2024 INSC 605

REPORTABLE

IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION

SUO MOTU CONTEMPT PETITION (CIVIL) NO. 4 OF 2024

IN

WRIT PETITION (CIVIL) No. 645 OF 2022

IN RE : PATANJALI AYURVED LIMITED THROUGH ITS MANAGING DIRECTOR, ACHARYA BALKRISHNA AND BABA RAMDEV

IN THE MATTER OF :

INDIAN MEDICAL ASSOCIATION AND ANOTHER .....PETITIONERS

Versus

UNION OF INDIA AND OTHERS .....RESPONDENTS

JUDGEMENT

HIMA KOHLI, J.

1. This order shall dispose of the *suo motu* contempt proceedings initiated by this Court against the proposed contemnors, Patanjali Ayurved Limited[1], Acharya Balkrishna, Managing Director of Patanjali and Baba Ramdev. The circumstances leading to initiation of contempt proceedings against the aforesaid parties needs some elucidation.

1 For short 'Patanjali'

A. BACKDROP

2. Indian Medication Association[2], the petitioner in the writ petition[3] has invoked Article 32 of the Constitution of India for raising a grievance against Patanjali, its Managing Director – Acharya Balkrishna and its primary proponent, Baba Ramdev stating that they have been indulging in a campaign of misinformation and disparagement against the modern system of medicine in an orchestrated and systematic manner resulting in misleading the common man. IMA has claimed that despite lodging multiple complaints and submitting several representations to the Union of India and the State Authorities, they have declined to take any concrete action, thus compelling them to approach this Court for relief.

B. PROCEEDINGS DATED 21ST NOVEMBER, 2023

3. Notice was issued on the writ petition on 23rd August, 2022. On 21st November, 2023, this Court passed the following order :

> "2. After some arguments were canvassed by counsel afore-noted, on the serious points emanating herein, at the request of the Court, Mr. K.M. Nataraj, learned ASG has very fairly submitted that he may be permitted to obtain instructions, after full and effective consultation with the authorities concerned insofar as checking of incorrect assertions/misrepresentation for various products with regard to their purported medicinal efficacy is concerned, as also the measures which may be put in place for statements released through the media, both electronic and print, presently confined to the Respondent No.5.
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> 3. **Mr. Poovayya, learned senior counsel for the Respondent No.5, on instructions, assures this Court that henceforth there shall not be any violation of any law(s), especially relating to advertising or branding of products manufactured and marketed by it and, further, that no casual statements claiming medicinal efficacy or against any system of medicine will be released to the media in any form. The Respondent No.5 is bound down to such assurance.**

2 In short "IMA"
3 Writ Petition (Civil) No. 645 of 2022

> 4. It is made clear that the suit(s) pending on issues pertaining inter-se, that is, between the petitioners/other persons and the Respondent No.5 have not been stayed, and shall not be hindered only by reason of the pendency of the present writ petition."
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> (emphasis added)

C. PROCEEDINGS DATED 27TH FEBRUARY, 2024

4. On 27th February, 2024, learned counsel appearing for IMA drew the attention of this Court to some advertisements published by Patanjali in a newspaper and the transcription of a Press Conference conducted by Baba Ramdev and Acharya Balkrishna on 22nd November, 2023, i.e., on the very next day to passing of the order by this Court on 21st November, 2023 and submitted that despite an assurance given on behalf of Patanjali and recorded in the order passed on 21st November, 2023, the aforesaid parties were continuing to make incorrect assertions and misrepresentations in respect of various products marketed by them by describing the said products as a permanent solution to particular ailments that have been specifically listed in the Schedules appended to the Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954[4] and the Drugs and Magic Remedies (Objectionable Advertisement) Rules, 1955[5].

5. In view of the above, this Court expressed a *prima facie* view that Patanjali had violated the undertaking given to the Court on 21st November, 2023 and issued a notice to show cause to Patanjali and its Managing Director as to why contempt of court

4 For short 'DMR Act, 1954'
5 For short 'DMR Rules, 1955'

proceedings be not issued against them. The relevant extract of the order passed on 27th February, 2024, is as follows:

> "3. Today, Mr. P.S. Patwalia, learned Senior Counsel appearing for the petitioners states that his briefing counsel proposes to file some newspaper advertisements in the daily newspaper "The Hindu" published on 04th December, 2023 (i.e. after the date of passing the order on 21st November, 2023) and a You Tube link and transcription of a Press Conference headed by Baba Ramdev and Acharya Balkrishna (Managing Director of the respondent no.5) conducted on 22nd November, 2023 (i.e. on the very next day of the passing of the order on 21st November, 2023).
>
> 4. It is submitted on behalf of the petitioners that the aforesaid documents amply demonstrate that the respondent no.5 is continuing to make incorrect assertions and misrepresentations in respect of its various products in the market by describing the said products as a permanent solution to such of the ailments that have been specifically listed in the Schedule appended to the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 and the Schedule appended to the Drugs and Magic Remedies (Objectionable Advertisements) Rules, 1955.
>
> 5. We may note that Section 3(d) of the 1954 Act prohibits advertisement of certain products for treatment of certain diseases and disorders, including thereof diabetes (Sr. No.9), Heart Diseases (Sr. No.26), High or Low Blood Pressure (Sr. No. 27) and Obesity (Sr. No. 38) and Asthma (Appended to the 1955 Rules at Sr. No.1).
>
> **6. The aforesaid advertisement as referred to by learned Senior Counsel for the petitioners and those that form part of the documents enclosed with an anonymous letter dated 15th January, 2024, addressed to Hon'ble the Chief Justice of India with copies marked to two other Hon'ble Judges of this Court including one of us (Ahsanuddin Amanullah, J.) show that the said advertisements were issued and Press Conferences held after the order was passed on 21st November, 2023. The aforesaid documents handed over by learned Senior Counsel for the petitioners and the anonymous letter dated 15th January, 2024, are taken on record. Copies thereof have been furnished to learned counsel for the respondents.**
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> **7. Prima facie, this Court is of the opinion that the respondent no.5-Patanjali Ayurved Limited has violated the undertaking given by it and recorded in the order dated 21st November, 2023.**
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> **8. Issue notice as to why Contempt of Court proceedings should not be initiated against the respondent no.5 and its Managing Director-Acharya Balkrishna. Memo of parties shall be drawn by the Registry.**
>
> 9. Mr. Simranjeet Singh, learned Counsel appearing on behalf of Mr. Gautam Talukdar, Advocate on Record, accepts notice on behalf of the respondent no.5- Patanjali Ayurved Limited and its Managing Director and seeks time to file a reply.
>
> 10. Reply be filed within two weeks with a copy to learned counsel for the petitioners and other respondents.

xxx xxx xxx

14. **Till further orders, the respondent no.5-Patanjali Ayurved Limited is restrained from advertising or branding of products manufactured and marketed by it which are meant to cure the diseases/disorders/conditions specified in the 1954 Act and 1955 Rules. Respondent no.5 and its officers are also cautioned to refrain from making any statements against any system of medicine in the media (both electronic and print) in any form, as undertaken on 21st November, 2023."**

(emphasis added)

D. PROVISIONS OF DMR ACT AND DMR RULES

6. For purposes of ready reference, the provisions of Sections 3 and 4 of the DMR Act, 1954 are extracted below :

"3. Prohibition of advertisement of certain drugs for treatment of certain diseases and disorders.—Subject to the provisions of this Act, no person shall take any part in the publication of any advertisement referring to any drug in terms which suggest or are calculated to lead to the use of that drug for—

(a) the procurement of miscarriage in women or prevention of conception in women; or

(b) the maintenance or improvement of the capacity of human beings for sexual pleasure; or

(c) the correction of menstrual disorder in women; or

(d) the diagnosis, cure, mitigation, treatment or prevention of any disease, disorder or condition specified in the Schedule, or any other disease, disorder or condition (by whatsoever name called) which may be specified in the rules made under this Act:

Provided that no such rule shall be made except—

(i) in respect of any disease, disorder or condition which requires timely treatment in consultation with a registered medical practitioner or for which there are normally no accepted remedies; and

(ii) after consultation with the Drugs Technical Advisory Board constituted under the Drugs and Cosmetics Act, 1940 (23 of 1940), and if the Central Government considers necessary, with such other persons having special knowledge or practical experience in respect of Ayurvedic or Unani systems of medicines as that Government deems fit.]

