

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
(Appellate Jurisdiction)

**PRESENT:**

Raja Saeed Akram Khan, C.J.  
Kh. Muhammad Nasim, J.  
Raza Ali Khan, J.  
Muhammad Younas Tahir, J.

1. Civil Appeal No.78 of 2022  
(Filed on 14.06.2022)

Khawaja Muhammad Maqbool War, Advocate  
Supreme Court Advocate General of AJK, Resident  
of Khawaja House, Neelum Road, Lower Plate,  
Muzaffarabad.

... APPELLANT

VERSUS

1. Sardar Muhammad Javed Ayub, Member  
Legislative Assembly Azad Jammu & Kashmir  
Muzaffarabad.
2. Syed Bazil Ali Naqvi Member Legislative  
Assembly Azad Jammu & Kashmir  
Muzaffarabad.
3. Shah Ghulam Qadir Member Legislative  
Assembly Azad Jammu & Kashmir  
Muzaffarabad.
4. Ch. Javid Iqbal Member Legislative Assembly  
Azad Jammu & Kashmir Muzaffarabad.
5. Raja Muhammad Farooq Haider Khan Member  
Legislative Assembly Azad Jammu & Kashmir  
Muzaffarabad.
6. Ch. Latif Akber Member Legislative Assembly  
Azad Jammu & Kashmir Muzaffarabad.
7. Ch. Muhammad Yaseen Member Legislative  
Assembly Azad Jammu & Kashmir  
Muzaffarabad.

8. Registrar High Court of AJ&K High Court Building Lower Chatter, Muzaffarabad.

.... RESPONDENTS

9. Azad Govt. of The State of Jammu and Kashmir through its Chief secretary having his office at new Secretariat Complex Lower Chatter, Muzaffarabad.
10. Department of Law, Justice, Parliamentary Affairs and Human Rights through its Secretary, New Secretariat Complex Lower Chatter, Muzaffarabad.

.... PROFORMA RESPONDENTS

[On appeal from the order of the High Court dated 10.06.2022 in writ petition No.1207/2022]

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FOR THE APPELLANT: M. Tabassum Aftab Alvi, Advocate.

FOR RESPONDENT No.5: Raja Ayaz Ahmed, Advocate.

2. Civil Appeal No.74 of 2022  
(PLA filed on 14.06.2022)

1. Azad Government of the State of Jammu and through Chief Secretary having his office at Civil Secretariat Chatter Domail, Muzaffarabad.
2. Principal Secretary to the Prime Minister of Azad Government of the State of Jammu and Kashmir, Office situated at Prime Minister Secretariat Muzaffarabad.
3. Azad Government of the State of Jammu and Kashmir through Secretary Local Government and Rural Development, Muzaffarabad.

4. Secretary Local Government and Rural Development Azad Government of the State of Jammu and Kashmir, office situated at New Secretariat, Muzaffarabad.
5. Director General Local Government and Rural Development Azad Government of the State of Jammu and Kashmir.

.... APPELLANTS

VERSUS

1. Sardar Muhammad Javed Ayoub, Member Legislative Assembly of Azad Jammu & Kashmir-I, LA-27 R/o village Chareel Duberyal Tehsil Naseerabad Pattika District Muzaffarabad, Azad Jammu & Kashmir.
2. Syed Bazil Ali Naqvi, Member Legislative Assembly of Azad Jammu & Kashmir Muzaffarabad-2, LA-28 R/o Village Miani Bandi Tehsil and District Muzaffarabad, Azad Jammu & Kashmir.
3. Shah Ghulam Qadar, Member Legislative Assembly of Azad Jammu & Kashmir Neelum-1, LA-25, Azad Jammu and Kashmir.
4. Ch. Javed Iqbal Budhanvi, Member Legislative Assembly of Azad Jammu & Kashmir, R/o Village Budhan Khud Gojran Tehsil & District Kotli, Azad Jammu and Kashmir.
5. Raja Muhammad Farooq Haider Khan, Ex-Prime Minister Azad Jammu and Kashmir now Member Legislative Assembly Muzaffarabad VI LA-XXXII R/o Village Chikar Tehsil Hattian District Jhelum Valley now residing at Jhelum Valley House, Muzaffarabad.
6. Ch. Latif Akbar, Member Legislative Assembly of Azad Jammu & Kashmir Opposition Leader of Azad Jammu and Kashmir Assembly, R/o Sawan Tehsil and District Muzaffarabad.

