex problems involving technique and expertise, which ordinary courts do not possess. Realistically, Tribunals and courts share a common feature, in that, both discharge judicial functions and exercise judicial powers normally vested in the sovereign authority. However, Tribunal's powers are limited to special matters which they have to deal dispassionately, in that, they do possess the trappings of a court. The decisions of the Tribunals are not normally interfered with by the High Courts or the Supreme Court on the ground that the decision of the Tribunal is based on wrong appreciation of evidence. The judicial review over Tribunal's decision can be exercised on the following grounds:

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- i) Acting without jurisdiction or excess of jurisdiction; or
  - ii) Not observing the procedures laid down by law;
  - iii) Acting in violation of principles of natural justice like not providing an opportunity of being heard to the party concerned or acting on extraneous material considerations;
  - iv) Decisions not supported by any reason;

**19)** Ordinarily, the decisions of many Tribunals including the Tribunal under discussion are final though subject to the power of judicial review vested in the High Court and the Hon'ble Supreme Court under Articles 226 and 32 of the Constitution of India respectively. In **Thakur Jugal Kishore Sinha vs. Sitamarhi Central Cooperative Bank Ltd. & Anr**, [AIR 1967 SC 1494], the Apex Court held that the Assistant Registrar of Cooperative Society adjudicating a cooperative dispute is a court and must have the same power of the court to punish for contempt. After discussing the issue at some length and placing reliance upon its various authoritative pronouncements, in particular those rendered in the cases of **Brajnandan Sinha vs Jyoti Narain AIR 1956 SC 66**, **Bharat Batik Limited v. Employees of Bharat Bank Ltd (1950) SCR 459**, **Maqbool Hussain v. State of Bombay (1953) SCR 730** and **Cooper v. Wilson (1937) 2 KB 309,340**, the Apex Court concluded that in order to constitute a court in the strict sense of the term, an essential condition is that the court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement. The Hon'ble Supreme Court in particular made a reference to the judgment in the case of **Cooper v. Wilson**, which was later referred to in **Brajnandan Sinha's** case, which, for facility of reference, is set out below:

"A true judicial decision presupposes an existing dispute between two or more parties, and then involves four requisites:--(1) The presentation (not necessarily orally) of their case by the parties to the dispute; (2) if the dispute between them is a question of fact, the ascertainment of the fact by

means of evidence adduced by the parties to the dispute and, often with the assistance of argument by or on behalf of the parties on the evidence; (3) if the dispute between them is a question of law, the submission of legal arguments by the parties; and (4) a decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law".

**20)** Having regard to the aforesaid prerequisites, the Hon'ble Supreme Court held that the Assistant Registrar, Co-operative Societies, exercising the powers of the Registrar, Cooperative Societies, under Section 48 of the Bihar and Orissa Cooperative Societies Act, 1935, was a "court" within the meaning of Contempt of Courts Act, 1952. As a matter of fact, the Hon'ble Supreme Court in the aforesaid case had framed following three questions:

- 1) Whether the Assistant Registrar of Co-operative Societies was a court within the meaning of the Contempt of Courts Act, 1952;
- (2) Even if it was a court, whether it was a court subordinate to the Patna High Court; and
- (3) Whether the words used by the appellant in one of his grounds of appeal to the Joint Registrar of Co-operative Societies, which formed the basis of the complaint, did amount to contempt of any court;

**21)** This Court may not be concerned with third question which is a question of fact. The first question was answered in the manner explained above. So far as question No.2 is concerned, the Hon'ble Supreme Court concluded that by virtue of Article 227 of the Constitution of India, the High Court exercises judicial control over all

courts and tribunals functioning within the limits of its territorial jurisdiction and, therefore, all the tribunals, which meet the attributes of a court, shall be deemed to be 'courts subordinate to the High Court'. The Hon'ble Supreme Court also clarified that subordination for the purposes of attracting applicability of Contempt of Courts Act means judicial subordination and not subordination under the hierarchy of courts under the Civil Procedure Code or the Criminal Procedure Code. In a nutshell, the Hon'ble Supreme Court held that the Assistant Registrar, Co-operative Societies, exercising the powers of the Registrar, Cooperative Societies, was a 'court' subordinate to the High Court.

**22)** True it is that the Contempt of Courts Act, 1971, does not define the term 'court' but the 'court' under the Act of 1971 means the authority which has the legal power to give judgment, which, if confirmed by some authority would be definitive, binding and authoritative.

