

PETITIONER:

I. MANILAL SINGH

Vs.

RESPONDENT:

DR H. BOROBABU SINGH

DATE OF JUDGMENT 05/02/1993

BENCH:

SHARMA, L.M. (CJ)

BENCH:

SHARMA, L.M. (CJ)

AGRAWAL, S.C. (J)

VENKATACHALLIAH, M.N. (J)

VERMA, JAGDISH SARAN (J)

REDDY, K. JAYACHANDRA (J)

CITATION:

1994 AIR 505 1993 SCR (1) 769

1994 SCC Supl. (1) 718 JT 1993 (1) 348

1993 SCALE (1)282

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1.This matter came up for our consideration on December 8, 1992 pursuant to the order dated November 24, 1992, to decide the appropriate order which needs to be made in the existing situation. A brief resume of the events leading to the present stage may first be given.

2.This Court has held that the Speaker while deciding the question of disqualification of a Member of the Legislative Assembly under the Tenth Schedule to the Constitution acts as a statutory authority, in which capacity the Speaker's decision is subject to judicial review by the High Court and this Court. Pursuant thereto, certain orders were made by this Court in proceedings arising out of the order of disqualification of certain members, made by the contemner, Dr H. Borobabu Singh who holds the office of Speaker of the Manipur Legislative Assembly. In spite of the clear decision of this Court that an order made under the Tenth Schedule by the Speaker relating to the disqualification of a Member of the Legislative Assembly is subject to judicial review and the Speaker while making an order under the Tenth Schedule acts

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merely as a statutory authority amenable to the court's jurisdiction in that capacity, the contemner continued to resist the implementation of such orders made by this Court. The petitioner, 1. Manilal Singh was then the Secretary of the Manipur Legislative Assembly. In his capacity as Secretary of the Assembly, the petitioner, 1. Manilal Singh took steps to implement this Court's orders. The allegation made by 1. Manilal Singh is that the contemner, Dr H. Borobabu Singh got annoyed with him for his attempt to

secure obedience and implementation of this Court's orders and, therefore, as an act of reprisal, the contemner has made an order of his compulsory retirement. The petitioner, 1. Manilal Singh, therefore, challenged the order of his compulsory retirement made by the contemner inter alia on the ground that it was mala fide being an act of reprisal by the contemner for the petitioner's obedience of this Court's orders. This Court stayed the operation of the impugned order of compulsory retirement of the petitioner, 1. Manilal Singh as well as the order of his suspension passed by the contemner. The petitioner then complained that in spite of this Court's orders, the contemner was not permitting him to function as the Secretary of the Manipur Legislative Assembly and was also not paying him his salary and other dues; and that another person had been appointed by the contemner to function as the Secretary.

3. On July 22, 1992, this Court made an order reiterating that the petitioner, I. Manilal Singh shall be allowed to function as the Secretary of the Manipur Legislative Assembly without delay and that all concerned will enable him to so function, and some further directions were also given.

4. On August 4, 1992 another order was made by this Court as a result of the grievance made by the petitioner, I. Manilal Singh that in spite of the orders of this Court, he was neither allowed to function as the Secretary of the Legislative Assembly nor had he been paid his salary etc. In that order, this Court further directed the Chief Secretary of the State of Manipur to ensure that the direction given for payment of dues to the petitioner was promptly obeyed.

5. When the matter was again taken up on August 25, 1992, the petitioner, 1. Manilal Singh stated that another order had been made on August 19, 1992 declaring that the petitioner is to retire from service on August 31, 1992 as Joint Secretary which was in disobedience of this Court's orders, and was a further act of reprisal against him by the contemner. Accordingly, in the order dated August 25, 1992, this Court after recording that this action appears to be prima facie in violation of this Court's order, stayed the operation of the order dated August 19, 1992. The order after mentioning the statement made by the learned counsel for the Chief Secretary, H.V. Goswami expressed this Court's concern at the apathy exhibited towards obedience of the mandate under Article 144 of the Constitution and after hearing all the counsel including Shri S.K. Bhattacharya, learned counsel for the contemner, directed that the Chief Secretary, H.V. Goswami, Deputy Secretary, Manipur Legislative Assembly, R.K. Chinglensana Singh and Dr H. Borobabu Singh should be personally present in Court at the next hearing which was fixed for September 8, 1992. On September 8, 1992 the matter was adjourned to September 9, 1992.