7. Mian Abdul Waheed Member Legislative Assembly of Azad Jammu and Kashmir Neelum-2, LA-26 R/o Village Kundal Shahi Tehsil and District Neelum, Azad Jammu and Kashmir.
8. Chaudhary Muhammad Yasin, Member Legislative Assembly of Azad Jammu & Kashmir, Constituency LA-X Kotli III Azad Kashmir.
9. Amir Yasin Chaudhary, Member Legislative Assembly Constituency LA-XII Kotli V Azad Kashmir.
10. Ch. Qasim Majeed MLA Constituency LA-II Mirpur-II R/o Chaksawari Mirpur Azad Kashmir.
11. Waqar Ahmed Noor, Member Legislative Assembly of Azad Jammu & Kashmir Bhimber-1, LA-05, Azad Jammu and Kashmir.
12. Sardar Amir Altaf, Member Legislative Assembly of Azad Jammu & Kashmir Poonch-2, LA-19, Azad Jammu and Kashmir.
13. The Hon'ble Larger bench of High Court through Registrar High Court of Azad Jammu and Kashmir, Muzaffarabad.

#### RESPONDENTS

14. Raja Ilyas Khan Ex. Candidate Pakistan Tehrik Insaf Neelum II LA-26, Neelum Athmaqam Azad Jammu and Kashmir.
15. Raja Mansoor Khan Ex. Candidate Pakistan Tehrik Insaf Muzaffarabad, 5 LA-31 Azad Jammu and Kashmir.
16. AJ&K Bar Council through its Secretary, having his office at District Complex Muzaffarabad.

17. President of Azad Jammu and Kashmir through its Secretary Presidential Affairs, President Secretariat Muzaffarabad.
18. Secretary Law, Justice, Parliamentary Affairs and Human Rights Department, Azad Government of the State of Jammu and Kashmir.
19. Office of the Advocate General through Administration Officer, having his office at Supreme Court Building, Muzaffarabad.
20. Project Manager Markaz Kahori, Tehsil Pattaika District Muzaffarabad.
21. Mir Attiq-ur-Rehman candidate, Pakistan Tehrik Insaf Muzaffarabad-1, LA-27 Kutla Muzaffarabad.
22. Ch. Shahzad Mahmood Ex-Candidate Pakistan Tehrik-e-Insaf, LA-28 Muzaffarabad-2 Lachrat, District Muzaffarabad, Azad Jammu and Kashmir.
23. Sardar Gul-e-Khandan Ex-Candidate Pakistan Tehrik-e-Insaf Neelum-1, LA-25, Azad Jammu and Kashmir.
24. Ch. Anwar-ul-Haq Noor Ex-candidate Pakistan Tehrik-e-Insaf Bhimber-1, LA-05, Azad Jammu and Kashmir.
25. Sardar Arzish Ex-candidate Pakistan Tehrik-i-Insaf Poonch-2, LA-19, Azad Jammu and Kashmir.
26. Project Manager Markaz District Kotli Azad Jammu and Kashmir.
27. Ch. Asif Hanif Khailve LA-9 Kotli-2 Nakayal, Ex-Ticket Holder Pakistan Tehrik-e-Insaf year 2021 Resident of Navel Khud Gojran Tehsil and District Kotli, Azad Jammu and Kashmir.

28. Sardar Naeem Arzoo Ex-Ticket Holder Pakistan Tehrik-i-Insaf LA-9 Kotli-2 year 2016 Resident of Basala Colony Duruti Mora of Nikayal District Kotli, Azad Jammu and Kashmir.
29. Syed Zeeshan Haider Candidate Pakistan Tehrik-e Insaf LA-XXXII Muzaffarabad-6, Hattian-1.
30. Scrutiny Committee for the Development Scheme of the Local Government Department.
31. Deputy Director Local Government, District Muzaffarabad Azad Jammu and Kashmir office situated at Muzaffarabad.
32. Assistant Director Local Government, District Neelum Azad Jammu and Kashmir.
33. Assistant Director Local Government, District Muzaffarabad, Azad Jammu and Kashmir, office situated at New Secretariat Muzaffarabad.
34. Khawaja Muhammad Maqbool War, Advocate General Azad Jammu and Kashmir, having his office at Supreme Court Building, Muzaffarabad.

.... PROFORMA RESPONDENTS

[On appeal from the order of the High Court dated 10.06.2022 in writ petition No.1207/2022]

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FOR THE APPELLANTS: Raja Mazhar Waheed Khan, Addl. Advocate General.

FOR THE RESPONDENTS: Ch. Shoukat Aziz, Mr. Pervaiz Mughal, Ch. Mushtaq Ahmed and Raja Ayaz Ahmed,

Advocates.

Date of hearing: 29.06.2022

**JUDGMENT:**

**Raja Saeed Akram Khan, C.J.—** We intend to dispose of both the titled appeals through this proposed judgment as the common question of law is involved in this lis.

