NORTHERN MINERAL LTD.

v.

UNION OF INDIA AND ANR.

(Criminal Appeal No. 766 of 2003)

JULY 07, 2010

[HARJIT SINGH BEDI AND C.K. PRASAD, JJ.]

Insecticides Act, 1968 – ss.24(3) and 24(4) – Scope and ambit of – Insecticide sample drawn and sent for analysis – Report of the Insecticide Analyst – Right of accused to rebut the conclusive nature of the evidence of Insecticide Analyst by notifying its intention to adduce evidence in controversion of the report before the Insecticide Inspector or before court where proceeding in respect of the samples is pending – Held: Mere notifying of intention to adduce evidence, in controversion of the report of the Insecticide Analyst, confers on the accused the right and clothes the court the jurisdiction to send the sample for analysis by the Central Insecticides Laboratory and an accused is not required to demand in specific terms that the sample be sent for analysis to Central Insecticides Laboratory – On facts, when the accused was served with Insecticide Analyst report, it notified its intention to adduce evidence in controversion of the report but its right was defeated as the sample was not sent for analysis to Central Insecticides Laboratory – Shelf life of the insecticide had expired even prior to filing of the complaint in court, and for that reason no step was possible to be taken for its test and analysis by Central Insecticides Laboratory – Valuable right of the accused having been defeated, allowing criminal prosecution against the accused to continue would be futile and abuse of the process of court – Accused discharged of its criminal liability – Code of Criminal Procedure, 1973 – s.245.

Insecticides Act, 1968 – Authorities concerned entrusted

with the implementation of the provisions of the Act advised to act with promptitude and adhere to the time-schedule, so that innocent persons are not prosecuted and real culprits not left out.

The Insecticide Inspector drew sample of insecticide manufactured by appellant company from the shop of appellant's dealer and sent it to the Regional Laboratory. The Regional Laboratory reported that the sample did not conform to ISI specifications. Notice of the report was sent to the appellant.

Pursuant to receipt of the report, appellant, in terms of s.24(3) of the Insecticides Act, 1968, intimated to the Insecticides Inspector its "intention to adduce evidence in controversion of the report", but no step was thereafter taken by the Insecticides Inspector.

A complaint was subsequently filed against the appellant and its dealer under Section 29 of the Insecticides Act. However, meanwhile the shelf-life of the insecticide in question had expired. Appellant filed application for discharge under Section 245 CrPC which was dismissed by the Chief Judicial Magistrate. The order was upheld by the High Court in Criminal Revision.

In the instant appeal, the questions before the Court for consideration were:

1) Whether by conveying its intention to lead evidence in controversion of the report, the appellant exercised its right to seek re-analysis of the sample from the Central Insecticides Laboratory, but was denied such right and;

2) Whether inasmuch as the shelf life of the sample of insecticide expired before the complaint was filed against the appellant, continuing criminal prosecution against the appellant would be a futile exercise and abuse of the process of Court and the appellant ought to be discharged.

Allowing the appeal, the Court

HELD:1.1. The Statute mandates disclosure of expiry date of the insecticide. Insecticides are substances specified in the Schedule to the Insecticides Act, 1968 and from perusal thereof, it is evident that many of substances with passage of time may lose its identity if exposed or come into contact with other substance. Therefore, there is no escape from the conclusion that shelf- life of an insecticide shall have its bearing when it is tested or analysed in the laboratory. [Para 6] [10-E-G]

1.2. From a plain reading of Section 24(3) of the Insecticides Act, 1968 it is evident that an accused, within 28 days of the receipt of the copy of the report of the Insecticide Analyst, to avoid its evidentiary value is required to notify in writing to the Insecticide Inspector or the Court before which the proceeding is pending that it intends to adduce evidence in controversion of the report. Section 24(4) of the Act provides that when an accused had notified its intention of adducing evidence in controversion of the Insecticide Analyst report under Section 24(3) of the Act, the court may of its own motion or in its discretion at the request either of the complainant or the accused cause the sample to be sent for analysis to the Central Insecticides Laboratory. [Para 11] [14-G-H; 15-A-B]

1.3. Under the scheme of the Act when the accused had notified its intention to adduce evidence in controversion of the report of the Insecticide Analyst, the legal fiction that the report of the Insecticide Analyst shall be conclusive evidence of the facts stated in its report looses its conclusive character. The Legislature has used similar expression i.e. the "intention to adduce evidence in controversion of the report" in both sub-section (3) and sub-section (4) of Section 24 of the Act, hence the expression used in both the places has to be given one

and the same meaning. Notification of an intention to adduce evidence in controversion of the report takes out the report of the Insecticide Analyst from the class of "conclusive evidence" contemplated under sub-section (3) of Section 24 of the Act. Further, the intention of adducing evidence in controversion of the Insecticide Analyst report clothes the Magistrate the power to send the sample for analysis to the Central Insecticides Laboratory either on its own motion or at the request of the complainant or the accused. In face of the language employed in Section 24(4) of the Act, the act of the accused notifying in writing its intention to adduce evidence in controversion of the report shall give right to the accused and would be sufficient to clothe the Magistrate the jurisdiction to send the sample to Central Insecticide Laboratory for analysis and it is not required to state that it intends to get the sample analysed from the Central Insecticides Laboratory. Though the report of the Insecticides Analyst can be challenged on various grounds but the accused can not be compelled to disclose those grounds and expose his defence and he is required only to notify in writing his intention to adduce evidence in controversion. The moment it is done, conclusive evidentiary value of the report gets denuded and the statutory right to get the sample tested and analysed by the Central Insecticides Laboratory gets fructified. [Para 11] [15-B-H]

1.4. From the language and the underlying object behind Sections 24(3) and (4) of the Act as also from the ratio of the earlier decisions of this Court, it is clear that mere notifying of intention to adduce evidence in controversion of the report of the Insecticide Analyst confers on the accused the right and clothes the court jurisdiction to send the sample for analysis by the Central Insecticides Laboratory and an accused is not required to demand in specific terms that sample be sent for

analysis to Central Insecticides Laboratory. The mere intention to adduce evidence in controversion of the report, implies demand to send the sample to Central Insecticides Laboratory for test and analysis. [Para 12] [16-E-G]

1.5. Section 24(3) of the Act gives right to the accused to rebut the conclusive nature of the evidence of Insecticide Analyst by notifying its intention to adduce evidence in controversion of the report before the Insecticide Inspector or before the court where proceeding in respect of the samples is pending. Further the court has been given power to send the sample for analysis and test by the Central Insecticides Laboratory of its own motion or at the request of the complainant or the accused. In the present case, no proceeding was pending before any court, when the accused was served with Insecticide Analyst report, the intention was necessarily required to be conveyed to the Insecticide Inspector, which was so done by the appellant and in this background the Insecticide Inspector was obliged to institute complaint forthwith and produce sample and request the court to send the sample for analysis and test to the Central Insecticides Laboratory. The appellant did whatever was possible for it. Its right has been defeated by not sending the sample for analysis and report to Central Insecticides Laboratory. It may be mentioned herein that shelf life of the insecticides had expired even prior to the filing of the complaint. The position, therefore, which emerges is that by sheer inaction, the shelf life of the sample of insecticides had expired and for that reason no step was possible to be taken for its test and analysis by Central Insecticides Laboratory. Valuable right of the appellant having been defeated, allowing this criminal prosecution against the appellant to continue shall be futile and abuse of the process of court. [Para 13] [16-H; 17-A-E]

State of Haryana v. Unique Farmaid (P) Ltd. & Ors. **(1999) 8 SCC 190;** *State of Punjab v. National Organic Chemical Industries Ltd.* **(1997) SCC (Crl.) 312 and** *M/s. Gupta Chemicals Pvt. Ltd. & Ors. v. State of Rajasthan & Anr.* **JT 2002 (Suppl.1) SC 516, relied on.**

2. In the present case, had the authority competent to grant consent, given consent and complaint lodged immediately after the receipt of intimation of the accused, sample could have very well sent for analysis and report, before the expiry of shelf-life. Section 24(3) and (4) of the Act obliges the Insecticide Analyst and Central Insecticides Laboratory to make the test and analysis and report within thirty days. When 30 days is good enough for report, there does not seem any justification not to lodge complaint within 30 days from the receipt of the intimation from the accused and getting order for sending the sample for test and analysis to the Central Insecticides Laboratory. All who are entrusted with the implementation of the provisions of the Act, would be well advised to act with promptitude and adhere to the time-schedule, so that innocent persons are not prosecuted and real culprits not left out. [Para 14] [17-H; 18-A-D]

3. The impugned judgments of the High Court as also that of the Chief Judicial Magistrate refusing to discharge the appellant are set aside and the appellant is discharged of its criminal liability. [Para 15] [18-D-E]

Case Law Reference:

(1999) 8 SCC 190	**relied on**	**Para 5**
(1997) SCC (Crl.) 312	**relied on**	**Para 7**
JT 2002 (Suppl.1) SC 516	**relied on**	**Para 9**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 766 of 2003.

From the Judgment & Order dated 5.11.2001 of the High Court of Punjab & Haryana at Chandigarh in Criminal Revision No. 170 of 2000.

Arun Nehra, Shobha, Mohinder Thakur for the Appellant.

P.K. Dey, Rashmi Malhotra, Rohitash S. Nagar, R.S. Nagar, D.S. Mehra, B.V. Balaram Das for the Respondents.

The Judgment of the Court was delivered by

C.K. PRASAD, J. 1. This appeal arises out of an order dated 5th November, 2001 passed by the Punjab and Haryana High Court at Chandigarh in Criminal Revision No. 170 of 2000, whereby the revision preferred by the appellant against the order dated 13th November, 1999 passed by the Chief Judicial Magistrate, Patiala refusing to discharge the appellant has been rejected.

2. Brief facts giving rise to the present appeal are that the appellant company is a Private Limited Company registered under the Companies Act, 1956 and inter alia engaged in the manufacturing of insecticides including Monocrotophos 36 SL. On 10th September, 1993, the Insecticide Inspector drew sample of Monocrotophos 36 SL from the shop of the appellant's dealer, M/s. Jindal Traders respondent no. 2 herein. The aforesaid insecticide, sample of which was collected by the Insecticide Inspector, was manufactured by the appellant company in September, 1992. The sample so collected was sent for analysis to the Regional Pesticides Testing Laboratory, Chandigarh who submitted its report dated 13th October, 1993 stating that the sample was misbranded as it did not conform to the relevant ISI specifications. The Show Cause Notice dated 1st November, 1993 was issued to the appellant and it was informed about the report of the Regional Pesticides Laboratory which according to the appellant was received on 3rd November, 1993. The appellant replied to the notice by its letter dated 17th November, 1993 inter alia expressing its

"intention of adducing evidence in controversion of report". It also alleged that the report of the Regional Pesticides Testing Laboratory is of no consequence. After the Joint Director, Agriculture, gave its consent for prosecution of the appellant company and respondent No. 2 on 23rd February, 1994 the Insecticide Inspector filed the complaint in the Court of Chief Judicial Magistrate, Patiala on 16th March, 1994 alleging commission of offence under Section 29 of the Insecticides Act. Shelf-life of the insecticide expired in February, 1994. The appellant company and Respondent No.2 herein i.e. M/s. Jindal Traders were arrayed as accused in the said complaint. Appellant filed application for discharge under Section 245 of the Criminal Procedure Code. But the learned Magistrate by Order dated 13th November, 1999 dismissed the same, inter alia observing as follows :

> "Since the accused did not make prayer for getting the second sample reanalyzed, the authorities cited at bar by the learned counsel for the accused do not render any assistance to the accused. Rather, authority cited by learned Additional PP for the State is fully applicable Moreso, the case is yet at its threshold and therefore, only prima facie commission of offence has to be taken into consideration at this stage. The plea of the learned counsel for the accused that sample was drawn from the sealed container will be evaluated after adducing the evidence which would be adduced during the course of trial. Consequently, both the applications for discharge of the accused stand dismissed being devoid of any merit."

3. Aggrieved by the aforesaid order, the appellant preferred Criminal Revision No. 170 of 2000 before the High Court of Punjab and Haryana. Revision application preferred by the appellant was heard alongwith Criminal Revision Petition No. 106 of 2000 preferred by another accused in a different case. The High Court by Order dated 5th November, 2001 dismissed the Revision Application preferred by the appellant.

While doing so, the High Court observed as follows:

> "The upshot of the above discussion is that the weight of the judicial opinion of the Hon'ble Supreme Court of India and of this Court favours the petitioners case that re-analysis is a valuable right which gets defeated if the complaint is filed after the expiry date and consequently the proceedings must be dropped. The question which is now required to be considered is whether the petitioners exercised their right to seek re-analysis or not. The replies to the Show-Cause Notices indicate that Apex Mineral did seek re-analysis whereas Northern Minerals did not. Re-analysis by Central Insecticides Laboratory was not done in neither case. Where a party does not ask for a second analysis it should not be permitted to complain that its right of re- analysis has been defeated. This grievance can only be valid if a party seeks re-analysis before expiry but was denied this right.
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> Consequently, Northern Minerals case must fail. Criminal Revision No. 170 of 2000 is dismissed."

4. From the facts stated above, it is evident that the complaint was filed on 16th March, 1994 whereas shelf life of insecticide expired in February, 1994. The appellant had given its intention to adduce evidence in controversion of the report to Insecticides Inspector but had not specifically prayed for analysis of the sample by the Central Insecticides Laboratory.

5. Mr. Arun Nehra, learned counsel appearing on behalf of the appellant submits that every insecticide has its shelf life and with passage of time, it loses its efficacy and therefore after the expiry of the shelf life of the insecticide, it may not conform to the standard specifications. He submits that in view of the aforesaid, the shelf-life shall have serious consequence when Insecticides are tested or analysed after expiry of shelf-life. In support of the submission, reliance has been placed on a decision of this Court in the case of *State of Haryana vs.*

Unique Farmaid (P) Ltd. & Ors. (1999) 8 SCC 190 and our attention has been drawn to the following passage from para 10 of the judgment, which reads as follows:

> "10. It has been submitted before us as well as before the High Court that the Insecticide Inspector was not competent to send the sample for retesting to the Central Insecticides Laboratory and that request for retesting should have been made to the court concerned. Then the State has further submitted that no other defence than prescribed under Section 30 of the Act could be allowed to be raised in the prosecution filed under the Act and further that the shelf life of the sample was not relevant as the Act does not prescribe any expiry date. There is no substance in either of these contentions. If the expiry date is not relevant, there was no reason why in the form prescribed for submission of the report by the Insecticide Analyst, the dates of manufacture of the article and the expiry date are mentioned. We do not find any answer to this by the State."

6. We find substance in the submission of Mr. Nehra and the decision relied on clearly supports his contention. Statute mandates disclosure of expiry date of the insecticide. The form prescribed for submission of the report by Insecticide Analyst contains columns for the date of the manufacture and expiry. Insecticides are substances specified in the schedule of the Insecticides Act and from perusal thereof it is evident that many of substances with passage of time may lose its identity if exposed or comes into contact with other substance. Therefore, there is no escape from the conclusion that shelf-life of an insecticide shall have its bearing when it is tested or analysed in the laboratory.

7. Mr. Nehra submits that the appellant admittedly had conveyed, within 28 days of the receipt of the report, its intention to adduce evidence in controversion of the report of the Regional Pesticides Laboratory in terms of Section 24(3) of the

Insecticides Act, 1968 (hereinafter referred to as the "Act"). He points out that the language of sub-section (3) as well as sub-section (4) of Section 24 of the Act is very clear and leaves no room of any ambiguity and it nowhere obliges the accused to state that it intends to get sample analysed from the Central Insecticides Laboratory. He emphasizes that sub-Section (3) only postulates the accused to notify to the Insecticide Inspector or the Court that it intends to adduce evidence in controversion of the report. In his submission, if such a requirement is read it would tantamount to adding words in sub-Section (3) as well as sub-Section (4) of Section 24 of the Act. In sum and substance, submission of Mr. Nehra is that the law does not require the accused to say in addition that it demands analysis of the sample by the Central Insecticides Laboratory. He submits that when appellant conveyed its intention to lead evidence in controversion of the report, it would imply demand for sending the sample to Central Insecticides Laboratory for test and analysis. In support of the submission, he has placed reliance on a decision of this Court in the case of *State of Punjab vs. National Organic Chemical Industries Ltd.* (1997) SCC (Crl.) 312 and our attention has been drawn to the following passages from para 5 of the judgment which reads as follows :

> "5……. At that stage, two options are open to the accused. The accused is entitled to have one copy of the sample entrusted to him to have it notified to the court for proving to be contrary to the conclusive evidence of the report of the analyst; after such a notification having been given to the court, he is entitled to have it tested by Central Insecticides Laboratory and adduce evidence of the report so given. That such certificate by the Director of CIL has a proof of his defence to dislodge the conclusiveness attached to the report of the Insecticide Analyst under sub-section (3) of Section 24. The other option is, after the complaint is laid in the court, the copy of the sample that is lodged with the court by the Insecticide Inspector, would

> be requested to be sent by the court to the CIL and the report thus given by the Director of CIL shall be conclusive evidence as to the quality, content and facts stated therein. The cost thereof is to be borne either by the complainant or by the accused, as may be directed by this Court."

8. Another decision relied on by the appellant to buttress its submission is the decision of this Court in the case of *Unique Farmaid (P) Ltd. & Ors.* (Supra) wherein it has held as follows:

> "12. It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under sub-section (4) of Section 24 of the Act. Under sub-section (3) of Section 24 report signed by the Insecticide Analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticide Inspector or the court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases the Insecticide Inspector was notified that the accused intended to adduce evidence to controvert the report."

9. Yet another decision on which reliance is placed is the decision of this Court in the case of *M/s. Gupta Chemicals Pvt. Ltd. & Ors. Vs. State of Rajasthan & Anr.* JT 2002 (Suppl.1) SC 516, the relevant portion reads as follows :

> "12. From our perusal of the aforequoted provisions it is manifest that ordinarily in the absence of any material to the contrary, the report of the Insecticides Analyst will be accepted as final and conclusive of the material contained therewith. This is, however, subject to the right of the accused to have the sample examined by the Central Insecticides Laboratory provided he

communicates his intentions for the purpose within 28 days of the receipt of the copy of the report. It needs no emphasis that this right vested under the statutes valuable for the defence, particularly in a case where the allegations are that the material does not conform to the prescribed standard. As noted earlier in the present case the appellants had intimated the insecticide inspector their intention to have the sample tested in the central insecticides laboratory within the prescribed period of 28 days of receipt of the copy of the state analyst report, yet no step was taken by the inspector either to send the sample to the central insecticides laboratory or to file the complaint in the court with promptitude in which case the appellants would have moved the magistrate for appropriate order for the purpose. The resultant position is that due to sheer inaction on the part of the inspector, it has not been possible for the appellant to have the sample examined by the central insecticides laboratory and in the meantime, the shelf-life of the sample of insecticide seized had expired and for that reason no further step could be taken for its examination. In the circumstances, we are of the view that continuing this criminal prosecution against the appellant will be a futile exercise and abuse of the process of court. The High Court was not right in dismissing the petition filed under Section 482 of Cr.P.C."

10. Counsel representing the respondents, however, contends that excepting intimating its intention to adduce evidence in controversion of the report of the Regional Pesticides Laboratory specific request was not made to send the sample for test and analysis by the Central Insecticides Laboratory and, hence, failure to send the sample for test and analysis by the Central Insecticides Laboratory in no way defeats the right of the accused. The submission advanced necessitates examination of scope and ambit of Section 24(3) & 4 of the Act, same read as follows :

"24. Report of Insecticide Analyst.-

xxx xxx xxx xxx

(3) Any document purporting to be a report signed by an Insecticide Analyst shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken has within twenty-eight days of the receipt of a copy of the report notified in writing the Insecticide Inspector or the court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Insecticides Laboratory, where a person has under sub-section(3) notified his intention of adducing evidence in controversion of the Insecticide Analyst's report, the court may, of its own motion or in its discretion at the request either of the complainant or of the accused, cause the sample of the insecticide produced before the Magistrate under sub-section (6) of section 22 to be sent for test or analysis to the said laboratory, {which shall, within a period of thirty days, which shall make the test or analysis} and report in writing signed by, or under the authority of, the Director of the Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein."

xxx xxx xxx xxx

11. From a plain reading of Section 24(3) of the Act, it is evident that an accused within 28 days of the receipt of the copy of the report of the Insecticide Analyst to avoid its evidentiary value is required to notify in writing to the Insecticide Inspector or the Court before which the proceeding is pending that it intends to adduce evidence in controversion of the report. Section 24(4) of the Act provides that when an accused had

notified its intention of adducing evidence in controversion of the Insecticide Analyst report under Section 24(3) of the Act, the court may of its own motion or in its discretion at the request either of the complainant or the accused cause the sample to be sent for analysis to the Central Insecticides Laboratory. Under the scheme of the Act when the accused had notified its intention to adduce evidence in controversion of the report of the Insecticide Analyst, the legal fiction that the report of the Insecticide Analyst shall be conclusive evidence of the facts stated in its report looses its conclusive character. The Legislature has used similar expression i.e. the "intention to adduce evidence in controversion of the report" in both sub-section (3) and sub-section (4) of Section 24 of the Act, hence both the expression has to be given one and the same meaning. Notification of an intention to adduce evidence in controversion of the report takes out the report of the Insecticide Analyst from the class of "conclusive evidence" contemplated under sub-section (3) of Section 24 of the Act. Further intention of adducing evidence in controversion of the Insecticide Analyst report clothes the Magistrate the power to send the sample for analysis to the Central Insecticides Laboratory either on its own motion or at the request of the complainant or the accused. In face of the language employed in Section 24(4) of the Act, the act of the accused notifying in writing its intention to adduce evidence in controversion of the report in our opinion shall give right to the accused and would be sufficient to clothe the Magistrate the jurisdiction to send the sample to Central Insecticide Laboratory for analysis and it is not required to state that it intends to get sample analysed from the Central Insecticides Laboratory. True it is that report of the Insecticides Analyst can be challenged on various grounds but accused can not be compelled to disclose those grounds and expose his defence and he is required only to notify in writing his intention to adduce evidence in controversion. The moment it is done conclusive evidentiary value of the report gets denuded and the statutory right to get the sample tested and analysed by the Central Insecticides Laboratory gets fructified.