4. Prohibition of misleading advertisements relating to drugs.—Subject to the provisions of this Act, no person shall take any part in the publication of any advertisement relating to a drug if the advertisement contains any matters which—

(a) directly or indirectly gives a false impression regarding the true character of the drug; or

(b) makes a false claim for the drug; or (c) is otherwise false or misleading in any material particular.

THE SCHEDULE

[See Sections 3(d) and 14]

S. No.	Name of the disease, disorder or condition
*****	
9.	Diabetes.
******	
26.	Heart diseases.
27.	High or low blood pressure.
*******	
38.	Obesity."

7. Rule 6 of the DMR Rules, 1955 states as follows:

> **"[6] Prohibition of Advertisement of Drugs for Treatment of Disease, etc.–** No person shall also take part in the publication of any advertisement referring to any drug in terms which suggest or are calculated to lead to the use of that drug for the diagnosis, cure, mitigation, treatment or prevention of any disease, disorder, or condition specified in the Schedule annexed to these rules.
>
> **SCHEDULE**
>
> **(See Rule 6)**
>
> 1. Asthma
>
> ***]"

E. ADVERTISEMENT PUBLISHED IN THE NEWSPAPER ON 4TH DECEMBER, 2023

8. It is noteworthy that Patanjali had published an advertisement in the daily newspaper on 4th December, 2023 (copy whereof was subsequently filed by the petitioner/IMA under index dated 6th February, 2024), that spoke of *"completely curing"* lakhs of people of diseases like high blood pressure, sugar, thyroid, arthritis, asthma, etc. Similarly, the advertisement claimed to have *"completely cure patient suffering from failure of liver, kidney, heart and brain"*. The advertisement as published by Patanjali on

4th December, 2023 with a photograph of Baba Ramdev prominently displayed in it, is extracted below :

9. In the advertisement, Patanjali also displayed packages of medicines sold by it under the names of “BP GRIT”, “Madhu GRIT” and “Liva Amrit Advance” and declared that they offer permanent solution for curing ailments such as sugar, BP and liver problems.

F. TRANSCRIPTION OF THE PRESS CONFERENCE CONDUCTED ON 22nd NOVEMBER, 2023

10. We may also refer to the transcription of the statements made by Baba Ramdev in a Press Conference conducted by Patanjali on 22nd November, 2023, i.e., on the very next day to this Court passing the order on 21st November, 2023, recording the

undertaking given by learned counsel for Patanjali that there shall be no violation of any law relating to advertising or branding of products manufactured and marketed by Patanjali and that no casual statements claiming medicinal efficacy or against any system of medicine will be released to the media in any form. In the said transcription, Baba Ramdev alluded to the aforesaid order passed by this Court and asserted that a group of doctors were making false propaganda claiming that *"there is cure for diseases like BP, sugar, thyroid, asthma, arthritis, liver and kidney failure",* that they have *"discontinued insulin for more than a crore people"*; that *"children with type-1 diabetes have been cured*" and that *"we cure blood pressure, thyroid, type – 1 diabetes, asthma and turn CRP positive to negative"*. Referring to the order passed by this Court on 21st November, 2023, Acharya Balkrishna made a statement in the very same Press Conference, that *"Corona could not be cured by allopathy……." and* that *"Coronil has not only protected the family but also followed all protocols and rules".*

G. PROCEEDINGS DATED 19TH MARCH, 2024

11. In the light of the endorsement made by Baba Ramdev of the advertisement issued by Patanjali that had given an Undertaking to this Court on 21st November, 2023, the scope of the contempt proceedings initiated by this Court on 27th February, 2024, was expanded. On 19th March, 2024, notice to show cause was issued to Baba Ramdev calling upon to him to state as to why contempt proceedings should not be initiated against him as well for violation of the provisions of Sections 3 and 4 of the DMR Act, 1954 and Rule 6 of the DMR Rules, 1955. Learned counsel appearing for Patanjali and

Acharya Balkrishna accepted notice on behalf of the proposed contemnor, i.e., Baba Ramdev and sought time to file replies. The relevant extract of the order passed on 19th March, 2024 is as follows :

> "1. On the last date of hearing, notice to show cause was issued to the respondent No.5 and its Managing Director-Acharya Balkrishna (respondent No.6) as to why contempt of court proceedings be not initiated against them for violating the order dated 21st November, 2023. At the request of learned counsel appearing for the aforesaid respondent, a period of two weeks' was granted to file a reply. The reply is not on record.
>
> xxx xxx xxx
>
> 4**. In view of the aforesaid facts and circumstances, it is deemed appropriate to direct the presence of respondent No.6-Acharya Balkrishna on the next date of hearing. Further, having gone through the advertisements issued by the respondent No.5 in the teeth of the undertaking given to this Court on 21st November, 2023 and on noticing that the said advertisements reflect an endorsement thereof by Baba Ramdev, it is deemed appropriate to issue notice to show cause as to why the contempt proceedings be not initiated against him as this Court is prima facie of the opinion that he too has violated the provisions of Section 3 and 4 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 read with Rule 6 of the Drugs and Magic Remedies (Objectionable Advertisements) Rules, 1955.**
>
> 5. Mr. Mukul Rohatgi, learned Senior counsel appearing with Mr. Gautam Talukdar, learned Advocate on Record accepts notice on behalf of the proposed Contemnor-Baba Ramdev. Complete set of paper book be furnished to the learned counsel within two days.
>
> 6. Mr. Mukul Rohatgi, learned Senior counsel appearing for the respondent No.5 and its Managing Director-respondent No.6 states on instructions that reply to show cause is ready and the same shall be filed during the course of the day. Copies thereof may be furnished to the learned counsel for the petitioner as also to the Union of India and the same be filed by tomorrow, i.e. 20th March, 2024.
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> xxx xxx xxx
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> 11. **The respondent No.6-Acharya Balkrishna shall remain present on the next date of hearing along with the proposed contemnor-Baba Ramdev."**
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> (emphasis added)

H. AFFIDAVITS DATED 20TH MARCH, 2024 AND 6TH APRIL, 2024

12. On 20th March, 2024, Acharya Balkrishna filed an affidavit, purportedly in compliance of the order passed by this Court on 27th February, 2024. In the said affidavit, in one breath the deponent offered an unqualified apology on behalf of Patanjali for the breach of the statement recorded in para 3 of the order dated 21st November, 2023 and in the other breath, tried to explain that the advertisement in question was meant to contain only general statements but inadvertently, included the offending statement and that the intention was only to exhort the citizens of the country to lead the healthier life by consuming the product of Patanjali. The contents of the aforesaid affidavit filed by Acharya Balkrishna are extracted below :

> "3. The Deponent regrets that the advertisement in question which was meant to contain only general statements inadvertently included the offending sentences. The same was *bona fide* and added in routine course by the media department of the Respondent No. 5 Company. The personnel of the media department of the Respondent No. 5 Company were not cognizant of the order dated 21.11.2023."

13. On perusing the aforesaid affidavit, this Court expressed its disinclination to accept the conditional apology tendered. At that stage, conscious of the fact that the aforesaid affidavit could not be treated as an unqualified apology, time was sought to file fresh affidavits. Thereafter, fresh affidavits were filed by Acharya Balkrishna and Baba Ramdev on 6th April, 2024 wherein, identical averments were made by them. The said affidavits stated that :

> "2. I am filing this Affidavit in supersession of my Affidavit dated 20.03.2024.

3. Pursuant to the order dated 27.02.2024, I entered appearance through Ld. Counsel on 19.03.2024 before this Hon'ble Court and tendered an unqualified apology for the breach of the statement recorded in Para 3 of the order dated 21.11.2023. In the affidavit filed on 20.03.2024, I further undertake to ensure that such offending advertisements shall not be issued in the future. I affirm that no further offending advertisements were issued after 27.02.2024.

4. I hereby tender an unconditional and unqualified apology for the breach of the statement recorded in para 3 of the order of this Hon'ble Court dated 21.11.2023. I further undertake and ensure that the said statement shall be complied with in letter and spirit and no such similar advertisements shall be issued.

5. I seek pardon for the aforesaid breach of the statement. I undertake to always uphold the majesty of law and majesty of justice.

6. That I sincerely regret the issue of advertisements from Respondent No. 5 which is an infraction of the order dated 21.11.2023. I tender my unconditional and unqualified apology in this regard, on my own behalf and that of Respondent No. 5 I never had any intention to violate orders of this Hon'ble Court. I state that no such lapse will occur in future. I will always uphold the Majesty of law.