6. On September 9, 1992, the Chief Secretary, Manipur, H.V. Goswami and R.K. Chinglensana Singh, Deputy Secretary, Manipur Legislative Assembly were personally present. On behalf of Dr H. Borobabu Singh who did not appear, a request was made by his counsel, Shri Bhattacharya to adjourn the

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matter till after September 22, 1992 on the ground that the Manipur Legislative Assembly was in session. The matter was, therefore, adjourned to September 25, 1992.

7. On September 25, 1992, in spite of earlier order in the contempt proceeding directing Dr H. Borobabu Singh to appear in person, he did not appear. His counsel, Shri

Bhattacharya filed an affidavit stating inter alia that Dr H. Borobabu Singh is immune from such directions of the Court in view of his constitutional position as Speaker. Accordingly, Shri Bhattacharya was heard on his objection which was found to be without substance. On September 25, 1992, the Court while rejecting the contention of Shri Bhattacharya stated as under:

"... This is a case in which Dr Singh's function is not as a Speaker in the House. The facts of the case which are on record in this matter clearly show that Dr Singh was acting as Authority under the Tenth Schedule to the Constitution and in that capacity certain orders were passed which gave rise to the present contempt petition. In a petition filed by the petitioner, Manilal Singh, directions issued by this Court relating to his service conditions which have, according to the allegations, not been respected by Dr Singh. In this context and background, we do not have any doubt that the capacity in which Dr Singh was functioning was not that of the Speaker of the House, but as administrative head of the Secretariat of the Legislature in relation to the rights of one of the employees. Accordingly, we hold that there is no merit at all in the plea raised regarding the jurisdiction of this Court and the objection is, therefore, rejected.

2. We asked Mr G. Ramaswamy, learned Attorney General to examine the matter and indicate his opinion as to the enforceability of the directions of this Court requiring the personal appearance of Dr H. Borobabu Singh in Court. On earlier occasion also, learned Attorney General had indicated that this Court would have been justified in taking a far stricter view of the conduct of Dr Singh and it is an appropriate case where it is not only within the power of this Court, but also it

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bounden duty to take such steps which will reassure the people of their faith in, and respect for the institution, now that it is obvious that the indulgence granted so far to Dr H. Borobabu Singh has been misplaced. Mr Altaf Ahmed, learned Additional Solicitor General appearing for the Union of India fully supports the opinion and submission of learned Attorney General.

3. Mr Kapil Sibal who represents the Chief Secretary of Manipur also expressed his opinion on these lines."

8. The remaining part of the order then considered the fact that Dr H. Borobabu Singh was included as a Member of the Indian Parliamentary delegation to attend a conference abroad and the Court adjourned the matter to October 20, 1992 requiring the contemner, Dr H. Borobabu Singh to give a written undertaking, before he left the country that he would appear in the Court, and the Government of India was required to ensure compliance with that direction. It is sufficient to mention that the contemner, Dr H. Borobabu Singh did not give such an undertaking in spite of the persuasion of senior officers of the Government of India as well as the Union Home Minister, as appears from the

documents filed on behalf of the Government of India. Accordingly, the Government of India did not permit the contemner to leave the country.

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9. When the matter was taken up on October 20, 1992, the contemner, Dr H. Borobabu Singh did not appear in spite of the earlier direction given and the indulgence granted to him. However, his counsel, Shri Bhattacharya prayed for a short adjournment on the ground that he would be advising Dr H. Borobabu Singh to file an unconditional affidavit to appear in person in Court in pursuance to the direction of the Court and to make a separate application for condoning his absence and exempting him from personal appearance in the Court. In spite of the background, we granted further indulgence to the contemner and accepting the request of Shri Bhattacharya adjourned the case to October 23, 1992 stating that if in addition to the unconditional affidavit to appear personally in the Court pursuant to the direction, a separate application, as indicated by Shri Bhattacharya, for condoning his absence and exempting him from personal appearance was filed by the contemner, the same would be considered on its merits. At the request of Shri Bhattacharya, learned counsel for Dr H. Borobabu Singh, we again adjourned the matter to November 12, 1992 recording his statement in the order as under:

"Mr S.K. Bhattacharya the learned counsel for Dr H. Borobabu Singh states that he has been instructed personally by Dr H.B. Singh to make a statement in this Court that Dr H.B. Singh will be filing his affidavit in the terms of our order of the last date. We asked M

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Bhattacharya to clarify whether our order has been correctly understood that the affidavit has to be filed giving an unconditional undertaking to appear in this Court in pursuance of a direction by this Court and the application which Dr H.B. Singh wants to make with a prayer for dispensing with his personal presence will be filed separately and be not a condition of the affidavit. He states that the position has been correctly understood by Dr H.B. Singh who has instructed Mr Bhattacharya to state accordingly. Mr Bhattacharya further states that the affidavit could not be filed today as Dr H.B. Singh could not come to Delhi because of the prevailing deterioration of law and order situation due to insurgency in the eastern part of the country due to which he was advised by the authorities responsible for his security not to undertake a journey to Delhi at this stage. He has also referred to the partial disruption in the air services between Manipur and Delhi. Mr Bhattacharya adds that the affidavit shall be filed by the 5th or the 6th November, 1992."