12. The decisions of this Court in the cases of *National Organic Chemical Industries Ltd.* (Supra), *Unique Farmaid (P) Ltd. & Ors.* (Supra) and *M/s. Gupta Chemicals Pvt. Ltd.* (Supra), in our opinion do support Mr. Nehra's contention. True it is that in first two cases, the accused, besides sending intimation that they intend to adduce evidence in controversion of the report accused persons have specifically demanded for sending the sample for anlaysis by the Central Insecticides Laboratory. However, the ratio of the decision does not rest on this fact. While laying down the law, this Court only took into consideration that accused had intimated its intention to adduce evidence in controversion of the report and that conferred him the right to get sample tested by Central Insecticides Laboratory. The decision of this Court in the case of M/s Gupta Chemicals (supra) is very close to the facts of the present case. In the said case "on receipt of the information about the State Analyst report the appellants sent intimation to the Inspector expressing their intention to lead evidence against the report" and this intimation was read to mean "their intention to have the sample tested in the Central Insecticides Laboratory". From the language and the underlying object behind Section 24(3) and (4) of the Act as also from the ratio of the decisions aforesaid of this Court, we are of the opinion that mere notifying intention to adduce evidence in controversion of the report of the Insecticide Analyst confers on the accused the right and clothes the court jurisdiction to send the sample for analysis by the Central Insecticides Laboratory and an accused is not required to demand in specific terms that sample be sent for analysis to Central Insecticides Laboratory. In our opinion the mere intention to adduce evidence in controversion of the report, implies demand to send the sample to Central Insecticides Laboratory for test and analysis.

13. Section 24(3) of the Act gives right to the accused to rebut the conclusive nature of the evidence of Insecticide Analyst by notifying its intention to adduce evidence in controversion of the report before the Insecticide Inspector or

before Court where proceeding in respect of the samples is pending. Further the Court has been given power to send the sample for analysis and test by the Central Insecticides Laboratory of its own motion or at the request of the complainant or the accused. No proceeding was pending before any Court, when the accused was served with Insecticide Analyst report, the intention was necessarily required to be conveyed to the Insecticide Inspector, which was so done by the appellant and in this background Insecticide Inspector was obliged to institute complaint forthwith and produce sample and request the court to send the sample for analysis and test to the Central Insecticides Laboratory. Appellant did whatever was possible for it. Its right has been defeated by not sending the sample for analysis and report to Central Insecticides Laboratory. It may be mentioned herein that shelf life of the insecticides had expired even prior to the filing of the complaint. The position therefore which emerges is that by sheer inaction the shelf life of the sample of insecticides had expired and for that reason no step was possible to be taken for its test and analysis by Central Insecticides Laboratory. Valuable right of the appellant having been defeated, we are of the opinion that allowing this criminal prosecution against the appellant to continue shall be futile and abuse of the process of Court.

14. We are distressed to note the casual manner in which the whole exercise has been done. Insecticide Inspector had collected the sample on 10th September, 1993 and sent it to the Insecticide Analyst for analysis and report. Insecticide Analyst submitted its report dated 13th October, 1993. Notice of the report was sent to the appellant on Ist November, 1993, in reply whereof by letter dated 17th November, 1993 it intimated its intention to adduce evidence in controversion of the report. The shelf-life of the pesticide had not expired by that time but expired in February 1994. However, permission to file complaint was given on 23rd February, 1994 and the complaint was actually filed on 16th March, 1994. Had the authority

competent to grant consent, given consent and complaint lodged immediately after the receipt of intimation of the accused, sample could have very well sent for analysis and report, before the expiry of shelf-life. It is interesting to note that Section 24(3) and (4) of the Act obliges the Insecticide Analyst and Central Insecticides Laboratory to make the test and analysis and report within thirty days. When 30 days is good enough for report, there does not seem any justification not to lodge complaint within 30 days from the receipt of the intimation from the accused and getting order for sending the sample for test and analysis to the Central Insecticides Laboratory. All who are entrusted with the implementation of the provisions of the Act, would be well advised to act with promptitude and adhere to the time-schedule, so that innocent persons are not prosecuted and real culprits not left out.

15. In the result, the appeal is allowed, the impugned judgments of the High Court as also that of the Chief Judicial Magistrate refusing to discharge the appellant are set aside and the appellant is discharged of its criminal liability.

B.B.B. Appeal allowed.

MAHESH CHANDRA BANERJI
v.
U.P. AVAS EVAM VIKAS PARISHAD AND ORS.
(Civil Appeal No. 4970 of 2010)

JULY 07, 2010

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

Land Acquisition – U.P. Avas Vikas Parishad Adhiniyam (U.P. Act No.1 of 1968) – ss.28 and 32(i) – Acquisition for purpose of Development Scheme – Respondent no.1-Parishad conducted auction in respect of the lands acquired – Respondent no.6 became successful bidder in respect of a portion of the acquired lands which had earlier belonged to the appellant's family and a sale deed was also executed in his favour – Inquiry conducted pursuant to representation made by appellants, and Additional District Magistrate reported that the house of appellants and the land attached to it had been exempted from the acquisition – Possession of the lands sold in auction not handed over to Respondent no.6 – Dispute as regards the extent to which land belonging to appellant's family had been excluded from ambit of acquisition – Writ petition filed by respondent no.6 – Appeal against order passed by High Court – Held: The writ court is not to decide such disputed questions of fact – All such questions can either be decided in a properly instituted suit or by the Collector on a proper inquiry being conducted – In order to put a quietus to the dispute, District Magistrate directed to conduct fresh inquiry upon giving the affected parties an opportunity of placing their respective cases – Constitution of India, 1950 – Article 226.

Respondent no.1-Parishad conducted auction in respect of lands acquired under a Development Scheme (Yojana No.7). Respondent no.6 became successful

bidder in respect of a portion of the acquired lands which had earlier belonged to the appellant's family and a sale deed was also executed in his favour.

Meanwhile, the appellants made a representation to the Housing Commissioner, praying for release of their land, on which inquiry was conducted and the Additional District Magistrate reported that the house of the appellants and the land attached to it had been exempted from acquisition.

While on one hand, possession of the lands sold in auction was not handed over to respondent no.6, on the other hand, the report of the Additional District Magistrate was also not given proper consideration for release of the lands belonging to appellant's family which Respondent no.1-Parishad purportedly took possession of without the same having been acquired.

Respondent no.6 filed a writ petition. The High Court directed grant of possession of the lands in dispute to Respondent No.6 in the event it deposited the entire outstanding dues, excluding the penal interest. The appellants filed application praying for recall of the said judgment which was dismissed.

Partly allowing the instant appeals, the Court

HELD:1. The dispute in this case centers around the question as to whether barring 1-1-10 bighas of the lands comprising a part of the property belonging to the appellant's family, which had been excluded from the acquisition, the remaining portion had also been acquired for the purpose of Yojana No.7 undertaken by the Respondent-Parishad. From the calculations as indicated in the report of the Executive Engineer, U.P. Housing

Development Board, only 1-1-10 bighas of land belonging to the appellants had been excluded from the scope of the acquisition and as far as remaining lands are concerned, the same either fall within the 6.17 bighas possession whereof had already been taken, or the same fell outside the said area which did not form part of the lands excluded from the ambit of the acquisition. In either case, the appellants have to be compensated for the said lands in respect whereof, according to the appellants, no compensation had either been assessed or awarded. The said conundrum still remains to be solved. No positive finding has at all been arrived at in this regard by the acquiring authorities, nor even by the Collector while making his Award. There is, therefore, some justification in the submission that if the lands of the appellant's family, apart from the lands which had been excluded from the acquisition, had actually been acquired for the purpose of Yojana No.7, the same had to be reflected in the proceedings for acquisition of the lands and, accordingly, compensation was required to be paid to the appellants in respect thereof. [Para 21] [33-F-H; 34-A-D]

2. The writ court is not ideally situated to decide such a disputed question of fact. Although, a description of the lands of the appellants which had been acquired, has been given in the letter written by the Executive Engineer, U.P. Housing Development Board to the District Magistrate, the same has to be considered along with the decision which had been taken to allow the appellants to retain the lands adjacent to their Kothi upto G.T. Road. There appears to be a communication gap between the different authorities of the State Government as also the Parishad relating to these lands. If a resolution had been taken to allow the appellants to retain the above-mentioned lands contiguous to G.T. Road, then the specifications given in the letter of the Executive

Engineer appear to be incorrect. Whatever be the dispute, a citizen cannot be deprived of his property except in accordance with the procedure established by law. If barring 1-1-10 bighas of land which had been excluded from the ambit of the acquisition, the other lands of the appellant's family have actually been acquired and possession thereof been taken, the extent of the lands so acquired will have to be established and compensation in respect thereof has to be paid to the appellant's family. That does not appear to have been done in this case, thereby causing prejudice to the appellants. On the other hand, if the excess lands belonging to the appellant's family had been included within the 6.17 bighas of land in respect whereof possession had actually been taken, the State and the acquiring body have to identify the said lands for the purposes of assessing compensation. [Para 22] [34-F-H; 35-A-C]

3. All the above questions can either be decided in a properly instituted suit or by the Collector on a proper inquiry being conducted. Therefore, in order to put a quietus to the dispute, the District Magistrate is directed to conduct a fresh enquiry in order to determine the extent of land belonging to the appellant's family which is said to have been acquired for the purposes of the scheme covered by Yojana No.7 undertaken by the Respondent No.1-Parishad and to also determine as to whether the same was included in the 6.17 bighas of land possession whereof had been taken earlier. In the event the lands have not been included within the ambit of the acquisition proceedings, as indicated by the Additional District Magistrate (V.R.), Aligarh, then, the compensation for the same is to be assessed and Award is to be made in respect thereof, in accordance with law. On the other hand, if the said lands have been included within the 6.17 bighas in respect of which compensation had already

been awarded, the District Magistrate shall, after identification of the lands of the appellants, apportion the compensation payable to them and make an Award accordingly. In conducting such an inquiry, the appellants as also the authorities of the Respondent No.1-Parishad should be given proper opportunity of placing their respective cases. Since the acquisition relates back to the year 1968/1971, such investigation and enquiry must, however, be completed within six months. [Paras 23, 24 and 25] [35-D-H; 36-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4970 of 2010.

From the Judgment & Order dated 12.12.2006 of the High Court of Judicature at Allahabad in Civil Misc. Recall Application No. 81128 of 2006 in Civil Misc. Writ Petition No. 54160 of 2005.

WITH

C.A. No. 4971 of 2010.

Rajiv Dutta, M.P. Shorawala, Jyoti Saxena, Shashi Karan, Vipin K. Saxena for the Appellant.

R.K. Dash, S.K. Dwivedi, AAG, Manoj K. Dwivedi, Vandana Mishra, Ashutosh Sharma, Gunam Venkateswara Rao, Praveen Jain, Amit Khenka, Ambhoj Kr. Sinha, Sanjay Rohtagi, Vishwajit Singh for the Respondents.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted.

2. One, Udai Chandra Banerji had two sons, namely, Suresh Chandra Banerji and Ramesh Chandra Banerji. On 1st February, 1927, the two brothers jointly purchased 8848 square yards of land in Khasra Plot No.2305 situated in Kasba Koli.

The said khasra number was subsequently converted into Plot No.1002. Although, the purchase was said to have been made jointly by Suresh Chandra Banerji and Ramesh Chandra Banerji, the Sale Deed was executed in the name of Ramesh Chandra Banerji, who was the elder brother. From the Sale Deed, it would be evident that a Kothi (building) was in existence over a part of the said land and the land adjacent to the building was lying vacant. Certain additional constructions were raised on the vacant portions which were completed in the year 1930. The said property fell within the municipal limits of Aligarh. On 1st April, 1957, house tax was imposed for the first time and the name of Suresh Chandra Banerji was recorded in the assessment list of the house tax payers in the records of the Municipal Board. In 1930, Ramesh Chandra Banerji and Dr. Suresh Chandra Banerji shifted into the Kothi with their families and continued to reside therein. In 1941, Ramesh Chandra Banerji expired and after his death, a family settlement is said to have taken place between Ramesh Chandra Banerji's heirs and Dr. Suresh Chandra Banerji, as a result whereof the family of Ramesh Chandra Banerji shifted to Kanpur and Dr. Suresh Chandra Banerji became the exclusive owner of the Kothi in question and he resided therein along with his family members till his death on 16th August, 1989. At the time of his death Dr. Suresh Chandra Banerji left behind him surviving his sons, Paresh Chandra Banerji, Dinesh Chandra Banerji, Bhavesh Chandra Banerji and Umesh Chandra Banerji, who died in August, 1997.

3. Mahesh Chandra Banerji, one of the sons of late Dr. Suresh Chandra Banerji, claims to have acquired knowledge that a Development Scheme known as Yojana No.7 had been taken up by the Avas Evam Vikas Parishad in 1968 and that a notification under Section 28 of the Avas Vikas Parishad Adhiniyam, being U.P. Act No.1 of 1968, had been issued on 5th October, 1968 and a further notification under Section 32(i) of the Adhiniyam was issued on 25th January, 1971, which was published in the Gazette on 13th February, 1971. Under the

said scheme, along with other lands, the property of late Dr. Suresh Chandra Banerji in Khasra Plot No.1002, was also proposed to be acquired. Objections were filed against the proposed acquisition and in response thereto the Respondent No.1 decided to exclude the residential house of the appellants and the adjoining land from the acquisition. Despite the same, further representations were made by the appellants to allow them full frontal access from G.T. Road to their residential premises, since they wanted to establish a nursing home on the said plot. It appears that a decision was even taken in that regard and Resolution No. 1/130/79 dated 16th January, 1979 was accepted by the Respondent No.1-Parishad and the cost of the said land was fixed at not less than R.82/- per square metre. According to the appellants, since the said resolution/ decision was not being given effect to, and, on the other hand, auction notice was issued by the Parishad on 23rd August, 1993 for sale of the acquired lands under the above-mentioned scheme, they were compelled to file Original Suit No.307 of 1998 before the Civil Judge, Senior Division, Aligarh, inter alia, praying for the following reliefs :

> "(a) By passing a decree for permanent prohibitory injunction the defendant 1st set be restrained from interfering in the peaceful possession of the plffs. And defendant IInd set over the land shown by wards A B C D and red colour shown in the map annexed with the plaint.
>
> (b) By passing a decree for mandatory injunction the defendant No.1 and 5 be directed to remove their encroachment from the land of the plaintiff detailed at the foot of the plaint and to restore it's position and possession as on the date of suit within the time specified by the court and in failure to do the same be done by agency of court."

4. Initially, an order of injunction was passed in favour of the appellants, which was subsequently vacated on 19th April, 2001. Simultaneously, with the filing of the aforesaid suit, two of the other sons of late Dr. Suresh Chandra Banerji, namely,

Shri Dinesh Chandra Banerji and Shri Bhavesh Chandra Banerji, filed Civil Misc. Writ Petition No.18132/98 questioning the acquisition proceedings, but the same was ultimately dismissed on 12th May, 1999, on account of the pendency of the suit relating to the same acquisition.

5. In the meantime, on 5th May, 2000, the Respondent No.6 became the successful bidder in the auction conducted by the Respondent No.1-Parishad in respect of a portion of the acquired lands which had earlier belonged to the appellants and a sale deed was also executed in his favour on 5th May, 2000.

6. After execution of the sale deed in favour of the Respondent No.6, the appellants on 18.7.2001 filed FAFO No.694/2001 against the order by which the interim order passed in the suit had been vacated. The High Court of Allahabad granted stay of the order passed in the suit, but indicated that the right of the Respondent No.6, Shri Gyanendra Prashad Varshney, would not be affected by the stay order. Ultimately, Civil Suit No.307 of 1998 came to be dismissed as withdrawn on 18th November, 2004, on the ground that the same had become infructuous.

7. While the above-mentioned suit was pending, Dr. Mahesh Chandra Banerjee made a representation to the Housing Commissioner (C), Uttar Pradesh Housing & Development Board, Lucknow, on 19th August, 2002, praying for release of the land belonging to the applicant and his family members in Plot No.1002. In response thereto, the District Magistrate, Aligarh, directed the Additional District Magistrate (V.R.), Aligarh, to conduct an inquiry and to submit a report. In his report dated 30th June, 2004/02.07.2004, the Additional District Magistrate observed that the house of the applicant and the land attached to it had been exempted from acquisition. It was also specifically indicated that 8848 square yards of the land of the applicant comprised in the said plot was free from acquisition. It was further indicated that the Special Land Acquisition Officer, Agra, had clearly mentioned that only the

lands owned by one Shivdan Singh had been acquired and that no other land out of the total area comprising Plot No.1002 had either been acquired or had compensation been determined or had possession been taken thereof. It was also indicated that despite the above, the officials of the Housing Development Board, Aligarh, were selling Dr. Banerji's land illegally.

8. While, on the one hand, possession of the lands sold in auction was not being handed over to the auction purchasers, Shri Sanjai Singh and others, on the other hand, the report of the Additional District Magistrate was also not being given proper consideration for release of the lands which the Respondent No.1-Parishad had purportedly taken possession of without the same having been acquired. Consequently, Sanjai Singh and two others filed Civil Misc. Writ Petition No.54160 of 2005 before the Allahabad High Court claiming that they were entitled to be given the possession of the land in respect of which they were the successful bidders in the auction conducted by the Parishad. They also questioned the demand made by the Respondent No.1-Parishad by its letter dated 30th April, 2005, asking for interest along with penalty and stamp fee before physical possession of the said lands could be made over to them. Aggrieved by such demand and also by the fact that possession of the land in respect of which they were the successful bidders was not being made over to them, the said writ petitioners, Sanjai Singh and others, inter alia, prayed for quashing of the impugned demand dated 30th April, 2005, made on behalf of the Respondent No.1-Parishad and also for a direction upon the said respondent to immediately deliver possession of Plot No.C-2/A, G.T. Road, Yojana, Aligarh, within a time period to be fixed by the court, after accepting the original amount as determined by allotment order dated 17th May, 2000 and also to execute the sale deed in their favour.

9. On the other hand, Dr. Dinesh Chandra Banerji and

Mahesh Chandra Banerjee filed a separate Writ Petition No.43552/2004 against the Respondent-Avas Evam Vikas Parishad and the auction purchasers for a direction in the nature of Mandamus commanding the Respondent-State and the Avas Evam Vikas Parishad to give effect to the inquiry report dated 2nd July, 2004, submitted by the Additional District Magistrate (V.R.), Aligarh.

10. The Writ Petition filed by Sanjai Singh and others came to be disposed of by the Division Bench of the Allahabad High Court on 6th October, 2005, inter alia, with a direction that in the event the writ petitioners deposited the entire outstanding dues, excluding the penal interest, within a period of four weeks from the date of the order, the respondents would hand over the possession of the property in dispute to them within a period of two weeks thereafter. The Respondent No.1-Parishad was also requested to decide the representation of the petitioners with regard to the penal interest by a speaking and reasoned order within six weeks from the date of filing of a certified copy of the order. It was also indicated that in case the petitioners had not filed their representation before the appropriate authority, they could do so within a week from the date of the order before the Housing Commissioner, U.P. Avas Evam Vikas Parishad, Lucknow, and the same would be dealt with in accordance with law.

11. After the said order was passed, Dr. Mahesh Chandra Banerji filed Civil Misc. Recall Application No.81128/2006 praying for recall of the aforesaid judgment and order on the ground that the same had been obtained by concealing material facts and that the order adversely affected the applicant who was not even impleaded as respondent in the writ petition, though, he was a necessary party. The said application was dismissed on 12th December, 2006, on the ground that the process of the court was being misused by denying possession of the lands which had been allotted in favour of the auction purchasers and that attempts were being made to misguide

the court in order to hold on to the possession which had already vested in the State under Section 16 of the Land Acquisition Act, 1894. Consequently, by an order of 12th December, 2006, Writ Petition No.43552 of 2004, which had been filed by the petitioners in SLP(C)No.8019 of 2007, was dismissed on the ground that the case was clearly covered by the judgment passed in the Recall Application filed by Mahesh Chandra Banerji in Writ Petition No.54160 of 2005 filed by Sanjai Singh and others.

