BEFORE THE NATIONAL GREEN TRIBUNAL

SOUTHERN ZONE BENCH AT CHENNAI

M.A.No.2 OF 2021

IN

ORIGINAL APPLICATION NO: 71 OF 2020 (SZ)

IN THE MATTER OF:-

GAVINOLLA SRINIVAS ....Applicant

Versus

UNION OF INDIA & ORS ... .Respondents

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SRAVAN KUMAR
Ms. KOTHAI MUTHU MEENAL
COUNSEL FOR THE APPLICANT
104, 1st Floor, 14, School Lane
Bengali Market, New Delhi- 110001
Mobile: 9811237009, 97152 16186
Email: advsravan@gmail.com

PLACE: Chennai **DATE: 29.9.2021**

Note on behalf of Applicant

1. https://irrigationap.cgg.gov.in/wrd/projects

ANDHRA PRADESH PROJECTS INFORMATION

Andhra Pradesh is a riverine state with 40 major, medium and minor rivers. Godavari, Krishna, Vamsadhara, Nagavali and Pennar are major interstate rivers.

Evaluation of Irrigation Potential Created

The total Irrigation Potential created in 13 districts of Andhra Pradesh is given below.

Description	Irrigation Potential Created (in Acres)		
	Andhra Region	Rayalaseema Region	Total
Irrigation Potential Created before 1956			
Major & Medium	2701447	271274	2972721
Irrigated area	3.45	7.31	
Irrigation Potential Created 1956 to 02/2015			
Major & Medium	2913010	1022679	3935689
Irrigation Potential Created Since Inception up to 02/2015			
Minor Irrigation	1930169	630275	2560444
APSIDC	611681	91746	703426
Grand Total	8156306	2015973	10172280

The total irrigation potential created under major and medium projects before 1956 was 29.73 Lakh Acres, and from 1956 to 02/2015 is 39.35 Lakh Acres. The Irrigation potential created under Minor irrigation and APSIDC since inception up to 02/2015 is 32.63 Lakh Acres. Thus, the total new irrigation potential created under Major, Medium & Minor irrigation and APSIDC in the state is 101.72 Lakh Acres.

The main objective of irrigation Department in Andhra Pradesh is to create irrigation potential in the draught prone areas, upland areas and upkeep of the existing projects to enhance the agriculture productivity per unit of water.

The irrigation projects are classified based on the irrigated ayacut under the projects.

Major Irrigation Projects	:	Ayacut above 25000 Ac (10,000 ha.)
Medium Irrigation Projects	:	Ayacut above 5000 Ac up to 25000 Acres(10000ha.)
Minor Irrigation Projects	:	Ayacut up to 5000 Acres (2000 ha)

2. According to G.O.94 dated 1.7.2003 issued by Government of Andhra Pradesh:

Stage -1, the administrative approvals will be accorded for the following items which help in preparation of detailed project reports.

i) Detailed investigation
ii) Preparation of EIA and EMP reports, R&R plan, forest clearance etc.,
iii) Preparation of detailed designs/ drawings
iv) Obtaining of necessary clearances
v) Acquisition of minimum lands required
vi) Completion of R&R, EMP etc
vii) Shifting of utilities for R&B Works

3. Maps obtained from http://epams.cwc.gov.in/#

4. GUIDELINES FOR SUBMISSION, APPRAISAL AND ACCEPTANCE OF IRRIGATION AND MULTIPURPOSE PROJECTS, 2017:

Website particulars:
http://www.cwc.gov.in/sites/default/files/Revised_Acceptance_Guidelines_DPR_2017.pdf

http://www.cwc.gov.in/guidelines-and-guide-book-publications

http://www.cwc.gov.in/sites/default/files/dpr_guidelines.pdf

"DETAILED PROJECT REPORT:
4.1 Detailed Project Report (DPR) preparation by the Project Authority has to be undertaken in a consultative mode with CWC. For this, the Project Authority may make a presentation to the specialised Directorates of CWC. Project Authority needs to furnish a certificate indicating that the DPR has been prepared in a consultative mode with the specialized Directorates of CWC i.e. Hydrology, Irrigation Planning, Inter-State Matters and Project Planning from concerned design unit while uploading the DPR in e-PAMS. The certificate needs to be countersigned by the concerned Directorates dealing with the above matters in CWC. The certificate will however not be treated as acceptance by these Directorates of the DPR. CWC would carry out field inspection on need basis.

4.2 CWC will primarily examine hydrology, inter-State aspects, irrigation planning, and economic viability in the DPR. Examination of these aspects by CWC is crucial from the point of view of holistic and unbiased examination of the project. As regards design and safety aspects, States having Central Design Organisation (CDO) accredited* by CWC need to furnish a certificate in the prescribed proforma indicating that the planning & design / safety aspects have been examined by the CDO under State Water Resources Department incorporating the list of BIS codes followed therein. States which don't have CDO/accredited CDO can take the help of accredited CDO of other States. CWC will necessarily examine design aspects in case of those States which don't furnish certificate from accredited CDO with regard to planning and design / safety aspects.

4.3 Online Project Appraisal Management System (e-PAMS) necessitates submission of certificates by various Central agencies / State agencies / or their Accredited agencies (like GSI, CSMRS, CGWB, State Agriculture Department, Accredited agencies of CSMRS / GSI

4.4 Detailed Project Report (DPR) shall be prepared in accordance with applicable Indian Standards and as per the latest" Guidelines for preparation of Detailed Project Reports of Irrigation and Multipurpose Projects" issued by Govt. of India, MoWR, RD & GR (2010), after detailed surveys and investigations. It must be ensured that duly completed check-list, salient features and all relevant details as well as location map, Index map showing command area and canal network, annexures etc. as required by the aforesaid MoWR, RD & GR Guidelines are contained in the report and estimates are comprehensive as well as up-to-date in accordance with the existing Guidelines.

4.5 The clearances obtained in respect of Environment Impact Assessment, Forest, R&R Plans, etc. shall also be appended with DPRs and implied costs shall be duly accounted in the estimate.

4.6 DPR of ERM scheme shall be accepted by CWC for appraisal, only if the original project was accorded investment clearance by the then Planning Commission (now NITI Ayog) / MoWR, RD & GR. However, the ERM of the projects which were completed before 1976 will be accepted by CWC for appraisal.

4.7 Copy of DPR of any project proposed in the river basin for which no tribunal award or inter-State agreement exists, will be circulated to the co-basin States by the Project Authority. CWC will send a copy of the DPR to Resident Commissioner of the party States in New Delhi.

4.8 After circulation of the project report, the co-basin States have to furnish views/observations on the project proposal / report within 45 days of receipt of the report failing which it will be treated that the State has nothing to say.

4.9 In case of Major irrigation and Multi-purpose project, soft copy of the Detailed Project Report shall be submitted only by e-PAMS system and sufficient sets of hard copies of DPR (refer Para 4.15) alongwith relevant certificates from various accredited agencies and clearances as per check-list Annexure- 6 shall be submitted to the Chief Engineer, PAO, CWC for examination.

4.10 In case of medium projects, soft copy of the Detailed Project Report shall be submitted only by e-PAMS system and sufficient sets of hard copies of DPR (refer Para 4.15) alongwith relevant clearances as per check-list Annexure-6 shall besubmitted to Chief Engineer of respective Regional Offices of CWC for examination under intimation to the Chief Engineer, PAO, CWC. etc.) with respect to various aspects such as Geological exploration, rock and soil testing for various engineering parameters, ground water planning, crop yield and market rate, cropping pattern etc., at thetime of submitting the DPR so that the appraisal process can be carried out unhindered within a stipulated time frame. The check list as a part of the e-PAMS for facilitating the Project Authorities to upload the DPR as per the prescribed norms is enclosed as Annexure - 6.

*Accreditation of CDOs and other agencies would be carried out by a Committee headed by Member(D&R), CWC after receipt of requisite information from the concerned State Governments and the list of accredited CDOs of various States will be communicated separately.

4.11 In case of Major, Medium irrigation & Multipurpose projects proposed to be funded under external assistance, soft copy shall be submitted through e - PAMS and sufficient sets of hard copies of DPR (refer Para 4.15)alongwith relevant clearances as per check-list Annexure-6 shall be submitted to the Chief Engineer, PPO, CWC.

4.12 In case of National Projects, soft copy shall be submitted through e - PAMS and sufficient sets of hard copies of DPR (refer Para 4.15) alongwith relevant clearances as per check-list Annexure-6 shall be submitted to the Chief Engineer, PPO, CWC.

4.13 DPRs, not containing details as per check list will not be accepted by the System.

4.14 In case where Design & Planning Organizations are existing in the concerned State and CWC certifies through accreditation process that it has sufficient competency to design such projects and a certificate is furnished by the accredited CDO in prescribed proforma Appendix-J of Annexure - 6 in respect of their detailed examination/clearance of the project proposal and appraisal/clearance of the State level Project Appraisal/Technical Advisory and Environmental Appraisal committees, examination of the project by CWC will be generally restricted to inter- State aspects, basic planning, hydrology and economic viability.

RAYALASEEMA LIFT SCHEME

Agreement Amount in Rupees **33,070,663,247**

Sl.No		Item of Work	Unit	Total	Work done	Balance work	Time period for balance work	Remarks
				Physical	Physical	Physical		
1		**Approach channel**						**Agreement period is 30 Months**
	a	**Investigation, design, preparation and submission of Hp's**						
	b	Excavation	Lakh cum	250	**70**	180	**15 months**	
	c	Diversion for drains and other works						
	d	**Investigation, design ,preparation and submission of lining & Protection works drawing**					**1 month**	
	e	Concrete for Lining	cum	98600		98600	**5 months**	
	f	Shot creting for sides	sqm	122000		122000		
2		**Pump House with intake Forebay**						
	a	**Investigation, design ,preparation and submission of system design and layout , Pumphouse structural design including conducting plate load test and geological Mapping.**					**2 months**	
	b	Excavation	Lakh cum	23.37	22.32	1.05	**1 month**	
	c	Concrete						
		CC for Levelling course	cum	1,573		1573		
		RCC for Raft	cum	66,774		66774		
		RCC for Walls	cum	81,203		81203		

Sl.No	Item of Work		Unit	Total	Work done	Balance work	Time period for balance work	Remarks
				Physical	Physical	Physical		
		RCC for slabs & Beams	cum	14,278		14278	**20 months**	
		CC for plain concrete works	cum	2,855		2855		
		Steel reinforcement	MT	19,760		19760		
		Masonry works	cum	4,200		4200		

Sl.No	Item of Work		Unit	Total	Work done	Balance work	Time period for balance work	Remarks
				Physical	Physical	Physical		
	d	Shot creting for sides	Lakh sqm	0.41	0.3	0.11	**2 months**	**Agreement period is 30 Months**
	e	**Investigation, design ,preparation and submission of Mechanical GAD, Draft tube Drawings, Motor,pump,valve GTP.**					**1 month**	
	f	Electro Mechanical works & Hydro Mechanical works	**No's**	**12**		**12**	**20 months**	
	g	Control Valves/ Protection valves	**No's**	**12**				
	h	Gates & Hoists	**No's**	**12**				
	i	Auxiliary work of Pump House						
3		**Delivery System**						
	a	**Investigation, design ,preparation and submission of Delivery cistern design**						
	b	Tunnelling for Delivery mains	RM	2400	350	2050	**15 months**	
	c	Delivery mains (Pipeline)	RM	2400		2400		
	d	Delivery Cistern Excavation	lakh cum	1.07	1.07			
	e	Delivery Cistern Concrete	lakh cum					
	f	Delivery Channel Excavation	lakh cum					
	g	Delivery Channel Lining	sqm					
	h	Delivery channel protection works	cum					
4		Electrical substation & infrastructure					**10 months**	
5		Removal of spoil and other works					**2 months**	

Sl.No	Item of Work		Unit	Total	Work done	Balance work	Time period for balance work	Remarks
				Physical	Physical	Physical		
6		Operation & Maintenance					**(60+120) months**	

