CASE NO.:
Contempt Petition (civil) 83 of 2005

PETITIONER:
T. N. Godavarman Thirumulpad Through the Amicus Curiae

RESPONDENT:
Ashok Khot and Anr.

DATE OF JUDGMENT: 10/05/2006

BENCH:
CJI, ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

CONTEMPT PETITION (C) NO. 83 of 2005
IN
WRIT PETITION (C) NO. 202 of 1995

ARIJIT PASAYAT, J.

The "King is under no man, but under God and the law"- was the reply of the Chief Justice of England, Sir Edward Coke when James-I once declared "Then I am to be under the law. It is treason to affirm it"-so wrote Henry Bracton who was a Judge of the King’s Bench.

The words of Bracton in his treatise in Latin "quod Rex non debat esse sub homine, sed sub Deo et Lege" (That the King should not be under man, but under God and the law) were quoted time and time again when the Stuart Kings claimed to rule by divine right. We would like to quote and requote those words of Sir Edward Coke even at the threshold.

In our democratic polity under the Constitution based on the concept of ’Rule of law’ which we have adopted and given to ourselves and which serves as an aorta in the anatomy of our democratic system. THE LAW IS SUPREME.

Everyone whether individually or collectively is unquestionably under the supremacy of law. Whoever he may be, however high he is, he is under the law. No matter how powerful he is and how rich he may be.

Disobedience of this Court’s order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the Courts have to be respected and protected at all costs. Otherwise, the very corner stone of our constitutional scheme will give way and with it will disappear the rule of law and the civilized life in the society. That is why it is imperative and invariable that Court’s orders are to be followed and complied with.

The case at hand involves two contemnors. Shri Ashok Khot (hereinafter described as 'contemnor No.1') was the Principal Secretary, Department of Forest, Government of Maharashtra and Shri Swarup Singh Naik (hereinafter described as 'contemnor No.2') was the Minister, Incharge of Department of Forest at the relevant point of time.

On the basis of submissions made by learned Amicus Curiae, proceedings were initiated against them. It was highlighted by learned Amicus Curiae that the respondents have acted in brazen defiance of the orders of this Court and their conduct constitutes the contempt by way of (a) wilful dis-obedience of directions issued by this Court, (b) the manner in which contemnors have conducted themselves clearly tends to lower the authority of this Court and obstructs the administration of justice (c) as their conduct falls both under the definition of Civil contempt, as well as seeing dimensions of the matters, under criminal contempt.

It was pointed out by learned Amicus Curiae that this Court by order dated 4.3.1997 directed the closure of all un-licensed saw mills, veneer and plywood industries. Further by order dated 30.10.2002 it was directed that no State Government would permit the opening of any saw mill, veneer and plywood industry without the prior permission of the Central Empowered Committee (in short the 'CEC'). The State of Maharashtra by I.A.414 sought permission to permit the re-opening of saw mills/veneer and plywood industries inter alia dependent on imported timber; which permission was declined by this Court's order dated 14th July, 2003. On enquiries made by CEC as well as learned Amicus Curiae the State Government stated that the orders of this Court will be complied with and six mills in question i.e. (i) M/s Oriental Veneer Products Ltd. (ii) M/s Konark Plywood Industries Ltd. (iii) M/s Great Western Plywood Industries Ltd. (iv) M/s Pagoda Woods Pvt. Ltd. (v) M/s Woodmac (Bombay) Pvt. Ltd. (vi) Luckywood Products Pvt. Ltd. were actually closed.

But by orders dated 7th April, 2004 and 29th May, 2004 the State of Maharashtra granted permission to aforesaid six units to operate in the State. Such permissions were granted on the basis of decisions taken by the contemnors 1 and 2 deliberately and consciously though fully aware of the orders of this Court with the sole motive of favouring those units and to evade enforcement of the orders of this Court. It was pointed out that as a result of such orders, the units have been permitted to operate in direct contravention of the orders of this Court.