12. SLP(C) No.2639 of 2007 has been filed by Dr. Mahesh Chandra Banerji against the order dated 12th December, 2006, whereby his application for recall of the judgment delivered in Writ Petition No.54160 of 2005 was rejected. SLP(C) No.8019 of 2007 has been filed by Dr. Devesh Chandra Banerji and Mahesh Chandra Banerji against the final order dated 12th December, 2006, whereby Writ Petition No.43552 of 2004 was rejected.

13. The main contention of Mr. Rajiv Dutta, learned Senior Advocate, who appeared for the appellants in both the Civil Appeals, was that only a part and not the whole of Plot No.1002, which, according to him, measured 15 bighas and 10 biswa had been acquired for the scheme (Yojana No.7) undertaken by the Respondent-Parishad. It was urged that out of the total area comprising the aforesaid plot, possession had been taken only of 6 bighas and 17 biswa, which belonged to one Shivdan Singh, in whose name compensation had been awarded by the Collector. In fact, it was Mr. Dutta's stand that no part of the appellants' land in Plot No.1002 had been acquired for the aforesaid scheme.

14. Mr. Dutta relied heavily on the report submitted by the Additional District Magistrate (V.R.), Aligarh, dated 30th June, 2004/02.07.2004, in regard to the inquiry conducted by him on the representation made on behalf of the appellants wherein reference had been made to the report of the Special Land Acquisition Officer, Agra, indicating that out of Plot No.1002

only the land owned by one Shivdan Singh had been acquired and that any other land had neither been acquired nor had compensation been determined nor had possession been taken. On the other hand, the actions of the officials of the Housing Development Board, Aligarh, were deprecated. Mr. Dutta pointed out that a categorical finding had been arrived at by the Additional District Magistrate (V.R.), Aligarh, that the officials of the Housing Development Board had allotted Dr. Banerji's land illegally without acquiring the same and without making payment of compensation. Mr. Dutta submitted that having taken note of the high-handed and arbitrary action of the officials of the Housing Development Board, the Additional District Magistrate had recommended that the equivalent extent of land of Dr. Banerji, which had been arbitrarily allotted to others, should be made available to Dr. Banerji's family.

15. Mr. Dutta further submitted that although initially there was a proposal to acquire the entire land comprising Plot No.1002, subsequently on representations being made, the said proposal was dropped and, in fact, a resolution was adopted by the Respondent-Parishad to exclude the building and land of the Banerjis from the scope and ambit of the acquisition proceedings. Mr. Dutta submitted that the controversy began when some of the lands owned by the appellants in the plot in question were forcibly occupied and sold, allegedly in pursuance of the above-mentioned Yojana No.7. Mr. Dutta submitted that as will be evident from the proceedings conducted by the Collector in regard to the acquisition of Plot No.1002, there is no mention whatsoever of the land of the Banerji family having been acquired or compensation having been assessed therefor. It was urged that this would clearly establish that no part of the lands under the occupation of the Banerji family in the plot in question had been acquired for the above-mentioned Scheme. Mr. Dutta submitted that although an attempt has been made on behalf of the Respondent-Parishad to muddy the waters by claiming that the lands of the Banerji family had also been included in

the 6.17 bighas in respect of which compensation had been awarded, there was no evidence of such assertion since the proceedings were confined only to the lands belonging to the property of Shivdan Singh. It was also pointed out that no compensation had either been awarded or paid to the members of the Banerji family and hence, the case made out on behalf of the Parishad that the land belonging to the Banerji family in Plot No.1002 had also been acquired, has no basis whatsoever.

16. Mr. Dutta urged that in view of the detailed inquiry conducted by the Additional District Magistrate (V.R.), Aligarh, and the report submitted by him on the basis thereof, the impugned order passed by the Division Bench of the Allahabad High Court on the Recall Application filed on behalf of the appellants herein, was liable to be set aside and the matter was liable to be remanded to the Division Bench of the High Court for fresh consideration.

17. Mr. Dinesh Dwivedi, learned senior counsel, appearing for the Respondent-Parishad and its Authorities, referred to the reliefs prayed for by Dr. Mahesh Chandra Banerji and Dr. Devesh Chandra Banerji in Original Suit No.307 of 1998 which was ultimately dismissed as infructuous. Mr. Dwivedi submitted that the suit was for injunction simplicitor to restrain the Parishad from interfering with the possession of the plaintiffs in the lands forming the subject matter of the suit and also for mandatory injunction on the Defendant Nos.1 and 5 to remove encroachments from the said lands and to restore its position and possession as on the date of the suit. It was submitted that the plaintiffs chose to abandon the suit on account of the writ petition which had been separately filed in respect of the same land, inter alia, for implementation of the report of the Additional District Magistrate (V.R.), Aligarh, dated 2nd July, 2004, submitted to the District Magistrate, Aligarh. Mr. Dwivedi submitted that the aforesaid report did not give an accurate picture of the acquisition proceedings since the lands

measuring 6.17 bighas in respect of which possession had been taken by the Parishad, was not confined to the lands of Shivdan Singh alone, but also included some of the lands comprising the lands of the Banerji family as well. Mr. Dwivedi referred to the status of the land comprised in Plot No.1002 shown in the letter addressed by the Executive Engineer, U.P. Housing and Development Board on 9th February, 2004 to the District Magistrate, Aligarh.

18. From the contents of the said letter, Mr. Dwivedi pointed out that out of the total lands comprising Plot No.1002, the land comprising the Pisawa House was excluded from the acquisition along with Dr. Mahesh Banerji's Kothi and the open land towards North-32 ft., towards South-32 ft., towards East-12 ft. and towards West-52 ft. measuring 1-1-10 bighas and a further 0-14-2 bighas on which Smt. Angoori Devi's Kothi was situated. Mr. Dwivedi submitted that according to the aforesaid facts, the stand taken on behalf of the appellants on the basis of the report of the Additional District Magistrate (V.R.), Aligarh, that no portion of the lands belonging to the Banerji family had been acquired, was wrong and not supported by the record. In fact, Mr. Dwivedi pointed out that while assessing compensation for the 6.17 bighas of land in respect whereof possession had been taken, the Collector was alive to the fact that the entire lands did not belong to Shivdan Singh alone, as alleged, and the same would be evident from the Award, wherein compensation had been assessed in favour of Shivdan Singh, etc. It was submitted that apart from Shivdan Singh, the lands of the Banerji family had also been included in the acquisition.

19. The submissions made on behalf of the Parishad were also adopted by Mr. R.K. Dash, learned Senior Advocate for the State of Uttar Pradesh. The categorical stand taken by learned counsel was that the views expressed by the Additional District Magistrate (V.R.), Aligarh, were contrary to the records, as mentioned by the Executive Engineer, U.P. Housing and

Development Board in his letter dated 9th February, 2004, addressed to the District Magistrate, Aligarh.

20. Mr. L. Nageshwara Rao, learned Senior Advocate, who appeared for Respondent Nos.4 to 6, firstly referred to the notice published by the Respondent-Parishad under Section 28 of the U.P. Avas Evam Vikas Parishad Adhiniyam, 1965, wherein the area to be comprised in the G.T. Road Bhoomi Vikas Yojana was specified and objections were invited within 30 days from the date on which the notice was first published in the Uttar Pradesh Gazette, i.e., 5th October, 1968. Mr. Rao submitted that no objection had been filed on behalf of the Banerjis within the specified time and the representation on the basis of which the inquiry was conducted by the Additional District Magistrate (V.R.), Aligarh, was made as late as on 19th August, 2002. It was submitted that in the meantime, auction had been conducted on 30th March, 2000 and allotment letter had also been issued in favour of the successful bidders by the Housing Board on 17th May, 2000 and possession was also given to the three auction purchasers on 5th April, 2006. Mr. Rao submitted that the Respondent Nos.4 to 6 were, therefore, bona fide purchasers for value without notice and the allotment made in their favour, could not be disturbed.

21. From the submissions made on behalf of the respective parties and the materials on record, it will be apparent that the dispute in this case centers around the question as to whether barring 1-1-10 bighas of the lands comprising a part of the property belonging to the Banerji family, which had been excluded from the acquisition, the remaining portion had also been acquired for the purpose of Yojana No.7 undertaken by the Respondent-Parishad. From the calculations as indicated in the report of the Executive Engineer, U.P. Housing Development Board, only 1-1-10 bighas of land belonging to the Banerji family had been excluded from the scope of the acquisition and as far as remaining lands are concerned, the same either fall within the 6.17 bighas

possession whereof had already been taken, or the same fell outside the said area which did not form part of the lands excluded from the ambit of the acquisition. In either case, the Banerjis have to be compensated for the said lands in respect whereof, according to the Banerjis, no compensation had either been assessed or awarded. The said conundrum still remains to be solved. No positive finding has at all been arrived at in this regard by the acquiring authorities, nor even by the Collector while making his Award. There is, therefore, some justification in Mr. Dutta's submissions that if the lands of the Banerji family, apart from the lands which had been excluded from the acquisition, had actually been acquired for the purpose of Yojana No.7, the same had to be reflected in the proceedings for acquisition of the lands and, accordingly, compensation was required to be paid to the Banerji family in respect thereof. The general submission made on behalf of the Parishad and the State that it was for the Banerjis to prove their title to the alleged lands comprising 6.17 bighas and to ask for compensation therefor, does not stand scrutiny in view of the fact that identity of the lands covered within the said 6.17 bighas has not been properly established.

22. The writ court is not ideally situated to decide such a disputed question of fact. Although, a description of the lands of the Banerji family which had been acquired, has been given in the letter written by the Executive Engineer, U.P. Housing Development Board to the District Magistrate on 9th February, 2004, the same has to be considered along with the decision which had been taken to allow the Banerji family to retain the lands adjacent to their Kothi upto G.T. Road. There appears to be a communication gap between the different authorities of the State Government as also the Parishad relating to these lands. If a resolution had been taken to allow the Banerji family to retain the above-mentioned lands contiguous to G.T. Road, then the specifications given in the letter of the Executive Engineer appear to be incorrect. Whatever be the dispute, a citizen cannot be deprived of his property except in accordance

with the procedure established by law. If barring 1-1-10 bighas of land which had been excluded from the ambit of the acquisition, the other lands of the Banerji family have actually been acquired and possession thereof been taken, the extent of the lands so acquired will have to be established and compensation in respect thereof has to be paid to the Banerji family. That does not appear to have been done in this case, thereby causing prejudice to the appellants. On the other hand, if the excess lands belonging to the Banerji family had been included within the 6.17 bighas of land in respect whereof possession had actually been taken, the State and the acquiring body have to identify the said lands for the purposes of assessing compensation.

23. All the above questions can either be decided in a properly instituted suit or by the Collector on a proper inquiry being conducted. We are, therefore, of the view that in order to put a quietus to the dispute, the District Magistrate should conduct a fresh inquiry in order to determine the extent of the lands of the Banerji family which had been included in the acquisition proceedings for the purpose of Yojana No.7 undertaken by the Parishad upon giving the affected parties an opportunity of placing their respective cases.

24. The District Magistrate, Aligarh is, therefore, directed to conduct an enquiry in order to determine the extent of land belonging to the Banerji family which is said to have been acquired for the purposes of the scheme covered by Yojana No.7 undertaken by the Respondent No.1-Parishad and to also determine as to whether the same was included in the 6.17 bighas of land possession whereof had been taken earlier. In the event the lands have not been included within the ambit of the acquisition proceedings, as indicated by the Additional District Magistrate (V.R.), Aligarh, then, in such an event, the compensation for the same is to be assessed and Award is to be made in respect thereof, in accordance with law. On the other hand, if the said lands have been included within the 6.17

bighas in respect of which compensation had already been awarded, the District Magistrate shall, after identification of the lands of the appellants, apportion the compensation payable to them and make an Award accordingly.

25. As indicated hereinbefore, in conducting such an inquiry, the appellants as also the authorities of the Respondent No.1-Parishad should be given proper opportunity of placing their respective cases. Since the acquisition relates back to the year 1968/1971, such investigation and enquiry must, however, be completed within six months from the date of receipt of a copy of this order.

26. The appeals are, accordingly, allowed to the aforesaid extent, but without any order as to costs. All connected applications shall also stand disposed of by this order.

B.B.B. Appeals partly allowed.

DINESH CHANDRA PANDEY
v.
HIGH COURT OF M.P. & ANR.
(Civil Appeal No. 2622 of 2005)

JULY 8, 2010

[DR. B.S. CHAUHAN AND SWATANTER KUMAR, JJ.]

Service Law – Judicial officer – Departmental Enquiry – Charge for possessing disproportionate assets – A Judge appointed as Presenting Officer – Application of delinquent for appointing legal practitioner for his defence dismissed – Found guilty in enquiry – Dismissal from service – Appeal, writ petition as well as LPA dismissed – On appeal, plea that denial to engage legal practitioner violative of principles of natural justice and Civil Services Rules and that evidence was not appreciated in its correct perspective – Held: Denial of engagement of legal practitioner was not violative of the principles of natural justice or the Rules – Permission for engagement of legal practitioner was not mandatory – Engagement of 'legal practitioner' is permissible for delinquent only if the Presenting Officer is a legal practitioner – A judge in service cannot be termed as a legal practitioner – Non-production of witnesses and documents by the delinquent in support of his case leads to drawing adverse inference against him – On facts, delinquent has not approached the court with clean hands – Judges are expected to apply stringent social and moral values to their standard of living – Finding of facts arrived at by authorities/courts below cannot be interfered with in exercise of jurisdiction under Article 136 – M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 – r. 14(8) – Principles of natural justice – Interpretation of Statutes – Advocates Act, 1961 – s. 2(i) – Central Administrative Tribunal (Procedure) Rules, 1987 – r. 2(e) – Constitution of India, 1950 – Article 136 – Judiciary.

Interpretation of Statutes – Contextual interpretation – Expression 'may' in a statute – Not essential, that it is always directory – It can be read as 'shall' in view of the legislative intent – However, in the instant case, expression 'may' in r. 14(8) to be construed as directory – M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 – r. 14 (8).

Words and Phrases – 'Legal practitioner' – Meaning of.

Appellant-a Civil Judge was charged for possessing disproportionate assets to his known source of income. In the course of departmental enquiry, he made an application for permission to engage a legal practitioner, which was declined. Enquiry Officer found him guilty of the charge. Disciplinary Authority imposed punishment of removal from service. Appeal against the order was dismissed by the Governor. Writ petition as well as Letters Patent Appeal were dismissed.

In the instant appeal, the impugned order was challenged mainly on two grounds viz. denial of assistance of legal practitioner was in violation of principles of natural justice as well as M.P. Civil Services (Classification, Control and Appeal) Rules, 1966; and that Disciplinary Authority and the courts had not appreciated the evidence in its correct perspective.

Dismissing the appeal, the Court

HELD: 1.1 The bare reading of Rule 14(8) of M.P. Civil Services (Classification Control and Appeal) Rules, 1966 shows that the Government servant may take the assistance of any other Government servant to represent his case but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the authority is a 'legal practitioner' or the disciplinary authority, having regard to the circumstances of the case, so permits. The expression 'may' cannot be read as 'shall'. The normal Rule is that a delinquent officer would

be entitled to engage another officer to present his case. But if the Presenting Officer is a 'legal practitioner', he may normally be permitted to engage a legal practitioner. The third category is where the disciplinary authority having regard to the circumstances of the case so permits. It is, therefore, not absolutely mandatory that the disciplinary authority should permit the engagement of a legal practitioner irrespective of the facts and circumstances of the case. There is some element of discretion vested with the authority which, has to be exercised properly and in accordance with the settled principles of service jurisprudence. [Para 7] [50-D-H]

1.2 Where expression 'shall' has been used it would not necessarily mean that it is mandatory. It will always depend upon the facts of a given case, the conjunctive reading of the relevant provisions along with other provisions of the Rules, the purpose sought to be achieved and the object behind implementation of such a provision. Where the word 'may' shall be read as 'shall' would depend upon the intention of the legislature and it is not to be taken that once the word 'may' is used, it *per se* would be directory. The expression 'may', used in Rule 14(8) of 1966 Rules would have to be construed as directory and not absolutely mandatory with reference to the facts and circumstances of a given case. [Para 7] [50-H; 51-A-E]

Sarla Goel v. Kishan Chand **(2009) 7 SCC 658;** *Malaysian Airlines Systems BHD (II) v. Stic Travels (P.) Ltd.* **(2001) 1 SCC 509, relied on.**

1.3. In the instant case the Presenting Officer was an Additional District Judge. He possessed similar qualification, professionally or otherwise, as was the appellant himself. The appellant could have asked for permission to engage and take assistance of any other judicial officer of that rank or of any rank that he wanted,

which request ought to have been considered by the Disciplinary Authority. It will be entirely uncalled for, that an Additional Judge should be termed as a legal practitioner and, therefore, vesting in the appellant a right to engage a legal practitioner or an advocate for defending him in the departmental proceedings. It will be rather appropriate to apply the principles of contextual interpretation in the facts and circumstances of the case. A judge in service cannot be termed as a legal practitioner, as it will mean and include only an Advocate or a Vakil of court practicing in a court, may even be a Barrister, Special Pleader, Solicitors depending on the facts of a given case. Rule 2(e) of the Central Administrative Rules, 1987 also defines the word 'legal practitioner'. However, it, in turn, requires that this expression shall have the same meaning as is assigned to it under the Advocates Act, 1961. In that Act the word 'legal practitioner' has been defined u/s. 2(i) to mean an Advocate or Vakil of any High Court, a pleader M*ukhtar* or Revenue Agent. The 'legal practitioner' is an expression of definite connotation and cannot be granted an extended or inclusive meaning, so as to include what is not specifically covered. A Judge may be law graduate holding a Bachelor Degree in Law from any University established by law in India but this by itself would not render him as a 'legal practitioner'. On the contrary, there is a definite restriction upon the Judge from practicing law. Such an implied inclusion, would not only lead to absurdity but would even offend the laws in force in India. [Paras 7 and 8] [51-F-H; 52-A-B; G-H; 53-A-D]

Muddada Chayanna vs. K. Narayana **AIR 1979 SC 1320, relied on.**

Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd. **AIR 2003 SC 511, referred to.**

P. Ramanatha Aiyar's Law Lexicon; 'Principles of the

Common Law' **by John Indermaur, 169 (Edmund H. Bennett ed., 1st Am.ed. 1878), referred to.**

1.4. Even on principle of fairness, the order cannot be said to have caused any prejudice to the appellant. The appellant could have asked for appointment of any colleague whose assistance he wanted to take and who would have been as well qualified and experienced as the presenting officer. The request of the appellant has been rightly rejected by the disciplinary authority. Furthermore, the appellant took no steps whatsoever to challenge the order of the Disciplinary Authority declining assistance of an advocate. On the contrary, he participated without any further protest in the entire departmental enquiry and raised no objections. The Enquiry Officer conducted the proceedings in a just, fair manner and in accordance with rules. In fact, there is no challenge to that aspect of the matter. The appellant himself was fully capable of defending himself in the departmental enquiry. In the alternative he could easily ask for assistance of any senior colleague from the service if he was under pressure of any kind that the Presenting Officer was senior to him and belonged to Higher Judicial Service. He did not exercise this choice, at any stage, for reasons best known to him. However, he made an application praying for permission to engage an advocate and nothing else. Charge against the appellant was not of a very complicated nature, which a person having qualification and experience of the appellant would not be able to defend. In these circumstances, no prejudice whatsoever has been caused to the interest of the delinquent officer. [Para 9] [53-F-H; 54-A-F]

J.K. Aggarwal v. Haryana Seeds Development Corporation Ltd. **1991 (2) SCC 283;** *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni* **1983 (1) SCR 828, distinguished.**

2.1. So far as the plea regarding perversity in appreciation of the evidence in the impugned judgment under appeal is concerned, the finding of facts arrived at by the enquiry officer was not interfered with by the Single Judge as well as the Division Bench of the High Court. It is hardly permissible for this Court to disturb such findings of fact in exercise of its jurisdiction under Article 136 of the Constitution of India. [Para 11] [57-F-G]

2.2. The conduct of the appellant can hardly be appreciated in regard to deposit of money in the Bank regularly during the entire period of the relevant year. The Department had showed that the deposits have been made and the bank balance of the appellant, on a particular date, was beyond the known sources of his income to which, the appellant has raised a defence that he owned the land and the income received was an agricultural income. However, he produced no evidence during the departmental enquiry to show that some person was making payment to him and/or some person was depositing the money in the Bank so received from agricultural activity in every 2-3 days. Non-examination of witnesses viz. persons carrying on the agricultural activity, harvesting and selling the same; and the persons purchasing the crop etc. and non-production of necessary documents must lead to draw an adverse inference against the appellant. In any case, the appellant cannot take advantage of that fact and contend that the inquiry officer has failed to appreciate evidence in its correct perspective. [Para 11] [57-G-H; 58-A-E]

2.3. In the property return for the relevant year, the appellant is shown to have 1/3rd share in the agricultural land located at two different places. There is a specific column relating to income from agriculture. In that form it was filled in by the appellant as 'uncertain'. Thus, for the substantial period, he was fully aware of his income received from agricultural activity but he still chooses to

keep it vague and not declare his true income in the return. Now, in the departmental proceedings and in the reply to the charge-sheet, he submitted that there was an income of more than Rs.50,000/- p.a. and that he owned 37.53 acres of land at two different places. It is again strange that he did not disclose in his reply that this was a land jointly owned with his brothers and family members and what was the extent of his holding individually. In the return, he himself claimed one-third share in the property. The total land indicated at two different places being 26 acres + 18 comes to 44 acres and one third of which, merely 14 acres approximately, would be the land owned by him and not 37 acres as claimed. This, itself shows that the appellant has not approached the court with clean hands and has not disclosed true facts which were known to him alone. [Para 11] [58-F; 59-A-D]

2.4. In the departmental proceedings, he took incorrect defence contrary to his return and failed to discharge the onus placed upon him. In the departmental enquiry, the appellant produced no income tax returns to show that in addition to his salary, he had other sources of income and what was the extent of income from these sources. In his written statement of defence he never took up the plea that any such returns were filed and he made no effort to bring on record the copies of such income-tax returns, if at all filed. It was obligatory on the part of the delinquent officer to disclose all such relevant facts which were only within his personal knowledge. He belongs to a service which is looked upon by the public at large as a service cadre of high integrity and professional values. The Judges are expected to apply stringent social and moral values to their standard of living. It was expected of the appellant to disclose all true and correct information and documents in his power and

possession before the Enquiry Officer. It was not required of him to with-hold relevant material and take such a defence which could not be substantiated during the course of departmental enquiry. Having failed to produce relevant documentary evidence as well as examine the witnesses, the appellant cannot argue that the Disciplinary Authority or the courts have not appreciated the evidence in its correct perspective. [Para 11] [59-D; 60-A]

Case Law Reference:

(2009) 7 SCC 658	**Relied on.**	**Para 7**
(2001) 1 SCC 509	**Relied on.**	**Para 7**
AIR 1979 SC 1320	**Relied on.**	**Para 7**
AIR 2003 SC 511	**Referred to.**	**Para 7**
1991 (2) SCC 283	**Distinguished.**	**Para 9**
1983 (1) SCR 828	**Distinguished.**	**Para 10**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2622 of 2005.