RAYALASEEMA LIFT SCHEME

HILL TOP LEVEL:366.741

SRISAILAM RESERVOIR

NANDIKOTKUR RESERVED FOREST

FOREST AREA

Srisailam Reservoir

256.00

MAADUGULA

ERRAMATAM

GUVVALAKUNTLA RESERVED FOREST

NANDIKOTKUR RF

Pedda Gummadapuram

Dense mixed jungle

MUSALIMADUGU

Chinna Gummadapuram

SRISAILAM RESERVOIR

Maximum flood level 269 metres approximately

VAGU

FRL

PH-1A

KC CANAL

Muchchumarri

Vellala

Vanamulapadu

Nehrunagar

Kotta Muchchumarri

AGIDYALA

SANKIRANI PALLA

CONSIDERED ALIGNMENT ALTERNATIVE-2C APPROACH CHANNEL LENGTH = 17.590Km

PR. APPROACH CHANNEL

PH-2A

PH-2B

GUMMADAPURAM

Sivapuram Cheruvu

Singarajupalli

Bhattuvaripalle

ZADDUVARIPALLE

EDURUPADU

KOKKERANCHU

PAGIDYALA

Kondyala

Pālamari

KC GANNAVOL CUDDAPAH CANAL

PRATHAKOTA

Prātākota

Padamara Prātākota

Raitupalle

M Ghanapuram

GANAPURAM

PH-1B

Lakshmapuram

Bhaskarapuram

CONSIDERED LOCATION PH-2C

PROPOSED ROAD

PUMP HOUSE REGULATOR

POTHIREDDYPADU VILLAGE

Tatipadu

Mandlem Tanda

Mandlem

Pedda Vagu

National Seeds Corporation Colony

JUPADU BUNGALOW

KURNOOL- GUNTOOR ROAD

BANNUR VILLAGE

THUMMALUR VILLAGE

Krishnārāopet

Lakshminagar

SRMC

N NE E SE S SW W NW

ALITERNATIVE-1A
ALITERNATIVE-1B
ALITERNATIVE-2A
ALITERNATIVE-2B
ALITERNATIVE-2C
FRL LINE
STREAM
ROADS
CT
FOREST
VILLAGE
PUMP HOUSE

CLIENT :	GOVERNMENT OF ANDHRA PRADESH WATER RESOURCES DEPARTMENT
PROJECT :	RAYALASEEMA LIFT SCHEME
TITLE:	**RLS-INDEX PLAN**
SCALE	AS SHOWN
PROJECTION	
DRAWING No:	RLS-ALIGNMENT PROPOSAL DRAWING NO-01

A.E.E	D.E.E	E.E	S.E	C.E

RAYALASEEMA LIFT SCHEME

KURNOOL DISTRICT, ANDHRA PRADESH STATE

WATER RESOURCES DEPARTMENT, GOVERNMENT OF ANDHRA PRADESH

INDEX MAP

DWG NO:WAP/WRD/RLS/03

78°20'0"E 78°25'0"E

16°0'0"N 15°55'0"N 15°50'0"N

SRISAILAM RESERVOIR

Jalarlagudem
Siddeswaram
Kapileswaram
Virbhadradurgam
Srisailam
Madugula
Erramatham
Musalimadugu
Pedda Gummadapuram
Chinna Gummadapuram
Kothapalle
Singarajupalle
Bhattuvaripalle
Muchchumarri
Vellala
Vanamulapadu
Nandikotkur
Pagidyala
Kotta Sankarenipalli
Anjaiahnagar
Kotta Biravolu
PAGIDYALA
Palamarri
Padamara Patakota
Pratakota
Raitupalle
N Ghanapuram
M Ghanapuram
Kurnool
Jadduvaripalle
Kokkerancha
Bhaskarapuram
Chabolu
Potireddipadu
Nagampalle
Tatipadu
JUPADU BANGALOW
Jupadu Bungalow
Tummaluru
Bannuru
Lakshminagar
Lingala
Mandlem
Tangedancha
Tarturu
Juturu
Rudravaram
Anandapuram
Tarigopula
Ramasamudram
Lingapuram
Pamulapadu

PROPOSED APPROACH CHANNEL @ 8.892 Km

KURNOOL CUDDAPAH CANAL

SRISAILAM RIGHT BANK CANAL

POTHIREDDYPADU HEAD REGULATOR

SRISAILAM RESERVOIR

NANDIKOTKUR RESERVED FOREST

GUVVALAKUNTLA RESERVE

GUVVALAKUNTLA R F O

Ankalamma Bodu

Chintala Dadi

Rocky knobs

Rocky knob

Boulders

Open scrub

Stony waste

Dense mixed jungle mainly nallamaddi

Eucalyptus plantation

Mixed plantation

Causeway

Aqueduct

Sluice

Siphon

Seed farm

Primary Health Centre

Mango garden

Track follows bed

Fire line follows boundary

Maximum flood level 269 metres approximately

Legend

- Settlement Location
- Existing Canal System
- District Boundary
- Block Boundary
- Forest Boundary
- Srisailam Reservoir (+269.00 MFL)

0 1 2 4

Kilometers

State Government to withdraw from acquisition. A declaration under Section 6 of the Act is made by notification only after formalities under Part VII of the Act which contains Sections 39 to 42 have been complied and the report of the Collector under Section 5-A(2) of the Act is before the State Government who consents to acquire the land on its satisfaction that it is needed for the company. A valuable right, thus, accrues to the company to oppose the proposed decision of the State Government withdrawing from acquisition. The State Government may have sound reasons to withdraw from acquisition but those must be made known to the company which may have equally sound reasons or perhaps more, which might persuade the State Government to reverse its decision withdrawing from acquisition. In this view of the matter it has to be held that Yadi (memo) dated 11-4-1991 and Yadi (memo) dated 3-5-1991 were issued without notice to the appellant (L&T Ltd.) and are, thus, not legal.

32. Accordingly all these appeals are allowed with costs; impugned judgment of the High Court is set aside. SCA No. 1568 of 1987 and SCA No. 5149 of 1989 filed in the High Court are dismissed and SCA No. 5171 of 1991 is allowed. Yadi (memo) dated 11-4-1991 and Yadi (memo) dated 3-5-1991 containing orders of the State Government withdrawing from acquisition of the land are quashed. A direction is issued to Respondents 1 and 2 to complete the acquisition proceeding in pursuance of the notification under Section 4 and declaration under Section 6 of the Land Acquisition Act.

(1998) 4 Supreme Court Cases 409

(BEFORE S.C. AGRAWAL, G.N. RAY, DR A.S. ANAND, S.P. BHARUCHA AND S. RAJENDRA BABU, JJ.)

SUPREME COURT BAR ASSOCIATION .. Petitioner;

Versus

UNION OF INDIA AND ANOTHER .. Respondents.

Writ Petition (C) No. 200 of 1995†, decided on April 17, 1998

A. **Constitution of India — Arts. 142 and 129 — Supreme Court's power of investigation or punishment for contempt of itself is inherent — Though by virtue of Art. 142(2), it is subject to law made by Parliament but such law cannot take away the inherent jurisdiction of Supreme Court — Contempt of Courts Act enacted by Parliament does not deal with Supreme Court's power regarding investigation and punishment for contempt of itself and therefore Supreme Court exercises this power under Art. 129 r/w Art. 142 — However, nature of punishment prescribed under that Act may act as a guide for Supreme Court — But the extent of punishment prescribed under that Act can apply only to High Court — S. 15 of the Act only prescribes procedural mode for taking cognizance of criminal contempt and is not a substantive provision — Contempt of Courts Act, 1971, Ss. 10, 15**

† Under Article 32 of the Constitution of India

B. Constitution of India — Arts. 129 & 142 and 144 — Jurisdiction of Supreme Court to punish an advocate for contempt of court — Different from jurisdiction to punish the advocate for professional misconduct — Former is conferred on the Supreme Court by Art. 129 r/w Art. 142 while the latter is exclusively conferred on the authorities such as State Bar Council or Bar Council of India created under the Advocates Act — Supreme Court while punishing an advocate for contempt of court cannot also punish him by suspending his licence for practise and removing his name from roll of State Bar Council — Such punishment can be imposed by the Bar Council pursuant to an elaborate enquiry — It cannot be imposed by the Supreme Court even by resort to appellate power under S. 38 of Advocates Act — Supreme Court while punishing the contemner advocate cannot exercise its appellate jurisdiction under S. 38 of the Act and impose any punishment prescribed under the Act — Whenever the Court of Record while finding an advocate guilty of contempt also records findings about his conduct and desires or refers the matter to be considered by the Bar Council, the Bar Council should "act in aid of the Supreme Court" as envisaged in Art. 144 and proceed in the manner prescribed in Advocates Act and Rules — But if the Bar Council fails to take any action Supreme Court may consider invoking S. 38 of the Act

C. Constitution of India — Art. 142 — Plenary power of Supreme Court under — Nature and scope — Court in exercise of power under Art. 142 cannot ignore any substantive statutory provision dealing with the subject — It is a residuary power, supplementary and complementary to the powers specifically conferred on the Supreme Court by statutes, exercisable to do complete justice between the parties wherever it is just and equitable to do so — It is intended to prevent any obstruction to the stream of justice

D. Constitution of India — Arts. 129 and 215 — Contempt of court — Jurisdiction of court — Not adversarial in nature — Party who brings to the notice of the court the contumacious conduct is only an informant and not a litigant — When and how the jurisdiction to be exercised stated

E. Constitution of India — Arts. 129 and 215 — Court of record — Meaning of — Words and phrases

F. Constitution of India — Arts. 129 and 215 — Punishment for contempt of court — Recognised and accepted punishments for civil and criminal contempt stated — Determination of what punishment to be imposed — Factors to be considered — To the extent the Contempt of Courts Act, 1971 identifies the nature or types of punishments which can be awarded in the case of established contempt, it does not impinge upon the inherent powers of the High Court under Article 215 either — No new type of punishment can be created or assumed — Contempt of Courts Act, 1971, Ss. 10 and 15 (Paras 33 to 37)

G. Constitution of India — Art. 124 — Supreme Court — Role of has always been of a law-maker and travels beyond merely dispute-settling

Held:

Article 129 vests the Supreme Court with all the powers of a court of record including the power to punish for contempt of itself. A court of record is a court, the records of which are admitted to be of evidentiary value and are not to be questioned when produced before any court. The power that courts of record enjoy to punish for contempt is a part of their inherent jurisdiction and is essential to enable the courts to administer justice according to law in a regular, orderly and effective manner and to uphold the majesty of law and prevent interference in the due administration of justice. (Paras 10 and 12)

Jowitt's *Dictionary of English Law*, First Edn. (p. 526); *Wharton's Law Lexicon*; Nigel Lowe and Brenda Sufrin: *Law of Contempt* (Third Edn.), *relied on*

Besides Article 129, the power to punish for contempt is also vested in the Supreme Court by virtue of Article 142(2). The power of the Supreme Court in respect of *investigation* or *punishment* of any contempt including contempt of itself, is expressly made "subject to the provisions of any law made in this behalf by Parliament" by Article 142(2). However, the power to punish for contempt being inherent in a court of record, it follows that no act of Parliament can take away that *inherent* jurisdiction of the court of record to punish for contempt and Parliament's power of legislation on the subject cannot, therefore, be so exercised as to stultify the status and dignity of the Supreme Court and/or the High Courts, though such a legislation may serve as a guide for the determination of the nature of punishment which the Supreme Court may impose in the case of established contempt. Though Parliament by virtue of Entry 77 List I is competent to enact a law relating to the powers of the Supreme Court with regard to contempt of itself and such a law may prescribe the nature of punishment which may be imposed on a contemner by virtue of the provisions of Article 129 read with Article 142(2), it has not enacted any law dealing with the powers of the Supreme Court with regard to investigation and punishment of contempt of itself. The Contempt of Courts Act does not deal with the powers of the Supreme Court to try or punish a contemner for committing contempt of the Supreme Court or the courts subordinate to it. Therefore, the Supreme Court exercises the power to investigate and punish for contempt of itself by virtue of the powers vested in it under Articles 129 and 142(2). The *nature of punishment* prescribed under the Contempt of Courts Act, 1971 may act as a guide for the Supreme Court but the extent of punishment as prescribed under that Act can apply only to the High Courts, because the 1971 Act ipso facto does not deal with the contempt jurisdiction of the Supreme Court, except that Section 15 of the Act prescribes *procedural mode* for taking cognizance of criminal contempt by the Supreme Court also. Section 15, however, is not a substantive provision conferring contempt jurisdiction. The judgment in *Sukhdev Singh case* as regards the *extent* of "maximum punishment" which can be imposed upon a contemner must, therefore, be construed as dealing with the powers of the High Courts only and not of the Supreme Court in that behalf. Therefore, the view that the *extent of punishment* which the Supreme Court can impose in exercise of its inherent powers to punish for contempt of itself and/or of subordinate courts can also be only to the extent prescribed under the Contempt of Courts Act, 1971 is doubtful. However, no final opinion need be expressed on that question since that issue, strictly speaking, does not arise for decision in this case. The question regarding the restriction or limitation on the *extent* of punishment, which *the Supreme Court* may award while exercising its contempt jurisdiction may be decided in a proper case, when so raised.