7. I hereby tender an unconditional and unqualified apology for the press conference dated 22.11.2023 and undertake not to make any public statements which may amount to breach of the undertaking given as recorded in para 3 of the order dated 21.11.2023, therefore, seek apology of this Hon'ble Court for the aforesaid press Conference."

I. PROCEEDINGS DATED 10TH APRIL, 2024

14. In an endeavour to avoid appearing before this Court in terms of the directions issued on 19th March, 2024, both, Acharya Balkrishna and Baba Ramdev moved separate applications[6] for permission to appear virtually on a plea that they had pre-scheduled meetings at Dubai, UAE on 2nd April, 2024 and therefore, they needed exemption from attending the Court hearing physically on 2nd April, 2024. Enclosed with the said applications sworn on 30th March, 2024, were the details of their travel summary issued at 2.16 PM, on 31st March, 2024.

15. On noticing the evident discrepancies in the aforesaid affidavits and the documents enclosed therewith, it was pointed out that while the travel summary

6 IA No. 78328 of 2024 and IA No. 77726 of 2024

enclosing the air tickets of the proposed contemnors was dated 31st March, 2024, the affidavits filed by them were sworn one day before the said date, i.e., on 30th March, 2024. This Court adversely commented on the aforesaid mismatch of dates and observed that it was an attempt on the part of the proposed contemnors to somehow evade their physical appearance before the Court. The relevant paras of the order passed on 10th April, 2024, are extracted below :

> "1. Mr. Mukul Rohatgi, learned Senior counsel appearing for the respondents No. 5, 6 and 7, proposed contemnors, submits that subsequent to filing affidavits dated 02nd April, 2024, submitting qualified apologies to this Court for issuing misleading advertisements and releasing press statements contrary to the orders passed on 21st November, 2023 and the undertakings given to this Court, the proposed contemnors have filed fresh affidavits on 06th April, 2024, tendering their unconditional apologies for the lapses on their part and they have sought pardon for the breach of statements made by them.
>
> 2. **Having regard to the entire history of the matter and the past conduct of the respondents No. 5 to 7 – proposed contemnors, we have expressed our reservation about accepting the apologies offered in the latest affidavits filed by them. We have also pointed out to learned counsel appearing for the proposed contemnors that even after notices to show cause were issued to the respondents-proposed contemnors and they were directed to remain present before this Court, they attempted to wriggle out by moving applications seeking exemption from appearing on the pretext that they were travelling abroad. To demonstrate the said fact, in the affidavits filed by them alongwith the exemption applications on 30th March, 2024, they annexed tickets purportedly purchased by their travel agents for purposes of travelling abroad. Strangely enough, the said documents were issued the day after the aforesaid affidavits were sworn by them, i.e. on 31st March, 2024.**
>
> **3. When confronted with the said position on the last date of hearing, learned Senior counsel appearing for the respondents No. 5 and 7 – proposed contemnors had sought time to obtain clarifications. It has now been stated in the latest affidavits filed by the proposed-contemnors that admittedly, photocopies of the tickets were issued on a date after the affidavits were sworn and the said documents were annexed with the affidavits that were sworn on 30th March, 2024 and filed on 31st March, 2024. Fact remains that on the date when the affidavits were sworn, there were no such tickets issued. It is apparent that the respondents were trying to escape appearing personally before this Court in these proceedings, which is most unacceptable."**
>
> (emphasis added)

J. PROCEEDINGS DATED 16TH APRIL, 2024

16. On 16th April, 2024, both the proposed contemnors were present in Court and after interacting with them, the following order was passed:

> "1. Mr. Mukul Rohatgi, learned Senior counsel appearing for the proposed Contemnors No.5 to 7 submits that to redeem themselves and demonstrate their bona fides, they propose to take some steps unilaterally. He requests one week's time to revert back on the aforesaid aspect.
>
> 2. **This Court has interacted with the proposed Contemnors No.6 and 7 for some time and have heard their submissions. Both of them have tendered their unqualified apology for having called a press conference immediately after an order was passed by this Court on 21st November, 2023 and for continuing to issue misleading advertisements and making derogatory statements in respect of other systems of treatment. They seek to assure this Court that they will be careful in future and not violate the orders of the Court or the undertaking given to the Court or violate the provisions of law.**
>
> 3. This aspect shall be considered on the next date.
>
> 4. At the request of the proposed Contemnors No.5 to 7, list on 23rd April, 2024 at the top of the Board. The proposed contemnors shall remain present on the next date of hearing."
>
> (emphasis added)

17. This was followed by an affidavit filed by Acharya Balkrishna on 24th April, 2024 stating *inter alia* as follows :

> "2. That the Deponent herein in the affidavit filed on 06.04.2024, undertook to ensure that no further offending advertisements shall be issued as directed by this Hon'ble Court.
>
> 3. Further, I again tender my unconditional apology for the infraction of order dated 21.11.2023, and I regret that the advertisements were issued and I seek pardon of this Hon'ble Court. I tender my unconditional and unqualified apology in this regard once again.
>
> 4. I state that no such lapse will occur in future. I will always uphold the Majesty of the Court of law.

5. Furthermore, pursuant to the order dated 16.04.2024, the Deponent took an initiative to redeem himself voluntarily and in view of the same, the Deponent to took an initiative to publish public apologies in various National and Regional Newspapers with wide circulation across the country which were carried out on 22.04.2024. The said public apology which was published in several newspapers circulated across the nation is reproduced as below for ready reference:

> "Patanjali Ayurved Limited fully respects the dignity of the Hon'ble Supreme Court. We sincerely apologize for the mistake of publishing advertisements and holding a press conference even after our advocates made a statement in the apex court. We are committed to not let such a mistake be repeated ever in future. We reassure you that we shall remain committed to uphold the constitution and dignity of the Hon'ble Supreme Court.
>
> Patanjali Ayurved Limited
>
> Haridwar, Uttarakhand."

K. PROCEEDINGS DATED 23rd APRIL, 2024

18. On 23rd April, 2024, learned counsel appearing for the proposed contemnors stated before this Court that some advertisements tendering unqualified apologies by the proposed contemnors had been published in the press a day before. When the newspaper cuttings were handed over to the Court for perusal, it was noticed that the apologies tendered were in a small box with such a fine print that it was impossible to read the apologies without using a magnifying glass. This attempt to downsize the advertisements, making them virtually illegible, had drawn an adverse comment from the Court. As time was sought to collate and file the documents and issue additional advertisements, the following orders were passed on 23rd April, 2024 :

> "1. Mr. Mukul Rohatgi, learned Senior counsel appearing for the proposed contemnors submits that some advertisements tendering unqualified apologies have been published in the press by the proposed contemnors for the lapses on their part, only yesterday. It is submitted that the same have been collated and shall be filed during the course of the day with copies furnished to learned counsel for the parties.
>
> 2. Needful shall be done within two days.

> 3. It is further stated that additional advertisements shall be published by the proposed contemnors tendering an unqualified apology for the lapses on their part within this week. As and when the said advertisements are issued and copies filed, the same shall be considered and appropriate orders passed.
>
> 4. List on 30th April, 2024, at the top of the Board. The proposed contemnors shall continue to remain present on the next date of hearing."

19. On 24th April, 2024, an affidavit was filed by Acharya Balkrishna furnishing a list of the daily newspapers published by the proposed contemnors on 22nd April, 2024, both in English and in Hindi. He further deposed that to redeem himself, he had voluntarily taken the initiative to publish fresh advertisements seeking public apology in various national and regional newspapers with wide circulation which were carried on 24th April, 2024. The apologies published by the proposed contemnors extracted in para 7 of the affidavit, stated as follows:

> "In the wake of on going matter before the Hon'ble Supreme Court of India (Writ Petition C. No. 645/2022), we in our individual capacity as well as on behalf of the Company, unconditionally apologise for the non-compliance or disobedience of directions/orders of the Hon'ble Supreme Court of India.
>
> We unconditionally extend the apology for holding meeting/press conference dated 22.11.2023. We earnestly apologize for the mistake made in publishing our advertisements and it is our whole-hearted commitment that such errors will not be repeated. We undertake to abide by directions and instructions of the Hon'ble Court with due care and utmost sincerity. We undertake to uphold the majesty of the court and comply with applicable laws and directions of the Hon'ble Court of law/relevant authorities.
>
> Patanjali Ayurved Limited, Acharya Balkrishna, Swami Ramdev
>
> Haridwar, Uttarakhand"

20. On 30th April, 2024, learned counsel for the proposed contemnors alluded to the aforesaid affidavit sworn by his clients and to the publications carried in various newspapers on 22nd April, 2024 containing their apologies for the breach of the order passed by this Court on 21st November, 2023 and submitted that the apologies tendered

by the proposed contemnors this time, were published in bold letters and the font size was legible.