**23)** From the analysis of the case law on the point, following essential attributes of a Tribunal to be treated as 'court' for the purposes of Contempt of Courts Act may be culled out:-

- i) Legal power to give a give a judgment, which if confirmed by some other authority would be definitive
- ii) Power to regulate legal rights by the delivery of definitive judgments;

- iii) Power to enforce its orders by legal sanctions; and
- iv) Procedure followed must be judicial in character in such matters as the taking of evidence and the administration of oaths;

**24)** When we apply these tests to the Tribunal under discussion, we find that the Tribunal exercises the power of adjudication of appeals, revisions and review petitions which under different Acts of Legislature lie to the Government or a Minister. Under Rules of 1986, any such appeal, revision or review is required to be presented in the shape of memorandum to the Tribunal bearing proper stamp duty. On its presentation before the Registrar/Deputy Registrar of the Tribunal, it is presented before a Bench of the Tribunal for consideration. If the Tribunal entertains the said appeal, revision or review the parties to the dispute are notified the date and place of hearing and is served with a copy of the memorandum of such appeal, revision or review, as the case may be, along with notice. In terms of Rule 21 of the Rules of 1986, the Tribunal is conferred the powers of Civil Court in respect of various matters, which we have already indicated hereinabove, which, *inter alia*, include summoning and enforcing of attendance of any person or witness, their examination on oath or solemn affirmation, requiring the discovery or production of any document relating to the subject matter, receiving of evidence on affidavits, issuing commissions for examination of witnesses etc. etc. There is a period of limitation for filing appeal, review, revision under the Act. The Tribunal is further given the power

under Rule 23 of the Rules of 1986 to call for the record of subordinate courts/authorities. The Tribunal is also empowered to make spot inspection, if necessary. There is further a provision that in case there arises any question of law, the same shall be decided by the Full Bench of the Tribunal consisting of at least the Chairman and two members of the Tribunal.

25) From a reading of the entire scheme of the Act and the Rules framed thereunder, we will find that all the attributes that make a Tribunal a 'court' for the purpose of Contempt of Courts Act, 1971, are present in the case of Tribunal in question. I have, therefore, no hesitation to hold that the Tribunal is a 'court' for the purpose of Section 10 of the Contempt of Courts Act, 1971. The judgments cited by Mr. Haqani, learned senior counsel appearing for respondents No.6 and 7, also support the view I have taken.

26) In view of the law laid down by the Supreme Court in **Thakur Jugal Kishore Sinha's** case, it is no more *res integra* that the Tribunals, which are subordinate to the High Court, are subject to the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India. That apart, the High Court also exercises the power of judicial review against the orders passed by the Statutory Tribunals.

27) Viewed thus, there is no escape from holding that the J&K Special Tribunal constituted under the Act of 1988 is a 'court' subordinate to the High Court for the purposes of Section 10 of the Contempt of Courts



Act, 1971. In appropriate cases where the authority of the Tribunal is undermined or its orders are flouted or disobeyed, the Tribunal can refer the matter to the High Court, which, under Section 10 of the Contempt of Courts Act, 1971, shall be within its powers to invoke its contempt jurisdiction and punish the contemnor for committing the contempt of the Tribunal.

**28)** Otherwise also, under Rule 21 of the Rules of 1986, the J&K Special Tribunal is conferred the power of Civil Court to punish a person for contempt in relation to itself or any member thereof. Under Rule 21 the Tribunal is treated as a Civil Court for the purposes of punishing a person for contempt in relation to itself or any member thereof. As I have already clarified that the Civil Court, *per se*, does not have any jurisdiction to punish for its contempt but it can refer the matter to the High Court being a court subordinate to the High Court. Article 215 of the Constitution read with Section 10 of the Contempt of Courts Act, 1971, empowers the High Court to punish a person for contempt of its subordinate courts. It needs to be further clarified that under Section 10 of the Contempt of Courts Act, 1971, High Court has the power to punish for contempt of courts subordinate to it provided such contempt is not an offence punishable under the Indian Penal Code.

**29)** It was argued by learned counsel for the petitioner that Rule 21, which is strongly relied upon by learned counsel for the respondents, is

beyond the rule making power of the Government and, therefore, it must be declared as ultra vires the Act.

**30)** I am afraid I cannot embark upon such exercise, more particularly when the vires of Rule 21 is not challenged in this petition nor any foundation for such challenge has been laid therein. Prima facie, Rule 21 is within the rule making power of the Government conferred under Section 9 of the Act of 1988, whereby the Government has been conferred power to make rules for carrying out purposes of the Act. The main object and primary purpose of the Act of 1988 is to provide independent adjudicatory forum to hear and decide appeals, revisions and review petitions arising under any law made by the State Legislature, which before the promulgation of the Act of 1988 were being heard and decided by the Government or a Minister. With a view to effectuate efficient working of the Tribunal(s), necessary powers are required to be conferred upon it and one such power is the power to punish a person for disobedience of its orders on the analogy of the power conferred on the Civil Courts under Order 39 Rule 2-A of the Code of Civil Procedure. There is, however, no quarrel with regard to the proposition propounded by Mr. J. H. Reshi supported with few judgments that rule making authority cannot frame rules which are contrary to and beyond the rule making power conferred upon it by the principal Act.

**31)** The term “contempt of court” as defined in clause (a) of Section 2 of the Contempt of Courts Act, 1971, means civil or criminal contempt.