2. Facts of the case, briefly stated are that, nine writ petitions in relation to Development Schemes of Local Government Department were filed before the High Court. During the proceedings in the said writ petitions, on 10.06.2022, the learned High Court passed the following order:-

“This case was called at 9:30 AM in view of acts of the respondents in violation of stay order issued by this Court, the Advocate General was directed to inform and produce Chief Secretary before the Court at 10:30 AM. At 10:30 AM the case has been called again, the Chief Secretary did not appear and Advocate General apprised the Court that Chief Secretary has deputed Additional Chief Secretary to appear on his behalf. The Advocate General was again ordered to produce the Chief Secretary whereupon he refused to obey the order and stated that he does not want to argue the case. The conduct of the Advocate General is

highly regrettable, contemptuous and tantamount to degrade the prestige of the Court which cannot be ignored in any stretch of imagination so he is relieved from his job and the concerned authority is directed to issue notification in this regard and for said reason his license of Advocacy is hereby suspended till further orders and copy of this order shall be sent to Chief Executive of the Azad Jammu and Kashmir for intimation and further action. Notice shall be issued to Chief Secretary of State of Jammu and Kashmir to appear before the Court at 11:15 AM today. The office shall ensure the service of summon upon the Chief Secretary. To come up at 11:15 AM."

The order (supra) is the subject matter of both the titled appeals.

3. Mr. M. Tabassum Aftab Alvi, Advocate, representing the appellant, Kh. Muhammad Maqbool War (Advocate General), submitted that the Advocate General is appointed by the Worthy President under Article 20 of the Azad Jammu and Kashmir Interim Constitution, 1974 (Constitution) hence, the learned High Court was not empowered to relieve him of the office. In this perspective, the impugned order passed by the High Court is coram-non-judice. He further added that the



appellant has not committed the contempt of Court. On 10.06.2022, he was busy before this Court, whereas, for prosecuting the cases before the High Court the Additional and Assistant Advocate Generals were deputed. At 10:30 a.m. on the information for appearance given by the Addl. Advocate General, the appellant appeared before the High Court. The learned High Court directed him to produce the Chief Secretary to the Government of Azad Jammu and Kashmir. Accordingly, the appellant conveyed the Chief Secretary to appear before the Court who later on also appeared in person, hence, the appellant has never disobeyed the order of the Court. He further added that before passing the impugned order the appellant has not been provided with an opportunity of being heard which is sheer violation of basic principle of natural justice i.e., *Audi Alteram Partem*. Even otherwise, in this regard, a specific procedure is provided under the Contempt of Courts Act, 1993 which includes the framing of

charge, provision of the list of allegations and the right of hearing, but in the instant case the procedure provided under law has not been adopted. The impugned order on the face of it is a void order, hence, it has no existence in the eye of law as has been held in the case reported as *Muhammad Rashid vs. Azad Jammu and Kashmir Govt. & others* [PLD 1987 SC(AJ&K) 60].

4. The learned Additional Advocate General supported the arguments advanced by Mr. M. Tabassum Aftab Alvi, Advocate.

5. Raja Ayaz Ahmed, Advocate, submitted that in view of the series of events happened before the High Court, the impugned order has rightly been passed which is not open for interference by this Court. The other learned counsel dropped their arguments for the reason that the matter is between the Court and the contemner.

6. We have heard the learned counsel for the parties and gone through the record. At the very outset, it may be observed here that the purpose and philosophy of law of contempt is to maintain the confidence of the general public and the litigants in the Courts and to keep the course of justice free and to ensure the uninterrupted administration of law and justice. To speak generally, Contempt of Court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants or their witnesses during the litigation. The contempt proceedings are not initiated just to protect the Judges but to vindicate the honour of the Court, so that the confidence which the public retains in superior Courts in the State is not weakened.<sup>1</sup> The purpose of the proceedings for contempt is to maintain the dignity of the Court. Committal for contempt of

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<sup>1</sup> *Robkar-e-Adalat vs. Shahid Mohi-ud-Din* [2017 SCR 1411].

Court is a weapon which is to be used sparingly and always with reference to administration of justice where *ex facie* some contempt of Court has been committed.

7. With reference to the argument of the learned counsel for the appellant that the Contempt of Courts Act, 1993 provides a specific procedure including the framing of charge, provision of list of allegations and the right of hearing, which has not been adopted in this case; we would like to highlight here the scope of the powers vested in the Supreme Court and High Court in relation to contempt of Court. Article 45 of the Constitution provides that:-

“45. Contempt of Court.- (1) In this Article “Court” means the Supreme Court of Azad Jammu and Kashmir or the High Court.

(2) A Court shall have power to punish any person who-

(a) Abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court;

- (b) Scandalizes the Court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule or contempt;
  - (c) Does anything which tends to prejudice the determination of a matter pending before the Court; or
  - (d) Does any other thing, which by law, constitutes contempt of the Court.
- (3) The exercise of the power conferred on a Court by this Article may be regulated by law and, subject to law, by rules made by the Court."