(Paras 19, 21, 38 and 29)

Sukhdev Singh v. *Hon'ble C.J., S. Teja Singh*, AIR 1954 SC 186 : 1954 SCR 454, *limited*

Pushpaben v. *Narandas V. Badiani*, (1979) 2 SCC 394 : 1979 SCC (Cri) 511; *S.K. Sarkar, Member, Board of Revenue* v. *Vinay Chandra Misra*, (1981) 1 SCC 436 : 1981 SCC (Cri) 175; *Mohd. Ikram Hussain* v. *State of U.P.*, AIR 1964 SC 1625 : (1964) 2 Cri LJ 590, *relied on*

The powers of the Supreme Court, under Article 129 read with Article 142 of the Constitution, being supplementary powers have "*to be used in exercise of its jurisdiction*" *in the case* under consideration by the Supreme Court. Moreover, a case of contempt of court is not stricto sensu a cause or a matter between the parties inter se. It is a matter between the court and the contemner. It is not, strictly speaking, tried as an adversarial litigation. The party, which brings the contumacious conduct

of the contemner to the notice of the court, whether a private person or the subordinate court, is only an *informant* and does not have the status of a *litigant* in the contempt of court case. (Para 41)

The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemner and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice. (Para 42)

The plenary powers of the Supreme Court under Article 142 of the Constitution are inherent in the Court and are *complementary* to those powers which are *specifically conferred on the Court by various statutes though are not limited by those statutes.* These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of *supplementary* powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, *to prevent injustice* in the process of litigation and *to do complete justice between the parties.* This plenary jurisdiction is, thus, the residual source of power which the Supreme Court may draw upon as necessary *whenever it is just and equitable to do so* and in particular to ensure the observance of the due process of law, *to do complete justice between the parties*, while administering justice according to law. It is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Supreme Court to prevent "clogging or obstruction of the stream of justice". (Para 47)

However, the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to *ignore* the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by "ironing out the creases" *in a cause or matter before it.* Indeed the Supreme Court is not a court of restricted jurisdiction of only dispute-settling. The Supreme Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a "problem-solver in the nebulous areas" but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by the

Supreme Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be *controlled* by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise *may come directly in conflict* with what has been expressly provided for in a statute dealing expressly with the subject. (Paras 47 and 48)

K. Veeraswami v. *Union of India*, (1991) 3 SCC 655 : 1991 SCC (Cri) 734; *Bonkya* v. *State of Maharashtra*, (1995) 6 SCC 447 : 1995 SCC (Cri) 1113; *Prem Chand Garg* v. *Excise Commr., U.P.*, AIR 1963 SC 996 : 1963 Supp (1) SCR 885, *relied on*

It is not possible to agree with the observations of the Bench in *V.C. Mishra case* that the law laid down by the majority in *Prem Chand Garg case* is "no longer a good law". In *Union Carbide Corpn.* v. *Union of India*; the *Delhi Judicial Service Assn. case* and *Mohd. Anis case* relied upon in *V.C. Mishra case* the Supreme Court did not say that substantive statutory provisions dealing expressly with the subject can be *ignored* by the Supreme Court while exercising powers under Article 142. The observations in the *Union Carbide case*, *A.R. Antulay case* and *Delhi Judicial Service Assn. case* go to show that they do not strictly speaking come into any conflict with the observations of the majority made in *Prem Chand Garg case*. The Court did not actually doubt the correctness of the observations in *Prem Chand Garg case*. (Paras 56 and 55)

Vinay Chandra Mishra, Re, (1995) 2 SCC 584, *overruled on this point*

Prem Chand Garg v. *Excise Commr., U.P.*, AIR 1963 SC 996 : 1963 Supp (1) SCR 885, *reaffirmed*

Mohd. Anis v. *Union of India*, 1994 Supp (1) SCC 145 : 1994 SCC (Cri) 251; *Delhi Judicial Service Assn.* v. *State of Gujarat*, (1991) 4 SCC 406 : (1991) 3 SCR 936; *Union Carbide Corpn.* v. *Union of India*, (1991) 4 SCC 584, *harmonised*

A.R. Antulay v. *R.S. Nayak*, (1988) 2 SCC 602 : 1988 SCC (Cri) 372; *State of U.P.* v. *Poosu*, (1976) 3 SCC 1 : 1976 SCC (Cri) 368 : (1976) 3 SCR 1005; *Ganga Bishan* v. *Jai Narain*, (1986) 1 SCC 75; *Navnit R. Kamani* v. *R.R. Kamani*, (1988) 4 SCC 387; *B.N. Nagarajan* v. *State of Mysore*, AIR 1966 SC 1942 : (1966) 3 SCR 682 : (1967) 1 LLJ 698; *Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413; *Harbans Singh* v. *State of U.P.*, (1982) 2 SCC 101 : 1982 SCC (Cri) 361; *K.M. Nanavati* v. *State of Bombay*, AIR 1961 SC 112 : (1961) 1 SCR 497, *cited*

The power of the Supreme Court to punish for contempt of court, though quite wide, is yet limited and cannot be expanded to include the power to determine whether an advocate is also guilty of "professional misconduct" in a summary manner, giving a go-by to the procedure prescribed under the Advocates Act. The power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law but it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act, 1961 by suspending his licence to practise in a summary manner while dealing with a case of contempt of court. (Para 43)

In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing "professional misconduct", depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct *vests exclusively* in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts. (Para 57)

After the coming into force of the Advocates Act, 1961, exclusive power for punishing an advocate for "professional misconduct" has been conferred on the State

Bar Council concerned and the Bar Council of India. That Act contains a detailed and complete mechanism for suspending or revoking the licence of an advocate for his "professional misconduct". Since, the jurisdiction to grant licence to a law graduate to practise as an advocate vests exclusively in the Bar Council of the State concerned, the jurisdiction to suspend his licence for a specified term or to revoke it also vests in the same body. Since the suspension or revocation of licence of an advocate has not only civil consequences but also penal consequences, the punishment being in the nature of penalty, the provisions have to be strictly construed. Punishment by way of suspending the licence of an advocate can only be imposed by the competent statutory body after the *charge* is established against the advocate in a manner prescribed by the Act and the Rules framed thereunder.

(Paras 58 and 71)

Bar Council of Maharashtra v. *M.V. Dabholkar*, (1975) 2 SCC 702, *relied on*

In *V.C. Mishra, Re, case*, the Bench relied upon its appellate jurisdiction under Section 38 of the Advocates Act also to support its order of suspending the licence of the contemner. The Supreme Court is indeed the final appellate authority under Section 38 of the Act but it is not possible to agree with the view that the Supreme Court can in exercise of its appellate jurisdiction under Section 38 of the Act impose one of the punishments prescribed under that Act while punishing a contemner advocate in a contempt case. "Professional misconduct" of the advocate concerned is not a matter directly in issue in the contempt of court case. While dealing with a contempt of court case, the Supreme Court is obliged to examine whether the conduct complained of amounts to contempt of court and if the answer is in the affirmative, then to sentence the contemner for contempt of court by imposing any of the recognised and accepted punishments for committing contempt of court. Keeping in view the elaborate procedure prescribed under the Advocates Act, 1961 and the Rules framed thereunder it follows that a complaint of professional misconduct is required to be *tried* by the Disciplinary Committee of the Bar Council, like the trial of a criminal case by a court of law and an advocate may be punished on the basis of evidence led before the Disciplinary Committee of the Bar Council after being afforded an opportunity of hearing. The delinquent advocate may be suspended from practice for a specified period or even removed from the rolls of the advocates or imposed any other punishment as provided under the Act. The enquiry is a detailed and elaborate one and is not of a *summary nature*. It is therefore, not permissible for the Supreme Court to punish an advocate for "professional misconduct" in exercise of the appellate jurisdiction by converting itself as the statutory body exercising "original jurisdiction". Indeed, if in a given case the Bar Council concerned on being apprised of the contumacious and blameworthy conduct of the advocate by the High Court or the Supreme Court does not take any action against the said advocate, the Supreme Court may well have the jurisdiction in exercise of its appellate powers under Section 38 of the Act read with Article 142 of the Constitution to proceed suo motu and send for the records from the Bar Council and pass appropriate orders against the advocate concerned. In an appropriate case, the Supreme Court may consider the exercise of appellate jurisdiction even suo motu provided there is some cause pending before the Bar Council concerned, and the Bar Council does "not act" or fails to act, by sending for the record of that cause and pass appropriate orders. However, the exercise of powers under the contempt jurisdiction cannot be confused with the appellate jurisdiction under Section 38 of the Act. The two jurisdictions are separate and distinct. It is, therefore, not possible to subscribe to the contrary view expressed by the Bench in *V.C. Mishra case* because in that case the Bar Council had not declined to deal with the matter and take appropriate action against the advocate concerned. Since there was no cause pending before the Bar

Council, the Supreme Court could not exercise its appellate jurisdiction in respect of a matter which was *never* under consideration of the Bar Council. It must, therefore, be held that the Supreme Court cannot in exercise of its jurisdiction under Article 142 read with Article 129 of the Constitution, while punishing a contemner for committing contempt of court, also impose a punishment of suspending his licence to practise, where the contemner happens to be an advocate. Such a punishment cannot even be imposed by taking recourse to the appellate powers under Section 38 of the Act while dealing with a case of contempt of court (and not an appeal relating to professional misconduct as such). To that extent, the law laid down in *Vinay Chandra Mishra, Re* is not good law and we overrule it. (Paras 76 to 78)

Vinay Chandra Mishra, Re, (1995) 2 SCC 584, *overruled on this point*

O.N. Mohindroo v. *District Judge, Delhi*, (1971) 3 SCC 5, *relied on*

In *V.C. Mishra case* the Bench relied upon its inherent powers under Article 142 to punish him by suspending his licence, without the Bar Council having been given any opportunity to deal with his case under the Act. It is not possible to accept that approach. Wider the amplitude of its power under Article 142, the greater is the need of care for the Supreme Court to see that the power is used with restraint without pushing back the limits of the Constitution so as to function within the bounds of its own jurisdiction. To the extent the Supreme Court makes the statutory authorities and other organs of the State perform their duties in accordance with law, its role is unexceptionable but it is not permissible for the Supreme Court to "take over" the role of the statutory bodies or other organs of the State and "perform" their functions. (Para 82)

The Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act "in aid of the Supreme Court". Whenever a court of record records its findings about the conduct of an advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should be initiated by the Bar Council concerned in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards the court or disregard by the court of the privileges of the Bar. In case the Bar Council, even after receiving "reference" from the Court, fails to take action against the advocate concerned, the Supreme Court might consider invoking its powers under Section 38 of the Act by sending for the record of the proceedings from the Bar Council and passing appropriate orders. Of course, the appellate powers under Section 38 would be available to the Supreme Court only and not to the High Courts. (Para 79)

In a given case it may be possible, for the Supreme Court or the High Court, to prevent the contemner advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, the Supreme Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practise as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practise as an advocate in other courts or tribunals. (Para 80)

Suggested Case Finder Search Text (*inter alia*) :

(1) "constitution of india" supreme 142
search in catch words only

Search again and add:

(129 or contempt)

(2) contempt (bar or practise or practice)

Advocates who appeared in this case :

T.R. Andhyarujina, Solicitor General, Kapil Sibal and Dr Rajeev Dhavan, Senior Advocates (R.S. Suri, M.K. Giri, Ranbir Yadav, S.C. Gupta, Arun Pednekar, Vijay Pandeta, Rajesh Kr. Sharma, R.D. Upadhyay, Subrat Birla, P. Parameswaran, A. Subba Rao, R.B. Misra, Kamlendra Misra, R.P. Wadhwani, V.C. Mishra in person and M.M. Kashyap, Advocates, with them) for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (1995) 6 SCC 447 : 1995 SCC (Cri) 1113, *Bonkya* v. *State of Maharashtra* 432*e-f*
2. (1995) 2 SCC 584, *Vinay Chandra Mishra, Re* 417*a*, 418*d*, 430*c-d*, 433*e-f*, 437*f*, 438*b-c*, 442*g*, 444*e*, 444*g-h*, 446*b*, 446*e-f*
3. 1994 Supp (1) SCC 145 : 1994 SCC (Cri) 251, *Mohd. Anis* v. *Union of India* 433*f-g*, 434*d-e*, 437*f*
4. (1991) 4 SCC 584, *Union Carbide Corpn.* v. *Union of India* 433*f-g*, 434*a*, 434*b*, 434*d*, 436*e-f*, 437*f*, 437*g-h*, 438*a-b*
5. (1991) 4 SCC 406 : (1991) 3 SCR 936, *Delhi Judicial Service Assn.* v. *State of Gujarat* 433*f-g*, 434*b*, 434*d*, 434*e*, 437*f*, 437*g-h*
6. (1991) 3 SCC 655 : 1991 SCC (Cri) 734, *K. Veeraswami* v. *Union of India* 432*d-e*
7. (1988) 4 SCC 387, *Navnit R. Kamani* v. *R.R. Kamani* 435*f-g*
8. (1988) 2 SCC 602 : 1988 SCC (Cri) 372, *A.R. Antulay* v. *R.S. Nayak* 435*a-b*, 435*b*, 436*a*, 436*f*, 436*g-h*, 437*g-h*
9. (1986) 1 SCC 75, *Ganga Bishan* v. *Jai Narain* 435*f-g*
10. (1982) 2 SCC 101 : 1982 SCC (Cri) 361, *Harbans Singh* v. *State of U.P.* 435*g*
11. (1981) 1 SCC 436 : 1981 SCC (Cri) 175, *S.K. Sarkar, Member, Board of Revenue* v. *Vinay Chandra Misra* 426*a*
12. (1979) 2 SCC 394 : 1979 SCC (Cri) 511, *Pushpaben* v. *Narandas V. Badiani* 425*e-f*
13. (1976) 3 SCC 1 : 1976 SCC (Cri) 368 : (1976) 3 SCR 1005, *State of U.P.* v. *Poosu* 435*f-g*
14. (1975) 2 SCC 702, *Bar Council of Maharashtra* v. *M.V. Dabholkar* 441*e*, 442*h*
15. (1971) 3 SCC 5, *O.N. Mohindroo* v. *District Judge, Delhi* 443*e*
16. AIR 1966 SC 1942 : (1966) 3 SCR 682 : (1967) 1 LLJ 698, *B.N. Nagarajan* v. *State of Mysore* 435*f-g*
17. AIR 1965 SC 745 : (1965) 1 SCR 413, *Special Reference No. 1 of 1964* 435*f-g*
18. AIR 1964 SC 1625 : (1964) 2 Cri LJ 590, *Mohd. Ikram Hussain* v. *State of U.P.* 426*b*
19. AIR 1963 SC 996 : 1963 Supp (1) SCR 885, *Prem Chand Garg* v. *Excise Commr., U.P.* 432*g*, 433*e-f*, 433*f*, 434*a*, 434*d-e*, 435*a*, 435*b*, 436*f*, 436*g-h*, 437*b-c*, 437*f-g*, 437*g*, 437*h*, 438*b-c*
20. AIR 1961 SC 112 : (1961) 1 SCR 497, *K.M. Nanavati* v. *State of Bombay* 433*c*, 433*e*, 436*c-d*
21. AIR 1954 SC 186 : 1954 SCR 454, *Sukhdev Singh* v. *Hon'ble C.J., S. Teja Singh* 426*c-d*, 428*f-g*