L. AFFIDAVIT DATED 16TH MAY, 2024

21. On 14th May, 2024, on a query posed by the Court, time was sought on behalf of the proposed contemnors for permission to file affidavits setting out the steps that were being taken by them to bring down the advertisements of those products of Patanjali, licenses whereof had been suspended by the State of Uttarakhand and for recalling the said medicines sent for sale to stockists and other agencies. The proposed contemnors were permitted to file the said affidavits and orders on the *suo motu* contempt proceedings were reserved. Following is the relevant extract of the affidavit filed by Patanjali on 16th May, 2024 :

> "2. That in pursuance of the order dated 10.04.2024 of this Hon'ble Court, the State Government of Uttarakhand cancelled the manufacturing licenses of 14 ayurvedic medicines/formulations. The Respondent No. 5 is in the process of taking the appropriate remedy against the aid suspension order, mentioned hereinbelow, in terms of applicable law and further in light of the order dated 14.05.2024 passed by this Hon'ble Court.
>
> 3. That in light of the suspension order, the sale of these ayurvedic medicines/formulations has been stopped by Respondent No. 5 by issuing various directions to entities associated with it, details of which are mentioned hereinafter. It is relevant to state that the list of 14 medicines/formulations which has been suspended by the State Government of Uttarakhand are as follows :

S. No.	Medicines
1.	Swasari Gold
2.	Swasari Vati
3.	Bronchom
4.	Swasari Pravahi
5.	Swasari Avaleh
6.	Mukta Vati Extra Power,
7.	Lipidom
8.	BP Grit
9.	Madhugrit

10.	Madhunashini Vati Extra Power
11.	Livamrit Advance
12.	Livogrit
13.	Eyegrit Gold
14.	Patanjali Drishti Eye Drop

4. That the sale of the aforesaid 14 ayurvedic medicines/formulations by Respondent No. 5 on its online e-commerce platform patanjaliayurved.net was stopped on 09.05.2024.

5. That deponent states that it has also taken steps to remove the advertisements from its official verified social media accounts/handles in relation to the aforesaid 14 ayurvedic medicines/formulations and is taking steps to ensure that no advertisements qua the suspended medicines/formulations are available on the same.

6. Further, the Respondent No. 5 was selling the aforementioned ayurvedic medicines/formulations through-out India in its 5606 exclusive/franchise stores and has issued email of withdrawal dated 14.05.2024 to all the exclusive stores/franchises of the Respondent No. 5 across India for removal/withdrawal of the 14 ayurvedic medicines/formulations which were suspended vide order dated 15.04.2024 passed by the State Drug Licensing Authority Ayurvedic and Unani Services, Dehradun, Uttarakhand.

I. The Respondent has instructed the media platforms, associated with it as well as those specifically engaged by Respondent No. 5 for purchasing advertisement slots in print and electronic media to immediately stop the broadcasting of any advertisements in any form in relation to aforementioned medicines/formulations. It is relevant to state herein that vide emails dated 14.05.2024, issued by Respondent No. 5 to advertising agency namely Vermillion Communication Private Limited, Rights Ad Communication Private Limited, Rights Ad Communication Private Limited, Combine Communications Private Limited as well as entities such as Sanskar Info TV Private Limited, Aastha Broad Casting Network Limited and Vedic Broadcasting Limited, necessary instructions have been issued to ensure that no advertisements qua the sale or promotion of the aforesaid 14 suspended ayurvedic medicines/formulations be caried out in any publications either in print or electronic media.

A true copy of the emails dated 14.05.2024 sent to Vermillion Communication Private Limited, Rights Ad Communication Private Limited as well as entities such as Sanskar Info TV Private Limited, Aastha Broad Casting Network Limited and Vedic Broadcasting Limited are annexed herewith and marked as ANNEXURE R-1 at pages 10 to 21.

II. Respondent No. 5 also issued emails of withdrawal dated 14.05.2024 to all franchise stores, Super Distributors & e-commerce partner (Fit India Organic Private Limited) of the Respondent No. 5 across India for removal/withdrawal of the aforesaid 14 suspended medicines.

A true copy of the emails dated 14.05.2024 sent to franchise stores, Super Distributors & e-commerce partner (Fit India Organic Private Limited) are annexed herewith and marked as ANNEXURE R-2 at page 22 to 27.

III. Intimation emails dated 14.05.2024 were issued to social media companies to remove/withdraw all advertisements of aforesaid 14 ayurvedic medicine/formulations, if any, suspended vide order dated 15.04.2024 passed by State Drug Licensing Authority Ayurvedic and Unani Services, Dehradun, Uttarakhand, wherein such posts have been issued by third party individuals/entities who are not associated with any of the Respondent No. 5 verified social media handles. The said request was made directly to the Social Media Intermediaries as Respondent No. 5 has not direct control on any such handle which belongs to third party individuals/entities and any notice/take down action can only be initiated by the Social media Intermediary themselves.

A true copy of the emails dated 14.05.2024 sent to social media platforms/companies namely, X (Twitter), YouTube, Google and Meta (Facebook & Instagram) are annexed herewith and marked as ANNEXURE R-3 at pages 28-35.

Copies of the aforesaid emails dated 14.05.2024 written to various agencies, media houses and social media platforms are tabulated hereinbelow for ready reference of this Hon'ble Court:

S. No.	Medicines
1.	Patanjali (Exclusive/Franchise Stores
2.	Patanjali Super Distributors
3.	Sanskar Group
4.	Vermillion Team
5.	Fit India (E Commerce Partner)
6.	Meta (Facebook)
7.	Google LLC
8.	Meta (Instagram)
9.	Rights Ad communication Private Limited
10.	X Corp (Twitter)
11.	Vedic Broadcasting Limited
12.	YouTube (Google LLC)
13.	Combine Communications Private Limited
14.	Aastha Broad Casting Network Pvt. Ltd.

7. Respondent No. 5 has further intimated/conveyed all its franchise and stores to withdraw/remove any offending advertisement material.

8. The Respondent No. 5 further states that it has the highest regard for the orders/directions passed by this Hon'ble Court and further it will comply with any other directions/instructions as directed by this Hon'ble Court in order to meet the compliance of orders passed by this Hon'ble Court."

M. ARTICLE 129 OF THE CONSTITUTION OF INDIA AND CONTEMPT OF COURTS ACT, 1971

22. Before examining the conduct of the proposed contemnors in the aforesaid background, we may note the relevant provisions of law. Article 129 of the Constitution declares the Supreme Court to be "a court of record" and states that it shall have all the powers of such a court including the power to punish for contempt of itself. The provisions of Contempt of Courts Act, 1971[7] and the Rules framed thereunder form a part of a special statutory jurisdiction that is vested in courts to punish an offending party for its contemptuous conduct. It needs no emphasis that the power of contempt ought to be exercised with caution, care and sparingly. The contemptuous act complained of must be such that would result in obstruction of justice, adversely affect the majesty of law and impact the dignity of the courts of law.

23. It must also be understood that contempt proceedings are *sui generis* inasmuch as the Law of Evidence and the Code of Criminal Procedure, 1973 are strictly inapplicable. At the same time, the procedure adopted during the contempt proceedings must be fair and just that is to say that the principles governing the Rule of law must be extended to the party against whom contempt proceedings have been initiated. The party must have every opportunity to place its position before the Court. Such a party must not be left unheard under any circumstances.