Initially, responses were filed by contemnors 1 and 2 but on consideration thereof this Court was of the view that in fact contempt of this Court's order has been committed and, therefore, by order dated 3.2.2006 charges were framed as follows:

"Whereas this Court by its order dated 4.3.1997 directed the closure of all un-licensed saws mills, veneer and plywood industries, and further by its order of 30th October, 2002, directed that no State Government would permit the opening of any saw mills, veneer and plywood industries, without the prior permission of the Central Empowered Committee and whereas the State of Maharashtra, through its Interlocutory

Application NO.414 sought permission to permit the reopening of the saw mills/veneer and plywood industries inter alia dependent on imported timber, which permission was declined by rejection of their application by this Court on 14th July, 2003.

Whereas in response to enquiries made by the Central Powered Committee as well as the Amicus Curiae, the State Government assured that the orders of this Court will be complied with and six mills in question i.e. (i) M/s Oriental Veneer Products Ltd. (ii) M/s Konark Plywood Industries Ltd. (iii) M/s Great Western Plywood Industries Ltd. (iv) M/s Pagoda Woods Pvt. Ltd. (v) M/s Woodmac (Bombay) Pvt. Ltd. (vi) Luckywood Products Pvt. Ltd. were actually closed.

AND whereas vide orders dated 7th April, 2004 and 29th May, 2004 the State of Maharashtra granted permission to aforesaid six units to operate in the State.

AND whereas from the affidavit filed and the records produced it is apparent that these permissions were granted on the basis of decision taken by Respondent Nos. 1 and 2 deliberately and consciously and after being aware of the orders of the Court with the sole motive to favour these units and to evade enforcement of the orders of this Court.

AND whereas as the result of these orders the mills have been permitted to operate in direct contravention of the orders of this Court.

AND whereas a hand-written Marathi note has been added in the original record on Ist February, 2005 by respondent NO.1 which amounts to interpolation of the record.

AND whereas the minutes, Annexure-D from pages 47 to 57 filed by respondent No.2 show addition in the manner noticed in the order dated 27th January, 2006.

AND whereas by their conduct respondent Nos. 1 and 2 have not only violated the direction to the State to ensure that unlicensed saw mills/veneer and plywood industries are not allowed to operate, but have also attempted to lower the authority of the Court by granting permission which act clearly was in derogation of the authority exercised by the Court in exercise of its constitutional powers over the officers and employees of the State Government.

AND whereas respondents 1 and 2 have interpolated the record in the manner above noted.

AND whereas by virtue of the aforesaid

acts, the respondents are guilty of civil and/or criminal contempt of Court by having wilfully dis-obeyed the orders of the Court as well as having acted in a manner that attempt to lower the authority of this Court as well as interferes in the administration of justice by preventing enforcement of directions issued by the Court which constitutes a criminal contempt."

Affidavits in relation to the charges have been filed by contemnors. Their stand in essence is as follows:

COTEMNOR NO.1:

He has stated that the opinion given by him was based on the decision taken by the High Powered Committee (in short 'H.P.C.') on 28.1.2004. He has further stated that if he has made a mistake in his bona fide interpretation of the orders of this Court there was no mens rea involved and he tenders his unconditional apology. He has stated that there is no question of any disobedience, much less wilful disobedience of the orders passed by this Court so as to amount the contempt of this Court's order. It is stated that the State Government was of the opinion that units running exclusively on slicer or peeler machines do not require a licence and, therefore, cannot be termed as un-licensed units even after the order of this Court dated 4.3.1997. The units in question were not closed. Subsequently, the Nagpur Bench of the Bombay High Court by order dated 10th August, 1998 passed in Writ petition 3795 of 1995 (known as 'Kitply case') directed that even the slicing and peeling machines being run along with licensed saw mills would require separate license. As a result of this order, the said units were also closed. Several writ petitions were filed by the aggrieved units and the State decided to take a policy decision in the matter. Consequently, on 15.5.2001 the State Government constituted H.P.C. to take a policy decision in respect of such peeler and slicer units. The units in question applied to the State Government for permission to re-commence their operation. Their stand was that they were not using any saw mills but only peeler and slicer machines and were operating on the basis of "No Objection Certificates" issued by the Forest Department and the licenses issued by the Industries Department. On receipt of the representation, a meeting was held by contemnor No.2 which was attended by Principal Conservator of Forest, the Conservator of Forest, the Deputy Secretary of Forest Department, one Shri Tripathi whose role in the present matter is of considerable importance. Contemnor No.1 was not present in the meeting but his stand was that the contemnor No.2 who is the Minister gave direction as per the discussion to submit a note for his order. The Deputy Secretary of the Department Sri Tripathi in his note clearly stated that the requests should not be accepted and express orders from this Court and the Bombay High Court were necessary for the purpose. Contemnor No.1 expressed otherwise and in view of the alleged decision of the H.P.C. and the stand of the State Government before the Courts suggested that the units should be permitted to operate. The contemnor No.2 being the final authority i.e. the Minister-in-charge of the Forest Department accepted his stand. It was further pointed out that the units were to operate exclusively using imported wood. Therefore, in essence, his stand is that there is no wilful dis-regard of this Court's orders and no contempt was committed. So far as the charge relating to interpolation of records is concerned, he has stated that he