From the Judgment & Order dated 17.12.2004 of the High Court of Judicature M.P. at Jabalpur in LPA No. 606 of 2003.

C.N. Sreekumar, T.G. Narayanan Nair, Dushyant Parashar, P.R. Nayak for the Appellant.

B.S. Banthia for the Respondents.

The Judgment of the Court was delivered by

SWATANTER KUMAR, J. 1. Dinesh Chandra Pandey, appellant herein, was appointed to the post of Civil Judge in the M.P. Judicial Service (Class II) on 27th January, 1982. On completion of the training period, he joined as Civil Judge, Dhamtari on 12th September, 1982. During his tenure as Civil Judge, certain irregularities were noticed by the competent

authority and on 7th December, 1988, a charge-sheet was served upon him, primarily, on the ground that he was possessed of disproportionate money/assets to his known sources of income. He was served with a charge sheet containing two articles of charges. One out of them (Charge 2) had not been proved while other Charge (Charge 1) stood proved against the delinquent officer. Article 1 which had been established reads as under:

> "That the said Shri D.C. Pandey while his posting as Civil Judge, Class-II and J.M.F.C. Raipur had a Bank account in State Bank of India Account No. SB/8833, the balance whereof swelled from Rs.2170.01 to Rs.35036.92 paise within the period from January 1984 to 6th May, 1985, his explanation in this behalf having been found unconvincing considering the disproportionateness of the said increase in his bank balance to his salary income and pattern and frequency of deposits the said increase in balance is capable of no other reasonable explanation than that of illicit gains as the source of money which renders his integrity gravely doubtful."

2. The allegations were denied by him and on 30th January, 1989 he submitted that he owns 37 acres of land in Bilaspur and has agricultural income to the extent of Rs. 50,000/- p.a. It is out of this agricultural income that he has been depositing amounts in the bank and has not committed any violation of service regulations or other offence which would attract disciplinary action against him. The competent authority decided to conduct a regular departmental enquiry and appointed Shri G.R. Pandya, District & Sessions Judge, Raipur as enquiry officer. Besides appointing an enquiry officer, the High Court also appointed Shri Ram Krishna Behar, Addl. Judge as Presenting Officer. During the course of enquiry, the appellant made an application for permission to engage a legal practitioner to assist him in the departmental enquiry. This request was declined by the High Court vide order dated 4th

December, 1989. The appellant participated in the enquiry and the enquiry officer submitted his report on 4th April, 1990 and returned the finding of guilt against the appellant. The concluding paragraphs of the report read as under:

> "Shri Pandey was saving Rs.600/- p.m. out of his salary and, therefore, this amount was quite insufficient for making such a large saving. More saying of Shri Pandey received the amounts frequently from his mother is not sufficient. Something more was required to explain the deposits. This type of explanation was already given by Shri Pandey during the preliminary inquiry and was already found unsatisfactory, hence further opportunity was given to Shri Pandey, by holding this inquiry to give reasonable and convincing explanation regarding the source of his income. I am sorry to say that Shri Pandey could not assess the seriousness of the matter and went on repeating that the money was sent by his mother. The mother of Shri Pandey as well as the customers who had purchased the produce of the messenger who used to bring the money frequently from Bilaspur to Raipur have not been examined. Under these circumstances, bald statement of Shri Pandey that money was received by him from his mother does not appear to be correct. Thus, I come to the conclusion that charge no. 1 regarding the frequent deposits made by Shri Pandey within a span of short period is proved against him.

3. Disciplinary authority, after receiving the said report, issued show cause notice to the appellant on 16th March, 1991 informing the appellant that finding of the enquiry officer on Article (1) had been accepted and as to why punishment should not be imposed upon him to which he submitted a detailed reply. The disciplinary authority vide its order dated 10th June, 1992, opined that the stand taken by the appellant was not satisfactory and consequently, imposed the punishment of removal from service. The appellant preferred an appeal

against this order before the Governor which also came to be dismissed vide order dated 3rd February, 1993. The order of removal from service, as confirmed by the appellate authority, was challenged by the appellant by filing a Writ Petition being Misc. Petition No. 3847 of 1992 in the High Court which also came to be dismissed by the Ld. Single Judge vide its order dated 1st July, 2003. Still dissatisfied with the judgment of the Court, Letter Patent Appeal was filed which also met the same fate and was dismissed by the Division Bench of the Madhya Pradesh High Court vide order dated 17th December, 2004. The legality and correctness of this order has been challenged by the appellant in the present appeal under Article 136 of the Constitution.

4. As would be evident from the above narrated facts, the charge against the appellant was a very limited one. In fact, the deposit of the amount in the bank was not disputed by the appellant. However, he rendered the explanation that he had agricultural land from where he was getting Rs. 50,000/-p.a. as income and had, therefore, deposited these amounts in the bank during the period stated in the charge sheet i.e. between January, 1984 to May, 1985. He had also taken up the stand before the Courts that while he was functioning as a Civil Judge (Class II), Dhamtari in December, 1982, a crime had taken place in which one Shri Pandri Rao Pawar, Advocate and one of his nephew were involved. They had caused serious injuries to the brother of Shri H.L. Warda, the then Judicial Magistrate, 1st Class, Dhamtari who had lost his one eye in the assault. A case under Sections 294, 325, 506B of IPC was registered. The appellant herein had rejected their bail application and did not succumb to the pressure brought in by the advocate which resulted in enmity between the parties. It was also alleged that the said advocate filed a complaint on 9th December, 1982 against the appellant stating therein that one witness Dayaram Sahu in Criminal Case No. 1153 of 1986 under Section 325/34 IPC was directed to be handcuffed without any justification and later on the appellant was transferred from Dhamtari and

posted to Raipur. As such there was a different motive for taking disciplinary action against the appellant than what was apparent from the record of the disciplinary proceedings. According to the appellant, he was possessed by sufficient means as he had income from salary as well as agricultural activity. In light of the facts given by him, there was no occasion to frame any charge against the appellant. Further, the contention is that none of the article of charges have been proved against the delinquent in accordance with law.

5. On the contrary, the learned counsel appearing for the respondents contended that this Court should not re-appreciate the evidence. The enquiry officer, the disciplinary authority, the learned Single Judge and even the Division Bench have accepted the fact that the appellant had been rightly charged with Article 1, which stands proved and, as such, no interference is called for on merits or even on the question of quantum of punishment. It is also stated by him that in terms of Govt. Servant Conduct Rules, 1985, which are applicable to the members of the Judicial Service in the State of Madhya Pradesh, a Government servant who either fails to file a return prescribed in sub-rule (i) or files a return for any year, which does not fully disclose all the property that is required to be indicated or otherwise conceals any such property, would amount to misconduct. Further, the argument raised is that the Enquiry Officer has examined all the relevant aspects and after being satisfied that there was no plausible explanation for depositing the money in the bank at such short intervals, no fault can be found with the finding of the Enquiry Officer. Referring to the behaviour of a common prudent person/agriculturist, the income from agriculture could hardly be on day-to-day basis. It was nobody's case that vegetable or allied crop was being grown on the land in question. In normal course, the money would be available to agriculturist only when the crop is harvested and sold in the market. No such evidence had been produced by the appellant during the course of enquiry. Thus, no interference is called for.

6. The challenge to the impugned order is, primarily, on two grounds. Firstly, the appellant had asked for assistance of a legal practitioner which had been unfairly denied to him. Denial of assistance of a legal practitioner tantamount to violation of principles of natural justice as well as M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (for short "1966 Rules"), and, as such, the entire departmental proceedings as well as the impugned order of punishment are vitiated. Secondly, the enquiry officer as well as the High Court have not appreciated the evidence in its proper perspective and has failed to accept plausible defence raised by the appellant in regard to deposit of money in the bank. The order of removal from service, thus, is based on no evidence and is required to be set aside. In support of this contention learned counsel referred to Rule 14(8) of the 1966 Rules as well as Judgment of this Court in the case of *J.K. Aggarwal v. Haryana Seeds Development Corporation Ltd.* [(1991) 2 SCC 283] and Board of Trustees of the Port of *Bombay v. Dilipkumar Raghavendranath Nadkarni,* [(1983) 1 SCR 828]. The 1966 rules are applicable to the member of judicial services of the State of Madhya Pradesh as the Government, in consultation with the High Court, has only framed one set of Rules i.e. M.P. Judicial Service (Classification, Recruitment and Conditions of Service) Rules, 1955 (which primarily deal with the eligibility, methodology relating to appointment to the judicial services of the States and its cadre etc. As far as the disciplinary rules are concerned, it is a common case of the parties that the above 1966 Rules are the Rules applicable to the members of judicial services. These Rules came into force from the date of their publication. They deal with power to suspend, conduct departmental enquiry, the procedure which is to be adopted in a departmental enquiry and punishments which can be inflicted upon an officer by the Competent Disciplinary Authority. While Rule 10 deals with the punishment and penalties which can be imposed on the member of the service, Rules 12 and Rule 13 deal with the Disciplinary Authority and the authority who can institute the proceedings. While Rule 14 deals not only with

imposition of punishment but also gives the entire procedure which is required to be followed by the Enquiry Officer as well as the Disciplinary Authority before inflicting any punishment upon the charged officer, Rule 14(8) deals with providing of legal assistance or engagement of a legal practitioner during the course of a departmental enquiry. As the reliance has been placed by both the parties on this Rule, it will be useful to reproduce the same here:

> *"Rule 14(8):* The Government servant may take the assistance of any other Government servant to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits."

7. The bare reading of this Rule shows that the Government servant may take the assistance of any other Government servant to represent his case but may not engage a legal practitioner for the purpose unless the presenting officer appointed by the authority is a 'legal practitioner' or the disciplinary authority, having regard to the circumstances of the case, so permits. The expression 'may' cannot be read as 'shall'. The normal Rule is that a delinquent officer would be entitled to engage another officer to present his case. But if the presenting officer is a 'legal practitioner', he may normally be permitted to engage a legal practitioner. The third category is where the disciplinary authority having regard to the circumstances of the case so permits. It is, therefore, not absolutely mandatory that the disciplinary authority should permit the engagement of a legal practitioner irrespective of the facts and circumstances of the case. There is some element of discretion vested with the authority which, of course, has to be exercised properly and in accordance with the settled principles of service jurisprudence. The Courts have taken a view that where expression 'shall' has been used it would not

necessarily mean that it is mandatory. It will always depend upon the facts of a given case, the conjunctive reading of the relevant provisions along with other provisions of the Rules, the purpose sought to be achieved and the object behind implementation of such a provision. This Court in the case of *Sarla Goel v. Kishan Chand* [(2009) 7 SCC 658], took the view that where the word 'may' shall be read as 'shall' would depend upon the intention of the legislature and it is not to be taken that once the word 'may' is used, it *per se* would be directory. In other words, it is not merely the use of a particular expression that would render a provision directory or mandatory. It would have to be interpreted in light of the settled principles, and while ensuring that intent of the Rule is not frustrated. Further, in the case of *Malaysian Airlines Systems BHD (II) v. Stic Travels (P.) Ltd.,* [(2001) 1 SCC 509], this Court took the view that word 'may' in Section 11(1) of the Arbitration and Conciliation Act, 1996 is not to be construed as 'must' or 'shall', as the word 'may' has not been used in the sense of 'shall', the provision is not mandatory. In the light of these principles, we are of the considered view that the expression 'may', used in Rule 14(8) of 1966 Rules would have to be construed as directory and not absolutely mandatory with reference to the facts and circumstances of a given case. Of course, it would be desirable that wherever the presenting officer is a legal practitioner, the delinquent officer should be given the option and may be permitted to engage a legal practitioner if he so opts. But this Rule is hardly of any assistance and help to the appellant in the present case. The Presenting Officer was an Additional District Judge. He was possessed of similar qualification, professionally or otherwise, as was the appellant himself. The appellant could have asked for permission to engage and take assistance of any other judicial officer of that rank or of any rank that he wanted which request ought to have been considered by the Disciplinary Authority. It will be entirely uncalled for that an Additional Judge should be termed as a legal practitioner and, therefore, vesting in the appellant a right to engage a legal practitioner or an advocate for defending him in the

departmental proceedings. It will be rather appropriate to apply the principles of contextual interpretation in the facts and circumstances of the case. In the case of Muddada Chayanna vs. K. Narayana [AIR 1979 SC 1320], it was held by this Court that interpretation of statute, contextual or otherwise, must further and not frustrate the object of the statute. In other words, the expression 'medical practitioner' appearing in the Maharashtra Nurses Act, 1966 should be given a meaning in the context in which it is sought to be applied to achieve the real object of the statute. It is also to be kept in mind that while dealing with the provisions of the statute, the Court would not adopt an approach or give meaning to an expression which would produce unintelligible, absurd and unreasonable result and would render the legislative intent unworkable or totally irreconcilable with the provisions of the statute (*Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd.* [AIR 2003 SC 511]). The learned counsel for the appellant referred to P. Ramanatha Aiyar's Law Lexicon to emphasise that the expression 'legal practitioner' appearing in Rule 14(8) would cover even a judicial officer. He relied upon the following explanations given to this expression:

> "Legal practitioner" defined (See also Advocate of a High Court; Barrister; Government pleader; Pleader; Public Prosecutor; Recognized agent) Act 18, 1879, S. 3; Act 18, 1881, S. 4(2); Act 16, 1887, S.4(16); Act 17, 1889, S 3(13); Act 23, 1923, S.2; Act 21, 1926, S.2
>
> 'Legal Practitioner' means an advocate vakil or attorney of any High Court, a pleader, mukhtaro revenue agent. Act XVIII of 1879 (Legal Practitioners), S.3]"

8. The above referred explanations clearly show that a judge in service cannot be termed as a legal practitioner, as it will mean and include only an Advocate or a vakil of Court practicing in a Court, may even be a Barrister, Special Pleader, solicitors depending on the facts of a given case. Rule 2 (e) of the Central Administrative Rules, 1987 also defines the word

'legal practitioner'. However, it, in turn, requires that this expression shall have the same meaning as is assigned to it under the Advocates Act, 1961. In that Act the word 'legal practitioner' has been defined under Section 2(i) to mean an advocate or vakil of any High Court, a pleader *mukhtar* or revenue agent. In other words, this is an expression of definite connotation and cannot be granted an extended or inclusive meaning, so as to include what is not specifically covered. A Judge may be law graduate holding a Bachelor Degree in Law from any University established by law in India but this by itself would not render him as a 'legal practitioner'. On the contrary, there is a definite restriction upon the Judge from practicing law. Such an implied inclusion, as argued by the appellant, would not only lead to absurdity but would even offend the laws in force in India. John Indermaur, Principles of the Common Law 169 (Edmund H. Bennett ed., 1st Am.ed. 1878 explains the term as follows :

> "Legal practitioners may be either barristers, special pleaders not at the bar, certified conveyancers, or solicitors. The three latter may recover their fees, but the first may not, their acting being deemed of a voluntary nature, and their fees merely in the light of honorary payments; and it follows from this, that no action lies against them for negligence or unskilfulness."

9. Thus, the expression 'legal practitioner' is a well defined and explained term. It, by any stretch of imagination, cannot include a serving Judge who might have been appointed as a presenting officer in the departmental proceedings. Besides this legal aspect of the matter, even on principle of fairness we do not think that the order has caused any prejudice to the appellant. The appellant could have asked for appointment of any colleague whose assistance he wanted to take and who would have been as well qualified and experienced as the presenting officer. The request of the appellant has been rightly rejected by the disciplinary authority. Furthermore, the application was made on 7th December, 1988 itself and

thereafter the appellant took no steps whatsoever to challenge the order of the Disciplinary Authority declining assistance of an advocate. On the contrary, he participated without any further protest in the entire departmental enquiry and raised no objections. The Enquiry Officer conducted the proceedings in a just, fair manner and in accordance with rules. In fact, there is no challenge to that aspect of the matter. In the application, the appellant had stated "that the complainant neither has necessary experience nor the required skill to handle his defence in such circumstances." This statement *ex facie* is not correct. The appellant must have dealt with variety of cases during his tenure as a Judge. He was fully capable of defending himself in the departmental enquiry. In the alternative he could easily ask for assistance of any senior colleague from the service if he was under pressure of any kind that the Presenting Officer was senior to him and belonged to Higher Judicial Service. He did not exercise this choice, at any stage, for reasons best known to him. However, he made an application praying for permission to engage an advocate and nothing else. Charge against the appellant was not of a very complicated nature, which a person having qualification and experience of the appellant would not be able to defend. In these circumstances, we are of the considered view that no prejudice whatsoever has been caused to the interest of the delinquent officer. These are the rules primarily of procedure, an element of prejudice would be one of the necessary features, before departmental proceedings can be held to be vitiated on that ground. The reliance placed upon the case of *J.K. Aggarwal* (supra) is totally unwarranted. In that case, the Court came to the conclusion that refusal to sanction the service of lawyer in the inquiry proceedings was not a proper exercise of discretion under the Rule resulting in failure of justice. The Court held that the discretion was vested in the disciplinary authority in terms of Rule 7(5) of the relevant Rules. The language of that Rule was entirely different and permission to engage a legal practitioner was relatable to the nature of the punishment which could be imposed upon the delinquent officer in the

departmental proceedings. If the charges were likely to result in dismissal of the person from service, in that event, that officer may with the sanction of the Enquiry Officer be permitted to be represented through a counsel. Language of this Rule is entirely different from the language of the Rule in question in the present case. On the basis of the facts of that case and Rule 7(5) of the said Rules the Court held:

> "The right of representative by a lawyer may not in all cases be held to be a part of natural justice. No general principle valid in all cases can be enunciated. In non-statutory domestic tribunals, Lord Denning in the Court of Appeal in England favoured such a right where a serious charge had been made which affected the livelihood or the right of a person to pursue an avocation and observed:
>
> "I should have thought, therefore, that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth. He also has a right to speak by counsel or solicitor."
>
> But this was not followed by Lyell, J. in Pett case (No.2)
>
> It would appear that in the inquiry, the respondent-Corporation was represented by its Personnel and Administration Manager who is stated to be a man of law. The rule itself recognizes that where the charges are so serious as to entail a dismissal from service the inquiry authority may permit the services of a lawyer. This rule vests a discretion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reasons of the appellant being pitted against a presenting officer who is trained in law. Legal Adviser and a lawyer are for this purpose somewhat liberally construed and must include "whosoever assists or advises on facts and in law must be deemed to be in the

> position of a legal adviser". In the last analysis, a decision has to be reached on a case to case basis on the situational particularities and the special requirements of justice of the case. It is unnecessary, therefore, to go into the larger question "whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner" which was kept open in Board of Trustees of the Port of Bombay v. Dilip Kumar. However, it was held in that case (SCC p. 132, para 12)
>
> "…In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated…."
>
> On a consideration of the matter, we are persuaded to the view that the refusal to sanction the service of a lawyer in the inquiry was not a proper exercise of the discretion under the rule resulting in a failure of natural justice; particularly, in view of the fact that the Presenting Officer was a person with legal attainments and experience. It was said that the appellant was no less adept having been in the position of a Senior Executive and could have defended, and did defend, himself competently; but as was observed by the learned Master of Rolls in Pett case that in defending himself one may tend to become "nervous" or "tongue-tied". Moreover, appellant, it is claimed, has had no legal background. The refusal of the service of a lawyer, in the facts of this case, results in denial of natural justice."