Sub-Article (3) of Article 45 of the Constitution postulates that powers of a Court under Article 45 may be regulated by law and rules made by Court. For that purpose, the Contempt of Courts Act, 1993 has been promulgated, section 7 of which is reproduced as under:-

"7. Procedure for Supreme Court and High Court.- (1) Whenever it appears to the Supreme Court or the High Court that there is sufficient ground for believing that a person has committed contempt of Court and that it is necessary in the interest of effective administration of justice to proceed against him, it shall make an order in writing to that effect

setting-forth the substance of the charge against the accused, and, unless the Chief Justice is already on the Bench, the Judge or Judges who take cognizance of the matter, shall forward the case to the Chief Justice for constitution of Bench. The Bench shall comprise of not less than two Judges, unless the Chief Justice for the reason to be recorded, otherwise directs.

- (2) The Court shall issue notice to the accused and inform him grounds on which he is charged.
- (3) The Court, after holding such inquiry and taking such evidence as it deems necessary or is produced by the accused in his own defence and after hearing the accused and such other person as it deems fit, shall a decision in the case:

Provided that, in any such proceedings before the Supreme Court or the High Court, any finding given in its own proceedings by the Supreme Judicial Council about the nature of an averment made before it, that is relevant to the requirements of clause (vi) of the proviso to Section 3, shall be conclusive evidence of the nature of such averment.

- (4) If contempt of Court is committed in presence of the Court, the Court may cause the offender to be detained in custody and, at any time before the rising of the Court on the same day, may proceed against him in the manner provided for in the preceding sub-sections.

- (5) If any case referred to in subsection (4) cannot be finally disposed of on the same day, the Court shall order the release of the offender from custody either on bail or on his own bond."

The Constitution confers jurisdiction on the Supreme Court and a High Court to punish any person who "abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court", whereas, in general terms the Contempt of Courts Act, 1993 indicates the area of exercise of jurisdiction by the Courts in a contempt case. To disobey or disregard an order, direction or process of Court which a person is legally bound to obey, willful breach of an undertaking given to a Court, any act intended to or tend to bring the authority of the Court or the administration of law into disrespect or disrepute and to obstruct, interfere, interrupt or prejudice the process of law or the due course of any judicial proceeding fall within the category of contempt of Court.

8. The powers of the Supreme Court and High Court to proceed against the contemnors are derived from the Constitution and the same cannot be limited or curtailed by way of sub-ordinate legislation. Indeed, in sub-Article (3) of Article 45 of the Constitution, it has been provided that the exercise of the powers conferred on a Court by this Article may be regulated by law and, subject to law, by rules made by the Court, but, in our view, it does not mean that a statute can control or curtail the power conferred on a superior Court by the Constitution. The law referred to in sub-Article (3), *supra*, relates to procedural matters or matters which have not been provided for therein. There is no cavil with the proposition that under law a specific procedure including the framing of charge, provision of list of allegations and the right of hearing has been laid down but at the same time if contempt is committed in the face of the Court or the Judge or the Chief Justice, the contemner may be immediately proceeded against and



punished. It may be pointed out here that the offence of contempt of Court is by its nature purely sui generis. It is a power given to superior Courts to punish summarily any attempt to interfere with the administration of justice, upon the principle that persons who have duties to discharge in a Court of justice should be protected and shielded by the law in order that they may safely resort to Courts of justice. The nature of contempt of Court proceeding was dealt with in the case of *The State vs. Moulana Abdul Rashid Tarkabagish* [PLD 1959 Dacca 252] in the terms that "contempt of Court proceedings are sui generis in nature partaking of some of the elements of both civil and criminal proceedings but really constituting neither, that there was no fixed formula for contempt proceedings and that technical accuracies were not required, nor were we bound by the provisions of the Code of Criminal Procedure or by the technicalities of ordinary criminal proceedings; but, nevertheless being Courts of justice, we would

normally follow the fundamental rules for the ascertainment of the truth by giving the fullest opportunity to the person accused of defending himself and of putting forward his case with as much, if not, more fairness than we would in an ordinary trial before us." Thus, when the contempt is committed in the face of the Court, there remains no need to follow the technicalities of ordinary criminal proceedings, however, the basic requirement in such cases is the ascertainment of truth by providing the contemner a fair hearing to defend himself. In our considered view, looking at the gravity and nature of disobedience, the Court may evolve its own procedure. Such procedure, however, must commensurate with minimum standard of principles of fair play and natural justice i.e., the alleged contemner must at least be provided with an opportunity to answer the charges of contempt. By adherence to minimum standard of principles of natural justice, it would not necessarily mean that Court should inevitably

embark on full-fledged trial with elaborate enquiry and record detailed evidence. No universal formula can be prescribed in this behalf. The Court could adopt and follow such procedure in its discretion as the circumstances of a case demand. Hence, when a contemner commits contempt in the face of Court, the Court is not so handicapped to first of all follow the technicalities of law and then punish the contemner rather, as stated hereinabove, the Supreme Court and High Court enjoy the full powers to punish the contemner forthwith through summary proceedings.