has not interpolated any records of this Court. On the contrary, the handwritten note was made by him on 1.2.2005 during the course of hearing before CEC. By a bona fide mistake, the note was made in the official file and not on a separate piece of paper. He, therefore, has stated that there was no intention of manipulation or interpolation of the official records.

CONTEMNOR NO.2

The stand of contemnor No.2 is that he has acted bona fide without any mens rea. He has also tendered his unconditional apology. It is pointed out that he is qualified only upto secondary school level and belongs to Scheduled Tribe category and had represented the Nandurbar Lok Sabha Constituency as a Member of Parliament, was a member of the Legislative Council nominated by the Government of Maharashtra as well as a member of the State Assembly from Nawapur Assembly. He is presently one of the senior-most members of the Maharashtra Legislative Assembly and a member of the Cabinet being Minister of Transport, Ports, etc. He was the Minister of Forest and Environment between 19.10.1999 and 31.10.2004. The expert H.P.C. was constituted. The view expressed by it was at variance with the view of the State Government. Though he was not aware of the details of the orders he was conscious of the fact that giving the growing technicalities of the law involved in the day to day functioning of the Ministry in contrast to his background and the level of his educational qualification, it was not feasible for him to arrive at an appropriate decision unilaterally without being assisted by responsible officers of the Government. Therefore, in line what was decided by the H.P.C. which was constituted for a specific purpose and comprised of top bureaucrats and other important limbs of the Government and public personalities, the decisions arrived at by them would be entitled to great respect. The H.P.C. took the decision on 28.1.2004, and taking note of various relevant factors indicated in the representations made on or about 25.3.2004 passed the order. It is now alleged that the same amounted to violation of this Court's orders. He had concurred with the views expressed by contemnor No.1 and it was also clarified that the unitholders have closed the units after the decisions rendered by this Court as well as by the Bombay High Court, Nagpur Bench. He in his capacity as Minister-in-Charge endorsed the view of the senior most bureaucrat/officer of the Department of Forest and Revenue, Government of Maharashtra and accepted the proposal which was forwarded to him. There is no mens rea or personal element in the alleged contumacy. So far as the allegations that he had deliberately given false explanation about the view of H.P.C., it was submitted that due to wrong typing of the pages and the preparation of draft by learned counsel the mistake has occurred and there is deliberateness involved.

There are several factors which completely nullify the alleged claim of bona fides made by the contemnors. Firstly, the note made by the Deputy Secretary, Shri Tripathi is of great relevance in showing as to how the stand taken by contemnor No.1 is clearly false and the claim of acting bona fide is falsified. The note reads as follows:

"As directed by Pr. Secretary (F) on 2.4.2004

1. In the said filed, four applications, which have been submitted by the Oriental Veneer products Ltd. Konark Plywood Product Ltd,

Pagoda Woods Private Ltd, Great Western Wood Private Ltd, are being dealt with. The applicants have requested to grant the licences for running their units.

2. The history behind these cases are as:

a. In the State veneer and plywood units can be placed into three categories, first, units which are running along with saw mills, licences, second which are running exclusive, by using slicer and peeler machines and third which are running along with unlicensed saw mills.

b. The issue of veneer and plywood units came first time in the matter of T.N. Godaverman v. Union of India (W.P. No.171/96, 202/95) before Supreme Court. Hon'ble Supreme Court directed to the State Government to file affidavit before the Court, regarding the status of saw mills, veneer & plywood units in the State. The affidavit was filed by State Government before the Supreme Court treating veneer & plywood industries units as composite units along with saw mills. According to the affidavit, which implied, that veneer & plywood industries if running along with license saw mills may be treated as licensed unit and if running, without unlicensed saw mills may be treated as unlicensed. On 4.3.1997 Hon'ble Supreme Court passed order as under:

"All unlicensed saw mills, veneer and plywood industries in the State of Maharashtra and State of U.P. are to be closed forthwith and the State Government would not remove or relax the condition for grant of permission/licence for the opening of any such saw mills, veneer and plywood industries and it shall also not grant any fresh permission/licence for this purpose.