The Judgment of the Court was delivered by

DR ANAND, J.— In *Vinay Chandra Mishra, Re*[1] this Court found the contemner, an advocate, guilty of committing criminal contempt of court for having interfered with and

> "obstructing the course of justice by trying to threaten, overawe and overbear the Court by using insulting, disrespectful and threatening language".

While awarding punishment, keeping in view the gravity of the contumacious conduct of the contemner, the Court said: (SCC p. 626, para 55)

> "*55.* The facts and circumstances of the present case justify our invoking the power under Article 129 read with Article 142 of the Constitution to award to the contemner a suspended sentence of imprisonment together with suspension of his practice as an advocate in the manner directed herein. We accordingly sentence the contemner for his conviction for the offence of criminal contempt as under:
>
> (*a*) The contemner Vinay Chandra Mishra is hereby sentenced to undergo simple imprisonment for a period of six weeks. However, in the circumstances of the case, the sentence will remain suspended for a period of four years and may be activated in case the contemner is convicted for any other offence of contempt of court within the said period; and
>
> (*b*) The contemner shall stand suspended from practising as an advocate for a period of three years from today with the consequence that all elective and nominated offices/posts at present held by him in his capacity as an advocate, shall stand vacated by him forthwith."

2. Aggrieved by the direction that the "contemner shall stand suspended from practising as an advocate for a period of three years" issued by this Court by invoking powers under Articles 129 and 142 of the Constitution, the Supreme Court Bar Association, through its Honorary Secretary, has filed this petition under Article 32 of the Constitution of India, seeking the following relief:

> "Issue an appropriate writ, direction, or declaration, declaring that the Disciplinary Committees of the Bar Councils set up under the Advocates Act, 1961, alone have exclusive jurisdiction to inquire into and suspend or debar an advocate from practising law for professional or other misconduct, arising out of punishment imposed for contempt of court or otherwise and further declare that the Supreme Court of India or any High Court in exercise of its inherent jurisdiction has no such original jurisdiction, power or authority in that regard, notwithstanding the contrary view held by this Hon'ble Court in Contempt Petition (Crl.) No. 3 of 1994 dated 10-3-1995†."

1 (1995) 2 SCC 584

† *Vinay Chandra Mishra, Re*, (1995) 2 SCC 584

3. On 21-3-1995, while issuing rule in the writ petition, the following order was made by the Division Bench:

> "The question which arises is whether the Supreme Court of India can while dealing with contempt proceedings exercise power under Article 129 of the Constitution or under Article 129 read with Article 142 of the Constitution or under Article 142 of the Constitution can debar a practising lawyer from carrying on his profession as a lawyer for any period whatsoever. We direct notice to issue on the Attorney General of India and on the respondents herein. Notice will also issue on the application for interim stay. Having regard to the importance of the aforesaid question we further direct that this petition be placed before a Constitution Bench of this Court."

4. That is how this writ petition has been placed before this Constitution Bench.

5. The only question which we are called upon to decide in this petition is whether the punishment for established contempt of court committed by an advocate can include punishment to debar the advocate concerned from practice by suspending his licence (sanad) for a specified period, in exercise of its powers under Article 129 read with Article 142 of the Constitution of India.

6. Dealing with this issue, the three-Judge Bench in *Vinay Chandra Mishra case*[1] opined: (SCC p. 620, para 45)

> "*45.* The question now is what punishment should be meted out to the contemner. We have already discussed the contempt jurisdiction of this Court under Article 129 of the Constitution. That jurisdiction is independent of the statutory law of contempt enacted by Parliament under Entry 77 of List I of Seventh Schedule of the Constitution. The jurisdiction of this Court under Article 129 is sui generis. The jurisdiction to take cognizance of the contempt as well as to award punishment for it being constitutional, it cannot be controlled by any statute. Neither, therefore, the Contempt of Courts Act, 1971 nor the Advocates Act, 1961 can be pressed into service to restrict the said jurisdiction."

7. The Court repelled the arguments advanced on behalf of the contemner, the U.P. Bar Association and the U.P. Bar Council, that the Court cannot while punishing the contemner with any of the "traditional" or "accepted" punishments for contempt, also suspend his licence to practise as an advocate, since that power is specifically entrusted by the Advocates Act, 1961 to the Disciplinary Committees of the State Bar Council and/or the Bar Council of India. The Bench opined: (SCC p. 624, para 51)

> "*51.* What is further, the jurisdiction and powers of this Court under Article 142 which are supplementary in nature and are provided to do complete justice in any matter, are independent of the jurisdiction and powers of this Court under Article 129 which cannot be trammelled in any way by any statutory provision including the provisions of the

Advocates Act or the Contempt of Courts Act. As pointed out earlier, the Advocates Act has nothing to do with the contempt jurisdiction of the court including of this Court and the Contempt of Courts Act, 1971 being a statute cannot denude, restrict or limit the powers of this Court to take action for contempt under Article 129."

8. Mr Kapil Sibal, learned Senior Counsel appearing for the Supreme Court Bar Association, and Dr Rajeev Dhavan, Senior Advocate appearing for the Bar Council of U.P. and Bar Council of India, assailed the correctness of the above findings and submitted that powers conferred on this Court by Article 142, though very wide in their amplitude, can be exercised only to "do complete justice in any case or cause pending before it" and since the issue of "professional misconduct" is not the subject-matter of "any cause" pending before this Court while dealing with a case of contempt of court, it could not make any order either under Article 142 or 129 to suspend the licence of an advocate contemner, for which punishment, statutory provisions otherwise exist. According to the learned counsel, a court of record under Article 129 of the Constitution does not have any power to suspend the licence of a lawyer to practise because that is not a punishment which can be imposed under its jurisdiction to punish for contempt of court and that Article 142 of the Constitution cannot also be pressed into aid to make an order which has the effect of assuming "jurisdiction" which expressly vests in another statutory body constituted under the Advocates Act, 1961. The learned Solicitor General submitted that under Article 129 read with Article 142 of the Constitution, this Court can neither create a "jurisdiction" nor create a "punishment" not otherwise permitted by law and that since the power to punish an advocate (for "professional misconduct") by suspending his licence vests exclusively in a statutory body constituted under the Advocates Act, this Court cannot assume that jurisdiction under Article 142 or 129 or even under Section 38 of the Advocates Act, 1961.

9. To appreciate the submissions raised at the Bar, let us first notice Article 129 of the Constitution, it reads:

> "129. *Supreme Court to be a court of record.*—The Supreme Court shall be a court of record and shall have all the power of such a court including the power to punish for contempt of itself."

10. The article on its plain language vests this Court with all the powers of a court of record including the power to punish for contempt of itself.

11. The expression *court of record* has not been defined in the Constitution of India. Article 129 however, declares the Supreme Court to be a court of record, while Article 215 declares a High Court also to be a court of record.

12. A court of record is a court, the records of which are admitted to be of evidentiary value and are not to be questioned when produced before any court. The power that courts of record enjoy to punish for contempt is a part of their inherent jurisdiction and is essential to enable the courts to administer justice according to law in a regular, orderly and effective manner and to uphold the majesty of law and prevent interference in the due administration of justice.

13. According to Jowitt's *Dictionary of English Law*, First Edn. (p. 526) a court of record has been defined as:

"A court whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony, and which has power to fine and imprison for contempt of its authority."

14. *Wharton's Law Lexicon* explains a court of record as:

"Record, courts of, those whose judicial acts and proceedings are enrolled on parchment, for a perpetual memorial and testimony; which rolls are called the records of the court, and are of such high and supereminent authority that their truth is not to be called in question. Courts of record are of two classes — superior and inferior. Superior courts of record include the House of Lords, the Judicial Committee, the court of appeal, the High Court, and a few others. The Mayor's Court of London, the County Courts, Coroner's Courts, and other are inferior courts of record, of which the County Courts are the most important. *Every superior court of record has authority to fine and imprison for contempt of its authority; an inferior court of record can only commit for contempts committed in open court, in facie curiae.*"(emphasis provided)

15. Nigel Lowe and Brenda Sufrin in their treatise on the *Law of Contempt* (Third Edn.) (Butterworths 1996), while dealing with the jurisdiction and powers of a court of record in respect of criminal contempt say:

"*The contempt jurisdiction of courts of record forms part of their inherent jurisdiction.*

The power that courts of record enjoy to punish contempts is part of their inherent jurisdiction. The juridical basis of the inherent jurisdiction has been well described by Master Jacob as being:

'the authority of the judiciary to uphold, to protect and to fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner'.

Such a power is not derived from statute nor truly from the common law but instead flows from the very concept of a court of law.

* * *

All courts of record have an inherent jurisdiction to punish contempts committed in their face but the inherent power to punish contempts committed outside the court resides exclusively in superior courts of record.

* * *

Superior courts of record have an inherent superintendent jurisdiction to punish contempts committed in connection with proceedings before inferior courts." (emphasis ours)

16. Entry 77 of List I of the Seventh Schedule of the Constitution provides for:

"77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court."

17. Entry 14 of List III of the Seventh Schedule provides for legislation in respect of:

"14. Contempt of court, but not including contempt of the Supreme Court."

18. The language of Entry 77 of List I and Entry 14 of List III of the Seventh Schedule demonstrates that the legislative power of Parliament and of the State Legislature extends to legislate with respect to matters connected with contempt of court by the Supreme Court or the High Court, subject however, to the qualification that such legislation cannot denude, abrogate or nullify, the power of the Supreme Court to punish for contempt under Article 129 or vest that power in some other court.

19. Besides Article 129, the power to punish for contempt is also vested in the Supreme Court by virtue of Article 142(2).

20. Article 142 of the Constitution reads:

"142. *Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.*—(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) *Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall*, as respects the whole of the territory of India, *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.*"

(emphasis supplied)

21. It is, thus, seen that the power of this Court in respect of *investigation* or *punishment* of any contempt including contempt of itself, is expressly made "subject to the provisions of any law made in this behalf by Parliament" by Article 142(2). However, the power to punish for contempt being inherent in a court of record, it follows that no act of Parliament can take away that *inherent* jurisdiction of the court of record to punish for contempt and Parliament's power of legislation on the subject cannot, therefore, be so exercised as to stultify the status and dignity of the Supreme Court and/or the High Courts, though such a legislation may serve as a guide for the determination of the nature of punishment which this Court may impose in the case of established contempt. Parliament has not enacted any law dealing with the powers of the Supreme Court with regard to investigation and punishment of contempt of itself, (we shall refer to Section 15 of the Contempt of Courts Act, 1971, later on) and this Court, therefore, exercises the power to investigate and punish for contempt of itself by virtue of the powers vested in it under Articles 129 and 142(2) of the Constitution of India.

22. The first legislation to deal with contempt of courts in this country was the Contempt of Courts Act, 1926. It was enacted with a view to define and limit the powers of *certain* courts for punishing contempts of court. The preamble to that Act stated:

> "Whereas doubts have arisen as to the powers of a High Court of Judicature to punish contempts of courts and whereas it is expedient to resolve these doubts and to define and limit the powers exercisable by *High Courts* and *Chief Courts* in punishing contempts of courts, it is hereby enacted as follows:"

Section 2(*i*) says:

> "2. (*i*) Subject to the provisions of sub-section (*iii*), the High Courts of Judicature established by Letters Patent shall have and exercise the same jurisdiction, powers and authority in accordance with the same procedure and practice, in respect of contempts of courts subordinate to them as they have and exercise in respect of contempts of themselves."