10. Thus, the appellant can hardly take any help from that case. Even in the case of *Dilipkumar Raghavendranath Nadkarni* (supra), the Board of Trustees had appointed its law officer as a presenting officer. The Presenting Officer was legally trained and experienced in handling departmental enquiries, it was in those circumstances that this Court found, as a matter of fact, that there was violation of principles of natural justice and that a legally expert person has been permitted to be engaged by the delinquent worker. In that case the provisions similar to the present provisions also came into force during the pendency of the departmental proceedings. The Court remanded the matter and directed re-conducting of the departmental enquiry with specific liberty to the workman to cross-examine all the witnesses afresh in accordance with law. The facts of that case are thus entirely different from the case in hand wherein no such ground is made out. Firstly, the petitioner himself was equally qualified and trained as the presenting officer and/or he could even ask for assistance for a fellow colleague with similar experience and status as that of the presenting officer which he choose not to do. Having given up the right, he cannot now be permitted to turn back and raise a grievance in that regard. This contention of the appellant is without any merit.

11. Coming to the other aspect of the case, that there is perversity in appreciation of the evidence in the impugned judgment under appeal, we may notice that the finding of facts arrived at by the enquiry officer was not interfered with by the learned single Judge as well as the Division Bench of the Madhya Pradesh High Court, it is hardly permissible for this Court to disturb such findings of fact in exercise of its jurisdiction under Article 136 of the Constitution of India. Besides that, we must notice that the conduct of the appellant can hardly be appreciated in regard to deposit of money in the Bank regularly during the entire period of 1984-85. The Department had showed that the deposits have been made and the bank balance of the appellant, on a particular date, was beyond the

known sources of his income to which, the appellant has raised a defence that he owned the land and the income received was an agricultural income. However, he produced no evidence during the departmental enquiry to show that some person was making payment to him and/or some person was depositing the money in the Bank so received from agricultural activity in every 2-3 days. Once a person is carrying on agricultural activities like the appellant, the obvious result thereof would be that there would be persons who would be carrying on agricultural activities on the land on his behalf, would be harvesting the crops and then selling the same on his behalf and that there would be persons who would be buying such crops and disposing the crops in the open market directly or indirectly. Thus, these persons would have been easily available to the appellant to be produced in departmental enquiry to substantiate his defence. No such effort was ever made by the appellant. Non-examination of these witnesses and non-production of necessary documents must lead to draw an adverse inference against the appellant. In any case, the appellant cannot take advantage of that fact and contend that the inquiry officer has failed to appreciate evidence in its correct perspective. At this stage, we may also notice that during the course of hearing, we had called for the original personal file of the officer where he had filed property returns to the Department. In the property return for the year 1984-85 (copy of which is stated to have been produced before the Enquiry Officer), which is the relevant year, the appellant is shown to have 1/3rd share in the agricultural land located at two different places. There is a specific column relating to income from agriculture. In that form it was filled in by the appellant as 'uncertain' (anishchit). This return had been filed on 27th March, 1985. In other words, on that date he did not know whether he had earned any amount from the agricultural income or not. The period in question was January, 1984 to May 1985, thus, for the substantial period, he was fully aware of his income received from agricultural activity but he still chooses to keep it vague and not declare his true income in the return. Now, in

the departmental proceedings and in the reply to the charge-sheet, he submitted that there was an income of more than Rs.50,000/- p.a. and that he owned 37.53 acres of land in village Bilaspur at two different places. It is again strange that he did not disclose in his reply that this was a land jointly owned with his brothers and family members and what was the extent of his holding individually. In the return, he himself claimed one-third share in the property. The total land indicated at two different places being 26 acres + 18 comes to 44 acres and one third of which, merely 14 acres approximately, would be the land owned by him and not 37 acres as claimed. This, itself shows that the appellant has not approached the Court with clean hands and has not disclosed true facts which were known to him alone. In the departmental proceedings, he took incorrect defence contrary to his return and failed to discharge the onus placed upon him. In the departmental enquiry, the appellant produced no income tax returns to show that in addition to his salary, he had other sources of income and what was the extent of income from these sources. In his written statement of defence he never took up the plea that any such returns were filed and he made no effort to bring on record the copies of such income-tax returns, if at all filed. The delinquent officer could have stated in his statement if he was not filing any return and reason thereof. We are certainly of the considered view that it was obligatory on the part of the delinquent officer to disclose all such relevant facts which were only within his personal knowledge. He belongs to a service which is looked upon by the public at large as a service cadre of high integrity and professional values. The Judges are expected to apply stringent social and moral values to their standard of living. It was expected of the appellant to disclose all true and correct information and documents in his power and possession before the Enquiry Officer. It was not required of him to with-hold relevant material and take such a defence which could not be substantiated during the course of departmental enquiry. Having failed to produce relevant documentary evidence as well as examine the witnesses, the appellant cannot argue that the

Disciplinary Authority or the Courts have not appreciated the evidence in its correct perspective. We are unable to accept the contention of the appellant that the findings are based on no evidence or are perverse in any manner whatsoever.

12. For the reasons afore stated, we find no merit in this appeal. The same is dismissed however, without any order as to costs.

K.K.T. Appeal dismissed.

THE NEW INDIA ASSURANCE CO. LTD.
v.
M/S. PROTECTION MANUFACTURERS PVT. LTD.
(Civil Appeal No. 312 of 2006)

JULY 8, 2010

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

Insurance – Fire insurance – Surveyors appointed by Insurance Company finding the cause of fire to be accidental – Insurance Company appointing Investigator to find out cause of fire – Investigator finding that fire could be an act of arson by vested interest – Insurance company obtaining opinion of former Chief Justice of India regarding cause of fire – Chief Justice discarding the report of Investigator, opining that fire was accidental – Complaint – National Commission allowing the claim – On appeal, held: Report of the Joint Surveyors were correct – Report of the Investigator is liable to be discarded as it was tailor-made intended to benefit the Insurance Company – Appointment of Investigators was also not correct as the Insurance Company should have applied to the Regulatory Authority under Insurance Act, for second opinion – Insurance Act, 1938 – s. 64 UM – Evidence Act, 1872 – s. 45 – Consumer Protection Act, 1986.

Evidence Act, 1872 – s. 45 – Opinion of retired Chief Justice of India after analysis of survey and investigation reports – Admissibility of the opinion – Held: The opinion of the Chief Justice is admissible in evidence as it is not an opinion as contemplated u/s. 45, but an independent and unbiased analysis of the reports and the materials provided to him.

The factory of the respondent, which was covered by Fire Insurance Policy, caught fire. The appellant-insurance company appointed a surveyor to conduct a

preliminary spot survey. In the preliminary report, cause of fire was not specified. Thereafter insurance company appointed joint surveyor to conduct final survey. Joint surveyor estimated the loss suffered by the respondent to be Rs. 2,37,09,372/-. The final report stated that exact cause of fire was not known. Insurance company, then appointed an investigator to conduct an investigation into the cause of fire and to assess the loss. The investigator assessed the loss suffered to be Rs. 1,10,67,230/-. As to the cause of fire, he stated that fire could be attributed to an act of 'arson' by vested interest for some pecuniary benefits. Joint surveyors criticized the report of the investigator stating that it was tailor-made in order to fit the loss assessed by the Insurance Company. Insurance company, therefore, decided to obtain views of the former Chief Justice of India as to the cause of fire. The Chief Justice concluded that the fire was accidental and was not an act of arson.

As the claim of the respondent was not settled by the Insurance Company, respondent filed a complaint. National Commission for Consumer Disputes Redressal directed the Insurance Company to pay to the respondent a sum of Rs. 2,26,36,170/- with 12% interest p.a., w.e.f. 1.7.2000 and to pay Rs. 1 lakh towards compensation. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1. The report of the Joint Surveyors indicates that the exact cause of the fire was not known, though it could be due to a short circuit. The observation of the Investigators that the fire could reasonably be attributed to an act of "arson" by vested interests, for some pecuniary benefit, is without any factual basis. Apart from the aforesaid observation made at the end of the report, no foundation has been laid down in the

report for such an observation which literally appears out of the blues. [Para 31] [77-F-H; 78-A]

National Insurance Co. Ltd. vs. Harjeet Rice Mills **(2005) 6 SCC 45;** *United India Insurance Co. Ltd. and Ors. vs. Roshan Lal Oil Mills Ltd. and Ors.* **(2000) 10 SCC 19;** *Ramesh Chandra Agrawal vs. Regency Hospital Ltd. and Ors.* **(2009) 9 SCC 709, distinguished.**

1.2. Even if the views expressed by the Joint Surveyors, on the reports submitted by the Investigators are discounted, although they were appointed by the Insurance Company itself, the views obtained by the Insurance Company from former Chief Justice cannot be ignored. [Para 32] [78-B-C]

1.3. It is not correct to say that the opinion of the retired Chief Justice was not admissible in evidence in view of s. 45 of Evidence Act, 1872, since the opinion given by the retired Chief Justice was based on an analysis of the materials placed before him by the Insurance Company, including the reports submitted by the Joint Surveyors, and the Investigators. Section 45 of the Evidence Act empowers the court, in order to form an opinion upon a point of foreign law or of science or of art, or as to identity of handwriting or finger impressions, to rely upon the opinions of persons specially skilled in such matters. The case in hand is quite different, as the views expressed by the retired Chief Justice were not meant to be an opinion within the meaning of Section 45 of the Evidence Act, but an analysis of the reports and the materials provided by the Insurance Company. In fact, the attempt made on behalf of the Insurance Company to exclude the views expressed by the retired Chief Justice with regard to the cause of fire from the area of consideration does not commend itself as the same is a completely independent

and unbiased assessment of the events relating to the cause of fire on the basis of the materials made available. [Para 32] [78-C-G]

1.4. It would be entirely unjust and inequitable to accept the theory of arson, projected by the Investigators, without any material to support it and sufficient material to hold otherwise. Accordingly, the views expressed by the National Commission that the cause of fire was accidental and that the attempt made by the Investigators to show that the fire had been caused by an act of arson, was motivated and intended to benefit the appellant-Insurance Company, is endorsed. [Para 33] [79-A-C]

1.5. The almost identical amounts, barring a few rupees, arrived at by the Insurance Company and the Investigators speak volumes of the exercise carried out by the latter on a wholly cursory investigation which has quite aptly been described as "tailor-made". The amount of loss suffered by the respondent-company on account of the fire has been calculated by the Joint Surveyors on the basis of the amounts mentioned by the respondent-company and the computer data available in support thereof and also upon cross-checking with the accounts of suppliers and vendors of raw materials to the respondent-company. There is no reason to differ with the views expressed by the National Commission in this regard. [Para 34] [79-D-G]

1.6. The discretion exercised by the National Commission regarding the rate of interest awarded from three months after the date of the award is also accepted. The rate of interest cannot be enhanced because such exercise of discretion was just and equitable in the absence of any agreement between the parties regarding payment of interest or the quantum thereof. [Para 34] [79-G-H; 80-A]

Sovintorg (India) Ltd. vs. State Bank of India, New Delhi **1999 (6) SCC 406;** *Ghaziabad Development Authority vs. Balbir Singh* **2004 (5) SCC 65, referred to.**

2. In view of Section 64UM of the Insurance Act, 1938, the Appellant Insurance Company should have applied to the Regulatory Authority under the Act, for a second opinion instead of appointing the Investigators for the said purpose unilaterally. The reports submitted by the Investigators are liable to be discarded on such ground as well. [Para 35] [80-B]

Case Law Reference:

(2005) 6 SCC 45	**Distinguished**	**Para 19**
(2000) 10 SCC 19	**Distinguished**	**Para 19**
(2009) 9 SCC 709	**Distinguished**	**Para 20**
1999 (6) SCC 406	**Referred to.**	**Para 28**
2004 (5) SCC 65	**Referred to.**	**Para 28**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 312 of 2006.

From the Judgment & Order dated 24.10.2005 of the National Consumer Disputes Redressal Commission at New Delhi in Original Petition No. 60 of 2003.

Jaideep Gupta, Dinesh Mathur, Rameshwar Prasad Goyal for the Appellant.

Respondent-In-Person.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. This is a statutory appeal filed under Section 23 of the Consumer Protection Act, 1986, hereinafter referred to as 'the 1986 Act', from an order dated

24th October, 2005, passed by the National Consumer Disputes Redressal Commission, New Delhi, hereinafter referred to as the "National Commission", in O.P. No.60 of 2003. By the said order, the National Commission accepted the claim of the Respondent herein, M/s. Protection Manufacturers Pvt. Ltd., in respect of insurance claim on account of a fire which had broken out in its factory at about 8.45 a.m. on 29th March, 2000, and directed the Appellant Insurance Company to pay Rs.2,26,36,179/- to the Respondent with interest at the rate of 12 per cent per annum from three months after the date of the fire. In other words, the interest was to be reckoned from 1st July, 2000, till date.

2. Although, the scope of the appeal is to some extent limited, a few facts may be stated for proper appreciation of the case made out by the Respondent/complainant.

3. On 29th March, 2000, at about 8.45 a.m., there was a devastating fire in the factory of the Respondent/complainant. The same was noticed by the factory workers who had assembled in front of the factory premises and were waiting for the factory to open. On being informed, the fire brigade reached the site at about 9.10 a.m. and began their operations immediately. However, the fire was so severe that it continued to flicker for the next three to four days and was completely extinguished only on 4th April, 2000. As the factory premises of the Respondent was covered by Fire Insurance Policy for the period from 19th February, 2000, to 18th February, 2001, against the risk of fire, the Respondent made its claim to the Insurance Company amounting to Rs.2,85,50,000/- on account of damage and loss suffered to the building, plant and machinery, stocks and stock-in-process and the transformer for which the Respondent Company had paid Rs.1,16,636/- as premium. It appears that while the Policy was in force, the insurance coverage was enhanced.

4. On the very same day when the fire broke out, the Insurance Company appointed Mr. A.S. Asthana, Surveyor, to

conduct a preliminary spot survey. On 30th March, 2000, Mr. Asthana and the representatives of the Insurance Company took joint stock of burnt motors and air coolers which were being manufactured by the Respondent/complainant. Mr. Asthana submitted his preliminary report on 3rd April, 2000, but did not specify the cause of fire. Thereafter, on 9th April, 2000, one Mr. Bhaskar Joshi was appointed as Joint Surveyor to conduct a final survey along with Mr. Asthana. On 13th April, 2000, a status report was submitted by Mr. Bhaskar Joshi. The Joint Surveyors prepared a draft assessment report and estimated the loss suffered by the Respondent/complainant to be Rs.2,37,09,372.12 paise. The joint assessment report which was submitted on 28th August, 2000, clearly stated that the exact cause of fire was not known, though it could be due to a short circuit.

5. Thereafter, on 30th October, 2000, the Regional Manager of the Insurance Company appointed M/s. J. Basheer & Associates as investigator to conduct an investigation into the cause of fire and to assess the loss. As many as six independent investigation reports were filed by M/s. J. Basheer & Associates on 28th May, 2001, 3rd July, 2001, 27th August, 2002, 4th October, 2002, 7th November, 2002 and 10th December, 2002. According to M/s. J. Basheer & Associates, the net amount of loss suffered by the Respondent Company on account of the fire would be Rs.1,10,57,034/-, which tallies almost exactly with the assessment made by the Insurance Company amounting to Rs.1,10,67,230/-. Interestingly, although in the report submitted by M/s. J. Basheer & Associates it has been mentioned in clause 6 that their appointment was for investigation into (i) cause of fire and (ii) assessment of loss, there is nothing definite in the 67 page report as to the cause of fire, except for a reference to the reply sent by the Fire Officer, Cuttack, to the Khurda Branch Manager of the Insurance Company on 5th May, 2001, stating that the estimate of fire amount was about Rs.15 lakhs and the cause of fire was "short circuit" in the raw material section.

6. On 25th June, 2001, the Appellant Insurance Company requested Mr. Bhaskar Joshi to make his observations on the report submitted by M/s. J. Basheer & Associates on 28th May, 2001. In his comments submitted on 10th August, 2001, Mr. Bhaskar Joshi severely criticized the report filed by M/s. J. Basheer & Associates and even went to the extent of observing that they had failed to measure upto the faith and responsibility reposed on them by the insurers. The report seemed to suggest that the same had been tailor-made in order to fit the loss assessed by the Insurance Company at Rs.1,10,67,230/-, which uncannily tallied with the estimate of M/s. J. Basheer & Associates, namely, Rs.1,10,57,034/-.

7. After receipt of the views expressed by the Joint Surveyors, the Appellant Insurance Company decided to obtain the views of Justice Y.V. Chandrachud, former Chief Justice of India, on the question as to the cause of fire. In his report, Chief Justice Chandrachud arrived at the conclusion that the report of M/s. J. Basheer & Associates was unfounded and speculative while that of the Joint Surveyors contained a careful analysis of the events. Chief Justice Chandrachud was of the view that he had no doubt that the fire was accidental and could not by any reasonable norm or standard be characterized as an act of arson.

8. Mr. Bhaskar Joshi also commented on the report submitted by M/s. J. Basheer & Associates on 3rd July, 2001, and 29th November, 2001, and castigated the same in no uncertain terms. Mr. Joshi observed that M/s. J. Basheer & Associates had not gone into the roots of documentation and had not even bothered to verify the original documents. On the other hand, they had gone around creating confusion and controversies and to create an air of suspicion, which was a classic example of table-top investigation.

9. Thereafter, as the claim of the Respondent Company was not being settled by the Appellant Insurance Company, a complaint was filed by the Respondent Company with the

National Commission on 13th February, 2003, for a direction to the Insurance Company to pay compensation of Rs.2,48,94,000/- for the loss suffered by it, together with interest @18% p.a. and to also grant compensation of Rs.10 lakhs for the delay in settlement of the claim, which had caused mental agony and harassment to the Respondent/Complainant.

10. The claim of the Respondent-Company was repudiated by the Appellant Insurance Company on 20th February, 2003, when the National Commission admitted the complaint filed by the Respondent-Company and directed notice to issue to the Insurance Company limited to the question of deficiency of service. After considering the reply filed by the Insurance Company and after examining one Mr. Amit Biswas, the representative of the Insurance Company, and Mr. J. Basheer of M/s. J. Basheer & Associates, who admitted that he had not visited the Excise Office, the Vendors and had also not provided any supporting evidence to bolster his findings, the National Commission, by its order dated 24th October, 2005, directed the Appellant Insurance Company to pay to the Respondent Company a sum of Rs.2,26,36,179 with interest @12% p.a. with effect from 1st July, 2000 and to also pay a sum of Rs.1 lakh by way of compensation. The Insurance Company was given liberty to recover the said amount from its defaulting officers. Incidentally, it may be indicated that in the final assessment report of the Joint Surveyors the loss suffered by the Respondent Company was assessed at Rs.2,26,36,180.23 paise.

11. Aggrieved by the said Award of the National Commission, the Appellant Insurance Company has filed this appeal and questioned the said Award on several grounds.

12. Appearing for the Insurance Company, Mr. Jaideep Gupta, learned Senior Advocate, submitted that the National Commission had erroneously approached the problem by concentrating only on the reports submitted by the Joint Assessors and the opinion given by former Chief Justice of India, Y.V. Chandrachud, while rejecting the several reports

submitted by M/s. J. Basheer & Associates. It was submitted that the specific issues and the allegations made in respect thereof were not seriously considered by the National Commission.

13. Mr. Gupta submitted that the National Commission had not considered the evidence in its totality. Out of the six reports submitted by M/s. J. Basheer & Associates only two were taken into consideration, while the other four, including the Final Report submitted on 10th December, 2002, were ignored and were wrongly rejected. The National Commission relied only on the Joint Report submitted by the M/s. Asthana and Joshi and the views expressed by Chief Justice Chandrachud, which was only an opinion and hence not admissible in evidence. Mr. Gupta urged that the only certificate available as to the cause of the fire was the Fire Certificate issued by the Fire Officer, Orissa, Cuttack, on 17th May, 2000, indicating that the fire was the result of an electrical short circuit, but except for a bald statement, no evidence was produced to corroborate such opinion.