10. When the matter was taken on November 12, 1992, the contemner, Dr H. Borobabu Singh was again not present and the only thing done by him in the meantime was to file an affidavit dated November 6, 1992 indicating that he would not personally appear before the Court. Thus, in spite of the clear statement made by Shri Bhattacharya on instructions of Dr H. Borobabu Singh as stated by him and recorded in the order dated October 23, 1992, the contemner

once again remained absent and neither filed the requisite affidavit containing his undertaking to appear nor made any application praying for condoning his absence and exempting him from personal presence for cogent reasons.

11. In these circumstances, it became necessary to consider the making of necessary consequential orders. The matter was, therefore, adjourned to November 24, 1992 to hear the learned Attorney General of India and all the other counsel appearing in the case for deciding the future course of action. On November 24, 1992, the learned Solicitor General informed the Court that Mr

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G.Ramaswamy had resigned from the office of Attorney General and, therefore, the matter may be adjourned to enable his successor-in-office to assist the Court with his arguments. The matter was, therefore, adjourned to December 8, 1992.

12. On December 8, 1992 we have heard the learned Attorney General of India, the Solicitor General, on behalf of Union of India, Shri Kapil Sibal, learned counsel for the Chief Secretary of the State of Manipur, Shri S.K. Bhattacharya, learned counsel for the contemner, Dr H. Borobabu Singh and learned counsel for the petitioner.

13. It may be mentioned that the contemner, Dr H. Borobabu Singh has filed affidavits, the last being of December 7, 1992 making it amply clear repeatedly that he would not obey the orders of this Court directing his personal presence in the contempt matter nor would he make any application for condoning his absence and exempting him from personal presence for any cogent reasons. The only reason indicated in the affidavit filed by Dr H. Borobabu Singh and also reiterated by his counsel, Shri S.K. Bhattacharya is that by virtue of the office of Speaker of the Manipur Legislative Assembly held by Dr H. Borobabu Singh, he is immune from the process of this Court even in a contempt proceeding where the direction for his personal presence has been given as a result of prima facie opinion formed by the Court that he has wilfully disobeyed the orders of this Court in a capacity which does not relate to his functions as Speaker inside the House and has further deferred certain persons including the Chief Secretary of the State and Officers of the Assembly Secretariat from acting in aid of this Court's directions/orders in addition to taking administrative action against the petitioner, 1. Manilal Singh, Secretary of the Manipur Legislative Assembly as an act of reprisal for his acting in aid of this Court's orders. This stand has been taken and continues to be persisted in, in spite of the contention being considered and rejected expressly on merits including in the order dated September 25, 1992. The question, therefore, is of the action to be taken and the kind of order which it would be appropriate to make in these circumstances for implementation of this Court's orders, to uphold the majesty of law for preservation of the 'rule of law'.

14. The learned Attorney General submitted that the undisputed facts and the unequivocal stand taken by the contemner, Dr H. Borobabu Singh leave no doubt about his wilful and contumacious disregard and disobedience of this Court's orders which is without any doubt by itself sufficient to constitute criminal contempt of this Court. The learned Attorney General submitted that apart from the power which this Court has under the Contempt of Courts Act, 1971 and the rules framed thereunder, the power of this Court under several provisions of the Constitution of India is wide enough to indicate that the procedure available to

it for ensuring compliance with its orders directing the personal presence of the contemner, Dr H. Borobabu Singh are not confined merely to the provisions in the Contempt of Courts Act and the rules framed thereunder. The learned Attorney General added that all steps considered necessary to ensure compliance with this Court's orders requiring the personal presence in this Court of the contemner, Dr H. Borobabu Singh, are available to this Court which has a constitutional obligation to uphold the rule of law. He submitted that the stage has now reached when this step can no longer be avoided due to the continuing contemptuous conduct of the contemner in