9. In the case reported as *State vs. Dildar Ahmad, Advocate* [PLD 1999 Lahore 156], the division bench of the Lahore High Court made a reference to the Chief Justices that during the course of framing of charge in Ehtesab Reference No.26 of 1998 titled Miss. Benazir Bhutto, some Advocates started noise in the Court, attributed mala fide and asserted that illegalities were being committed by the Bench etc. The Chief Justice

constituted a Full Bench to hear the matter. The respondents contended that the Court should frame charge against each of the respondents. The Court observed as under:-

"3. It is well-settled that proceedings in contempt are a species of its own kind. These are neither civil nor criminal in nature. Some reported judgments describe them as quasi-criminal proceedings. It is nowhere laid down that the allegation in the nature of contempt shall be dealt with like a criminal charge as laid down in Criminal Procedure Code, 1898. The relevant statutory provision is section 7 of the Contempt of Court Act (hereinafter referred to as the Act), which states that "whenever it appears to the Supreme Court or a High Court that there is sufficient ground for believing that a person has committed contempt of Court and that it is necessary in the interest of effective administration of justice to proceed against him, it shall make an order in writing to that effect setting forth the substance of the charge against the accused, and unless he is present in Court, shall require by means of an appropriate process that he appear or be brought before it to answer the charge. In this case, as noted above, on 15-10-1998, this Court tentatively came to the conclusion that respondents have committed contempt of Court and accordingly they were issued the notices. This part of law has, therefore, been fully complied with."

10. In *State vs. Muhammad Akbar Cheema* [PLD 1993 Lahore 658], a five-Member Bench held that “show-cause notice in writing is not necessary when the contempt is committed in view of the Court.” It was further held that “in cases of direct contempt, proceedings are not to take the form of trial. In case of direct contempt, it is not necessary that there be a written charge, framing of issue, or to hold regular trial or examination and that no further proof is necessary when it is case of direct contempt.”

11. From the neighboring country’s jurisdiction, we have found a judgment delivered in the case titled *Pritam Lal v. High Court of M.P* [AIR 1992 SC 904]. In the case (supra), the contemnor alleged that impugned order of the High Court should be set aside on the ground of procedural irregularities. The Supreme Court of India held that the High Court can deal with the contemner summarily and adopt its own procedure. All that is necessary is that the

procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. In paragraphs 24 and 41, it was held that:-

"24. From the above judicial pronouncements of this Court, it is manifestly clear that the power of the Supreme Court and the High Court being the Courts of Record as embodied under Articles 129 and 215 respectively cannot be restricted and trammled by any ordinary legislation including the provisions of the Contempt of Courts Act and their inherent power is elastic, unfettered and not subjected to any limit.

25 to 40 .....

41. The position of law that emerges from the above decisions is that the power conferred upon the Supreme Court and the High Court, being Courts of Record under Articles 129 and 215 of the Constitution respectively is an inherent power and that the jurisdiction vested is a special one not derived from any other statute but derived only from Articles 129 and 215 of the Constitution of India (See D.N. Taneja v. Bhajan Lal, (1988) 3 SCC 26) and therefore the constitutionally vested right cannot be either abridged by any legislation or abrogated or cut down. Nor can they be controlled or limited by any state or by any provision of the Code of Criminal Procedure or any Rules. The caution that has to be observed in exercising this inherent power by summary

procedure is that the power should be used sparingly, that the procedure to be followed should be fair and that the contemnor should be made aware of the charge against them and given a reasonable opportunity to defend himself."

12. In the wordings of Lord Denning *"contempt in the face of the Court was never confined to conduct which a judge saw with his own eyes. It covered all contempts for which a judge of his own motion could punish a man on the spot. So contempt in the face of the court is the same thing as contempt which the court can punish of its own motion. It really means contempt in the cognisance of the court."* The Delhi High Court in the case titled *Louis Vuitton Malletier vs Mr. Omi & Anr* (<https://indiankanoon.org/doc/27540396/>) after referring to the aforesaid wordings of the Lord Denning elaborated the matter of contempt in the face of the Court in the following manner:-

"27. Criminal Contempt is defined under Section 2(c) of the Act, 1971. Section 14 deals with contempt in the face of the Court. Under the said section, the Judge in whose face the contempt is committed can himself/herself forthwith

take notice and issue orders of contempt against the contemnor. Lord Denning has held "contempt in the face of the Court was never confined to conduct which a judge saw with his own eyes. It covered all contempts for which a judge of his own motion could punish a man on the spot. So contempt in the face of the court is the same thing as contempt which the court can punish of its own motion. It really means contempt in the cognisance of the court." [73 Balogh vs. St. Albans Crown Court (supra)].

28. Contempt in the face of the Court may be criminal or civil contempt. However, in both cases of contempt in the face of the Court, the procedure under Section 14 of the Act, 1971 is attracted. For all other cases of criminal contempt Section 15 is applicable.