14. Mr. Gupta also referred to paragraph 6 of the Final Assessment Report on the basis of the joint survey conducted by M/s. A. Asthana & Co. and Bhaskar Joshi, which deals with the cause of the fire. It was pointed out that the very first sentence of paragraph 6 indicates that the exact cause of the fire was not known, but the police had attributed it to short circuit. Sub-paragraph 2 records the fact that nothing specific as to the cause of the fire could be found even on further probe and hence it had to be presumed that short circuit could be one of the probable causes out of other probables. It was also indicated that in the light of the reports issued by the local authorities, such as the police and the fire brigade, the cause of the fire could only be attributed to a short-circuit, since no evidence could be found that would point towards a deliberate act of arson. The final opinion expressed in Sub-paragraph (a) of paragraph 6 was that the fire appeared to be accidental and

the loss would be indemnifiable under the Fire Policy issued to and held by the insured.

15. Mr. Gupta also referred to the opinion of Chief Justice, Y.V. Chandrachud, wherein His Lordship indicated that on a perusal of the Survey Report and the Investigation Report it was quite clear that the Report of J. Basheer & Associates was unfounded and speculative, whereas the Report of the Joint Surveyors contained a careful analysis and assessment of the cause of fire and the facts incidental to and attendant upon the event of fire.

16. Mr. Gupta reiterated his earlier submission that except the Fire Certificate issued by the Fire Officer, Orissa, Cuttack, there were no other reports as to the cause of the fire and the views expressed by the Joint Surveyors and also Chief Justice Chandrachud were without foundation and were themselves speculative and conjectural and could not, there, be relied on. If, however, all the reports submitted by J. Basheer & Associates were taken together, it would point towards an act of arson as to the cause of the fire.

17. Mr. Gupta then referred to the decision of the National Commission on the question of cause of the fire. It was pointed out that the National Commission in considering the report of J. Basheer & Associates and the opinion of Chief Justice Y.V. Chandrachud and the views expressed by Bhaskar Joshi which had been accepted by the Insurance Company, observed as follows :

> "Undisputedly, this report is accepted by the Insurance Company and the learned counsel for the Insurance Company had stated that the Insurance Company accepted that the fire was accidental and could not be characterized as an act of arson."

18. Mr. Gupta submitted that the said observation was made on the basis of a concession which had been made by

Counsel for the Insurance Company and not on the pleadings, wherein it had been consistently stated that the cause of the fire had not been finally determined by any of the Assessors or Investigators and that the opinion of M/s. J. Basheer & Associates, that an act of arson was the cause of fire, could not be ruled out. Mr. Gupta reiterated that even in the Joint Survey Report of M/s. Asthana and Joshi it had been mentioned that the exact cause of fire is not known but that the police had attributed it to a short circuit. But it had also been indicated that the same was only a probable hypothesis. Mr. Gupta submitted that it is on such improved probability that an opinion was given that the fire appeared to be accidental and the loss would be indemnifiable under the fire policy issued to and held by the insured. Mr. Gupta submitted that in the circumstances when the cause of fire had not been established with any certainty, the direction given by the Commission to make payment of insurance on the Fire Policy, was not justifiable.

19. Mr. Gupta urged that this was a fit case for remand to enable the National Commission to ascertain the cause of the fire before making any Award for payment of insurance under the aforesaid policy. In support of his submissions, Mr. Gupta firstly referred to the decision of this Court in *National Insurance Co. Ltd. vs. Harjeet Rice Mills* [(2005) 6 SCC 45], wherein it was held that since the High Court had failed to consider the allegations of the Insurance Company, that the claim of the complainant was fraudulent, though there was adequate prima facie material available to warrant a proper inquiry, the matter was required to be remanded for a decision afresh for adjudication on such submissions made on the behalf of the Insurance Company. Learned Counsel also referred to the decision of this Court in *United India Insurance Co. Ltd. & Ors. vs. Roshan Lal Oil Mills Ltd. & Ors.* [(2000) 10 SCC 19], where in a somewhat similar situation as existing in the instant case, the matter was remanded to the Commission for a fresh hearing.

20. Mr. Gupta submitted that the National Commission had wrongly relied on the opinion of Justice Y.V. Chandrachud, former Chief Justice of India, in contravention of the provisions of Section 45 of the Indian Evidence Act, 1872. Learned counsel urged that if the Commission wanted to rely on the opinion given by Justice Y.V. Chandrachud, as if it were an expert opinion, it could only have done so after examining His Lordship in order to satisfy the provisions of Section 45 of the aforesaid Act. In support of his said submissions Mr. Gupta relied on the decision of this Court in *Ramesh Chandra Agrawal vs. Regency Hospital Ltd. & Ors.* [2009) 9 SCC 709, wherein, while considering the evidence of experts in the light of Section 45 of the Evidence Act, it was held that such evidence is only advisory in character since such expert is not a witness of fact.

21. Mr. Gupta urged that in view of the inconclusive nature of the reports as submitted, the matter was required to be sent back on remand to the National Commission for a fresh determination in accordance with law.

22. Mr. Piyush Gupta, who appeared in-person on behalf of the Respondent-Company, submitted that the allegations made about inclusion of the damage in respect of the products manufactured at the manufacturing unit at SCR-14, Suryanagar, Bhubaneswar, was misleading, since after the establishment of the new factory premises at Bhatkuri, the Suryanagar Factory ceased to exist. A request was made to the Central Excise Authorities to cancel the licence for production of air coolers at Suryanagar with effect from 1st July, 1999 and all manufacturing operations were being carried on by the insured at its new location at Bhatkuri which was affected by the fire.

23. Mr. Piyush Gupta submitted that the Company maintained computerized financial accounts which combined financial accounting as well as inventory management in one software. Learned counsel submitted that in making their report the Joint Surveyors, M/s. Asthana and Joshi, had relied on the

same after carrying out a detailed check of the system to ascertain its integrity. A substantial quantity of raw materials which had been damaged during the super cyclone in October, 1999, had been found to be subtracted from the other material which had been damaged on account of the fire. Learned counsel pointed out that in their report, M/s. Asthana and Joshi had in paragraph 8.03.1.14 indicated that they had verified the integrity of the system by making dummy entries and the results were found to be reliable. In order to further cross-check the account, ledger entries of the Company's accounts in the vendor's books were also called for and the same when reconciled with the Company's system produced corroborative results. Mr. Piyush Gupta submitted that based on their examination of the stock and the entries in the computer which were reconciled with the accounts of the suppliers (vendors), they submitted a draft assessment report assessing the loss incurred by the Company on account of the fire amounting to Rs.2,37,09,372.12/-. However, upon visiting the Regional Office of the Appellant-Insurance Company for discussions, they were given the version of the assessment made by the Insurance Company amounting to Rs.1,10,67,230/-. As against this, the loss assessed by M/s. J. Basheer & Associates was almost identical, namely, Rs.1,10,67,034/-. Mr. Gupta urged that it was obvious that the assessment made by the investigators was based on the Insurance Company's assessment of the loss suffered by the Company on account of the fire.

24. Mr. Piyush Gupta then submitted that Section 64UM of the Insurance Act, 1938, which provides for licensing of Surveyors and Loss Assessors, would be attracted to the facts of this case and instead of appointing another surveyor, as was done in the instant case by the appointment of M/s. J. Basheer & Associates, the Insurance Company ought to have gone to the Regulatory Authority under the Insurance Regulatory and Development Authority Act, 1999, and under Sub-Section (3) it was for the said Authority to call for an independent report from any other Approved Surveyor or Loss Assessor specified

by it. Mr. Gupta urged that by appointing another surveyor/assessor/investigator after M/s. Asthana and Joshi had submitted their report, the Insurance Company had presented two different reports as to the loss caused and had also introduced a third opinion as to the cause of the fire from a former Chief Justice of India, Justice Y.V. Chandrachud, although, an attempt was made to play down the same since it went completely against the case of the Insurance Company. It was pointed out that Chief Justice Chandrachud had observed that the report submitted by M/s. J. Basheer & Associates was unfounded and was in any way of speaking, speculative, while the Joint Surveyors' report contained a careful analysis of the event. It was further pointed out that Chief Justice Chandrachud came to the conclusion that he had no doubt that the fire was accidental and could not by any reasonable norm or standard be characterized as an act of arson.

25. On the merits of the report submitted by M/s. J. Basheer & Associates, Mr. Piyush Gupta submitted that one Mr. J. Basheer had been deputed by M/s. J. Basheer & Associates to visit the factory premises of the Respondent-Company, which had been damaged by the fire, only on 14th November, 2000, i.e., 8 months after the fire had occurred and by that time rehabilitation work had already been commenced after obtaining due permission from the Appellant-Insurance Company. Even then, Mr. Basheer was in the factory for barely half an hour and did not visit the factory ever again.

26. On the point of non-consideration of the last 3 reports filed by M/s. J. Basheer & Associates, learned counsel submitted that the same was nothing but a repetition of what had been mentioned in the earlier reports and did not reflect anything new which deserved separate consideration.

27. On the quantum of damages, Mr. Piyush Gupta referred to the assessment made by the Commission on a comparison of the reports submitted by M/s. Asthana and Joshi and M/s. J. Basheer & Associates. It was submitted that the conclusion

arrived at by the Commission holding that the report submitted by M/s. J. Basheer & Associates was totally unreliable and tailor-made with regard to the loss suffered by the Respondent-Company on the basis of the suggestions made by its Regional Office at Orissa and its agreement with the observations made by the Joint Surveyors to the effect that the whole exercise of M/s. J. Basheer & Associates was beyond their competence, cannot be called into question and the ultimate Award directing the Appellant-Assurance Company to pay Rs.2,26,36,179/- with interest @12% per annum from 3 months after the date of occurrence of the fire, i.e., from 1st July, 2000 till payment, was fully justified and the further direction to the Insurance Company to pay a further sum of Rs.1 lakh to the Respondent-Company by way of compensation for unjustly repudiating the claim of the Respondent-company did not also call for any interference.

28. A further submission was made by Mr. Gupta claiming payment of interest from the date of the fire and not from the date of the final decision of the Commission as the delay was on account of the Insurance Company, whose repudiation of the claim of the Respondent-Company was found to be unjust. In this regard reference was made to the decision of this Court in *Sovintorg (India) Ltd. vs. State Bank of India, New Delhi* [(1999) 6 SCC 406], wherein Section 14 of the Consumer Protection Act, 1986, fell for consideration and it was observed that where no contract existed between the parties regarding payment of interest on delayed deposit or service, interest could not be claimed under Section 34 C.P.C. as the provisions of the C.P.C. have not been made applicable to proceedings under the 1986 Act. However, the general provisions of Section 34 of the Code being based on justice, equity and good conscience, would authorize the consumer courts to grant interest according to the circumstances of each case. It was submitted that in the said case the direction to pay interest @12% given by the State Commission was enhanced by the National Commission to 15% per annum. Reference was also made to the decision of this Court in *Ghaziabad*

Development Authority vs. Balbir Singh [(2004) 5 SCC 65], where somewhat similar views were expressed in the context of Section 73 of the Contract Act, 1872, and it was observed that the award of compensation had to be made under different and separate set of circumstances and must vary from case to case depending on the facts of each case and no hard and fast rule, could, therefore, be laid down.

29. Mr. Gupta submitted that no interference was called for with the impugned Award of the National Commission and the appeal was liable to be dismissed.

30. The nature of the controversy between the parties has made us dwell on the facts of the case at some length. Despite the extensive submissions made on behalf of the parties, the issues to be resolved in this Appeal are confined to two questions, namely,

(i) What was the cause of fire which broke out in the factory premises of the assured at Bhatkuri at about 8.45 a.m. on 29th March, 2000?

(ii) What was the extent of loss and damage suffered by the assured on account of such fire?

31. As far as the answer to the first question is concerned, the report of the Joint Surveyors, M/s. Asthana & Joshi, dated 28th August, 2000, indicates that the exact cause of the fire was not known, though it could be due to a short circuit. Interestingly, while referring in its report dated 28th May, 2001, to the reply given by the Fire Officer, Cuttack, to the Khurda Branch Manager of the Insurance Company on 5th May, 2001, stating that the cause of fire was a "short circuit" in the raw material section of the factory premises, M/s. J. Basheer & Associates ultimately observed that the *fire could reasonably be attributed to an act of "Arson" by vested interests, for some*

pecuniary benefit, without any factual basis for the same. Apart from the aforesaid observation made at the end of the report, no foundation has been laid down in the report for such an observation which literally appears out of the blues.

32. Even if the views expressed by the Joint Surveyors, M/s. Asthana and Joshi, on the reports submitted by M/s. J. Basheer & Associates are discounted, although they were appointed by the Insurance Company itself, one cannot ignore the views obtained by the Insurance Company from former Chief Justice, Y.V. Chandrachud, although, an attempt has been made on behalf of the Insurance Company to exclude the said views from consideration or at least to water down the same by taking refuge in Section 45 of the Evidence Act. Such a stand has no legs to stand upon, since the opinion given by Justice Chandrachud was based on an analysis of the materials placed before him by the Insurance Company, including the reports submitted by the Joint Surveyors, M/s. Asthana and Joshi and M/s. J. Basheer & Associates. Section 45 of the Evidence Act empowers the Court, in order to form an opinion upon a point of foreign law or of science or of art, or as to identity of handwriting or finger impressions, to rely upon the opinions of persons specially skilled in such matters. The case in hand is quite different, as the views expressed by Justice Chandrachud were not meant to be an opinion within the meaning of Section 45 of the Evidence Act, but an analysis of the reports and the materials provided to His Lordship by the Insurance Company. In fact, the attempt made on behalf of the Appellant Insurance Company to exclude the views expressed by Justice Chandrachud with regard to the cause of fire from the area of consideration does not commend itself to us as the same is a completely independent and unbiased assessment of the events relating to the cause of fire on the basis of the materials made available to His Lordship.

33. Without any material to support the theory of arson projected by M/s. J. Basheer & Associates and sufficient

material to hold otherwise, it would be entirely unjust and inequitable to accept such a theory without any evidence whatsoever in support thereof. Reference can be made in this context to the submission made by the counsel for the Insurance Company before the National Commission and quoted in para 17 above. Accordingly, we endorse the views expressed by the National Commission that the cause of fire was accidental and that the attempt made by M/s. J. Basheer & Associates to show that the fire had been caused by an act of arson, was motivated and intended to benefit the Appellant Insurance Company. The decisions cited by the parties were rendered in their own particular fact situations in accordance with law which is not disputed. The fact situations are, however, distinguishable.

34. This brings us to the second question regarding the quantum of loss suffered by the Respondent Company on account of the fire. As has been commented upon by the Joint Surveyors and Chief Justice Chandrachud and subsequently by the National Commission, the almost identical amounts, barring a few rupees, arrived at by the Insurance Company and M/s. J. Basheer & Associates speak volumes of the exercise carried out by the latter on a wholly cursory investigation which has quite aptly been described as "tailor-made". The amount of loss suffered by the Respondent Company on account of the fire has been calculated by the Joint Surveyors on the basis of the amounts mentioned by the Respondent Company and the computer data available in support thereof and also upon cross-checking with the accounts of suppliers and vendors of raw materials to the Respondent Company. We see no reason to differ with the views expressed by the National Commission in this regard. We also accept the discretion exercised by the National Commission regarding the rate of interest awarded from three months after the date of the Award. The submissions made on behalf of the Respondent Company for enhancement of the same is rejected as we are of the view that such exercise of discretion was just and equitable in the absence of any

agreement between the parties regarding payment of interest or the quantum thereof.

35. The submissions of Mr. Piyush Gupta in regard to Section 64 UM of the Insurance Act, 1938, are also of substance, as the Appellant Insurance Company should have applied to the Regulatory Authority under the Act for a second opinion instead of appointing M/s. J. Basheer & Associates for the said purpose unilaterally. The reports submitted by M/s. J. Basheer & Associates are liable to be discarded on such ground as well.

36. The Appeal filed by the Insurance Company, therefore, fails on all counts and is dismissed. There will be no order as to costs.

37. Having regard to the judgment delivered today, no further orders are required to be passed on the application for directions filed on 30.4.2010 on behalf of the Respondent Company and supported by an affidavit dated 27.4.2010 affirmed by Mr. Piyush Gupta and the same is disposed of accordingly.

K.K.T. Appeal dismissed.

SINDHI EDUCATION SOCIETY & ANR.
v.
THE CHIEF SECRETARY, GOVT. OF NCT OF DELHI & ORS.
(Civil Appeal No. 5489 of 2007)

JULY 8, 2010

[DR. B.S. CHAUHAN AND SWATANTER KUMAR, JJ.]

Education/Educational Institutions:

Minority institutions – School run by a linguistic minority – Receiving grant-in-aid – Circular issued by Education Department of Delhi Government in September 1989 to all the schools that appointment of scheduled castes and schedule Tribes candidates was a precondition for all the institution receiving grant-in-aid from Government in terms of r.64 of the Delhi School Education Rules, 1973 – HELD: Rule 64(1)(b) and the Circular of September 1989 are not enforceable against linguistic minority schools in NCT of Delhi – Delhi School Education Rules, 1973 – r.64(1)(b) – Delhi School Education Act, 1973 – ss. 20,21, 28(2).

Delhi School Education Rules, 1973:

r.64(1)(b) – Undertaking to be given by a school for grant-in-aid to fill in the posts in the school with the Scheduled Castes and Scheduled Tribes candidates – HELD: Is not enforceable against linguistic minority schools in NCT of Delhi – The object and purpose of the DSE Act is to improve the standard and management of school education and protection to minority schools – Rules must fall within the ambit and scope of principal legislation – If r.64(1)(b) is enforced against minority schools, it would adversely affect and dilute the protection available to minority school under the Act and the Constitution – Delhi School Education Act,

1973 – s.21– Constitution of India, 1950 – Articles 14,15, 16(2), 29 and 30(2) – Interpretation of Statutes – Purposive interpretation – Doctrine of purposive advancement.

Delhi School Education Act, 1973:

s.2(o) – 'Minority school' – School run by Sindhi Education Society – HELD: Is a linguistic minority school in NCT of Delhi – Delhi School Education Rules, 1973 – r.64(1)(b).

CONSTITUTION OF INDIA, 1950

Articles 14,15, 29 and 30(2) – Minority Institutions – Grant-in-aid – School run by Sindhi Education Society – HELD: The Society enjoys the status of a linguistic minority and the school being a minority institution is entitled to all constitutional benefits and protection under Articles 29 and 30 – To receive grant-in-aid is a legitimate right of a school subject to satisfying the requirement of law – Article 30(2) requires the State not to discriminate the minority institution in relation to matters of grant-in-aid – Delhi School Education Rules, 1973 – r.64(1)(b).

Articles 15, 29 and 30 – Linguistic minority – Right to establish and administer school – HELD: Includes right to appoint teachers – To appoint a teacher is part of the regular administration and management of the school – A linguistic minority is entitled to conserve its language and culture by a constitutional mandate – A provision of law or a circular which would be enforced against the general class may not be enforceable with the same rigors against minority institutions, particularly, where it relates to establishment and management of a school – Rule 64(1)(b) of DSE Rules, if enforced, would adversely affect and dilute the right and protection available to minority school under the Constitution – Delhi School Education Rules, 1973 – r.64(1)(b).

Articles 14, 15(5), 16, 29 and 30(1) – Reservation policy

– Exception in regard to minority institutions – HELD: Although State is entitled to make law and reservations in different fields for Scheduled Castes, Scheduled Tribes and backward classes in the service under the State, but Article 15(5) carves out an exception for minority educational institutions in regard to which the said power cannot be exercised.

Articles 12,14 and 16 – "State" – Reservation in relation to 'service under the State' – Linguistic minority school run by a society registered under Societies Registration Act – Receiving grant-in-aid – HELD: The expression 'service under the State' would include service directly under the State or its instrumentalities which can be termed as State within the meaning of Article 12 – In order to bring a society, organization or body within the expressions 'State' or 'other authorities' appearing in Article 12, financial control, managerial and administrative control and functional control of such institution must be exercised by the State – Merely receiving grant-in-aid per se would not make a minority school or institution 'State' within the meaning of Article 12 – Delhi School Education Rules, 1973 – r.64(1)(b).

Administrative Law:

Framing of policy – HELD: Is the domain of the Government – It must do so within the framework of the Constitution and the laws – Concept of, reservation has been provided primarily under Article 16 of the Constitution – Minority institutions have been excluded under Article 15(5) from application of reservation policy – State may not be well within its constitutional duty to compel linguistic minority institutions to accept a policy decision, enforcement of which will impinge upon their fundamental right and/or protection – Constitution of India, 1950 – Articles 15(5) and 16 – Delhi School Education Rules, 1973 – r. 64(1)(b).

Policy decision – Change of – Reasons for – HELD:

When Government changes its policy decision, it is expected to give valid reasons – Absence of reasons and apparent non-application of mind would give colour of arbitrariness to State action – Besides, State would not compel a linguistic minority institution to accept a policy decision, enforcement of which will infringe its fundamental rights and/or protection.

Judgment – Reasoning – HELD: Reasoning is considered as the soul of the judgment – Various principles involved in the case need to be analised – Educational Institutions.