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persistently refusing to obey this Court's orders requiring his personal presence in this contempt matter. The learned Attorney General added that this Court also has the power to direct the Government of India to take the necessary steps to produce the contemner, Dr H. Borobabu Singh in this Court if the ordinary course of requiring a Magistrate to produce him in the Court is considered inappropriate in the present case. The learned Solicitor General of India on behalf of the Government of India supported the submissions of the learned Attorney General of India and assured us that in case the Court considered it necessary to direct the Government of India to take the necessary steps to produce the contemner, Dr H. Borobabu Singh, that direction would be duly and promptly complied with. Shri Kapil Sibal on behalf of the Chief Secretary of the State of Manipur also supported the submission and so did the counsel for the petitioner, 1. Manilal Singh. Shri S.K. Bhattacharya, learned counsel for the contemner, Dr H. Borobabu Singh reiterated the stand taken by the contemner that by virtue of the office of the Speaker which he holds, he is immune from the Court's process even in a contempt matter like this which does not relate to his function as Speaker inside the House.

15.The undisputed facts expose the conduct of the contemner, Dr H. Borobabu Singh, evident from the statement contained in his affidavits filed in this Court refusing to obey the orders of this Court directing him to appear in person in this Court to enable the hearing of the contempt proceedings against him, after the tentative opinion formed by this Court that his wilful and contemptuous violation of this Court's orders and deliberate obstruction of the persons acting in the aid of this Court's orders coupled with his act of reprisal against the Secretary of the Legislative Assembly for obeying the orders made by this Court make out a prima facie case of 'criminal contempt', was recorded in the orders made in the presence of his counsel and known to him. The contemner had refused to accept the notices sent to him directly but continued to be represented by counsel, Shri S.K. Bhattacharya through whom he communicated with the Court, in addition to filing some of his own affidavits to clearly indicate his refusal to appear in Court. The only reason given by him, through counsel and in his affidavits is, that he being Speaker of a Legislative Assembly, is immune from process of court even in such a proceeding.

16.The present situation arises as a result of repeated and emphatic refusal of the contemner to appear in person in this Court after due notice of the fact that his presence is required before the Court on the date fixed for the hearing of the contempt proceeding to answer this charge of criminal contempt committed by him by acts done which were not performed as a Speaker within the House.

17. Reference may now be made to some provisions of law applicable to the situation as indicated by the learned Attorney General and the other counsel supporting his submissions.

18. 'The Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975' framed by this Court provide in Rule 3 that the Court may take action even suo motu in such a matter. Rule 6 requires the contemner, unless otherwise ordered, to appear in person before the Court as directed on the date fixed for hearing of the proceeding and to continue to remain present during hearing till the proceeding is finally disposed of by order of the Court. Rule 10 provides that the Court may direct the Attorney General or the Solicitor General to appear and assist the Court. It is in this manner that the Attorney General was

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directed to appear and assist the Court while the Solicitor General appeared in this matter for the Union of India. Rule 11 provides that the Court may, if it has reason to believe, that the person charged is absconding or is otherwise evading service of notice, or if he fails to appear in person or to continue to remain present in person in pursuance of the directions, direct a warrant bailable or non-bailable for his arrest, addressed to one or more police officers and the warrant shall be executed by the officer or officers to whom it is directed. These Rules therefore, provide for procuring the personal appearance of the contemner in this Court if the Court has reason to believe that the contemner is evading service or he fails to appear in person in spite of the directions of this Court. In the present case, the contemner's repeated and categorical refusal to appear in this Court in spite of this Court's orders and grant of considerable indulgence to him till now is clear from the statements made in his affidavits and through his counsel, who has appeared for him throughout.

19. The learned Attorney General, the learned Solicitor General and Shri Kapil Sibal are right in their submission that the power of this Court in such matters is not confined merely to the provisions of the Contempt of Courts Act, 1971 and the rules framed thereunder but is plenary to punish any person for Contempt of court, and for that purpose to require his presence in person in this Court in the manner considered appropriate in the facts of the case. They refer particularly to Articles 129 and 142 apart from Article 145 of the Constitution of India.

20. Article 129 says that the Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

21. Article 142 provides for enforcement of decrees and orders of Supreme Court and lays down that the Supreme Court shall have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

Article 141 declares the binding effect of the law declared by the Supreme Court which is a clear provision to indicate that the meaning of 'law' is to be understood as declared by the Supreme Court. Obviously, it is not for anyone else including the Speaker to decide what the 'law' is, and make an interpretation of the 'law' contrary to the declaration of law made by the Supreme Court. Article 144 contains the constitutional obligation of all authorities in the territory of India to act in aid of the Supreme Court. These provisions are well known and they are mentioned in this order once again in the present case merely for the

benefit of the contemner who has wilfully and deliberately refused to obey and ignored not merely the orders of this Court but has also chosen to ignore the provisions in the Constitution itself, to which he must have sworn allegiance before taking his seat as a Member of the Manipur Legislative Assembly.