7 For short 'the Act'

24. In the above context, we may profitably refer to the observations made in ***Murray and Company v. Ashok Kr. Newatia and Another***[8] wherein, this Court stated as follows:

> "9.....**The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law since the image of such a majesty in the minds of the people cannot be led to be distorted**. The respect and authority commanded by courts of law are the greatest guarantee to an ordinary citizen and the entire democratic fabric of the society will crumble down if the respect for the judiciary is undermined. **It is true that the judiciary will be judged by the people for what the judiciary does, but in the event of any indulgence which can even remotely be termed to affect the majesty of law, the society is bound to lose confidence and faith in the judiciary and the law courts thus, would forfeit the trust and confidence of the people in general."**
>
> *(emphasis added)*

25. In ***Pushpaben and Another v. Narandas Badiani and Another***[9], this Court had highlighted the significance of the special jurisdiction under the Act in the following words:

> "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."**
>
> (emphasis added)

8 (2000) 2 SCC 367
9 (1979) 2 SCC 394

26. In ***Reliance Petrochemicals Limited v. Proprietors of Indian Express Newspapers, Bombay Pvt. Ltd. and Others***[10], this Court observed that :

> **35.** The question of contempt must be judged in a particular situation. **The process of due course of administration of justice must remain unimpaired. Public interest demands that there should be no interference with judicial process and the effect of the judicial decision should not be pre-empted or circumvented by public agitation or publications**. It has to be remembered that even at turbulent times through which the developing countries are passing, contempt of court means interference with the due administration of justice.
>
> (emphasis added)

27. In ***Anil Ratan Sarkar and Others v. Hirak Ghosh and Others***[11] this Court added a note of caution in exercise of contempt jurisdiction and made the following pertinent observations :

> **"**13. Before proceeding with the matter further, certain basic statutory features ought to be noticed at this juncture. **The Contempt of Courts Act, 1971 has been introduced in the statute-book for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country — undoubtedly a powerful weapon in the hands of the law courts but that by itself operates as a string of caution and unless thus otherwise satisfied beyond doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the statute.** The observation as above finds support from a decision of this Court in ***Chhotu Ram* v. *Urvashi Gulati*** **[(2001) 7 SCC 530** : 2001 SCC (L&S) 1196] wherein one of us (Banerjee, J.) stated as below: (SCC p. 532, para 2)
>
> > "2. As regards the burden and standard of proof, the common legal phraseology 'he who asserts must prove' has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the 'standard of proof', be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the

10 (1988) 4 SCC 592
11 (2002) 4 SCC 21

breach shall have to be established beyond all reasonable doubt."

14. Similar is the situation in ***Mrityunjoy Das* v. *Sayed Hasibur Rahaman***[12] and as such we need not dilate thereon further as to the burden and standard of proof vis-à-vis the Contempt of Courts Act — **suffice it to record that powers under the Act should be exercised with utmost care and caution and that too rather sparingly and in the larger interest of the society and for proper administration of the justice delivery system in the country.** Exercise of power within the meaning of the Act of 1971 shall thus be a rarity and that too in a matter on which there exists no doubt as regards the initiation of the action being bona fide."

(emphasis added)

28. In ***Ram Kishan v. Tarun Bajaj and Others***[13], highlighting the significance of contempt jurisdiction, it has been observed that :

"11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. **Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt.** It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities."

(emphasis added)

29. A judicious use of the power of contempt has been underscored in ***Hon'ble Shri Justice C.S. Karnan, in Re***[14], where a Constitution Bench of 7 Judges cited several decisions of foreign jurisdictions and observed thus :

"63. The authority to punish for contempt of court has always been exercised by the judiciary from times immemorial [In one of the earliest legal pronouncements dealing with the subject, Justice Wilmot in **R. v. Almon**, 1765 Wilmot's Notes 243 : 97 ER 94 explained the philosophy behind the power to punish for contempt of court. The passage now a classis exposition runs as follows : (ER p. 100) "… and whenever men's allegiance to the laws is so fundamentally shaken, it is the

12 (2001) 3 SCC 739
13 (2014) 16 SCC 204
14 (2017) 7 SCC 1

> most fatal and most dangerous obstruction of justice, and, in my opinion, calls out for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the Judges, as private individuals, but because they are the channels by which the King's justice is conveyed to the people."} the justification for the existence of that is not to afford protection to individual Judges ["14. … the law of contempt is not made for the protection of Judges who may be sensitive to the winds of public opinion. Judges are supposed to be men of fortitude, able to thrive in a hardy climate." [Douglas, J., **Craig v. Harney**, 1947 SCC Online US SC 79, para 14 : 91 L.Ed. 1546 : 331 US 367 (1947) at p. 376]] but to inspire confidence in the sanctity and efficacy of the judiciary ["… **The object of the discipline enforced by the Court in case of contempt of court is not to vindicate the dignity of the court or the person of the Judge, but to prevent undue interference with the administration of justice**." [Bowen, L.J. – **Helmore v. Smith** (2), [L.R.} 35 Ch. 449 at p. 455 (CA)]], though they do not and should not flow from the power to punish for contempt. They should rest on more surer foundations. The foundations are – the trust and confidence of the people that the judiciary is fearless and impartial."
>
> (emphasis added

(**Also refer:** ***Parashuram Detaram Shamdasani v. King-Emperor***[15] and ***Chairman, West Bengal Administrative Tribunal and Another v. SK. Monobbor Hossain and Another***[16]**)**

N. MEANING OF THE EXPRESSION "WILFUL DISOBEDIENCE"

30. What does the expression "wilful disobedience" used in defining "civil contempt" in Section 2(b) of the Act, mean? The expression "civil contempt" has been defined in Section 2(b) as follows :

> "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".

31. It can be discerned from the aforesaid definition that there are three sets of pre-conditions for holding a person as guilty for committing civil contempt, i.e., (a) there must a judgement, decree, direction, order, writ or other process of a Court; (b) there must be disobedience of such a judgement, decree, direction, order, writ or other process of a

15 (1945) A.C. 264
16 (2012) 11 SCC 761

Court; (c) such a disobedience to a judgement, decree, direction, order, writ or other process of a Court must be wilful. The fourth is the circumstance where an undertaking is given to the Court and there is a breach of such an undertaking. (Refer : ***Patel Rajnikant Dhulabhai and Another v. Patel Chandrakant Dhulabhai and Others***[17]).

32. In ***Rama Narang v. Ramesh Narang and Another***[18], this Court expounded on the interpretation of Section 2(b) of the Act and observed that the said provision can be divided into two neat compartments. The first compartment is of cases where there is willful disobedience of a Court process and the second one is where there is willful breach of an undertaking given to a Court. We may gainfully extract the following para for ready reference :

> "18. The Act has been duly widened. It provides inter alia for definitions of the terms and lays down firmer bases for exercise of the court's jurisdiction in contempt. Section 2(b) of the Contempt of Courts Act, 1971 defines civil contempt as meaning **"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".**
>
> Analysed, the definition provides for two categories of cases, namely, (1) wilful disobedience to a process of court, and (2) wilful breach of an undertaking given to a court. As far as the first category is concerned, the word "any" further indicates the wide nature of the power. No distinction is statutorily drawn between an order passed after an adjudication and an order passed by consent. **This first category is separate from the second and cannot be treated as forming part of or taking colour from the second category. The legislative intention clearly was to distinguish between the two and create distinct classes of contumacious behaviour.** Interestingly, the courts in England have held that the breach of a consent decree of specific performance by refusal to execute the agreement is punishable by way of proceedings in contempt."
>
> (emphasis added)

17 (2008) 14 SCC 561
18 (2006) 11 SCC 114

33. Citing the decisions in ***Patel Rajnikant Dhulabhai*** (supra) and ***Rama Narang*** (supra), this Court observed in ***Balwantbhai Somabhai Bhandari v. Hiralal Somabhai***[19] that :

> "62. Thus, it is evident that Section 2(b) of the Act, which defines civil contempt, consists of two different parts and categories, namely, (i) wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or (ii) wilful breach of an undertaking given to a court. **The expression "any" used with reference to the first category indicates the wide nature of power given to the Court and that the statute does not draw a difference between an order passed after adjudication or an order passed by consent. The first part or category is distinct and cannot be treated as a part or taking colour from the second category**. This Court consciously observed that the Courts in England have held that the breach of consent decree of performance by refusal to execute an agreement was punishable by way of contempt proceedings. With reference to the second part, in **Rama Narang** (supra) it was observed that giving of an undertaking is distinct from a consent order recording compromise. In the latter case of violation of compromise, no question of contempt arises, but the party can enforce the order of compromise either by execution or injunction from a Court. However, in the former case, when there is wilful disobedience, contempt application and proceedings would be maintainable."
>
> (emphasis added)

34. In ***Balwantbhai Somabhai Bhandari*** (supra), the Court further observed as under :

> "73. An undertaking or an assurance given by a lawyer based upon which the court decides upon a particular course of action would definitely fall within the confines of "undertaking" as stipulated under Section 2(b) of the Act, 1971 and the breach of which would constitute "civil contempt". As held in **M. v. Home** (supra) relied upon by this Court in **Rama Narang** (supra) that if a party or solicitor or counsel on his behalf, so as to convey to the court a firm conviction that an undertaking is being given, that party will be bound and it will be no answer that he did not think that he was giving it or that he was misunderstood. The breach of an undertaking given to a court by a person in a pending proceeding on the faith of which the court sanctions a particular course of action is misconduct amounting to contempt."
>
> (emphasis added)

35. The expression *"willful disobedience"* has been discussed by this Court at some length in ***Niaz Mohammad and Others v. State of Haryana and Others***[20] as below :

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19 2023 SCC OnLine SC 1139

20 (1994) 6 SCC 332

> *"9. Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act') defines "civil contempt" to mean "wilful disobedience to any judgment, decree, direction, order, writ or other process of a court ...". Where the contempt consists in failure to comply with or carry out an order of a court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order.* ***The court while considering the issue as to whether the alleged contemner should be punished for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemner is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional****. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequence thereof.* ***But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the contemner to comply with the order, the court may not punish the alleged contemner."***
>
> *(emphasis added)*

36. In ***Ashok Paper Kamgar Union v. Dharam Godha and Others***[21], this Court observed that the expression "*willful disobedience*" deployed in Section 2(b) of the Act means an act or omission done voluntarily and intentionally with a specific intent to do something, which the law forbids or with a specific intention to fail to do something which the law requires to be done. The expression '*willfulness*' signifies deliberate action done with evil intent and bad motive or purpose. It should not be an act which requires or is dependent either wholly or in part, on any act or omission of a third party for compliance.