23. Since the Act was enacted with a view to "remove doubts about the powers of the High Court to punish for contempt", it made no distinction between one Letters Patent High Court and another though it did distinguish between the Letters Patent High Courts and the Chief Courts. The doubt as a result of conflict of judicial opinion, whether the High Court could punish for contempt of a court subordinate to it, was removed by enactment of Section 2 of the Act (*supra*). The Contempt of Courts Act, 1926 was repealed by the Contempt of Courts Act, 1952. The 1952 Act made two significant departures from the 1926 Act. First, the expression "High Court" was defined to include the Courts of the Judicial Commissioner which had been excluded from the purview of the 1926 Act and secondly, the High Courts, including the Court of a Judicial Commissioner, were conferred jurisdiction to inquire into and "try contempt of itself or of any court subordinate to it", irrespective of whether the contempt was alleged to have been committed within or outside the local limits of its jurisdiction and irrespective of whether the person alleged to be guilty of committing contempt was within or outside such limits. In the matter of imposition of punishment for contempt of court, Section 4 of the 1952 Act provided:

> "4. *Limit of punishment for contempt of court.*—Save as otherwise expressly provided by any law for the time being in force, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:
>
> Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court:
>
> Provided further that notwithstanding anything elsewhere contained in any law for the time being in force, no High Court shall impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a court subordinate to it."

24. Thus, under the existing legislation dealing with contempt of court, the *High Courts* and Chief Courts were vested with the power to try a person for committing contempt of court and to punish him for established contempt. The legislation itself prescribed the nature and type, as well as the extent of, *punishment* which could be imposed on a contemner by the High Courts or the Chief Courts. The second proviso to Section 4 of the 1952 Act (*supra*) expressly restricted the powers of the courts not to "impose any sentence in excess of what is specified in the section" for any contempt either of itself or of a court subordinate to it.

25. After the Constitution of India was promulgated in 1950, it appears that on 1-4-1960, a Bill was introduced in the Lok Sabha "to consolidate and amend the law relating to contempt of court". The Bill was examined by the Government which felt that law relating to contempt of courts was "uncertain, undefined and unsatisfactory" and that in the light of the constitutional changes which had taken place in the country, it was advisable to have the entire law on the subject scrutinised by a special committee to be set up for the purpose. Pursuant to that decision, the Ministry of Law on 29-7-1961 set up a Committee under the Chairmanship of Shri H.N. Sanyal, Additional Solicitor General of India. The Committee came to be known as *Sanyal Committee* and it was required:

> "(*i*) to examine the law relating to contempt of courts generally, and in particular, the law relating to the procedure for the punishment thereof;
>
> (*ii*) to suggest amendments therein with a view to clarifying and reforming the law wherever necessary; and
>
> (*iii*) to make recommendations for codification of the law in the light of the examination made."

26. The Committee, inter alia, opined that Parliament or the legislature concerned has the power to legislate in relation to the substantive law of contempt of the Supreme Court and the High Courts subject only to the qualification that the legislature cannot take away the powers of the Supreme Court or the High Court, as a court of record, to punish for contempt nor vest that power in some other court.

27. After the submission of the *Sanyal Committee Report*, the Contempt of Courts Act, 1952, was repealed and replaced by the Contempt of Courts Act, 1971 which Act was enacted to "define and limit the powers of certain courts in punishing contempts of courts and to regulate their procedure in relation thereto". It would be proper to notice some of the relevant provisions of the 1971 Act at this stage. Sections 2(*a*), (*b*) and (*c*) of the Contempt of Courts Act, 1971 define contempt of court as follows:

> "2. *Definitions*.—In this Act, unless the context otherwise requires,—
>
> (*a*) 'contempt of court' means civil contempt or criminal contempt;
>
> (*b*) 'civil contempt' means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

(*c*) 'criminal contempt' means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(*i*) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or

(*ii*) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(*iii*) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner."

Section 10 provides:

"10. *Power of High Court to punish contempts of subordinate courts.*— Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code, 1860 (45 of 1860) ."

The *punishment* for committing contempt of court is provided in Section 12 of the 1971 Act which reads:

"12. *Punishment for contempt of court.*—(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation.—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary, shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment

may be enforced, with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer."

28. An analysis of the above provision shows that sub-section (1) of Section 12 provides that in a case of established contempt, the contemner may be punished:

(*a*) with simple imprisonment by detention in a civil prison; or

(*b*) with fine; or

(*c*) with both.

A careful reading of sub-section (2) of Section 12 reveals that the Act places an embargo on the court *not* to impose a sentence in excess of the sentence prescribed under sub-section (1). A close scrutiny of sub-section (3) of Section 12 demonstrates that the legislature intended that in the case of civil contempt a sentence of fine alone should be imposed except where the court considers that the ends of justice make it necessary to pass a sentence of imprisonment also. Dealing with imposition of punishment under Section 12(3) of the Act, in the case of *Pushpaben* v. *Narandas V. Badiani*[2] this Court opined: (SCC p. 396, para 6)

"*6.* A close and careful interpretation of the extracted section leaves no room for doubt that the legislature intended that a *sentence of fine alone should be imposed in* normal circumstances. The statute, however, confers special power on the Court *to pass a sentence of imprisonment if it thinks that ends of justice so require.* Thus before a Court passes the extreme sentence of imprisonment, it must give special reasons after a proper application of its mind that a sentence of imprisonment alone is called for in a particular situation. Thus, the sentence of imprisonment is an exception while sentence of fine is the rule." (emphasis supplied)

29. Section 10 of the 1971 Act like Section 2 of the 1926 Act and Section 4 of the 1952 Act recognises the power which a High Court already possesses as a court of record for punishing for contempt of itself, which jurisdiction has now the sanction of the Constitution also by virtue of Article 215. The Act, however, does not deal with the powers of the Supreme Court

2 (1979) 2 SCC 394 : 1979 SCC (Cri) 511

to try or punish a contemner for committing contempt of the Supreme Court or the courts subordinate to it and the constitutional provision contained in Articles 142(2) and 129 of the Constitution alone deal with the subject.

30. In *S.K. Sarkar, Member, Board of Revenue* v. *Vinay Chandra Misra*[3] this Court opined: (SCC p. 441, para 15)

> "*15.* Articles 129 and 215 preserve all the powers of the Supreme Court and the High Court, respectively, as a court of record which include the power to punish the contempt of itself. As pointed out by this Court in *Mohd. Ikram Hussain* v. *State of U.P.*[4], there are *no curbs on the power of the High Court to punish for contempt of itself except those contained in the Contempt of Courts Act.* Articles 129 and 215 do not define as to what constitutes contempt of court. Parliament has, by virtue of the aforesaid entries in List I and List III of the Seventh Schedule, power to define and limit the powers of the courts in punishing contempt of court and to regulate their procedure in relation thereto. Indeed, this is what is stated in the preamble of the Act of 1971." (emphasis supplied)

31. In *Sukhdev Singh* v. *Hon'ble C.J., S. Teja Singh*[5] while recognising that the power of the High Court to institute proceedings for contempt and punish the contemner when found necessary is a special jurisdiction which is inherent in all courts of record, the Bench opined that "the maximum punishment is now limited to six months' simple imprisonment or a fine of Rs 2000 or both" because of the provision of Contempt of Courts Act.

32. In England, according to *Halsbury's Laws of England*, 4th Edn., para 97:

> "*There is no statutory limit to the length of the term of imprisonment which may be imposed for contempt of court by the court of appeal, High Court or Crown Court.* Similarly the statutory provisions relating to the suspension of sentences of imprisonment have no application to committals for contempt.
>
> Although there is no limit to the length of the term which may be imposed, the punishment should be commensurate to the offence. Thus, where contempt is committed owing to a mistaken view of the rights of the offender, the punishment, where imprisonment is deemed necessary, should be for a definite period and should not be severe."

Paras 99 and 100 to 105 of *Halsbury's Laws* deal with the other punishments which may be imposed for contempt of court.

> "99. *Fines and security for good behaviour.—The court may, as an alternative or in addition to committing a contemner, impose a fine or require security for good behaviour.*
>
> *As in the case of imprisonment, there is no statutory limit to the amount of a fine which the court can impose.*

3 (1981) 1 SCC 436 : 1981 SCC (Cri) 175
4 AIR 1964 SC 1625 : (1964) 2 Cri LJ 590
5 AIR 1954 SC 186 : 1954 SCR 454

100. *Other remedies.*—As a further alternative to ordering committal, the court may, in its discretion, adopt the more lenient course of granting an injunction to restrain repetition of the act of contempt. The court may also penalise a party in contempt by ordering him to pay the costs of the application.

* * *

103. *Fine.—The court may, as an alternative to committal or sequestration, impose a fine for civil contempt.*

In assessing the amount of the fine, account should be taken of the seriousness of the contempt and the damage done to the public interest.

104. *Other remedies.—The court may, in its own discretion, grant an injunction, in lieu of committal or sequestration,* to restrain the commission or repetition of a civil contempt. The court may in lieu of any other penalty require the contemner to pay the costs of the motion on a common fund basis.

* * *

105. *Costs.*—The costs of an application for committal are in the discretion of the court, and should be asked for on the hearing of the application. The respondent can as a general rule only be ordered to pay costs if he has been guilty of contempt. An action is maintainable in the Queen's Bench Division to enforce an order made in the Chancery Division to pay the costs of a motion for committal."(emphasis supplied)

33. Thus, the recognised and accepted punishments for civil or criminal contempt of court in English law, which have been followed and accepted by the courts in this country and incorporated in the Indian law insofar as, civil contempt, is concerned are:

(*i*) sequestration of assets;

(*ii*) fine;

(*iii*) committal to prison.

34. The object of punishment being both curative and corrective, these coercions are meant to assist an individual complainant to enforce his remedy and there is also an element of public policy for punishing civil contempt, since the administration of justice would be undermined if the order of any court of law is to be disregarded with impunity. Under some circumstances, compliance of the order may be secured without resort to coercion, through the contempt power. For example, disobedience of an order to pay a sum of money may be effectively countered by attaching the earnings of the contemner. In the same manner, committing the person of the defaulter to prison for failure to comply with an order of specific performance of conveyance of property, may be met also by the court directing that the conveyance be completed by an appointed person. Disobedience of an undertaking may in the like manner be enforced through process other than committal to prison as for example where the breach of undertaking is to deliver possession of property in a landlord-tenant dispute.

Apart from punishing the contemner, the court to maintain the majesty of law may direct the police force to be utilised for recovery of possession and burden the contemner with costs, exemplary or otherwise.

35. Insofar as criminal contempt of court is concerned, which charge is required to be established like a criminal charge, it is punishable by—

(*i*) fine; or

(*ii*) by fixed period of simple imprisonment or detention in a civil prison for a specified period; or

(*iii*) both.

36. In deciding whether a contempt is serious enough to merit imprisonment, the court will take into account the likelihood of interference with the administration of justice and the culpability of the offender. The intention with which the act complained of is done is a material factor in determining what punishment, in a given case, would be appropriate.

37. The nature and types of punishment which a court of record can impose in a case of established contempt under the common law have now been specifically incorporated in the Contempt of Courts Act, 1971 insofar as the High Courts are concerned and therefore to the extent the Contempt of Courts Act, 1971 identifies the nature or types of punishments which can be awarded in the case of established contempt, it does not impinge upon the inherent powers of the High Court under Article 215 either. No new type of punishment can be created or assumed.

38. As already noticed, Parliament by virtue of Entry 77 List I is competent to enact a law relating to the powers of the Supreme Court with regard to contempt of itself and such a law may prescribe the nature of punishment which may be imposed on a contemner by virtue of the provisions of Article 129 read with Article 142(2). Since, no such law has been enacted by Parliament, the *nature of punishment* prescribed under the Contempt of Courts Act, 1971 may act as a guide for the Supreme Court but the extent of punishment as prescribed under that Act can apply only to the High Courts, because the 1971 Act ipso facto does not deal with the contempt jurisdiction of the Supreme Court, except that Section 15 of the Act prescribes *procedural mode* for taking cognizance of criminal contempt by the Supreme Court also. Section 15, however, is not a substantive provision conferring contempt jurisdiction. The judgment in *Sukhdev Singh case*[5] as regards the *extent* of "maximum punishment" which can be imposed upon a contemner must, therefore, be construed as dealing with the powers of the High Courts only and not of this Court in that behalf. We are, therefore, doubtful of the validity of the argument of the learned Solicitor General that the *extent of punishment* which the Supreme Court can impose in exercise of its inherent powers to punish for contempt of itself and/or of subordinate courts can also be only to the extent prescribed under the Contempt of Courts Act, 1971. We, however, do not express any final opinion on that question since that issue, strictly speaking, does not arise for our decision in this case. The question regarding the restriction or limitation

on the *extent* of punishment, which *this* Court may award while exercising its contempt jurisdiction may be decided in a proper case, when so raised.