3. The State Government approached the apex Court by way of filing I.A.No.414 of January 99 with request to allow State Government to grant licences to existing unlicensed ply wood and veneer industries which require saw milling activities but have industrial licences and also allow the State Government to issue licences to saw mill and veneer/plywood industries which

intend to operate on imported timber from outside the country. The matter came before apex court for final hearing on 14.7.2003. The Hon'ble Supreme Court rejected the request made by State Government and disposed off the I.A.NO.414 along with other I.As.

4. After the order of Hon'ble Supreme Court on 4.3.1997, the unlicensed saw mills in these plywood/veneer industries were closed, no other machinery in these industries was closed because of the interpretation of the Bombay Forest Rule 1942 was that only sawing machine i.e. band saw/horizontal saw/circular saw need licence. However, in the W.P. No.3795/95, Kit Ply case Hon'ble Bombay High Court Bench at Nagpur on 10.8.1998 made it clear that petitioner (i.e. Kitply's owner) do not entitle to operate any machinery or saw mills for cutting, slicing and/or peeling the timber without licence, as contemplated under rule 23(i)(ii) of Bombay Transit Forest Product Rule, 1960 (Vidarbh region, Saurashtra & Kutch areas).

5. After this judgement Mumbai High Court Bench Nagpur in Kitply's case the Forest Department issued instructions to the field officer to close the slicing and peeling machinery. This resulted in closure of wood conversion machinery i.e. slicer & peelers machine in the industries. Therefore, these industries filed W.Ps. in the Mumbai High Court Nagpur Bench. The gist of their main argument was as follows:

"Forest department never demanded licence to run veneer & plywood machinery therefore they were not getting licence from Forest Department to operate these units. Hence at this stage they cannot be compelled for licence to operate these units."

The Badar (Special Counsel Forest) admitted before the Court that Government is taking policy decision in this case.

6. This issue came before the High Powered Committee comprised under C.S. on 2.6.2001 and 13.6.2001. In the meeting on the issue of licensing of veneer and plywood industries the Committee took following decision:

"The Committee has decided that at this stage it will not be proper to make any licensing policy regarding veneer and plywood industry. However, industry department may be directed not to issue any new licence for establishment of veneer and plywood

units."

6. This decision of the Committee, after getting the approval of State Government submitted in the High Court in W.P. NO.3795/95, 1315/2001, 3731/78. In the hearing of these W.Ps. the Hon'ble Court observed that:

"It leads nowhere, as to the existing position, whether today a licence is required to the complete veneer unit or whether it is required only where a saw mill unit is in existence? Why the seal should not be open. Why these industries should not be allowed to run. The decision is vague it only says for future that Forest Department is not going to grant any licence and decision would have been taken by industry department."

7. Since the issue to giving the licences to the veneer & plywood industries was not decided then this matter was put up further before High Powered Committee on 28th January, 2004. The H.P.C. on this issue took following decision.

a. Licence should be given to those veneer and plywood Industries which were in operation prior to 4.3.1997.
b. The veneer and plywood industries running only on slicer and peeler machine are required to get the licence.

c. Slicing and peeling machine cannot be treated as composite unit along with saw mills.

d. The Hon'ble High Court may be apprised according to the decision of State Government.

8. On the basis of decision taken by H.P.C. the matter may be placed before the Hon'ble Court, by way of filing affidavit, after taking the approval from State Government. This is under consideration and shortly affidavit shall be filed before the Hon'ble Court.

9. In view of above, in my opinion, the matters of the applicants may be considered only after getting permission from the State Government and the Hon'ble Courts.

Submitted for information and approval.