Sections 175, 178, 179, 180 and 228 are the relevant Sections in Chapter X of the Indian Penal Code, which deal with the contempt of lawful authority of public servants conducting judicial proceedings. Under Section 345 of Cr. P. C, proper procedure is laid down where the offences punishable under the aforesaid Sections are committed in the view or presence of any Civil, Criminal, or Revenue Court. It confers upon such Courts the power to take cognizance of the offence and award punishment after giving the offender a reasonable opportunity of showing cause. Such Court can sentence an offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment of term which may extend to one month, unless such fine be sooner paid. Section 346 of Cr. P. C further provides that if the Court is satisfied that a person accused of any of the offences referred to in Section 345 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, it can, instead of disposing of the case under Section 345, forward the case to a Magistrate having jurisdiction to try the same.

**32)** From a reading of Sections 345 and 346 of Cr. P. C, it clearly transpires that the contempt of lawful authority of public servants including those conducting judicial proceedings, is an offence under the Indian Penal Code for which an adequate punishment is provided under Section 345 of Cr. P. C to be awarded by the Court in a case where such contempt is committed in the view or presence of any Civil, Criminal, or

Revenue Court. It is, thus, evident that the Tribunal, which has all the attributes of a 'court', shall have the power to punish a person for committing the contempt in the view or presence of such court, which is an offence under Sections 175, 178, 179, 180 or Section 228 of the Indian Penal Code.

**33)** I have made the aforesaid observation only to bring home the point that the J&K Special Tribunal is not a toothless body altogether and is possessed of sufficient powers to deal with the citizens who dare to commit its contempt. Though it is ideal as also to make the functioning of the Tribunal effective to make an amendment in the Act of 1988 to confer upon it specifically the power to punish for contempt in relation to itself or any member thereof, as has been done in various statutes. The Administrative Tribunals constituted under the Administrative Tribunals Act, 1985, National Company Law Tribunal and the National Company Law Appellate Tribunal constituted under the Companies Act have been specifically conferred the powers to punish for contempt of itself, which power is akin and identical to the power conferred upon the High Courts under Article 215 of the Constitution of India and Section 10 of the Contempt of Courts Act. It is, however, for the Legislature vested with the power to legislate to take a call in this regard.

**34)** In the premises it is sufficient for me to hold as under:

- (I) That the Tribunal is not vested with any power, directly or indirectly, to punish for contempt in relation to itself or any member thereof;
- (II) That under Rule 21 of the Rules of 1986, the Tribunal is conferred the power of Civil Court to punish a person for contempt in relation to itself or any member thereof.
- (III) Since the Civil Court is not vested with any power to punish a person for contempt in relation to itself, as such, such power should be understood to mean the power conferred upon a Civil Court under Order 39 Rule 2-A of the Code of Civil Procedure, to punish for disobedience of interim injunctions passed by a Civil Court under Rules 1 and 2 of Order 39 of the Code of Civil Procedure only. That would mean that the Tribunal too shall have jurisdiction to punish a person for disobedience of its interim orders of injunction passed to maintain the equilibrium or to preserve the lis etc. etc.
- (IV) That the Tribunal shall be deemed to be a 'court' subordinate to the High Court for the purposes of Section 10 of the Contempt of Courts Act and, therefore, shall be well within its powers to refer an

appropriate case to the High Court for initiating appropriate proceedings against the violators of its orders or against those who commit its criminal contempt.

- (V) That the Tribunal shall also be entitled to proceed under Section 345 of the Cr. P. C, where the contempt committed in the view of or in presence of the Tribunal is an offence described under Sections 175, 178, 179, 180 and 228 of the Indian Penal Code.

**35)** In view of the conclusions arrived at hereinabove, there is hardly any necessity to pronounce judgment on the point whether the Tribunal, if at all it is considered to be vested with the power of contempt, can, in the exercise of such jurisdiction, pass fresh directions, though the answer to this question has to be in the 'negative'. The contempt court is enjoined to ensure that the orders passed by it are adhered to in letter and spirit and the violators thereof are adequately punished so as to deter them from repeating their acts aimed at undermining the dignity of the court and majesty of law. That being the scope of contempt jurisdiction, it is trite to say that the contempt courts, like the executing courts, have no jurisdiction to travel beyond the order of which the contempt is complained of or issue fresh directions.

**36)** Viewed from any angle, the impugned order is not sustainable in law. The same is quashed. It is, however, made clear that quashment of

the impugned order and the passing of this judgment shall not be an impediment in the way of the Tribunal to exercise *suo moto* powers of revision which are vested in it under Section 403 of the Act of 2000, if it is of the opinion that the Srinagar Municipal Corporation has passed an order which is in violation or derogation of the directions passed by it earlier.

**(Sanjeev Kumar)**  
**Judge**

**Srinagar**  
**25.05.2023**  
**“BhatAltaf, PS”**

*Whether the order is speaking:* **Yes**  
*Whether the order is reportable:* **Yes**