22. The contention of the contemner's immunity from the process of this Court even in a contempt proceeding, wherein a prima facie case of criminal contempt is made out against him, requiring his personal presence to answer that charge and to be present at the hearing, hinted by the contemner in his affidavits and raised by his counsel is totally misconceived, and this was indicated to his counsel repeatedly. The immunity given by Article 361 of the Constitution is not to a Speaker and no other provision supports this submission.

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23. From the documents filed by the Union of India, it is evident that even the Union Home Minister has strongly advised the contemner to desist from the course he has chosen to adopt and to obey the orders of this Court, which is his constitutional obligation. The present Attorney General as well as his predecessor-in-office and the Solicitor General have also categorically and repeatedly expressed their opinion that it is the duty of the contemner to obey the orders of this Court and appear in this Court in person as directed. Shri Kapil Sibal who appears for the Chief Secretary of the State of Manipur has also expressed the same view in his submissions.

24. After hearing learned counsel at length on December 8, 1992 we had reserved the order for further reflection. On further and in-depth consideration of this matter on account of the fact that the contemner also happens to occupy the office of Speaker of a Legislative Assembly, we find that there is no escape from the obvious and logical conclusion emerging from the submissions made by the learned Attorney General of India and endorsed by the learned Solicitor General of India and Shri Kapil Sibal. While we reach this unfortunate decision in discharge of our constitutional obligation, we draw some solace from the fact that this situation is the creation of the contemner, Dr H. Borobabu Singh himself who continues to persist in his contumacy by repeatedly declaring that he would not obey the orders of this Court directing his personal appearance to participate in the contempt proceedings against him. It is unfortunate that a person who holds the constitutional office of Speaker of a Legislative Assembly has chosen to ignore the constitutional mandate that this country is governed by the 'rule of law' and what the law is, is for this Court to declare in discharge of its constitutional obligation which binds all in accordance with Article 141 of the Constitution of India and Article 144 then says that all authorities are to act in aid of the orders made by this Court. The contemner has chosen to ignore also the obvious corollary of rule of law that no person is above law. Having done our best to make the contemner see reason and be present by granting him indulgence repeatedly to the extent that the learned Attorney General of India at one of the earlier stages said that our indulgence and leniency was being construed as the weakness of the Court, we are constrained to now take the only appropriate and logical course to which the Court is driven in these circumstances. That obvious course is to require the production of the contemner, Dr H. Borobabu Singh in person before this Court, giving such a direction to the authority considered to be appropriate, in

the circumstances of the case, to ensure compliance with this order.

25. It is our constitutional duty which requires us to make this order, to uphold the majesty of law and justify the confidence of the people, that no one in this country is above the law and governance is not of men but of the 'rule of law'. It is unfortunate that this action has to be taken against a person who happens to be the Speaker of a Legislative Assembly, but that does not permit us to apply the law differently to him when he has wilfully and contumaciously driven the Court to this course. We must remind ourselves that the 'rule of law' permits no one to claim to be above the law and it means 'be you ever so high the law is above you'. It was said long back : 'to seek to be wiser than the laws, is forbidden by the law'.

26. We are also of the opinion that the issuance of a direction to any Magistrate to produce the contemner in this Court would be merely an exercise

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in futility in view of the obvious conduct of the contemner which includes the threat even to the Chief Secretary of the State as indicated by him. The learned Solicitor General of India appearing for the Union of India submitted that in case it is considered appropriate to issue such a direction to the Government of India, necessary action in this behalf would be taken by the Government of India to comply with the order. We have no doubt that in the existing situation to which this Court has been driven by the wilful and contumacious conduct of the contemner himself, the only appropriate order to make is to direct the Government of India to produce the contemner, Dr H. Borobabu Singh in person in this Court on the next date of hearing, taking such steps as are necessary for the purpose. We direct, accordingly. It is further clarified that the Government of India would be entitled to take all such steps, which are necessary including the use of minimum force which may be required, for compliance with this Court's order directing the production of the contemner in this Court. A copy of this order be sent forthwith by the Registrar (Judicial) to the Home Secretary, Government of India for prompt compliance. The next date of hearing is fixed for March 23, 1993 on which date the Government of India must produce the contemner, Dr H. Borobabu Singh before this Court.

27. List on March 23, 1993.+

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