29. Further, this Court is of the opinion that a contemnor is not in a position of an accused and contempt proceedings are separate and distinct from criminal proceedings. In a criminal trial where a person is accused of an offence, there is a Public Prosecutor who prosecutes the case on behalf of the prosecution against the accused, but in contempt proceedings the Court is both the accuser as well as the Judge of the accusation as observed by the Supreme Court in *Debarata Bandopadhyay Vs. State of West Bengal*, AIR 1969 SC 189. In fact, contempt proceeding is sui generis. It has peculiar features which are not found in criminal proceedings. In this view the contemnors do not stand in the position of a person accused of an offence and the Court is free to evolve its own procedure consistent with principles of fair play and



natural justice. The Supreme Court in Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat & Ors., (1991) 4 SCC 406 has held so. The relevant portion of the said judgment is reproduced hereinbelow:-

"12. ...A criminal contempt is punishable by the superior courts by fine or imprisonment, but it has many characteristics which distinguishes it from ordinary offence. An offence under the criminal jurisdiction is trial by a Magistrate or a Judge and the procedure of trial is regulated by the Code of Criminal Procedure, 1973 which provides an elaborate procedure for framing of charges, recording of evidence, cross-examination, argument and the judgment. But charge of contempt is tried on summary process without any fixed procedure as the court is free to evolve its own procedure consistent with fair play and natural justice. In contempt proceedings unlike the trial for a criminal offence no oral evidence is ordinarily recorded and the usual practice is to give evidence by affidavits....."

30. A Division Bench of the Allahabad High Court in State of U.P. Vs. Deg Raj Singh & Ors., 1983 CrLJ 866 has similarly held as under:-

"27. A contempt is not an offence within the meaning of Section 5(2)

of the Code of Criminal Procedure nor is the contemnor an accused within the meaning of Section 5 of the Oath's Act, or within the meaning of Article 20, Sub- Clause (3) of the Constitution of India. Contempt is an offence to the Court and not to the person who sits as a Judge. Ergo, an insult to the Court if not punished will create a general dissatisfaction in the minds of the public as to the dignity, solemnity and efficacy of the Courts of Justice.

28. A summary and quick mode of meting out punishment to the contemnor if he is guilty is very efficacious in inspiring confidence in public as to the Institution of justice. Without such protection courts would go down in public respect and maintenance of law and order will be in jeopardy...."

31. Since in the present case the respondent no.2/defendant no.2-contemnor has admitted to lying under oath, this Court is of the view that it is not necessary to follow the elaborate procedure of framing a charge and proceeding with a trial.

32. In any event, the Apex Court in *Leila David Vs. State of Maharashtra & Ors.*, (2009) 10 SCC 337 has held, "Although, Section 14 of the Contempt of Courts Act, 1971, lays down the procedure to be followed in cases of criminal contempt in the face of the Court, it does not preclude the court from taking recourse to summary proceedings when a deliberate and willful contumacious incident takes

place in front of their eyes and the public at large...."

33. In the opinion of this Court, the present case is a case of contempt in the face of the Court and therefore, Section 14 of the Act, 1971 applies."

(underlining is ours)

13. The above discussion leads us to hold that it is on the prime satisfaction of the Court that what procedure should be adopted in the matters of contempt. A contempt proceeding may be initiated summarily if the Judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the Court. In that case, it is not necessary that there be a written charge, framing of issue, holding of regular trial or examination of the witnesses rather the Supreme Court and High Court are empowered to proceed against the contemner through summary proceedings. However, it may be observed here that the powers of the Court for contempt of Court should be used sparingly and only in serious cases. The Court should not be either unduly touchy or over-astute

because usefulness of power of contempt depends on the wisdom and restraint with which it is exercised and at least before passing any order in relation to contempt of Court the contemner should be provided an opportunity to explain in his defence. At the same time, it is worth mentioning that the lawyers are the very limbs of the administration of justice. The standard of care as owned by them to the Court and to the unhampered administration of justice, is very much higher than that expected from laymen. They are not mere conduit pipes for passing on the Court whatever is whispered in their ears by clients. We will add nothing in this regard except that the members of the Bar should remember that their primary duty is to the Bench and then to their clients.

14. Now we advert to the fate of the case before us. For resolution of the controversy, the impugned order of the High Court, reproduced hereinabove, can be divided into two parts. In the

first part of the order, the learned High Court declared the conduct of the Advocate General as contemptuous, whereas, in the later part he has been relieved of the office. First of all, we would like to deal with the proposition, whether the learned High Court could relieve the Advocate General of the office. At this stage, it may be stated here that the Advocate General is appointed by the Worthy President under Article 20 of the Constitution which also provides the mode of his removal. The office of the Advocate General being creation of the Constitution, is one of the prestigious offices that's why only a person who is qualified to be appointed a Judge of the High Court, is appointed as Advocate General. The Advocate General performs multiple functions. His principal function is to provide independent legal advice to the Government and to represent the Government in the superior Courts. Another very vital unwritten function of the Advocate-General is to work as a

bridge between the Government and the Courts, thus, this office is of great importance.