Sd/- 5.4.2004
Pr.Secretary(F)"

After referring to the history behind the cases, the orders

passed by this Court on 4.3.1997 and 14.7.2003, the order dated 10.8.1998 passed by the Bombay High Court, Nagpur Bench, the opinion of the H.P.C., the Deputy Secretary categorically indicated his stand as follows:

"On the basis of decision taken by H.P.C. the matter may be placed before the Hon'ble Court by way of filing affidavit, after taking the approval from State Government. This is under consideration and shortly affidavit shall be filed before the Hon'ble Court.

In view of the above, in my opinion, the matter of the applicants may be considered only after getting permission from the State government and the Hon'ble Courts.

Submitted for information and approval."

Contemnor No.1 Shri Ashok Khot on 5.4.2004 completely ignored the view expressed by the Deputy Secretary, and on a clear and what appears to be a deliberate mis-reading of the H.P.C.'s recommendations expressed the view that there seems to be no objection in using imported timber for plywood/veneer/flash door/black board etc. since the permission given by the Conservator of Forest was prior to the orders of this Court i.e. 20.2.1997 and 21.2.1997 and these units can be made operational subject to the decisions of the Nagpur Bench of the Bombay High Court and of this Court. The permission shall be at the responsibility of unit holders and the unit holders shall close the units if the decisions of the Bombay High Court and this Court are contrary to the stand put forward by the Maharashtra State. Contemnor No.1 noted as follows:

"Thanks. Proposal accepted. Permission be granted to start."

With reference to the orders passed by contemnors 1 and 2 several units in other States like U.P. started making demands for similar permissions. When this came to the notice of the CEC and learned Amicus Curiae, they intimated the State Government about the violation of the orders. The view of the CEC was contested by the State of Maharashtra. Here comes into picture the manipulation in the official records. It has been accepted by contemnor No.1 that on 1.2.2005 he had made a note in Marathi in the official file. Significantly, rest of the note sheets is in English. The stand that he wanted to highlight certain aspects during the hearing is clearly contrary to the materials on record. He claims to have made the entry on 1.2.2005. But materials clearly establish that by that time the file was in the possession of CEC. Further, the High Powered Committee in its recommendations on 21.8.2004 had never finally decided in the manner projected by contemnor No.1. The file indicates something very interesting. Just before the note by contemnor No.1 recommending the grant of permission to saw mills which is a typed note running into several pages there is a hand-written note undated which suggested that there were different points of view on the subject and an opinion of counsel who was the then Advocate General presently the learned Solicitor General was also available. The obvious

purport of this note was to show that there were also others who did not share the view of the subordinate officer who had suggested that the proposal to re-open the mills was to be rejected.

Since there was no comment of CEC on this note, learned Amicus Curiae made an enquiry from CEC to find out whether the note had missed the attention of members of CEC and whether they had enquired into the correctness of what was stated in the note. The Member Secretary of the CEC asserted that he did not recollect having seen any such note and therefore made enquiries from the Chief Secretary, Maharashtra.

Reply of the Chief Secretary is also very significant. The Chief Secretary handed over a set of zeroxed pages of the file which he had returned before handing over the files to the CEC and they did not carry any such note. The object of introducing this note is very clear i.e. to show that his view was a possible view as there were different view points on the subject. In his reply, contemnor No.1 had stated that the files were kept in the custody of the Joint Secretary and were returned to the Forest Department on 1.2.2005 by CEC and the files were brought to this Court by the Joint Secretary subsequently. The relevant files were always in the possession of the Joint Secretary since then and were produced before this Court by him on 15.4.2005. He has stated that he had never been in possession of the files except when required. He has further stated that there was never any manipulation of file by him as alleged. He re-iterated that as a matter of fact that there has been no specific insertion as alleged by learned Amicus Curiae. This stand was subsequently given a go bye. He admitted to have made the note. Then comes the other palpably unacceptable and frivolous explanation that instead of writing on a separate piece of paper he by mistake wrote on the official file. Apart from the frivolity of the plea, it is clearly further falsified by the fact that on 1.2.2005 the file was with the CEC. These leave no manner of doubt that contemnor No.1 has deliberately and wilfully disregarded the authority of law.

In B.M. Bhattacharjee (Major General) and Anr. v. Russel Estate Corporation and Anr. (AIR 1993 SC 1633) it was observed by this Court that "all of the officers of the Government must be presumed to know that under the constitutional scheme obtaining in this country, orders of the courts have to be obeyed implicitly and that orders of the apex court-for that matter any court- should not be trifled with".