21 (2003) 11 SCC 1

Holding that a willful act does not encompass any involuntary or negligent actions, this Court held in **Ram Kishan** (supra) as under :

> "12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is **"wilful". The word "wilful" introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. "Wilful" means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability.** Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a "bad purpose or without justifiable excuse or stubbornly, obstinately or perversely". Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. **The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished.** "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct."
>
> *(emphasis added)*

37. In a recent decision of this Court in ***Balwantbhai Somabhai Bhandari*** (supra)[22], in the above context, this Court has made the following relevant observations :

> "45. **The sanctity to judicial proceedings is paramount to a society governed by law.** Otherwise, the very edifice of democracy breaks and anarchy reigns. The Act, 1971 is intended to correct a person deviating from the norm and trying to breach the law/assuming law on to himself. **It intends to secure confidence of the people in the administration of justice by disciplining those erring in disobeying the orders of the Court/undertaking given to court.**
>
> xxx xxx xxx
>
> 56. **Hence, the expression or word "wilful" means act or omission which is done voluntarily or intentionally and with the specific intent to do something which the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or to disregard the law.** It signifies a deliberate action done with evil intent or with a bad motive or purpose."
>
> (emphasis added)

22 2023 SCC OnLine SC 1139

38. To determine as to whether a person is guilty of civil contempt, it is necessary to first hold that the person has willfully disobeyed any judgement, decree, order, writ or any other process of the Court. Of equal significance is a wilful breach of an undertaking given to a Court. Mere disobedience of an order may not suffice to qualify as a "civil contempt" within the meaning of Section 2(b) of the Act. The element of willingness is a prerequisite to bring home the charge within the scope of the Act [Refer : ***Anil Ratan Sarkar*** (supra)]. This must not be confused with a wilful breach of an undertaking given to the opposite party in a litigation. While an undertaking given to a party in a litigation whether by way of a settlement / agreement (oral or in writing) or an assurance, does not attract the provisions of the Act, an undertaking given to a Court of law is treated on an entirely different footing and a breach of the said undertaking would no doubt, attract the provisions of the Act. It has to be seen in the facts and circumstances of a case as to whether the undertaking is one offered to the Court or to the other side.

39. In ***Babu Ram Gupta v. Sudhir Bhasin and Another***[23] this Court drew a distinction between a party failing to honour an undertaking resulting in a fraud on the Court as against failure to adhere to a consent order by a party and observed that:

> "8. .....while it is the duty of the court to punish a person who tries to obstruct the course of justice or bring into disrepute the institution of judiciary, this power has to be exercised not casually or lightly but with great care and circumspection and only in such cases where it is necessary to punish the contemner in order to uphold the majesty of law and dignity of the courts.
>
> 9 .....Contempt proceeding against a person who has failed to comply with the Court a order serves a dual purpose: (1) vindication of the public interest by punishment of contemptuous conduct and (2) coercion to compel the contemner to do what the law requires of him……

23 (1980) 3 SCC 47

> 10. ….**the reason why a breach of clear undertaking given to the court amounts to contempt of court is that the contemner by making a false representation to the court obtains a benefit for himself and if he fails to honour the undertaking, he plays a serious fraud on the court itself and thereby obstructs the course of justice and brings into disrepute the judicial institution. The same cannot, however, be said of a consent order or a compromise decree where the fraud, if any, is practised by the person concerned not on the court but on one of the parties**. Thus, the offence committed by the person concerned is qua the party not qua the court, and, therefore, the very foundation for proceeding for contempt of court is completely absent in such cases…...
>
> (emphasis added)

O. <u>BREACH OF AN UNDERTAKING</u>

40. Coming next to the word "*undertaking*", the same has not been defined in the Act but it has different connotations. In the backdrop of contempt proceedings, the word *"undertaking"* has been defined in Black's Law Dictionary, Fifth Edition as :

> "A promise, engagement, or stipulation. An engagement by one of the parties to a contract to the other, as distinguished from the nutual engagement of the parties to each other. It does not necessarily imply a consideration. In a somewhat special sense, a promise given in the course of legal proceedings by a party or his counsel, generally as a condition to obtaining some concession from the court or the opposite party. A promise or security in any form."

41. The Osborn's Concise Law Dictionary, 10th Edition defines *"undertaking"* in the following words :

> "A person, especially a promise in the course of legal proceedings by a party or his counsel, which may be enforced by attachment or otherwise in the same manner as an injunction."

42. In ***M v. Home Office***[24], the Court issued a caution on how an undertaking would be treated and observed that :

> "If a party, or solicitors or counsel on his behalf, so act as to convey to the court the firm conviction that an undertaking is being given, that party will be bound

24 (1992) Q.B. 270

> and it will be no answer that he did not think that he was giving it or that he was misunderstood."

P. QUALIFIED APOLOGY *VIS-À-VIS* UNCONDITIONAL APOLOGY

43. We may next touch upon the aspect of a qualified apology vis-à-vis an unconditional apology. It must be understood that any apology tendered by a party in contempt proceedings must be unconditional and unqualified. Such an apology must also demonstrate that it has been made with a *bona fide* intention and not just to wriggle out of a tight situation. Tendering a qualified apology is akin to a game of dice. It could either have a positive outcome or a negative result. If the contemnor tenders a conditional apology and expects luck to play a role in the outcome of such an apology, then he should be ready to face the consequence of an outright rejection.

44. In ***M.Y. Shareef and Another v. Hon'ble Judges of the High Court of Nagpur and Others***[25], a Constitution Bench of this Court had observed in para 12 that:

> **"12.** The proposition is well settled and self-evident that **there cannot be both justification and an apology. The two things are incompatible. Again, an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness.** The appellants having tendered an unqualified apology, no exception can be taken to the decision of the High Court that the application for transfer did constitute contempt because the Judges were scandalised with a view to diverting the due course of justice, and that in signing this application the two advocates were guilty of contempt. That decision therefore stands."
>
> (emphasis added)

25 (1954) 2 SCC 444

45. In ***Priya Gupta and Another v. Additional Secretary, Ministry of Health and Family Welfare and Others***[26], this Cout expounded on the expression *"bona fide"* and held as below:

> "**7. Tendering an apology is not a satisfactory way of resolving contempt proceedings. An apology tendered at the very initial stage of the proceedings being bona fide and preferably unconditional would normally persuade the court to accept such apology, if this would not leave a serious scar on the dignity/authority of the court and interfere with the administration of justice under the orders of the Court.**
>
> **8. "Bona fide" is an expression which has to be examined in the context of a given case. It cannot be understood in the abstract. The attendant circumstances, behaviour of the contemnor and the remorse or regret on his part are some of the relevant considerations which would weigh with the Court in deciding such an issue.** Where, persistently, a person has attempted to overreach the process of Court and has persisted with the illegal act done in wilful violation to the orders of the Court, it will be difficult for the Court to accept unconditional apology even if it is made at the threshold of the proceedings. It is not necessary for us to examine in any greater detail the factual matrix of the case since the disobedience, manipulation of procedure and violation of the schedule prescribed under the orders of the Court is an admitted position. All that we have to examine is whether the apology tendered is bona fide when examined in the light of the attendant circumstances and whether it will be in the interest of justice to accept the same.
>
> **9. The facts which will weigh with the Court while considering acceptance of an apology are the contemptuous conduct, the extent to which the order of the Court has been violated, irresponsible acts on the part of the contemnor and the degree of interference in the administration of justice, which thereby cause prejudice to other parties.** An apology tendered, even at the outset, has to be bona fide and should be demonstrative of repentance and sincere regret on the part of the contemnor, lest the administration of justice be crudely interfered with by a person with impunity. The basic ingredients of the rule of law have to be enforced, whatever be the consequence and all persons are under a fundamental duty to maintain the rule of law. **An apology which is not bona fide and has been tendered to truncate the process of law with the ulterior motive of escaping the consequences of such flagrant violation of orders of the court and causes discernible disrespect to the course of administration of justice, cannot be permitted. The court has to draw a balance between cases where tendering of an apology is sufficient, and cases where it is necessary to inflict punishment on the contemnor**. An attempt to circumvent the orders of the court is derogatory to the very dignity of the court and administration of justice. A person who attempts to salvage himself by showing ignorance of the court's order, of which he quite clearly had the knowledge, would again be an attempt on his part to circumvent the process of law. **Tendering a justification would be inconsistent with the concept of an apology. An apology which is neither sincere nor satisfactory and is not made at the appropriate stage may not provide sufficient grounds to the court for the acceptance of the same**. It is also an accepted principle that one

26 (2013) 11 SCC 404

who commits intentional violations must also be aware of the consequences of the same. **One who tenders an unqualified apology would normally not render justification for the contemptuous conduct**. In any case, tendering of an apology is a weapon of defence to purge the guilt of offence by the contemnor. It is not intended to operate as a universal panacea to frustrate the action in law, as the fundamental principle is that rule of law and dignity of the court must prevail.

xxx xxx xxx

14. From the above principle, it is clear that consideration of an apology as contemplated under Explanation to Section 12(1) of the Act is not a panacea to avoid action in law universally**. While considering the apology and its acceptance, the court inter alia considers : (a) the conduct of the contemnor prior and subsequent to the tendering of apology. If the conduct is contemptuous, prejudicial and has harmed the system and other innocent persons as a whole, it would be a factor which would weigh against the contemnors; and (b) the stage and time when such apology is tendered."**

(emphasis added)

46. In ***Bal Kishan Giri v. State of Uttar Pradesh***[27], where examining a case of rejection of an apology offered to the High Court by the contemnors who had insinuated bias and a predetermined mind against three Judges of the High Court, this Court observed that :

"15. The appellant has tendered an absolute and unconditional apology which has not been accepted by the High Court. The apology means a regretful acknowledgment or an excuse for failure. An explanation offered to a person affected by one's action that no offence was intended, coupled with the expression of regret for any that may have been given. **Apology should be unquestionable in sincerity. It should be tempered with a sense of genuine remorse and repentance, and not a calculated strategy to avoid punishment**.

16. Sub-section (1) of Section 12 of the Act and the Explanation attached thereto enables the court to remit the punishment awarded for committing the contempt of court on an apology being made to the satisfaction of the court. However, an apology should not be rejected merely on the ground that it is qualified or tendered at a belated stage if the accused makes it bona fide. **A conduct which abuses and makes a mockery of the judicial process of the court is to be dealt with iron hands and no person can tinker with it to prevent, prejudice, obstruct or interfere with the administration of justice**. There can be cases where the wisdom of rendering an apology dawns upon only at a later stage. Undoubtedly, an apology cannot be a defence, a justification, or an appropriate punishment for an act which tantamounts to contempt of court. An apology can be accepted in case where the conduct for which the apology is given is such that it can be "ignored without compromising the dignity of the court", or it is intended to be the evidence of real contrition. **It should be sincere. Apology cannot be accepted in case it is hollow; there is no**

27 (2014) 7 SCC 280

> **remorse; no regret; no repentance, or if it is only a device to escape the rigour of the law. Such an apology can merely be termed as "paper apology".**
>
> **17.** In **L.D. Jaikwal v. State of U.P.**[28], this Court noted that it cannot subscribe to the "slap-say sorry-and forget" school of thought in administration of contempt jurisprudence. Saying "sorry" does not make the slapper poorer. [See also **T.N. Godavarman Thirumulpad vs. Ashok Khot**[29]] **So an apology should not be "paper apology" and expression of sorrow should come from the heart and not from the pen; for it is one thing to "say" sorry, it is another to "feel" sorry.**
>
> **18.** An apology for criminal contempt of court must be offered at the earliest since a belated apology hardly shows the "contrition which is the essence of the purging of contempt". Of course, an apology must be offered and that too clearly and at the earliest opportunity. However, even if the apology is not belated but the court finds it to be without real contrition and remorse, and finds that it was merely tendered as a weapon of defence, the court may refuse to accept it. If the apology is offered at the time when the contemnor finds that the court is going to impose punishment, it ceases to be an apology and becomes an act of a cringing coward.
>
> **19. This Court has clearly laid down that an apology tendered is not to be accepted as a matter of course and the court is not bound to accept the same. The court is competent to reject the apology and impose the punishment recording reasons for the same**. The use of insulting language (sic and later on tendering an apology) does not absolve the contemnor on any count whatsoever. If the words are calculated and clearly intended to cause any insult, an apology, if tendered and lack penitence, regret or contrition, does not deserve to be accepted."
>
> *(emphasis added)*

47. In ***T.M.A. Pai Foundation and Others v. State of Karnataka and Others***[30], on noticing that the orders passed by this Court were assigned a distorted interpretation by judicial officers, who subsequently tendered an unqualified apology for their conduct, the said apologies were firmly rejected with the following observations :

> "10. **All the five officers, viz., Shri Arvind Choudhari, Capt. Shaikh, Smt Joyce Sankaran, Shri P.S. Mane and Shri B.G. More, have no doubt tendered unqualified apology to this Court but in the facts and circumstances stated above, it would be a travesty of justice to accept the same**. They are senior and experienced officers and must be presumed to know that under the constitutional scheme obtaining in this country, orders of this Court have to be obeyed implicitly and that orders of the Apex Court — for that matter, any Court — should not be trifled with**. We have found hereinabove that they have acted deliberately to subvert the orders of this Court, evidently at the instance of the Association of Private Medical Colleges. It is equally**

28 (1984) 3 SCC 405
29 (2006) 5 SCC 1
30 (1995) 4 SCC 1

> **necessary to erase an impression which appears to be gaining ground that the 'mantra' of unconditional apology is a complete answer to violations and infractions of the orders of this Court.**
>
> 11. **Accordingly, we reject the "unconditional apology" tendered by the five officers**, hold them guilty of contempt of court and do hereby censure their conduct. A copy of this order shall form part of the Annual Confidential Reports/Record of Service of each of the said officers."
>
> (emphasis added)

48. In ***Balwantbhai Somabhai Bhandari*** (supra), where the contemnors sold the suit property in violation of an undertaking given to the court, this Court rejected the apologies tendered holding that the same should not be accepted as a matter of course and the Court is not bound to accept the same. If the conduct of a contemnor is serious and the said conduct has caused damage to the dignity of the institution, the same should not be accepted. The Court deprecated the tendency of courts to show compassion in the face of disobedience of an undertaking or an order of the Court done deliberately.

49. In ***Suman Chadha and Another v. Central Bank of India***[31], the Court noted that an undertaking given by a party must be contextualized and observed as follows :

> "25**. It is true that an undertaking given by a party should be seen in the context in which it was made and (i) the benefits that accrued to the undertaking party; and (ii) the detriment/injury suffered by the counter party. It is also true that normally the question whether a party is guilty of contempt is to be seen in the specific context of the disobedience and the wilful nature of the same and not on the basis of the conduct subsequent thereto**. While it is open to the court to see whether the subsequent conduct of the alleged contemnor would tantamount to an aggravation of the contempt already committed, the very determination of an act of contempt cannot simply be based upon the subsequent conduct.
>
> 26. But the subsequent conduct of the party may throw light upon one important aspect namely whether it was just the inability of the party to honour the commitment or it was part of a larger design to hoodwink the court."
>
> (emphasis added)

31 2018 SCC OnLine Del 11536

50. A party appearing before the Court can give an undertaking by filing an application or an affidavit clearly setting out the undertaking given to the Court or by giving a clear and express oral undertaking incorporated by Court in its order. An undertaking may also be given by an Advocate on behalf of a client and if duly and properly given, it has the same effect as one given by the client. An undertaking given to the Court has the same force as an order of the Court and breach thereof would amount to contempt in the same manner as a breach of an injunction. Whether a statement made by a party or its counsel could amount to an undertaking, would depend on the words used in the statement made and the facts and circumstances of a case. When an undertaking is given before the Court for any purpose, be it for payment of money or for vacating a property or for doing an act or for refraining from doing a particular act and compliances are not made, contempt proceedings can be drawn up. The bottom-line is that if a party or the advocate acts in such a manner so as to convey to the Court a firm conviction that an undertaking is being given regardless of the fact that the word "undertaking" has not been specifically mentioned, that party will be bound down and it will be no answer that he did not think that he was giving it or that he was misunderstood.