39. Suspending the licence to practise of any professional like a lawyer, doctor, chartered accountant etc. when such a professional is found guilty of committing contempt of court, for any specified period, is not a recognised or accepted punishment which a court of record either under the common law or under the statutory law can impose on a contemner in addition to any of the other recognised punishments.

40. The suspension of an advocate from practise and his removal from the State roll of advocates are both punishments specifically provided for under the Advocates Act, 1961, for proven "professional misconduct" of an advocate. While exercising its contempt jurisdiction under Article 129, the only *cause* or matter before this Court is regarding commission of contempt of court. There is no cause of professional misconduct, properly so called, pending before the Court. This Court, therefore, in exercise of its jurisdiction under Article 129 cannot take over the jurisdiction of the Disciplinary Committee of the Bar Council of the State or the Bar Council of India to punish an advocate by suspending his licence, which punishment can only be imposed after a finding of "professional misconduct" is recorded in the manner prescribed under the Advocates Act and the Rules framed thereunder.

41. When this Court is seized of a matter of contempt of court by an advocate, there is no "case, cause or matter" before the Supreme Court regarding his "professional misconduct" even though, in a given case, the contempt committed by an advocate may also amount to an abuse of the privilege granted to an advocate by virtue of the licence to practise law but no issue relating to his suspension from practise is the subject-matter of the case. The powers of this Court, under Article 129 read with Article 142 of the Constitution, being supplementary powers have "*to be used in exercise of its jurisdiction*" *in the case* under consideration by this Court. Moreover, a case of contempt of court is not stricto sensu a cause or a matter between the parties inter se. It is a matter between the court and the contemner. It is not, strictly speaking, tried as an adversarial litigation. The party, which brings the contumacious conduct of the contemner to the notice of the court, whether a private person or the subordinate court, is only an *informant* and does not have the status of a *litigant* in the contempt of court case.

42. The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely affects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act complained of adversely affects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining "the jury, the judge and the hangman" and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual judge but to protect the administration of justice from being

maligned. In the general interest of the community it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemner and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice.

43. The power of the Supreme Court to punish for contempt of court, though quite wide, is yet limited and cannot be expanded to include the power to determine whether an advocate is also guilty of "professional misconduct" in a summary manner, giving a go-by to the procedure prescribed under the Advocates Act. The power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law but it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act, 1961 by suspending his licence to practice in a summary manner while dealing with a case of contempt of court.

44. In *Re, V.C. Mishra case*[1] while imposing the punishment of suspended simple imprisonment, the Bench, as already noticed, punished the contemner also by *suspending* his licence to practise as an advocate for a specified period. The Bench dealing with that aspect opined: (SCC p. 624, para 51)

> "*It is not disputed that suspension of the advocate from practice and his removal from the State roll of advocates are both punishments. There is no restriction or limitation on the nature of punishment that this Court may award while exercising its contempt jurisdiction and the said punishments can be the punishments the Court may impose while exercising the said jurisdiction.*" (emphasis supplied)

45. In taking this view, the Bench relied upon Articles 129 and 142 of the Constitution besides Section 38 of the Advocates Act, 1961. The Bench observed: (SCC p. 624, paras 49-50)

> "Secondly, it would also mean that for any act of contempt of court, if it also happens to be an act of professional misconduct under the Bar Council of India Rules, the courts including this Court, will have no power to take action *since the Advocates Act confers exclusive power for taking action* for such conduct on the Disciplinary Committees of the State Bar Councils and the Bar Council of India, as the case may be. Such a proposition of law on the face of it deserves rejection for the simple reason that *the disciplinary jurisdiction of the State Bar Councils and the Bar Council of India to take action for professional misconduct is different from the jurisdiction of the courts to take action against the advocates for the contempt of court.* The said jurisdictions coexist independently of each other. *The action taken under one jurisdiction does not bar an action under the other jurisdiction.*

The contention is also misplaced for yet another and equally, if not more, important reason. In the matter of disciplinary jurisdiction under the Advocates Act, this Court is constituted as the final appellate authority *under Section 38 of the Act* as pointed out earlier. In that capacity *this Court can impose any of the punishments mentioned in Section 35(3) of the Act including that of removal of the name of the advocate from the State roll and of suspending him from practice.* If that be so, there is no reason why this Court while exercising its contempt jurisdiction under Article 129 read with Article 142 cannot impose any of the said punishments. The punishment so imposed will not only be not against the provisions of any statute, but in conformity with the substantive provisions of the Advocates Act and for conduct which is both a professional misconduct as well as the contempt of court. The argument has, therefore, to be rejected." (emphasis supplied)

46. These observations, as we shall presently demonstrate and we say so with utmost respect, are too widely stated and do not bear closer scrutiny. After recognising that the disciplinary jurisdiction of the State Bar Council and the Bar Council of India to take action for professional misconduct is different from the jurisdiction of the courts to take action against the advocates for the contempt of court, how could the Court invest itself with the jurisdiction of the Disciplinary Committee of the Bar Council to *punish* the advocate concerned for "professional misconduct" in addition to imposing the punishment of suspended sentence of imprisonment for committing contempt of court.

47. The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are *complementary* to those powers which are *specifically conferred on the Court by various statutes though are not limited by those statutes.* These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of *supplementary* powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, *to prevent injustice* in the process of litigation and *to do complete justice between the parties.* This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary *whenever it is just and equitable to do so* and in particular to ensure the observance of the due process of law, *to do complete justice between the parties*, while administering justice according to law. There is no doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent "clogging or obstruction of the stream of justice". It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to *ignore* the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the

Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available *only* to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The construction of Article 142 must be functionally informed by the salutary purposes of the article, viz., *to do complete justice between the parties.* It cannot be otherwise. As already noticed in a case of contempt of court, the contemner and the court cannot be said to be litigating parties.

48. The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is *necessary for doing complete justice* "between the parties in any cause or matter pending before it". The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by "ironing out the creases" *in a cause or matter before it.* Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a "problem-solver in the nebulous areas" (see *K. Veeraswami* v. *Union of India*[6] but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be *controlled* by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise *may come directly in conflict* with what has been expressly provided for in a statute dealing expressly with the subject.

49. In *Bonkya* v. *State of Maharashtra*[7] a Bench of this Court observed: (SCC p. 458, para 23)

> "*23.* The amplitude of powers available to this Court under Article 142 of the Constitution of India is normally speaking not conditioned by any statutory provision but it cannot be lost sight of that this Court exercises jurisdiction under Article 142 of the Constitution with a view to do justice between the parties but *not in disregard of the relevant statutory provisions.*" (emphasis supplied)

50. Dealing with the powers of this Court under Article 142, in *Prem Chand Garg* v. *Excise Commr., U.P.*[8] it was said by the Constitution Bench:

> "In this connection, it may be pertinent to point out that the wide powers which are given to this Court for doing complete justice between the parties, can be used by this Court, for instance, in adding parties to

6 (1991) 3 SCC 655 : 1991 SCC (Cri) 734
7 (1995) 6 SCC 447 : 1995 SCC (Cri) 1113
8 AIR 1963 SC 996 : 1963 Supp (1) SCR 885

the proceedings pending before it, or in admitting additional evidence, or in remanding the case, or in allowing a new point to be taken for the first time. It is plain that in exercising these and similar other powers, *this Court would not be bound by the relevant provisions of procedure if it is satisfied that a departure from the said procedure is necessary* to do complete justice between the parties.

That takes us to the second argument urged by the Solicitor General that Article 142 and Article 32 should be reconciled by the adoption of the rule of harmonious construction. In this connection, *we ought to bear in mind that though the powers conferred on this Court by Article 142(1) are very wide, and the same can be exercised for doing complete justice in any case, as we have already observed, this Court cannot even under Article 142(1) make an order plainly inconsistent with the express statutory provisions of substantive law, much less, inconsistent with any constitutional provisions.* There can, therefore be no conflict between Article 142(1) and Article 32. In the case of *K.M. Nanavati* v. *State of Bombay*[9] on which the Solicitor General relies, it was conceded, and rightly, that under Article 142(1) this Court had the power to grant bail in cases brought before it, and so, there was obviously a conflict between the power vested in this Court under the said article and that vested in the Governor of the State under Article 161. The possibility of a conflict between these powers necessitated the application of the rule of harmonious construction. The said rule can have no application to the present case, because *on a fair construction of Article 142(1), this Court has no power to circumscribe the fundamental right guaranteed under Article 32.* The existence of the said power is itself in dispute, and so, the present is clearly distinguishable from the case of *K.M. Nanavati*[9]."

(emphasis ours)

51. In *Re, Vinay Chandra Mishra case*[1] the three-Judge Bench did notice the observations in *Prem Chand Garg case*[8] but opined: (SCC p. 623, para 48)

"In view of these observations of the latter Constitution Bench on the point, the observations made by the majority in *Prem Chand Garg case*[8] *are no longer a good law.* This is also pointed out by this Court in the case of *Mohd. Anis* v. *Union of India*[10] by referring to the decisions of *Delhi Judicial Service Assn.* v. *State of Gujarat*[11] and *Union Carbide Corpn.* v. *Union of India*[12] by observing that statutory provisions cannot override the constitutional provisions and Article 142(1) being a constitutional power it cannot be limited or conditioned by any statutory provision. The Court has then observed that it is, therefore, clear that the power of the Apex Court under Article 142(1) of the Constitution cannot be diluted by statutory provisions and the said position in law is now

9 AIR 1961 SC 112 : (1961) 1 SCR 497
10 1994 Supp (1) SCC 145 : 1994 SCC (Cri) 251
11 (1991) 4 SCC 406 : (1991) 3 SCR 936
12 (1991) 4 SCC 584

well settled by the Constitution Bench decision in *Union Carbide case*[12]." (emphasis supplied)

Commenting upon the observations in *Prem Chand Garg case*[8] the Bench further opined: (SCC pp. 621-22, para 46)

"*46.* Apart from the fact that these observations are made with reference to the powers of this Court under Article 142 which are in the nature of supplementary powers and not with reference to this Court's power under Article 129, the said observations have been explained by this Court in its latter decisions in *Delhi Judicial Service Assn.* v. *State of Gujarat*[11] and *Union Carbide Corpn.* v. *Union of India*[12]. In para 51 of the former decision, it has been, with respect, rightly pointed out that the said observations were made with regard to the extent of this Court's power under Article 142(1) in the context of fundamental rights. Those observations have no bearing on the present issue. No doubt, it was further observed there that those observations have no bearing on the question in issue in that case as there was no provision in any substantive law restricting this Court's power to quash proceedings pending before subordinate courts. But it was also added there that this Court's power under Article 142(1) to do complete justice was entirely of a different level and of a different quality."

52. As we shall presently see, there is nothing said in either *Delhi Judicial Service Assn. case*[11] or the *Union Carbide case*[12] from which it may be possible to hold that the law laid down in *Prem Chand Garg case*[8] is "no longer a good law". Besides, we also find that in *Mohd. Anis case*[10] referred to by the Bench, there is no reference made to *Prem Chand Garg case*[8] at all.

53. In *Delhi Judicial Service Assn.* v. *State of Gujarat*[11] the following questions fell for determination: (SCR Headnote)

"(*a*) whether the Supreme Court has inherent jurisdiction or power to punish for contempt of subordinate or inferior courts under Article 129 of the Constitution, (*b*) whether the inherent jurisdiction and power of the Supreme Court is restricted by the Contempt of Courts Act, 1971, (*c*) whether the incident interfered with the due administration of justice and constituted contempt of court, and (*d*) what punishment should be awarded to the contemners found guilty of contempt."

The Court observed: (SCC pp. 462-63, paras 50 and 51)

"*50.* Article 142(1) of the Constitution provides that the Supreme Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any 'cause' or 'matter' pending before it. The expression 'cause' or 'matter' would include any proceeding pending in court and it would cover almost every kind of proceeding in court including civil or criminal. The inherent power of this Court under Article 142 coupled with the plenary and residuary powers under Articles 32 and 136 embraces power to quash criminal proceedings pending before any court to do complete justice in the matter before this Court.

* * *

51. Mr Nariman urged that Article 142(1) does not contemplate any order contrary to statutory provisions. He placed reliance on the Court's observations in *Prem Chand Garg* v. *Excise Commr., U.P.*[8] (SCR at p. 899) and *A.R. Antulay* v. *R.S. Nayak*[13] where the Court observed that though the powers conferred on this Court under Article 142(1) are very wide, *but in exercise of that power the court cannot make any order plainly inconsistent with the express statutory provisions of substantive law.* It may be noticed that in *Prem Chand Garg*[8] and *Antulay case*[13] observations with regard to the extent of this Court's power under Article 142(1) were made in the context of fundamental rights. *Those observations have no bearing on the question in issue as there is no provision in any substantive law restricting this Court's power* to quash proceedings pending before subordinate court. This Court's power under Article 142(1) to do 'complete justice' is entirely of different level and of a different quality. Any prohibition or restriction contained in ordinary laws cannot act as a limitation on the constitutional power of this Court. Once this Court has seisin of a cause or matter before it, it has power to issue any order or direction to do 'complete justice' in the matter. This constitutional power of the Apex Court cannot be limited or restricted by provisions contained in statutory law."