Any country or society professing rule of law as its basic feature or characteristic does not distinguish between high or low, weak or mighty. Only monarchies and even some democracies have adopted the age old principle that the king cannot be sued in his own courts.

Professor Dicey’s words in relation to England are equally applicable to any nation in the world. He said as follows:

"When we speak of the rule of law as a characteristic of our country, not only that with us no man is above the law but that every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. In England the idea of legal equality, or the universal subjection of all classes to one

law administered by the ordinary courts, has been pushed to its utmost limit. With us every official, from Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done with legal justification as any other citizen. The reports abound with cases in which officials have been brought before the courts, and made, in their personal capacity, liable to punishment, or to the payment of damages, for acts done in their official character but in excess of their lawful authority. A colonial governor, a secretary of State, a military officer, and all subordinates, though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorize as is a private and unofficial person. (See Introduction to the Study of the Law of the Constitution, 10th Edn. 1965, pp. 193-194).

Respect should always be shown to the Court. If any party is aggrieved by the order which is in its opinion is wrong or against rules or implementation is neither practicable nor feasible, it should approach the Court. This had been done and this Court after consideration had rejected the I.A. long before.

Stand of contemnor No.2 is that he being not very highly educated depended on the view of the H.P.C./high placed officials. This plea is not only hollow but without any substance. As the contemnor No.2 in his reply has indicated that he has been a parliamentarian, a member of Legislative Assembly and Minister for very long period. To say that he was not aware of the complexities of the orders of this Court and, therefore, depended on the top bureaucrats is a futile attempt to shift the responsibility. He has not even indicated as to why the view of the Deputy Secretary, Shri Tripathi was not to be accepted. He tried to take shelter behind the so called view of the H.P.C. and an alleged mistake committed by the typist. In the further affidavit it has been stated that the learned counsel drafting the petition took note of mistake committed by the typist and accordingly drafted the reply. It is pointed out that the correct documents were available with CEC and he would not derive any advantage by taking plea contrary to the documents. The specific case is that the mistake occurred at the stage of filing of the reply. Even if that is so, it is certainly a very careless act and more care and caution was necessary, particularly when the affidavits were being filed before this Court.

The stand of contemnors also is further falsified when one takes note of the order passed by the High Court in Kitply's case on 10.8.1998. It was clarified that for operation of any machinery for cutting, slicing and/or peeling the timber - a license under Rule 23 (1)(ii) of the Bombay Transit of Forest Produce (Vidarbha region Saurashtra and Kutch Area) Rules, 1960 is required. It is not disputed that since 1999 corresponding Rule 88 of Bombay Forest Rules, 1942 (in short 'Forest Rules, 1942) has become applicable for entire Maharashtra. Keeping that in view I.A.No.414 of 1999 was filed to permit grant of license under Forest Rules, 1942 to unlicensed Plywood/veneer industries, which had NOC, industrial license etc. and to wood based industries which intended to operate only on imported timber. The said I.A. was

rejected by this Court on 14.7.2003. This Court accepted recommendations of CEC. It was further directed as follows:

"So far as 64 saw mills which claimed to be actually eligible for grant of licenses as per notification dated 16.7.1981 are concerned their cases may be examined by the State Government within a period of two months and if found eligible, their application may be sent to the CEC which may submit a report to this Court".

(Underlined for emphasis)

It is thus crystal clear that the applications of those eligible for grant of licenses were required to be sent to CEC, who was then required to submit a report to this Court. Thereafter, this Court would have decided on the question of entitlement for license. The procedure mandated by this Court was not followed. Instead of that by their impugned actions, the contemnors permitted resumption of operations by the unit holders. There was absolutely no confusion or scope for entertaining doubt as claimed by the contemnors.