15. In our estimation, the impugned order of the High Court to the extent of relieving the Advocate General is not sustainable, for the reason that he is holding the constitutional post. In the case reported as *Zaffar Ali Shah vs. Pervez Musharraf* [PLD 2000 SC 869], it was held by the apex Court of Pakistan that General Pervez Musharraf, Chief of the Army Staff and Chairman Joint Chiefs of Staff Committee is holder of constitutional post, hence, his purported arbitrary removal in violation of the principle of *audi alteram partem* was ab initio void and of no legal effect. In the instant case, if the High Court was of the opinion that the conduct of the Advocate General was unbecoming, two courses were available to the Court. Firstly, the punishment provided under law could have been awarded by conducting a summary proceedings; secondly, the matter could have been brought into the notice of the competent

authority to look into the conduct of the Advocate General and in that case, the competent authority was under obligation to give serious consideration to the observations of the Court, but the learned High Court was not empowered to straightaway relieve the Advocate General and direct the authority to issue the notification in this regard, specially, when the procedure of appointment and removal of the Advocate General finds place in the Constitution. It is repeatedly laid down principle of law that unless specifically excluded, the principle of natural justice which is known as the *audi alteram partem* shall be presumed to be the part of every enactment. According to this principle, no adverse order can be passed against any person without providing him the right of hearing. It is divine right. Even the Allah Almighty who is omnipotent, is so kind that he also provided this right to His creatures.<sup>2</sup> It was held in *Union of India v. Tulsiram Patel* [AIR 1985 SC 1416] that the

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<sup>2</sup> *Muhammad Yousaf vs. Muhammad Arshad Mehmood & others* [2015 SCR 1521]

principles of natural justice are obligatory rules of human conduct which have been established by the author of human nature as essential to the divine purposes in the universe and have been promulgated by God solely through human reason. It would be appropriate to reproduce here paragraph 72 of the referred judgment as follows:-

"72. The principles of natural justice are not the creation of Article 14. Article 14 is not their begetter but their Constitutional guardian. Principles of natural justice trace their ancestry to ancient civilizations and centuries long past. Until about two centuries ago the term "natural justice" was often used interchangeably with "natural law" and at times it is still so used. The expression "natural law" has been variously defined. In Jowitt's Dictionary of English Law (Second Edition, page 1221) it is defined as "rules derived from God, reason or nature, as distinct from man-made law." Black's Law Dictionary (Fifth Edition, page 925) states:

"This expression, 'natural law', or jus natural, was largely used in the philosophical speculations of the Roman jurists of the Antonine age, and was intended to denote a system of rules and principles for the guidance of human conduct which, independently of enacted law or of the systems peculiar to any one people, might be discovered by the



rational intelligence of man, and would be found to grow out of an conform to his nature, meaning by that word his whole mental, moral, and physical constitution. The point of departure for this conception was the stoic doctrine of a life ordered 'according to nature', which in its turn rested upon the purely supposititious existence, in primitive times, of a 'state of nature;' that is, a condition of society in which men universally were governed solely by a rational and consistent obedience to the needs, impulses, and promptings of their true nature, such nature being as yet underacted by dishonesty, falsehood, or indulgence of the baser passions. In ethics it consists in practical universal judgments which man himself elicits. These express necessary and obligatory rules of human conduct which have been established by the author or human nature as essential to the divine purposes in the universe and have been promulgated by God solely through human reason".

In paragraph 96 of the judgment (supra)

it was further held that:-

"96. The rule of natural justice with which we are concerned in these Appeals and Writ Petitions, namely, the audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an

opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of audi alteram partem rule in a quasi-judicial or administrative inquiry. If we look at clause (2) of Article 311 in the light of what is stated above, it will be apparent that clause is merely an express statement of the audi alteram partem rule which is implicitly made part of the guarantee contained in Article 14 as a result of the interpretation placed upon that Article by recent decisions of this Court. Clause (2) of Article 311 requires that before a government servant is dismissed, removed or reduced in rank, an inquiry must be held in which he is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The nature of the hearing to be given to a government servant under clause (2) of Article 311 has been elaborately set out by this Court in Khem Chand's case in the passages from the judgment extracted

above. Though that case related to the original clause (2) of Article 311, the same applies to the present clause (2) of Article 311 except for the fact that now a government servant has no right to make any representation against the penalty proposed to be imposed upon him but, as pointed out earlier, in the case of *Suresh Koshy George v. The University of Kerala and others*, such an opportunity is not the requirement of the principles of natural justice and as held in *Associated Cement Companies Ltd. v. T. C. Shrivastava and others* neither the ordinary law of the land nor industrial law requires such an opportunity to be given. The Opportunity of showing cause against the proposed penalty was only the result of the interpretation placed by the Judicial Committee of the Privy Council in *Lall's Case* upon section 240(3) of the Government of India, 1935, which was accepted by this Court in *Khem Chand's Case*. If, therefore, an inquiry held against a government servant under clause (2) of Article 311 is unfair or biased or has been conducted in such a manner as not to give him a fair or reasonable opportunity to defend himself, undoubtedly, the principles of natural justice would be violated, but in such a case the order of dismissal, removal or reduction in rank would be held to be bad as contravening the express provisions of clause (2) of Article 311 and there will be no scope for having recourse to Article 14 for the purpose of invalidating it."