A Senior Secondary School, run by the appellant-Sindhi Education Society and availing the grant-in-aid, received a communication in September 1989, addressed to all the Schools by the Education Directorate that appointment of Scheduled Castes and Scheduled Tribes candidates was a pre-condition for all the agencies receiving grant-in-aid from the Government in terms of Rule 64 of the Delhi School Education Rules, 1973. The appellant-Society filed a writ petition before the High Court contending that the school being a minority institution was outside the purview of the said communication. The single Judge of the High Court allowed the writ petition holding that the case was entirely covered by the decision in *Sumanjit Kaur's* case[1] rendered by the single Judge, and affirmed by the Division Bench of the High Court. However, the Division Bench set aside the judgment of the single Judge, and expressing a dissent to the earlier Division Bench decision in *Sumanjit Kaur's* case, granted the certificate of leave to appeal.

Allowing the appeal of the Society, the Court

HELD:1.1. There is no dispute to the fact that the appellant-Society enjoys the status of a linguistic minority

1. *Sumanjit Kaur v. Nct of Delhi* 2005 III AD (Delhi) 560.

and the institution being a minority institution is entitled to all the constitutional benefits and protection under Articles 29 and 30 of the Constitution of India. The High Court in *Sindhi Education Society & Anr. Vs. The Chief Secretary, Govt. of NCT of Delhi & Ors*. **(Writ petition No. 940 of 1975) has clearly declared that the appellant is a linguistic minority and that judgment has attained finality. Once an institution satisfies the ingredients of s.2(o) of the Delhi School Education Act, 1973, it has to be given the status of a minority institution. [para 14] [105-G-H; 106-A]**

1.2. It is of great significance to notice that the legislature in its wisdom by a specific provision u/s 21 of the DSE Act has kept minority schools outside the ambit and scope of s.20, i.e. the power of control and management vested in the authority. Even any of alleged breach of conditions would not enable the authorities to take over the management of any minority school. Section 21, thus, is an absolute exception to the applicability of s.20. The scheme of the DSE Act, in particular, is to give greater freedom to the aided minority institutions and not to impinge upon their minority status as granted under Article 30(1) of the Constitution. [para 16 and 25] [107-F-H; 113-D]

Re.: *Kerala Education Bill*, **1957 (1959) SCR 995;** *T.M.A. Pai Foundation v. State of Karnataka* **2002 Suppl. 3 SCR 587 = (2002) 8 SCC 481;** *Kanya Junior High School, Bal Vidya Mandir v. U.P. Basic Shiksha Parishad* **2006 Suppl. 4 SCR 813 = (2006) 11 SCC 92;** *Secy. Malankara Syrian Catholic College v. T. Jose* **2006 Suppl. 9 SCR 644 = (2007) 1 SCC 386;** *Brahmo Samaj Education Society v. State of W.B.* **2004 Suppl. 2 SCR 214 = (2004) 6 SCC 224;** *Ahmedabad St. Xaviers College Society v. State of Gujarat* **1975 (1) SCR 173 = AIR 1974 SC 1389;** *Father Thomas Shingare v. State of Maharashtra* **2001 Suppl. 5 SCR 636 = (2002) 1 SCC 758;** *T. Devadasan v. Union of India* **(1964)**

SCR 680 = AIR 1964 SC 179; and *Lt. Governor of Delhi v. V.K. Sodhi & Ors.* **2007 (8) SCR 1027 = AIR 2007 SC 2885, referred to.**

1.3. The DSE Rules specifically contemplate that the State Government will not have any strict control over the management of the minority institutions. Even the members, who are nominated by the Director of Education, would only have a right of limited participation with no right of voting. The limited extent of control exercisable by the authorities is demonstrated in DSE Rules 44, 59 and 96(3A) and (3B). Besides these statutory provisions and the scheme under the DSE Act, various judgments of this Court have also consistently taken the view that the State has no right of interference in the establishment, administration and management of a school run by linguistic minority except the power to regulate as specified. [para 53] [158-A-F]

1.4. The right under clause (1) of Article 30 is not absolute but subject to reasonable restrictions which, inter alia, may be framed having regard to the public interest and national interest of the country. The right to administer does not amount to the right to mal-administer and the right is not free from regulations. The regulatory measures are necessary for ensuring orderly, efficient and sound administration, and can be laid down by the State in the administration of minority institutions. The right of the State is to be exercised primarily to prevent mal-administration and such regulations are permissible regulations. These regulations could relate to guidelines for the efficiency and excellence of educational standards, ensuring the security of the services of the teachers or other employees, framing rules and regulations governing the conditions of service of teachers and employees and their pay and allowances and prescribing course of study or syllabi of the nature of books etc. However, the power to regulate,

undisputedly, is not unlimited. It has more restriction than freedom particularly, in relation to the management of linguistic minority institutions. [para 55,56 and 58] [159-E-F; 160-C-F; 163-G-H; 164-A]

State of Kerala v. Very Rev. Mother Provincial **1971 (1) SCR 734 = (1970) 2 SCC 417;** *All Saints High School v. Govt. of A.P.* **1971 (1) SCR 734 = (1980) 2 SCC 478;** *T.M.A. Pai Foundation v. State of Karnataka* **2002 Suppl. 3 SCR 587 = (2002) 8 SCC 481; and** *Malankara Syrian Catholic College v. T. Jose* **2006 Suppl. 9 SCR 644 = (2007) 1 SCC 386, referred to.**

1.5. Minority institutions could even impart education in their own language or in any other language, which choice essentially has to be left to the minority institution. The constitution itself uses the word 'choice' in Article 30(1), which indicates the extent of liberty and freedom, the framers of the Constitution intended to grant to the minority community. Thus, there arises no occasion for the Court to read restrictions into the freedom of the minority schools on the ground of policy. It may amount to intrusion into the very minority character and protection available to the community in law. [para 56] [161-F-H; 162-A]

1.6. The right to establish and administer includes a right to appoint teachers. A linguistic minority has constitution and character of its own and is entitled to conserve its language and culture by a constitutional mandate. Thus, it must select people who satisfy the prescribed criteria, qualification and eligibility and at the same time ensure better cultural and linguistic compatibility to the minority institution. Of course, what should be the qualification or eligibility criteria for a teacher to be appointed can be defined and, in fact, has been defined by the Government of N.C.T. of Delhi and within that specified parameters, the right of the linguistic

minority institution to appoint a teacher cannot be interfered with. The paramount feature of the DSE Act was to bring efficiency and excellence in the field of school education and, therefore, it is expected of the minority institutions to select the best teacher to the faculty. Once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of the teachers. To provide and enforce any regulation, which will practically defeat this purpose would have to be avoided. Besides, a provision of law or a Circular, which would be enforced against the general class, may not be enforceable with the same rigors against the minority institution, particularly where it relates to establishment and management of the school. [para 54, 59 and 63] [158-G; 164-C-G; 168-G-H]

2.1. Under s. 28(2) of the DSE Act, 1973, rules can be framed in regard to the condition which every existing school shall be required to comply. It has to be noticed that such Rules can be framed and have only one purpose *'make rules to carry out the provisions of the Act'***. The framing of Rules does not empower the Administrator to go beyond the purpose or object of the Act and all the Rules so framed should be intended only to further the cause of the Act and bring nothing into existence, which is specifically or by necessary implication impermissible under the provisions of the Act, Even, otherwise, it is a settled principle of law that Rules must fall within the ambit and scope of the principal legislation. Section 21 is sufficiently indicative of the inbuilt restrictions that the framers of the law intended to impose upon the State while exercising its power in relation to a linguistic minority school. DSE Act was enacted primarily for the purpose of better organization and development of school education in the Union Territory of Delhi and for matters connected therewith or**

incidental thereto. Thus, the very object and propose of this enactment was to improve the standard as well as management of school education. It will be too far fetched to read into this object that the law was intended to make inroads into character and privileges of the minority. [para 17 and 58] [108-B-F; 164-B; 163-D-F]

Islamic Academy of Eduation v. State of Karnataka **2003 (2) Suppl. SCR 474 = (2003) 6 SCC 697;** *P.A. Inamdar v. State of Maharashtra* **2005 (2) Suppl. SCR 603 = (2005) 6 SCC 537, referred to.**

2.2. In the case of *Kanya Junior High School, Bal Vidya Mandir* **the Court has kept a clear line of distinction between laws made by the State to regulate the administration of educational institutions receiving grant-in-aid but if such regulations interfere with overall administrative control by the management over the staff or abridges or dilutes, in any other manner, the right to establish and administer educational institutions, in that event, to such extent, the regulations will be inapplicable to the minorities. [para 43] [144-H; 147-E-F]**

Kanya Junior High School, Bal Vidya Mandir v. U.P. Basic Shiksha Parishad **2006 Suppl. 4 SCR 813 = (2006) 11 SCC 92, relied on.**

2.3. Under Rule 60, every aided school, which was receiving aid, will continue to receive such aid, so long as it fulfills the conditions of receiving the aid, in terms of Rule 64. Rule 64 deals with the condition that an undertaking in writing has to be filed by the institution to receive the grant-in-aid allowed by the competent authority under the provisions of the DSE Act. Sub-rule (1)(b) of r.64 deals with the relevant condition that the school shall fill in the posts in the school with the Scheduled Castes and the Scheduled Tribes candidates in accordance with the instructions issued by the Central

Government from time to time and also maintain the roster and other connected returns in this behalf. Second proviso to Rule 10 requires that wherever a linguistic minority school decides to impart education in a language other than the language of such linguistic minority, in that event the Administrator shall not be under any obligation to give grant-in-aid to such schools. [para 22 and 49] [111-C-F; 151-F]

2.4. Article 30(2) requires the State not to discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language, while granting aid to the educational institution. The Government does not enjoy identical control over the management of the schools belonging to the minority and/or majority schools. The logical impact of Article 30(2) read with the provisions of the DSE Act and the Rules framed thereunder is that, to receive grant-in-aid is a legitimate right of a school subject to satisfying the requirements of law. [para 47 and 49] [150-C; 152-B]

Unni Krishnan, J.P. V. State of A.P. **1993 (1) SCR 594 = (1993) 1 SCC 645, referred to.**

2.5. The purpose of granting protection or privilege to the minorities in terms of Article 29, and at the same time, applying negative language in Article 30(2) in relation to State action for releasing grant-in-aid, as well as the provisions of DSE Act, 1973 and the rules framed thereunder is obvious that the constitutional intent is to bring the minorities at parity or equality with the majority as well as give them right to establish, administer and run minority educational institutions. With the primary object of Article 21A of the Constitution in mind, the State was expected to expand its policy as well as methodology for imparting education. [para 58] [163-B-D]

2.6. The concept of equality stated under Article 30(2) has to be read in conjunction with the protection under Article 29 and thus it must then be given effect to achieve excellence in the field of education. Providing of grant-in-aid, which travels from Article 30(2) to the provisions of the DSE Act and Chapter VI of the Rules framed thereunder, is again to be used for the same purpose, subject to regulations which themselves must fall within the permissible legislative competence. The purpose of grant-in-aid cannot be construed so as to destroy, impair or even dilute the very character of the linguistic minority institutions. All these powers must ultimately, stand in comity to the provisions of the Constitution, which is the paramount law. [para 60] [165-D-F]

2.7. Besides, in the given facts and circumstances of the case, the court is also duty bound to advance the cause or the purpose for which the law is enacted. Different laws relating to these fields, thus, must be read harmoniously, construed purposively and implemented to further advancement of the objects, sought to be achieved by such collective implementation of law. While, keeping the rule of purposive interpretation in mind, one has also further to add such substantive or ancillary matters which would advance the purpose of the enactment still further. To sum up, we will term it as 'doctrine of purposive advancement'. Courts will have to strike the balance between different facets relating to grant-in-aid, right to education being the fundamental right, protection available to religious or linguistic minorities under the Constitution and the primary object to improve and provide efficiency and excellence in school education. In the considered view of the Court, it will not be permissible to infringe the constitutional protection in exercise of State policy or by a subordinate legislation to frame such rules which will impinge upon the character or in any way substantially dilute the right

of the minority to administer and manage affairs of its school. State has the right to frame such regulations which will achieve the object of the Act. Even if it is assumed that there is no complete eclipse of the DSE Act in the Rules in the case of minority institutions, still Rule 64(1)(b), if enforced, would adversely affect and dilute the right and protection available to the minority school under the Constitution. Once the State lacks basic power and jurisdiction to make special provisions for reservations in relation to minority institutions, which do not form part of service under the State, it will be difficult for the Court to hold that Rule 64(1)(b) can be enforced against aided minority institution. [para 54,58 and 60] [159-B; 163-F-G; 165-F-H; 166-C]

3.1. Article 14 of the Constitution commands equality before law or the equal protection of laws. Although, the State is entitled to make law and reservations in different fields for Scheduled Castes and Scheduled Tribes and the persons belonging to backward class in the services under the State, in accordance with law, but the Constitution has itself made out certain exceptions to the general rule of equality in terms of Articles 15 and 16. Article 15(5) of the Constitution excludes the minority educational institutions from the power of the State to make any provision by law for the advancement of any socially and educationally backward classes of citizens or for Scheduled Castes and Scheduled Tribes in relation to their admission to educational institutions including private educational institutions whether aided or unaided. This Article is capable of very wide interpretation and vests the State with power of wide magnitude to achieve the purpose stated in the Article. But, the framers of the Constitution have specifically excluded minority educational institutions from operation of this clause. [para 45-46 and 50] [148-C; 152-C-D]

3.2. Article 16 which ensures equality of opportunity

in matters of public employment prohibits discrimination and, at the same time, vests the State with power to make provisions, laws and reservations in relation to a particular class or classes of persons. This power of the State is in relation to the 'service under the State', which expression would obviously include service directly under the State Government or its instrumentalities and/or even the sectors which can be termed as State within the meaning of Article 12 of the Constitution. Once an organization or society falls outside the ambit of this circumference, it will be difficult for the Courts to hold that the State has a right to frame such laws or provisions or make reservations in the field of employment of that organization/society. [para 50] [152-E-H; 153-A-B]

3.3. Merely receiving grant-in-aid per se would not make a minority school or institution 'State' within the meaning of Article 12 of the Constitution. In order to bring a society, organization or body within the expression 'State' or 'other authority' appearing in Article 12, financial control, managerial and administrative control and functional control of such institution must be exercised by the State. The service in an aided linguistic minority school cannot be construed as 'a service under the State' even with the aid of Article 12 of the Constitution. Resultantly, Rule 64(1)(b) cannot be enforced against the linguistic minority school. Rule 64(1)(b) and the circular of September, 1989, are not enforceable against the linguistic minority school in the NCT of Delhi. [para 51,52,67 and 68] [154-A; 153-D; 172-E-H]

Ajay Hasia v. Khalid Mujib Sehravardi **1981 (2) SCR 79 = (1981) 1 SCC 722;** *Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies (Urban)* **2005 (3) SCR 592 = (2005) 5 SCC 632;** *State of U.P. v. Radhey Shyam Rai* **2009 (4) SCR 143 = (2009) 5 SCC 577, referred to.**

4.1. To frame policy is the domain of the Government. If, as a matter of policy, the Government has decided to implement the reservation policy for upliftment of the socially or otherwise backward classes, then essentially it must do so within the frame work of the Constitution and the laws. The concept of reservation has been provided, primarily, under Article 16 of the Constitution. Therefore, it would be the requirement of law that such policies are framed and enforced within the four corners of law and to achieve the laudable cause of upliftment of a particular section of the society. The framework of reservation policy should be such, as to fit in within the constitutional scheme of our democracy. As and when the Government changes its policy decision, it is expected to give valid reasons and act in the larger interest of the entire community rather than a section thereof. [para 65-66] [170-E-F; 171-F]

M. Nagaraj v. Union of India **2006 (7) Suppl. SCR 336 = (2006) 8 SCC 212, referred to.**

4.2. In its wisdom and apparently in accordance with law Government had taken a policy decision and issued the circular dated 21st March, 1986 exempting the minority institutions from complying with the requirements of the Rule 64(1)(b) of the DSE Rules. Despite this and judgment of the High Court there was a change of mind by the State that resulted in issuance of the subsequent circular of September, 1989. No reasons have been recorded in support of the decision superseding the circular dated 21st March, 1986. It is a settled canon of administrative jurisprudence that State action, must be supported by some valid reasons and should be upon due application of mind. Absence of reasoning and apparent non-application of mind would give colour of arbitrariness to the state action. [para 66] [171-F-H; 172-A-B]

4.3. Besides, State actions should be *actio quaelibet et sua via* and every discharge of its duties, functions and governance should also be within the constitutional framework. This principle equally applies to the Government while acting in the field of reservation as well. It would not be possible for the Courts to permit the State to impinge upon or violate directly or indirectly the constitutional rights and protections granted to various classes including the minorities. Thus, the State may not be well within its constitutional duty to compel the linguistic minority institution to accept a policy decision, enforcement of which will infringe their fundamental right and/or protection. On the contrary, the minority can validly question such a decision of the State in law. [para 67] [172-C-F]

5.1 This Court does not approve the view expressed by the single Judge of the Delhi High Court in the case of *Sumanjit Kaur* insofar as it held that the regulation would compel appointments to the teaching faculty in the minority schools of the persons, who may be inimical towards the minority community. The Court is of the considered view that the Single Judge as well as the Division Bench erred in law in stating this proposition as it is *contra-legam*. While deciding a constitutional matter in accordance with law, the Court would not be competent to raise a presumption of inimical attitude of and towards one community or the other. However, to the extent that it may interfere with the choice of medium of instructions as well as minority character of the institution to some extent is a finding recorded in accordance with law. The Division Bench of the High Court, in the instant matter, was right in not accepting the said reason given in *Sumarjit Kaur's case.* But, it was expected of the Division Bench to critically analyze other reasons given by the Single Judge in that case. [para 61-62] [167-B-H; 168-A-F]

Sumanjit Kaur v. NCT of Delhi **2005 III AD (Delhi) 560 – Disapproved to the extent it observed that regulation would compel appointments to teaching faculty of persons who may be inimical towards minority community.**

5.2 Reasoning is considered as the soul of the judgment. The discussion in the impugned judgment does not analyze the various principles enunciated in regard to the protection available to the linguistic minorities under Article 29 and the result of principle of equality introduced by Article 30(2) of the Constitution. Therefore, the view of the Division Bench in the judgment under appeal cannot be accepted. [para 62] [168-D-F]

Case Law Reference:

2005 III AD (Delhi) 560	Disapproved	para 1
(1959) SCR 995	referred to	para 12
2002 Suppl. 3 SCR 587	referred to	para 27
2006 Suppl. 4 SCR 813	relied on	para 27
2006 Suppl. 9 SCR 644	referred to	para 27
2004 Suppl. 2 SCR 214	referred to	para 27
1975 (1) SCR 173	referred to	para 28
2001 Suppl. 5 SCR 636	referred to	para 28
1964 SCR 680	referred to	para 28
2007 (8) SCR 1027	referred to	para 28
2003 (2) Suppl. SCR 474	referred to	para 41
2005 (2) Suppl. SCR 603	referred to	para 42
1993 (1) SCR 594	referred to	para 48
1981 (2) SCR 79	referred to	para 51

2005 (3) SCR 592	**referred to**	**para 51**
2009 (4) SCR 143	**referred to**	**para 51**
1971 (1) SCR 734	**referred to**	**para 56**
1971 (1) SCR 734	**referred to**	**para 56**
2006 (7) Suppl. SCR 336	**referred to**	**para 65**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5489 of 2007.

From the Judgment & Order dated 30.11.2006 of the High Court of Delhi at New Delhi in LPA Nos. 33, 34, 35, 36, 40, 41, 42 & 43 of 2006.

P.P. Malhotra, ASG, Madhurima Mridul, Rekha Pandey, Chetan Chawla (for Anil Katiyar), D.S. Mahra, Ashok Gurnani (for K.L. Janjani), H.K. Puri for the appearing parties.

The Judgment of the Court was delivered by

SWATANTER KUMAR, J. 1. The Bench hearing the letters patent appeal in the High Court of Delhi at New Delhi, while setting aside the judgment/order passed by the learned Single Judge dated 14th September, 2005 in Writ Petition (C) No.2426 of 1992, issued a certificate of leave to appeal under Article 133 read with Article 134-A of the Constitution of India, 1950 (for short 'the Constitution') in its judgment dated 30th November, 2006 and considered it appropriate to frame the following questions to be decided by this Court :-

(a) Whether Rule 64(1)(b) of the Delhi School Education Rules 1973 and the orders/ instructions issued thereunder would, if made applicable to an aided minority educational institution, violate the fundamental right guaranteed under Article 30(1) of the Constitution and are the

respondents herein entitled to a declaration and consequential directions to that effect ?

(b) Have the judgments of the learned Single Judge of the High Court in *Sumanjit Kaur v. NCT of Delhi* [2005 III AD (Delhi) 560], as affirmed by the decision dated 1.2.2006 of the Division Bench of the High Court in (LPA Nos.445-446/2005) *Govt. of National Capital of Territory of Delhi v. Sumanjit Kaur* been correctly decided ?