There is one other factor which shows the brazen manner in which facts have been distorted and without any manner of doubt wilfully. As noted by the CEC in its second Report, the Chief Conservator of Forests, Maharashtra by his letter dated 15.2.2000 had stated that pursuant to this Court's order dated 4.3.1997 and High Court's order dated 10.8.1998, 40 unlicensed plywood/veneer units were closed during 1999. These 40 units include the six units to whom subsequently permission was granted. Their names figure at Sl. Nos. 29, 30, 36, 37, 38 and 55 of the list enclosed to the letter dated 15.2.2000. But during a raid conducted by the Regional Deputy Director (WL) Western Region, MOEF on 22.3.2004, the premises of one of six units M/s Oriental Veneer Products Pvt. Ltd. (which was sealed on 21.3.1999), the seal was found to be broken and the unit was functioning. The raid conducted on 22.3.2004 appears to have pressed the panic button for making representations on or about 25.3.2004. The orders were passed on these representations showing scant regard for this Court's order.

The explanations of the contemnors are clearly unacceptable. Mens rea is writ large.

The inevitable conclusion is that both the contemnors 1 and 2 deliberately flouted the orders of this Court in a brazen manner. It cannot be said by any stretch of imagination that there was no mens rea involved. The fact situation clearly shows to the contrary.

Learned counsel appearing for contemnor No.1 and 2 stated that they have tendered unconditional apology which should be accepted.

Apology is an act of contrition. Unless apology is offered at the earliest opportunity and in good grace, the apology is shorn of penitence and hence it is liable to be rejected. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment it ceases to be an apology and becomes an act of a cringing coward.

Apology is not a weapon of defence to purge the guilty of their offence, nor is it intended to operate as universal panacea, but it is intended to be evidence of real contriteness. As was noted in L.D. Jaikwal v. State of Uttar Pradesh (AIR 1984 SC 1374) "We are sorry to say we cannot subscribe to the 'slap-say sorry-and forget' school of thought in administration of contempt jurisprudence. Saying 'sorry' does not make the slapper taken the slap smart less upon the said hypocritical word being uttered. Apology shall not be paper apology and expression of sorrow should come from the heart and not from the pen. For it is one thing to 'say' sorry-it is another to 'feel' sorry.

Proceedings for contempt are essentially personal and punitive. This does not mean that it is not open to the Court, as a matter of law to make a finding of contempt against any official of the Government say Home Secretary or a Minister.

While contempt proceedings usually have these characteristics and contempt proceedings against a Government department or a minister in an official capacity would not be either personal or punitive (it would clearly not be appropriate to fine or sequest the assets of the Crown or a Government department or an officer of the Crown acting in his official capacity), this does not mean that a finding of contempt against a Government department or minister would be pointless. The very fact of making such a finding would vindicate the requirements of justice. In addition an order for costs could be made to underline the significance of a contempt. A purpose of the court's powers to make findings of contempt is to ensure the orders of the court are obeyed. This jurisdiction is required to be co-extensive with the courts' jurisdiction to make the orders which need the protection which the jurisdiction to make findings of contempt provides. In civil proceedings the court can now make orders (other than injunctions or for specific performance) against authorized Government departments or the Attorney General. On applications for judicial review orders can be made against ministers. In consequence such orders must be taken not to offend the theory that the Crown can supposedly do no wrong. Equally, if such orders are made and not obeyed, the body against whom the orders were made can be found guilty of contempt without offending that theory, which could be the only justifiable impediment against making a finding of contempt. (See M v. Home Office (1993 (3) All ER 537).

This is a case where not only right from the beginning attempt has been made to overreach the orders of this Court but also to draw red-herrings. Still worse is the accepted position of inserting a note in the official file with oblique motives. That makes the situation worse. In this case the contemnors deserve severe punishment. This will set an example for those who have propensity of dis-regarding the court's orders because of their money power, social status or posts held. Exemplary sentences are called for in respect of both the contemnors. Custodial sentence of one month simple imprisonment in each case would meet the ends of justice. It is to be noted that in Re: Sri Pravakar Behera (Suo Motu C.P. 301/2003 dated 19.12.2003) (2003 (10) SCALE 1126), this Court had imposed costs of Rs.50,000/- on a D.F.O. on the ground that renewal of license was not impermissible in cases where licenses were issued prior to this Court's order dated 4.3.1997. That was the case of an officer in the lower rung. Considering the high positions held by the contemnors more

stringent punishment is called for, and, therefore, we are compressing custodial sentence.

The contempt petition No.83 of 2005 with I.A. Nos.1503 and 1504 in WP (C) No.202 of 1995 are disposed of.