The Bench went on to say:

"No enactment made by Central or State Legislature can limit or restrict the power of this Court under Article 142 of the Constitution, *though while exercising power under Article 142 of the Constitution, the Court must take into consideration the statutory provisions regulating the matter in dispute.* What would be the need of 'complete justice' in a cause or matter would depend upon the facts and circumstances of each case and *while exercising that power the Court would take into consideration the express provisions of a substantive statute.* Once this Court has taken seisin of a case, cause or matter, it has power to pass any order or issue direction as may be necessary to do complete justice in the matter. This has been the consistent view of this Court as would appear from the decisions of this Court in *State of U.P.* v. *Poosu*[14]; *Ganga Bishan* v. *Jai Narain*[15]; *Navnit R. Kamani* v. *R.R. Kamani*[16]; *B.N. Nagarajan* v. *State of Mysore*[17]; *Special Reference No. 1 of 1964*[18] and *Harbans Singh* v. *State of U.P.*[19]" (emphasis supplied)

13 (1988) 2 SCC 602 : 1988 SCC (Cri) 372
14 (1976) 3 SCC 1 : 1976 SCC (Cri) 368 : (1976) 3 SCR 1005
15 (1986) 1 SCC 75
16 (1988) 4 SCC 387
17 AIR 1966 SC 1942 : (1966) 3 SCR 682 : (1967) 1 LLJ 698
18 AIR 1965 SC 745 : (1965) 1 SCR 413
19 (1982) 2 SCC 101 : 1982 SCC (Cri) 361

In *A.R. Antulay* v. *R.S. Nayak*[13] a seven-Judge Bench of this Court said: (SCC p. 730, para 206)

> "*206.* The reliance placed in this context on the provisions contained in Articles 140 and 142 of the Constitution and Section 401 read with Section 386 of the CrPC does not also help. Article 140 is only a provision enabling Parliament to confer supplementary powers on the Supreme Court to enable it to deal more effectively to exercise the jurisdiction conferred on it by or under the Constitution. Article 142 is also not of much assistance. In the first place, the operative words in that article, again are 'in the exercise of its jurisdiction'. The Supreme Court was hearing an appeal from the order of discharge and connected matters. There was no issue or controversy or discussion before it as to the comparative merits of a trial before a Special Judge vis-à-vis one before the High Court. There was only an oral request said to have been made, admittedly, after the judgment was announced. Wide as the powers under Article 141 are, they do not in my view, envisage an order of the type presently in question. The *Nanavati case*[9], to which reference was made by Shri Jethmalani, involved a totally different type of situation. Secondly, it is one of the contentions of the appellant that an order of this type, far from being necessary for doing complete justice in the cause or matter pending before the court, has actually resulted in injustice, an aspect discussed a little later. Thirdly, *however wide and plenary the language of the article, the directions given by the court should not be inconsistent with, repugnant to or in violation of the specific provisions of any statute. If the provisions of the 1952 Act read with Article 139-A and Sections 406-407 of the CrPC do not permit the transfer of the case from a Special Judge to the High Court, that effect cannot be achieved indirectly.*" (emphasis supplied)

54. In *Union Carbide Corpn.* v. *Union of India*[12] a Constitution Bench of this Court dealt with the ambit and scope of the powers of this Court under Article 142 of the Constitution. The Bench considered the observations of the majority in *Prem Chand Garg* v. *Excise Commr., U.P.*[8] as well as the observations made in *A.R. Antulay* v. *R.S. Nayak*[13] and observed: (SCC pp. 634-35, para 83)

> "*83. It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court under Article 142(1) of the Constitution. These issues are matters of serious public importance. The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the Apex Court under Article 142(1) is unsound and erroneous. In both* Garg[8] *as well as* Antulay[13] cases *the point was one of violation of constitutional provisions and constitutional rights. The observations as to the effect of inconsistency with statutory provisions were really unnecessary in those cases as the decisions in the ultimate analysis turned on the breach of constitutional rights. We agree with Shri Nariman that the power of the Court under Article 142 insofar as quashing of criminal proceedings are concerned is*

not exhausted by Section 320 or 321 or 482 CrPC or all of them put together. The power under Article 142 is at an entirely different level and of a different quality. Prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions of limitations on the constitutional powers under Article 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into account the nature and status of the authority or the court on which conferment of powers — limited in some appropriate way — is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy. Shri Sorabjee, learned Attorney General, referring to Garg case[8]*, said that limitation on the powers under Article 142 arising from 'inconsistency with express statutory provisions of substantive law' must really mean and be understood as some express prohibition contained in any substantive statutory law. He suggested that if the expression 'prohibition' is read in place of 'provision' that would perhaps convey the appropriate idea. But we think that such prohibition should also be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that powers under Article 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of 'complete justice' of a cause or matter, the Apex Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly.* The proposition does not relate to the powers of the Court under Article 142, but only to what is or is not 'complete justice' of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. *No question of lack of jurisdiction or of nullity can arise.*" (emphasis supplied)

55. Thus, a careful reading of the judgments in *Union Carbide Corpn.* v. *Union of India*[12]; the *Delhi Judicial Service Assn. case*[11] and *Mohd. Anis case*[10] relied upon in *V.C. Mishra case*[1] show that the Court did not actually doubt the correctness of the observations in *Prem Chand Garg case*[8]. As a matter of fact, it was observed that in the established facts of those cases, the observations in *Prem Chand Garg case*[8] had "no relevance". This Court did not say in any of those cases that substantive statutory provisions dealing expressly with the subject can be *ignored* by this Court while exercising powers under Article 142.

56. As a matter of fact, the observations on which emphasis has been placed by us from the *Union Carbide case*[12], *A.R. Antulay case*[13] and *Delhi Judicial Service Assn. case*[11] go to show that they do not strictly speaking come into any conflict with the observations of the majority made in *Prem Chand Garg case*[8]. It is one thing to say that "prohibitions or limitations in a

statute" cannot come in the way of exercise of jurisdiction under Article 142 *to do complete justice* between the parties in the pending "cause or matter" arising out of that statute, but quite a different thing to say that while exercising jurisdiction under Article 142, this Court can altogether *ignore* the substantive provisions *of a statute,* dealing with the subject and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. This Court did not say so in *Union Carbide case*[12] either expressly or by implication and on the contrary it has been held that the Apex Court *will take note of the express provisions of any* substantive statutory law and regulate the exercise of its power and discretion accordingly. We are, therefore, unable to persuade ourselves to agree with the observations of the Bench in *V.C. Mishra case*[1] that the law laid down by the majority in *Prem Chand Garg case*[8] is "no longer a good law".

57. In a given case, an advocate found guilty of committing contempt of court may also be guilty of committing "professional misconduct", depending upon the gravity or nature of his contumacious conduct, but the two jurisdictions are separate and distinct and exercisable by different forums by following separate and distinct procedures. The power to punish an advocate by suspending his licence or by removal of his name from the roll of the State Bar Council for proven professional misconduct *vests exclusively* in the statutory authorities created under the Advocates Act, 1961, while the jurisdiction to punish him for committing contempt of court vests exclusively in the courts.

58. After the coming into force of the Advocates Act, 1961, exclusive power for punishing an advocate for "professional misconduct" has been conferred on the State Bar Council concerned and the Bar Council of India. That Act contains a detailed and complete mechanism for suspending or revoking the licence of an advocate for his "professional misconduct". Since the suspension or revocation of licence of an advocate has not only civil consequences but also penal consequences, the punishment being in the nature of penalty, the provisions have to be strictly construed. Punishment by way of suspending the licence of an advocate can only be imposed by the competent statutory body after the *charge* is established against the advocate in a manner prescribed by the Act and the Rules framed thereunder.

59. Let us now have a quick look at some of the relevant provisions of the Advocates Act, 1961.

60. The Act, besides laying down the essential functions of the Bar Council of India provides for the enrolment of advocates and setting up of disciplinary authorities to chastise and, if necessary, punish members of the profession for professional misconduct. That punishment may include suspension from practice for a specified period or reprimand or removal of the name from the roll of the advocates. Various provisions of the Act deal with functions of the State Bar Councils and the Bar Council of India. We

need not, however, refer to all those provisions in this judgment except to the extent their reference is necessary.

61. According to Section 30, every advocate whose name is entered in the State roll of advocates shall be entitled, as of right, to practise throughout the territories to which the Act extends, in all courts including the Supreme Court of India. Section 33 provides that no person shall, on or after the appointed day, be entitled to practise in any court or before any authority or person unless he is enrolled as an advocate under the Act.

62. Chapter V of the Act deals with the "Conduct of Advocates". After a complaint is received alleging professional misconduct by an advocate by the Bar Council, the Bar Council entrusts the inquiry into the case of misconduct to the Disciplinary Committee constituted under Section 9 of the Act. Section 35 lays down that if on receipt of a complaint or otherwise, a State Bar Council has reason to believe that any advocate on its roll has been *guilty of professional or other misconduct*, it shall refer the case for disposal to its Disciplinary Committee. Section 36 provides that where on receipt of a complaint or otherwise, the Bar Council of India has reason to believe that any advocate whose name is entered on any State roll is guilty of professional or other misconduct, it shall refer the case to the Disciplinary Committee. Section 37 provides for an appeal to the Bar Council of India against an order made by the Disciplinary Committee of a State Bar Council. Any person aggrieved by an order made by the Disciplinary Committee of the Bar Council of India may prefer an appeal to the Supreme Court of India under Section 38 of the Act.

63. Section 42(1) of the Act confers on the Disciplinary Committee of the Bar Council, powers of a civil court under the Code of Civil Procedure and Section 42(2) enacts that its proceedings shall be "deemed" to be judicial proceedings for the purposes mentioned therein.

64. Section 49 of the Act lays down that the Bar Council of India may make Rules for discharging its functions under the Act and in particular such Rules may prescribe, inter alia, the standards of professional conduct to be observed by the advocates and the procedure to be followed by the Disciplinary Committee of the Bar Council while dealing with a case of professional misconduct of an advocate. The Bar Council of India has framed Rules called "*The Bar Council of India Rules*" (hereinafter referred to as "the Rules") in exercise of its rule-making power under the Advocates Act, 1961.

65. Part VII of the Rules deals with *disciplinary proceedings* against the advocates. In Chapter I of Part VII provisions have been made to deal with complaints of professional misconduct received against advocates as well as for the procedure to be followed by the Disciplinary Committees of the State Bar Councils and the Bar Council of India to deal with such complaints received under Sections 35 and 36 of the Act. Rule 1 of Chapter I of Part VII of the Rules provides that a complaint against an advocate shall be in the form of a petition duly signed and verified as required under the Code of

Civil Procedure, and shall be accompanied by the fees as prescribed by the Rules. On the complaint being found to be in order, the same shall be registered and placed before the Bar Council for such order as it may deem fit to pass. Sub-rule (2) provides that before referring a complaint made under Section 35(1) of the Act to one of its Disciplinary Committees the Bar Council may require the complainant to furnish better particulars and the Bar Council "may also call for the comments from the advocate complained against".

66. Rules 3 and 4 of Chapter I Part VII provide for the procedure to be followed in dealing with such complaints. These Rules read:

> "3. (1) After a complaint has been referred to a Disciplinary Committee by the Bar Council, the Registrar shall expeditiously send a notice to the advocate concerned requiring him to show cause within a specified date on the complaint made against him and to submit the statement of defence, documents and affidavits in support of such defence, and further informing him that in case of his non-appearance on the date of hearing fixed, the matter shall be heard and determined in his absence.
>
> *Explanation*: Appearance includes, unless otherwise directed, appearance by an advocate or through duly authorised representative.
>
> (2) If the Disciplinary Committee requires or permits, a complainant may file a replication within such time as may be fixed by the Committee.
>
> 4. The Chairman of the Disciplinary Committee shall fix the date, hour and place of the enquiry which shall not ordinarily be later than thirty days from the receipt of the reference. The Registrar shall give notice of such date, hour and place to the complainant or other person aggrieved, the advocate concerned and the Attorney General or the Additional Solicitor General of India or the Advocate General, as the case may be, and shall also serve on them copies of the complaint and such other documents mentioned in Rule 24 of this Chapter as the Chairman of the Committee may direct at least ten days before the date fixed for the enquiry."