Q. DISCUSSION AND ANALYSIS

51. Based on the aforesaid broad features of the law as laid down, we shall analyze the action of the proposed contemnors for the purpose of deciding their action to be wilful and contumacious. On the factual score, to the credit of learned counsel for the

proposed contemnors, they have not advanced an argument to the effect that the assurance recorded by this Court on 21st November, 2023, on a statement made by the learned counsel appearing on behalf of Patanjali, cannot be treated as an undertaking given to the Court or that it does not bind them. As a recall, on the aforesaid date, learned Senior Advocate appearing for Patanjali had made a statement on instructions and assured this Court that in future, there shall not be any violation of the law, especially the laws relating to advertising or branding of products manufactured and marketed by Patanjali. Further, an assurance was given to the Court that no casual statements claiming medicinal efficacy of the products of Patanjali or against any system of medicine will be released to the media in any form. Not only was the aforesaid statement made a part of the order dated 21st November, 2023, this Court had bound Patanjali down to the terms of the undertaking.

52. In the teeth of the aforesaid clear, categorical and unambiguous assurance given by Patanjali to the Court and knowing that the said assurance was given by its counsel on instructions and further, that Patanjali had been bound down to such an assurance, there was no justification for the proposed contemnors to have called for a Press Conference on the very next day, i.e., on 22 November 2023. The fact that the proposed contemnors were aware of the undertaking given to this Court on their behalf by their counsel is evident from their statements made in the Press Conference where they acknowledged that an order had been passed by this Court on 21st November, 2023. Despite that, accusatory statements were made by them against practicing

Doctors to the effect that they were spreading false propaganda that "*there is no cure for deceases like B.P., thyroid, sugar, asthma, arthritis, kidney and liver failure*".

53. Furthermore, the proposed contemnors being well aware of the statement recorded on their behalf on 21st November, 2023 to the effect that Patanjali shall not violate any laws, especially laws relating to advertising or branding of products manufactured and marketed by it, a positive assertion was made by them in the Press Conference that they have medicines that could cure blood pressure, thyroid, type-I diabetes and asthma. This statement was in violation of the provisions of the DMR Act and Rules. Describing the products manufactured by Patanjali as a "permanent solution" in respect of ailments listed in the Schedule appended to the DMR Act and Rules which prohibit advertisement of drugs for treatment of particular diseases and disorders including those that were referred to by the proposed contemnors in the Press Conference, again amounted to violating the undertaking given to the Court.

54. Within a week of the order passed by this Court, the proposed contemnors published advertisements in the daily newspapers on 4th December, 2023, yet again claiming that they had manufactured medicines that could cure diseases like high blood pressure, sugar, asthma, thyroid, arthritis which have been listed in the Schedules appended to the DMR Act and DMR Rules and are specifically prohibited for advertisement, so as to prevent the public from being misled. The advertisement in question that has been extracted in para 8 of this order, is clearly a violation of the undertaking given by the proposed contemnors. It was in the aforesaid background that

this Court had issued a notice to Patanjali on 27th February, 2024 calling upon it to explain as to why Contempt of Court proceedings should not be initiated against it and its Managing Director – Acharya Balkrishna. Subsequently, on 19th March, 2024, a similar notice was issued to Baba Ramdev noting that he too had violated the provisions of law.

55. Coming to the first affidavit filed by Acharya Balkrishna, on 20th March 2024, though he purportedly tendered an unqualified apology on behalf of Patanjali for the breach of statement recorded in the order dated 21st November, 2023, we had rejected the said affidavit for the reason that the deponent had tried to justify his conduct by seeking to offer an explanation for the advertisements issued, which is impermissible. As already observed by this Court, there cannot be a justification and an apology. The two things are incompatible and do not go hand-in-hand. As a result, the conditional apology tendered by the proposed contemnor was rejected.

56. Thereafter, fresh affidavits were filed by Acharya Balkrishna and Baba Ramdev on 6th April, 2024 wherein, an unconditional and unqualified apology was tendered by them for the breach of the statement recorded in para 3 of the order dated 21st November 2023. A further undertaking was given by them that they will ensure that the statement recorded on their behalf is complied with and that no offending advertisement will be issued in the future. Expressing regret for having issued advertisements in violation of the undertaking given to this Court, they tendered an unconditional and unqualified apology and again, gave an assurance that no such lapse shall occur in the

future. Similarly, an unconditional and unqualified apology was offered by the proposed contemnors for holding a Press Conference on 22nd November, 2023 and making casual public statements regarding the efficacy of particular medicines manufactured by them and against any system of medicine. They also undertook not to make any such public statements in breach of the undertaking given to this Court.

57. On 16th April 2024, Acharya Balkrishna and Baba Ramdev, who were directed to remain present in Court in terms of earlier orders, stepped forward and orally tendered their unqualified apology to this Court for having called a Press Conference on 22nd November, 2023 and for having continued to issue misleading advertisements and making derogatory statements in respect of other systems of treatment. They assured this Court that they would be more careful in future and not violate any orders of the Court or the undertaking given to this Court or violate any provisions of law.

58. Learned Senior Advocate appearing for the proposed contemnors had also stated that to redeem themselves and demonstrate their *bona fide*s, they proposed to take some steps on their own. The said steps included tendering a public apology in the press for which Acharya Balkrishna filed an affidavit on 24th April, 2024, stating *inter alia* that an initiative had been taken to publish the public apology in various National and Regional newspapers having wide circulation across the country.

59. However, when the said advertisements were handed over for the perusal of the Court, the purported public apologies were rejected as meaningless and a mere lip service. This was for the reason that the public apologies were published in the

newspapers in such a fine print that the same were virtually illegible. This Court opined that the said apology was more of an empty formality than an expression of genuine contrition. Readily conceding the aforesaid position, learned Senior Advocate appearing for the proposed contemnors had sought time to file copies of fresh advertisements incorporating the public apology. This was done on an affidavit filed by Acharya Balkrishna on 24th April, 2024. This time, the public apology carried in various National and Regional newspapers was not only in bold words, but also published at prominent places. Subsequently, Acharya Balkrishna filed an affidavit on 14th May, 2024, listing the steps that were being taken to bring down the advertisements of such of the products manufactured by Patanjali whose licenses had been suspended by the State of Uttarakhand and for recalling the said medicines from other agencies as also from the online e-commerce platform of Patanjali.

R. CONCLUSION

60. On an overall conspectus of the facts of the present case and the sequence of events that have transpired from November, 2023 till May, 2024, we are of the opinion that though the initial conduct of the proposed contemnors prior to their tendering an apology to the Court showed that the same was in violation of the undertakings given to this Court, subsequent thereto, after they tendered an unqualified apology to this Court, efforts have been made by them to take steps to make amends. This was not only by expressing regret for their conduct on affidavit and in person, but also by taking steps to publicize the apology tendered by them through advertisements published prominently

in the National and Regional newspapers. No doubt the wisdom of tendering an unconditional apology dawned belatedly on the proposed contemnors, after this Court rejected the first attempt made by them to offer a qualified apology, but their subsequent conduct demonstrates that they have made sincere efforts to purge themselves.

61. Given the attendant facts and circumstances of the case and the effort made by the proposed contemnors to absolve themselves of acts that amounted to breach of undertakings given to this Court, we are inclined to accept the apology tendered by them and close the matter. At the same time, they are cautioned to strictly abide by the terms of their undertakings. Any future intransigence on their part, whether by act, deed or speech that could tantamount to violating the orders of the Court or dishonouring the terms of the undertakings, shall be viewed strictly and the ensuing consequences could indeed be grave. In that eventuality, the sword of contempt that has now been returned to rest in its sheath, shall be flourished as swiftly as these proceedings were originally initiated.

62. With the aforesaid orders, the present proceedings are closed and the notice to show cause issued to the proposed contemnors is discharged.

..... J
[HIMA KOHLI]

..... J
[AHSANUDDIN AMANULLAH]

NEW DELHI
AUGUST 13, 2024