16. From the bare reading of the impugned order an opinion can easily be formed that no

opportunity of hearing was granted to the appellant before relieving him of the office, whereas, as stated hereinabove, the learned High Court should at least follow the minimum standard of principle of natural justice and provide an opportunity of hearing to the appellant, thus, the impugned order of the High Court is against the basic principle of natural justice i.e., *audi alteram partem* and not maintainable on this ground. Further, the impugned order has also been issued in violation of constitutionally recognized right to fair trial, hence, we are constrained to set aside the same to the extent of relieving the Advocate General of the office and suspension of his license of Advocacy.

17. So far as the observation made by the High Court that the conduct of the Advocate General is contemptuous, is concerned, we have not witnessed the episode of events happened before the High Court, however, it appears from the arguments of the learned counsel for the

appellant that on 10.06.2022, the Advocate General was busy before this Court, whereas, before the High Court the Additional and Assistant Advocate Generals were deputed to appear in the cases. At 10:30 a.m. the Advocate General, who was present in the Supreme Court, was apprised by the Additional Advocate General that he has been called for by the High Court. The Advocate General appeared before the High Court, whereupon, he was directed to produce the Chief Secretary. The learned Advocate General immediately apprised the Chief Secretary to appear before the Court, who later on appeared before the High Court. It is contended by the appellant that he complied with the order of the Court, hence, he has not committed any contempt. In this regard, after passing of the impugned order by the High Court, the Chief Secretary submitted a report before the High Court, which reads as follows:-

“2. It is respectfully submitted that the undersigned was intimated by my office

regarding message of Secretary Local Government pertaining to order of Honorable High Court for my personal appearance before the Honorable Court during the hearing of the above titled cases and thereafter also received a message from the office of the Advocate General that the Honorable Court has ordered personal appearance of Chief Secretary AJ&K in the above cases.

3. That the undersigned intimated both the Secretary Local Government and the Advocate General Office that the undersigned is new to the office, do not have record of the cases and is not aware of the subject cases, therefore, suitable time may be sought from the Honorable Court so that the undersigned may consult and get briefed from relevant offices in order to brief and assist the Court in proper manner and to be prepared to answer any question or concern of the Court. However, I deputed Additional Chief Secretary (Development) to represent Chief Secretary as he is better conversant with the case than myself.

4. That around 10:45 AM, the undersigned received a call from the Honorable High Court and was intimated that the Court does not want briefing of the Chief Secretary on the subject matter, rather it intends to simply pass some orders in presence of the Chief Secretary so that the orders are implemented in letter and spirit. Accordingly, in compliance of the direction, the undersigned appeared before the Honorable Court at 11:15 AM without any record or detailed know-how of the case.

5. That upon appearance before the Court, the Honorable Court remarked that the Court wants to place before the Government, through the Chief Secretary, the judgment passed by the Honorable Supreme Court in a case titled "Sardar Attique Ahmed Khan versus Azad Government and others", SCR 2017 page 1327, and the matter relating to development program known as Prime Minister Community Infrastructure Development Program (PMCIDP) and the Honorable High Court while referring to the relevant portion of para 5 & 6 of the order, directed the Chief Secretary to ensure implementation of the order in letter and spirit."

The aforesaid report conveys that the Chief Secretary received the message from the office of the Advocate General regarding order by the High Court for personal appearance. It may also be stated here that the matter of contempt is essentially between the Court and the contemnor. This is on the principle that the power to punish for contempt is to be exercised only by the Court whose contempt has been committed and not by any other Court. In view of the facts of the case, in our opinion, the learned High Court has declared the conduct of the Advocate General as

contemptuous, whereas, the order of the High Court to relieve him of the office has been set aside by us in the preceding paragraphs, hence, the declaration by the High Court regarding the conduct of the Advocate General as contemptuous, is still part of the record. In the interest of justice, we deem it appropriate to direct the Advocate General to appear before the High Court and explain his conduct orally or in writing. The learned High Court, after providing him a fair opportunity of hearing, shall pass an appropriate order.

These appeals are disposed of in the manner indicated hereinabove.

CHIEF JUSTICE      JUDGE      JUDGE      JUDGE

Muzaffarabad,  
05.07.2022