67. Rules 5, 6 and 7 deal with the manner of service of notice, summoning of witnesses and appearance of the parties before the Disciplinary Committee. At any stage of the proceedings, the Disciplinary Committee may appoint an advocate to appear as amicus curiae and in case either of the parties absent themselves, the Committee may proceed ex parte against the absenting party and decide the case. Sub-rule (1) of Rule 8 provides:

> "The Disciplinary Committee shall hear the Attorney General or the Additional Solicitor General of India or the Advocate General, as the case may be or their advocate, and parties or their advocates, if they desire to be heard, and determine the matter on documents and affidavits unless it is of the opinion that it should be in the interest of justice to permit cross-examination of the deponents or to take oral evidence, in which case the procedure for the trial of civil suits shall as far as possible be followed."

Rules 9 and 10 deal with the manner of recording evidence during the enquiry into a complaint of professional misconduct and the maintenance of record by the Committee. Rule 14(1) lays down as follows:

"The finding of the majority of the members of the Disciplinary Committee shall be the finding of the Committee. The reason given in support of the finding may be given in the form of a judgment, and in the case of a difference of opinion, any member dissenting shall be entitled to record his dissent giving his own reason. It shall be competent for the Disciplinary Committee to award such costs as it thinks fit."

Rule 16 provides:

"16. (1) The Secretary of a State Bar Council shall send to the Secretary of the Bar Council of India quarterly statements of the complaints received and the stage of the proceedings before the State Bar Council and Disciplinary Committees in such manner as may be specified from time to time.

(2) The Secretary of the Bar Council of India may however call for such further statements and particulars as he considers necessary."

68. An appeal from the final order of the Disciplinary Committee of the Bar Council of a State is provided to the Bar Council of India under Section 37 of the Act and the procedure for filing such an appeal is detailed in Rules 19(2) to 31.

69. The object of referring to the various provisions of the Advocates Act, 1961 and the Rules framed thereunder is to demonstrate that an *elaborate* and *detailed procedure*, almost akin to that of a regular trial of a case by a court, has been prescribed to deal with a complaint of professional misconduct against an advocate before he can be *punished* by the Bar Council by revoking or suspending his licence or even for reprimanding him.

70. In *Bar Council of Maharashtra* v. *M.V. Dabholkar*[20] a seven-Judge Bench of this Court analysed the scheme of the Advocates Act, 1961 and, inter alia, observed: (SCC p. 709, para 24)

"*24.* The scheme and the provisions of the Act indicate that the constitution of State Bar Councils and Bar Council of India *is for one of the principal purposes* to see that the standards of professional conduct and etiquette laid down by the Bar Council of India are observed and preserved. The Bar Councils therefore entertain cases of misconduct against advocates. The Bar Councils are to safeguard the rights, privilege and interests of advocates. The Bar Council is a body corporate. The Disciplinary Committees are constituted by the Bar Council. The Bar Council is not the same body as its Disciplinary Committee. *One of the principal functions of the Bar Council in regard to standards of professional conduct and etiquette of advocates is to receive complaints against advocates and if the Bar Council has reason to believe that any advocate has been guilty of professional or other misconduct it shall refer the case for disposal to its Disciplinary Committee.* The Bar Council of a State may also of its own motion if it has reason to believe that any advocate has been guilty of professional or

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other misconduct it shall refer the case for disposal to its Disciplinary Committee. It is apparent that a State Bar Council not only receives a complaint but is required to apply its mind to find out whether there is any reason to believe that any advocate has been guilty of professional or other misconduct. The Bar Council of a State acts on that reasoned belief. *The Bar Council has a very important part to play, first in the reception of complaints, second, in forming reasonable belief of guilt of professional or other misconduct and finally in making reference of the case to its Disciplinary Committee.* The initiation of the proceeding before the Disciplinary Committee is by the Bar Council of a State. *A most significant feature is that no litigant and no member of the public can straightway commence disciplinary proceedings against an advocate. It is the Bar Council of a State which initiates the disciplinary proceedings.*" (emphasis supplied)

71. Thus, after the coming into force of the Advocates Act, 1961 with effect from 19-5-1961, matters connected with the *enrolment* of advocates as also their punishment for professional misconduct is governed by the provisions of that Act only. Since, the jurisdiction to grant licence to a law graduate to practise as an advocate vests exclusively in the Bar Council of the State concerned, the jurisdiction to suspend his licence for a specified term or to revoke it also vests in the same body.

72. The letters patent of the Chartered High Courts as well as of the other High Courts earlier did vest power in those High Courts *to admit* an advocate to practice. The power of suspending from practice being incidental to that of admitting to practice also vested in the High Courts. However, by virtue of Section 50 of the Advocates Act, with effect from the date when a State Bar Council is constituted under the Act, the provisions of the letters patent of any High Court and "of any other law" insofar as they relate to the admission and enrolment of a legal practitioner or confer on the legal practitioner the right to practise in any court or before any authority or a person as also the provisions relating to the "suspension or removal" of legal practitioners, whether under the letters patent of any High Court or of any other law, have been repealed. These powers *now* vest exclusively, under the Advocates Act, in the Bar Council of the State concerned. Even in England the courts of justice are now relieved from disbarring advocates from practice after the power of calling to the Bar has been delegated to the Inns of Court. The power to disbar the advocate also now vests exclusively in the Inns of Court and a detailed procedure has been laid therefor.

73. In *V.C. Mishra, Re, case*[1] the Bench relied upon its appellate jurisdiction under Section 38 (*supra*) also to support its order of suspending the licence of the contemner.

74. Dealing with the right of appeal conferred by Sections 37 and 38 of the Act, the Constitution Bench in *M.V. Dabholkar case*[20] observed: (SCC p. 711, para 28)

"28. Where a right of appeal to courts against an administrative or judicial decision is created by statute, the right is invariably confined to a person aggrieved or a person who claims to be aggrieved. The meaning of the words 'a person aggrieved' may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one 'a person aggrieved'. Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words 'a person aggrieved' is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates Act is comparable to the role of a guardian in professional ethics. The words 'persons aggrieved' in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests. *The test is whether the words 'person aggrieved' include 'a person who has a genuine grievance because an order has been made which prejudicially affects his interests'*. It has, therefore, to be found out whether the Bar Council has a grievance in respect of an order or decision affecting the professional conduct and etiquette." (emphasis supplied)

75. In *O.N. Mohindroo* v. *District Judge, Delhi*[21] it has been held that an appeal to the Supreme Court under Section 38 of the Act is not a restricted appeal. It is not an appeal on a question of law alone but also on questions of fact and under that section the Supreme Court has the jurisdiction to pass any order it deems fit on such an appeal but

> "no order of the Disciplinary Committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard".

76. This Court is indeed the final appellate authority under Section 38 of the Act but we are not persuaded to agree with the view that this Court can in exercise of its appellate jurisdiction under Section 38 of the Act impose one of the punishments prescribed under that Act while punishing a contemner advocate in a contempt case. "Professional misconduct" of the advocate concerned is not a matter directly in issue in the contempt of court case. While dealing with a contempt of court case, this Court is obliged to examine whether the conduct complained of amounts to contempt of court and if the answer is in the affirmative, then to sentence the contemner for contempt of court by imposing any of the recognised and accepted punishments for committing contempt of court. Keeping in view the

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elaborate procedure prescribed under the Advocates Act, 1961 and the Rules framed thereunder it follows that a complaint of professional misconduct is required to be *tried* by the Disciplinary Committee of the Bar Council, like the trial of a criminal case by a court of law and an advocate may be punished on the basis of evidence led before the Disciplinary Committee of the Bar Council after being afforded an opportunity of hearing. The delinquent advocate may be suspended from practice for a specified period or even removed from the rolls of the advocates or imposed any other punishment as provided under the Act. The enquiry is a detailed and elaborate one and is not of a *summary nature*. It is therefore, not permissible for this Court to punish an advocate for "professional misconduct" in exercise of the appellate jurisdiction by converting itself as the statutory body exercising "original jurisdiction". Indeed, if in a given case the Bar Council concerned on being apprised of the contumacious and blameworthy conduct of the advocate by the High Court or this Court does not take any action against the said advocate, this Court may well have the jurisdiction in exercise of its appellate powers under Section 38 of the Act read with Article 142 of the Constitution to proceed suo motu and send for the records from the Bar Council and pass appropriate orders against the advocate concerned. In an appropriate case, this Court may consider the exercise of appellate jurisdiction even suo motu provided there is some cause pending before the Bar Council concerned, and the Bar Council does "not act" or fails to act, by sending for the record of that cause and pass appropriate orders.

77. However, the exercise of powers under the contempt jurisdiction cannot be confused with the appellate jurisdiction under Section 38 of the Act. The two jurisdictions are separate and distinct. We are, therefore, unable to persuade ourselves to subscribe to the contrary view expressed by the Bench in *V.C. Mishra case*[1] because in that case the Bar Council had not declined to deal with the matter and take appropriate action against the advocate concerned. Since there was no cause pending before the Bar Council, this Court could not exercise its appellate jurisdiction in respect of a matter which was *never* under consideration of the Bar Council.

78. Thus, to conclude we are of the opinion that this Court cannot in exercise of its jurisdiction under Article 142 read with Article 129 of the Constitution, while punishing a contemner for committing contempt of court, also impose a punishment of suspending his licence to practice, where the contemner happens to be an advocate. Such a punishment cannot even be imposed by taking recourse to the appellate powers under Section 38 of the Act while dealing with a case of contempt of court (and not an appeal relating to professional misconduct as such). To that extent, the law laid down in *Vinay Chandra Mishra, Re*[1] is not good law and we overrule it.

79. An advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned

Solicitor General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for "professional misconduct", on the basis of his having been found guilty of committing contempt of court. We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the occasion, and take appropriate action against such an advocate. Under Article 144 of the Constitution "all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court". The Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act "in aid of the Supreme Court". It must, whenever facts warrant, rise to the occasion and discharge its duties uninfluenced by the position of the contemner advocate. It must act in accordance with the prescribed procedure, whenever its attention is drawn by this Court to the contumacious and unbecoming conduct of an advocate which has the tendency to interfere with due administration of justice. It is possible for the High Courts also to draw the attention of the Bar Council of the State to a case of professional misconduct of a contemner advocate to enable the State Bar Council to proceed in the manner prescribed by the Act and the Rules framed thereunder. There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any interference in the administration of justice. Learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record records its findings about the conduct of an advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the Bar Council concerned, appropriate action should be initiated by the Bar Council concerned in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards the court or disregard by the court of the privileges of the Bar. In case the Bar Council, even after receiving "reference" from the Court, fails to take action against the advocate concerned, this Court might consider invoking its powers under Section 38 of the Act by sending for the record of the proceedings from the Bar Council and passing appropriate orders. Of course, the appellate powers under Section 38 would be available to this Court only and not to the High Courts. We, however, hope that such a situation would not arise.

80. In a given case it may be possible, for this Court or the High Court, to prevent the contemner advocate to appear before it till he purges himself of the contempt but that is much different from suspending or revoking his licence or debarring him to practise as an advocate. In a case of

contemptuous, contumacious, unbecoming or blameworthy conduct of an Advocate-on-Record, this Court possesses jurisdiction, under the Supreme Court Rules itself, to withdraw his privilege to practice as an Advocate-on-Record because that privilege is conferred by this Court and the power to grant the privilege includes the power to revoke or suspend it. The withdrawal of that privilege, however, does not amount to suspending or revoking his licence to practice as an advocate in other courts or tribunals.

81. We are conscious of the fact that the conduct of the contemner in *V.C. Mishra case*[1] was highly contumacious and even atrocious. It was unpardonable. The contemner therein had abused his professional privileges while practising as an advocate. He was holding a very senior position in the Bar Council of India and was expected to act in a more reasonable way. He did not. These factors appear to have influenced the Bench in that case to itself punish him by suspending his licence to practice also while imposing a suspended sentence of imprisonment for committing contempt of court but while doing so this Court vested itself with a jurisdiction where none exists. The position would have been different had a reference been made to the Bar Council and the Bar Council did not take any action against the advocate concerned. In that event, as already observed, this Court in exercise of its appellate jurisdiction under Section 38 of the Act read with Article 142 of the Constitution of India, might have exercised suo motu powers and sent for the proceedings from the Bar Council and passed appropriate orders for punishing the contemner advocate for professional misconduct after putting him on notice as required by the *proviso* to Section 38 which reads thus:

> "Provided that no order of the Disciplinary Committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard."

But it could not have done so in the first instance.

82. In *V.C. Mishra case*[1] the Bench relied upon its inherent powers under Article 142 to punish him by suspending his licence, without the Bar Council having been given any opportunity to deal with his case under the Act. We cannot persuade ourselves to agree with that approach. It must be remembered that wider the amplitude of its power under Article 142, the greater is the need of care for this Court to see that the power is used with restraint without pushing back the limits of the Constitution so as to function within the bounds of its own jurisdiction. To the extent this Court makes the statutory authorities and other organs of the State perform their duties in accordance with law, its role is unexceptionable but it is not permissible for the Court to "take over" the role of the statutory bodies or other organs of the State and "perform" their functions.

83. Upon the basis of what we have said above, we answer the question posed in the earlier part of this order in the negative. The writ petition succeeds and is ordered accordingly.