2. It is useful to notice at this juncture itself that the Division Bench doubted the correctness of judgment of another Division Bench of that Court in the case of *Govt. of NCT of Delhi v. Sumanjit Kaur* in LPA Nos. 445-446 of 2006 dated 1.2.2006. The Division Bench had affirmed the view taken by the Single Judge in *Sumanjit Kaur* (supra). The learned Single Judge had expressed the view that such circulars and regulations issued by the Directorate of Education, would be unconstitutional since they are likely to interfere with the choice of the medium of instruction as well as minority character of the institution by compelling the appointment to the teaching faculty of persons, who may be inimical towards that minority community. The Court further held that since the approval in the facts of the case would be deemed to have been granted, the Court was not expected to discuss or pass further orders in the writ petition. The Division Bench, which passed the impugned judgment expressed the view contra to the view taken by the learned Single Judge in the Case of *Sumanjit Kaur* (supra), as affirmed by the Division Bench. While noticing that the Government of NCT of Delhi had filed the Special Leave Petition (C) No. 16374 of 2006 in this Court in that case, the Division Bench in the present case thought it fit to grant the certificate for leave to appeal to this Court.

3. This is how we have been called upon to examine the

constitutionality and legality or otherwise of the above questions framed by the High Court of Delhi. We are also of the considered view that besides the above question, it will have to be examined that even if the relevant provisions of the Delhi School Education Act, 1973 (for short the 'DSE Act') are not unconstitutional, would they still apply with their rigors to the linguistic minority schools receiving grant-in-aid from the Government. Before we enter upon the aspects relating to law on the above issues, reference to the basic facts would be necessary.

Facts :-

4. The appellant – Sindhi Education Society (hereinafter referred to as 'the Society') is a Society established and duly registered under the provisions of the Societies Registration Act, 1860. The Society is running, *inter alia*, a school known as S.E.S. Baba Nebhraj Senior Secondary School at Lajpat Nagar, New Delhi.

5. According to the Society, Sindhi language is one of the languages included in VIII Schedule of the Constitution and the people speaking Sindhi language are scattered in various parts of the country. As Sindhi language is not spoken by the majority of people in Delhi, therefore, the Sindhi community in Delhi is and has been held to be a linguistic minority by virtue of Article 30(1) of the Constitution. The Society, therefore, has a constitutional right to establish and administer educational institutions of its choice. In furtherance of such an object, the school was established for preservation of Sindhi language and managing the affairs of the school as per its constitution and under the provisions of the relevant laws.

6. In the year 1973, the DSE Act came into force with a view to provide better organization and development of the school education in Union Territory of Delhi and for matters connected therewith and incidental thereto. Soon after coming into force of the provisions of the DSE Act, 1973, the Society

felt that certain provisions of the DSE Act infringed the minority character of the Society, particularly, in matters related to administration and management of the school.

7. It appears that the society filed a writ petition in the High Court of Delhi being Writ Petition (C) No. 940 of 1975, titled *Sindhi Education Society (Regd.) v. Director of Education and others,* which came to be disposed of by a detailed judgment of the Delhi High Court dated 14th July, 1982. In that judgment, the Court specifically held that the Society was a linguistic minority and the provisions of the DSE Act as specified in the judgment would not be applicable to the Society. In order to put the matters with clarity, it will be useful to refer to the findings recorded by the Court which read as under :-

> "In the present case the Delhi School Education Act is applicable only to the Union territory of Delhi. It is with reference to this Territory that one has to consider as to whether Sindhi is a language spoken by the majority or minority of the people. On this there can be no doubt. Sindhi is not spoken by majority of the people in Delhi and, therefore, the Sindhi community in Delhi can legitimately be regarded as a linguistic minority. Just as a religious minority may be composed of persons whose mother-tongue may not be the same, similarly a linguistic minority may not necessarily be composed of people who belong to a religious minority of the State. As such, every person, who is a Sindhi, would be regarded as belonging to a linguistic minority irrespective of the fact as to whether he is a Hindu, or a Muslim or a Christian to the effect that some of the provisions of the Act and the Rules would not apply to minority institutions, while some other provisions could be made applicable only with certain modifications or in accordance with the observations made by the Court. We may now summarise the decision of this Court with regard to those provisions of the Act and the Rules which it held as not being applicable, or being applicable as per

the directions contained therein, because the learned counsel for the petitioner states that a similar direction should be issued in this case also.

xxx xxx xxx xxx xxx

The aforesaid provisions are not to apply to the school but the Director of Education, Delhi should be kept informed of any order of dismissal, removal, reduction in rank or termination of service of an employee by the management. If the Administration receives information that the disciplinary powers are being abused by the school then the Administration will have a right to suspend, reduce or stop the grant-in-aid to the School after giving a hearing to the school.

Section 27A and B :- The said provisions are not to apply to the minority school.

The writ petition is accordingly allowed in the aforesaid terms and, like in Jain *Sabha's case* (supra), it is directed that the aforesaid provisions of the Delhi School Education Act, 1973 and the Rules framed thereunder will not apply to the petitioner or would apply only in the manner in which they have been interpreted by this Court. The petitioner will be entitled to costs. Counsel's fee Rs.550/-."

8. The aforesaid judgment appears to have attained finality and, in fact, was not impugned before this Court. The Division Bench, while deciding the above case, clearly held that certain Rules would not be applicable and it specifically noticed the provisions relating to the constitution of the Managing Committee under Rule 59, Rule 64, different Clauses under Rule 96(3), Rule 98, Rule 105 and Rule 120 of Delhi School Education Rules, 1973 (for short 'DSE Rules') in that behalf. The Court held that Rule 64 of the DSE Rules is to be construed in respect of minority schools to require compliance only if those provisions of the Act and the Rules and instructions thereunder are in consonance with the provisions of the Constitution, particularly, with Article 30(1) of the Constitution.

9. Rule 64, primarily, deals with the conditions of providing grant-in-aid and further states that no aid is to be granted unless suitable undertaking is given by the Managing Committee. Rule 64 came to be amended by Notification Nos. 1340-2340 dated 23rd February, 1990. This Rule prescribe certain limitation which the Competent Authority can impose in exercise of its powers. Even before amendment of this Rule, on 12th March, 1985, instructions were issued by the Deputy Director of Education, addressed to the appellant stating, *inter alia*, that in accordance with provision of Rule 64 of the DSE Rules, the Managing Committee of the Society was required to furnish an undertaking that they would make reservation in the appointments of teachers for the Scheduled Castes and Scheduled Tribes. The reference was also made to the instructions issued by the Department of Personnel, Government of India, wherein reservation for Scheduled Castes and Scheduled Tribes in the Institutions/Organisations was ordered. The relevant part of the said letter reads as under :-

"**4.** Since the schools are required to apply for grants-in-aid every years on the prescribed proforma as provided under the Act, they are also required to given undertaking to make reservation in the services and posts for scheduled castes and scheduled tribes accordingly. A specimen of the declaration is sent herewith the request that the same be sent to this office duly filled in and signed with stamp of the Authority signing.

5. It may be noted that the future grants-in-aid shall be released on giving the aforesaid undertaking on the enclosed proforma."

The appellant Society responded to that letter vide reply dated 15th April, 1985, inviting attention of the authorities to the judgment of the High Court dated 14.7.1982, in Writ Petition

No. 940 of 1975, deciding, inter alia, that the school in question, has been held to be a minority institution and that Rule 64 of the DSE Rules is to be accordingly construed in respect of minority school(s) that they require compliance, only, if the same is in consonance with the provisions of Article 30(1) of the Constitution.

10. The Secretary (Education), Govt. of NCT of Delhi, Respondent No.3, thereafter vide his communication dated 21st March, 1986, informed the appellant that the undertaking, which was required to be given by all the Government aided schools in the matter of compliance with the provisions relating to reservation for Scheduled Castes and Scheduled Tribes in the institutions, is not applicable to the minority institutions. Thus, they were not required to adhere to the same. It will be useful to refer to the communication of the Government at this stage itself, which reads as follow :-

> "In connection with circular letter issued vide even number dated 12.3.85, this is hereby clarified that an undertaking in writing which was required to be given by all the Govt. Aided Schools in the matter of compliance with the provisions relating to reservation for SC/ST in the institutions is not applicable to the minority institutions. As such the managements of the institutions are at the discretion to adhere or not to adhere to the instructions issued by the Govt. of India regarding reservation of SC/ ST."

11. The aforesaid letter was issued after the judgment of the Court had been pronounced, however, according to the appellant, in violation of all the principles and the law laid down by that Court, they still received another communication from the authorities in September, 1989, addressed to all the schools that appointment of the Scheduled Castes and Scheduled Tribes candidates is a precondition for all the agencies receiving grant-in-aid from the Government and while referring to Rule 64 of the DSE Rules and its amendment, they were

required by the authorities to comply with this condition. The correctness of this action of the respondent was questioned by appellants by filing a writ petition in the High Court, which came to be registered as Writ Petition (C) No.2426 of 1992 titled as *Sindhi Education Society v. Union of India and Others.* This writ petition was allowed by the learned Single Judge vide his Order dated 14.9.2005. The learned Single Judge felt that the case was entirely covered by the judgment of that Court in the case of *Sumanjit Kaur* (supra). That was the primary and only reason, stated by the learned Single Judge, for allowing the writ petition.

12. Aggrieved from the judgment of the learned Single Judge, the NCT of Delhi filed a letter patent appeal being L.P.A. Nos. 33 to 36 of 2006 and 40-43 of 2006, and the same was not only accepted but the Division Bench had felt it proper to grant certificate of leave to appeal to this Court, vide judgment dated 30.11.2006. While setting aside the judgment of the learned Single Judge and also expressing a dissent to the Division Bench Judgment in the case of Sumanjit Kaur (supra), the Division Bench, primarily, recorded the reasons as [a] that Rule 64(1)(b) does not infringe any right of the minority institution, [b] Clause 11 of the Kerala Education Bill, 1957, which was the subject matter of consideration before the Supreme Court in the case of In Re. Kerala Education Bill, 1957, [(1959) SCR 995], was *pari materia* to Rule 64(1)(b) of DSE Rules, and as such was in conformity with law and lastly, implementation of roster of reservation was in consonance with the stated principle and the fundamental rights are not infringed. For these reasons, the High Court passed the order afore-noticed, resulting in filing of the present appeal.

13. We have already noticed the questions of law of general public importance, which had been framed by the High Court at the time of issuance of certificate. The appellants herein succeeded before the learned Single Judge, which order in turn, was set aside by the Division Bench of the High Court.

The appellants in writ petition had raised a specific challenge to the provisions of Rule 64(1)(b) of the DSE Rules which had been accepted by the learned Single Judge as the matter was stated to be covered by the judgment of that Court in *Sumanjit Kaur's case* (supra). The respondents vide their letter dated 12th March, 1985, and, thereafter, while referring to the Department of Personnel and Administration, letter dated 7th October, 1974, pressed upon the Managing Committee of the institutions, which were Government aided including minority institutions, to furnish an undertaking that they would abide by the rule promoting reservation while making appointment of teachers in the school. Thus, the question that clearly arise for consideration before this Court is whether the provisions of Rule 64(1)(b) of the DSE Rules is ultra-vires or violative of Article 30(1) of the Constitution. In the alternative, whether the said Rule, as framed, can be enforced against the Government aided institutions belonging to linguistic minorities.

In order to examine this aspect in some elaboration, we would have to dissect it into two different sections. Firstly, the law in relation to such minorities, as has been settled by catena of judgments of this Court, and their correct application to the present case, secondly, analysis of the scheme of the DSE Act and the Rules framed there under, in relation to minority institutions. Depending upon the answer to these two aspects, lastly, whether the Rule is enforceable against the minority institutions to the extent that the authorities can deny grant-in-aid for non-compliance.

Scheme under the Delhi School Education Act, 1973 and the Rules framed thereunder in relation to the Minority Institutions :-

14. As already noticed, there is no dispute to the fact that appellant is a minority institution and the Society is one which enjoys the status of a linguistic minority and thus is entitled to all the constitutional benefit and protection under Articles 29 and

30 of the Constitution. Firstly, one has to examine what is a minority. 'Minority', would include both religious and linguistic minorities.

Section 2(o) of the DSE Act defines 'minority school' as follows:-

"*minority school" means a school established and administered by a minority having the right to do so under clause (1) of Article 30 of the Constitution*

Once an institution satisfies the above ingredients, it has to be given the status of a minority institution. The High Court in its judgment in Sindhi Education Society (Writ Petition No.940 of 1975) (supra) had clearly declared that the appellant is a linguistic minority and that judgment has attained finality.

15. There is hardly any dispute in regard to status of this Society. Prior to coming into force of DSE Rules, the Society was obviously free to carry on its activity of running the educational institution, free from any restriction and in accordance with law. DSE Act was enacted to provide better organization and development of school education in Union Territory of Delhi and for matters connected therewith or incidental thereto. The very object of this Act was, therefore, to improve the organization and school education in Delhi. The primary object, thus, was to aid and develop the education system at the school level. In order to achieve this purpose, power is vested in the Administrator to regulate education in all schools in Delhi in accordance with the provisions of the DSE Act and Rules made there under. Section 3(3) of the DSE Act makes it abundantly clear that on and from the commencement of DSE Act, and subject to the provisions of Clause 1 of Article 30 of the Constitution, the establishment of a new school or opening of a higher class or even closing of existing classes shall have to be in accordance with the provisions of the DSE Act, but for such compliance, the recognition shall be denied to such institution by the appropriate authority. The school is

required to have a scheme of management in terms of Section 5 of the DSE Act, but such scheme insofar as it relates to the previous approval of the appropriate authority, will not be applicable to the scheme for an unaided school.

16. Powers of wide dimensions and authority are vested in the Administrator under Section 20 of the DSE Act, which forms part of Chapter VII relating to taking over of the management of the schools under the provisions of the Act. Whenever the Administrator is satisfied that the managing committee or the manager of the school has failed or neglected to perform their duties and carry on the management of the school in accordance with the provisions of the Act, the Administrator can take over the management of the school whether such school is recognized or not. But, such action can be taken only in accordance with the prescribed procedure. However, where the Administrator feels that it is expedient to take over the management of the school, it could pass orders from time to time, outer limit being 3 years which again could be extended for further period, if the Administrator is of that opinion for valid reasons but, in any case, it cannot exceed the period of 5 years in its entirety. These powers of the Administrator indicate the legislative intent to ensure that the object of the DSE Act is not defeated and every recognized or unrecognized institution, without classification on the basis of receiving Government aid, should function and be managed in accordance with the provisions of the DSE Act and the Rules framed thereunder. It is of great significance to notice here that the legislature in its wisdom by a specific provision under Section 21 of the DSE Act has kept minority schools outside the ambit and scope of Section 20. In other words, the power of control and management vested in the authority even on the basis of alleged breach of conditions would not enable the authorities to take over the management of any minority school. Section 21, thus, is an absolute exception to the applicability of Section 20 of the DSE Act. Section 28 of the DSE Act empowers the Administrator to frame Rules with the previous

approval of the Central Government. The Administrator has been empowered under Section 28(2), in particular and without prejudice to the generality of the stated powers, to frame Rules in relation to the matters specified in that sub-section.

17. It will not be necessary for us to notice in detail the purposes for which Rules can be framed but reference to few of them would be useful. Under Section 28(2)(b), Rules can be framed in regard to the condition which every existing school shall be required to comply. While, Section 28(2)(g) contemplate framing of minimum qualifications for, and method of recruitment, and the terms and conditions of service of employees, Section 28(2)(k) empowers the Administrator to frame Rules in regard to the conditions under which aid may be granted to recognized schools and on violation of which, aid may be stopped, reduced or suspended and Section 28(2)(q) relates to faming of Rules for admission to a recognized school and lastly under Section 28(2)(u), Rules can be framed in regard to financial and other returns to be filed by the managing committee of recognized private school. It has to be noticed that all these Rules can be framed and have only one purpose *'make rules to carry out the provisions of the Act*". In other words, the framing of Rules does not empower the Administrator to go beyond the purpose of object of the Act and all these Rules so framed should be intended only to further the cause of the Act and bring nothing into existence, which is specifically or by necessary implication impermissible under the provisions of the DSE Act.

18. At this point reference to some of the DSE Rules can be of some assistance. Under Chapter-II - Regulation of Education - The freedom of minority institutions to establish educational institutions for advancement of their own language and culture is a protected freedom. Rule 10 of the DSE Rules recognizes such mandate. It is provided there that any linguistic minority which intends to set up school with the object of imparting education in the mother-tongue of such linguistic

minority, shall be entitled to do so and shall be entitled to receive grant-in-aid, if other conditions for that purpose are satisfied. However, second proviso to this rule states that linguistic minority can decide to impart education at the school in a language other than the language of such linguistic minority. In that event, it shall not be obligatory upon the Administrator to give grant-in-aid to such schools. In other words, this rule recognizes two aspects – firstly, the extent of freedom available to the linguistic minority for educational purposes and secondly, an obligation on the part of the Administrator to give grant-in-aid unless the linguistic minority was covered by the second proviso. The indication that such institution would normally be entitled to receive grant-in-aid, if they satisfy the conditions, is clear in terms of Rule 10.

19. Chapter-III deals with Opening of New Schools or Classes or Closure of Existing Schools or Classes. Rule 44 provides that every individual, association of individuals, society or trust which desires to establish a new school, not being a minority school, is required to give intimation in writing to the Administrator of their intention to establish such school. The details of the intention/intimation required have been stated in Rule 44(2). Amongst others, it requires details to be submitted in respect of managing committee of the proposed new school and the proposed procedure until its recognition under the DSE Act for selection of the Head of the School and the teachers as well as the non-teaching staff etc. It is noteworthy that this rule is applicable to the institutions not being a minority school. The minority institution, therefore, has specifically been kept out of the application of this rule, the purpose being that the administration and management of a minority school will remain outside the rigors of compliance of Rule 44.

20. Chapter–IV of the DSE Rules deals with Recognition of Schools. Rule 50 states the condition which an institution is required to satisfy before it can be granted recognition. Rule 56 empowers the competent authority to suspend or withdraw the recognition granted.

21. Chapter-V deals with the Scheme of Management of the recognized schools. Rule 59 is one other provision which, primarily, indicates the limitations of the schools in regard to furnishing of scheme of the management of the recognized schools. All the recognized schools are expected to submit to the authority the scheme of management and comply with the requirements of formation of managing committee of the school and total number of the members in terms of that rule. The managing committee would include two members to be nominated by the Director, and other members to be nominated or elected, as the case may be, in accordance with the rules and regulations of the society in terms of Section 590(1)(iv), (v) and (vi) respectively. The members, who are nominated by the Director and the persons nominated by the Advisory Board, in the case of schools other than the minority schools, have an effective role to play in decisions of management as well as they have right of voting. However, in regard to minority school the framers of the rule have added five provisos to Rule 59(1). They specifically provided that in a minority school, the members, instead of being elected, would be the one nominated by the society or the trust by which such unaided minority school is run. The educationist, to be nominated by the Director, shall be a non-official belonging to the minority by which the school is established and run, and the managing committee shall co-opt two senior-most teachers out of a panel of ten senior-most teachers of the school by rotation and in case the school works in two shifts, then one senior-most teacher shall be co-opted from a panel of five senior most teachers in each shift by rotation. Sub-rule (iv) of Rule 59 which gives powers to the Advisory Board to nominate two persons will not apply in the case of the minority school. Furthermore, the members nominated by the Director, Education in exercise of its powers under Sub-rule (v) of Rule 59 shall not be entitled to take part in the management of the minority school and shall function as advisers and observers to put forward the views of the Government in the meeting. This reflects the kind of control, the

framers of the rule desired, that the authorities should exercise over the aided minority schools in comparison to the Government aided non-minority schools. There is clear line of distinction which gets more and more prominent with further reference to the various provisions of the DSE Act and the Rules framed thereunder.

22. Chapter-VI is the basic chapter, with which, we may be concerned in the present case, as it deals with grant-in-aid. Under Rule 60, every aided school, which was receiving aid, will continue to receive such aid, so long as it fulfills the conditions of receiving the aid, in terms of Rule 64. Rule 64 deals with the condition that an undertaking in writing has to be filed by the institution to receive the grant-in-aid allowed by the competent authority under the provisions of the DSE Act. The Rule reads as under :

> "(1) No school shall be granted aid unless its managing committee gives an undertaking in writing that:
>
> (a) it shall comply with the provisions of the Act and these rules;
>
> (b) it shall fill in the posts in the school with the Scheduled Castes and the Scheduled Tribes candidates in accordance with the instructions issued by the Central Government from time to time and also maintain the roster and other connected returns in this behalf;"

Rule 65 details the conditions which a school, applying for grant-in-aid, should satisfy. The grant-in-aid is required to be given only for the qualified staff as Rule 66 imposes no obligation upon the State to release grant-in-aid in relation to unqualified staff. The management of the school must employ adequate number of qualified teachers and other staff which is

approved by the Director under the norms prescribed for such post or which may be prescribed from time to time.

23. Rule 96 under Chapter VIII relates to the Recruitment and Terms and Conditions of Service of the Employees of the Private Schools other than the Unaided Minority Schools. This chapter itself will not apply to unaided minority schools but would apply to other schools. The chapter deals with how a selection committee will be constituted and how the employees including the teachers would be appointed to the schools. DSE Rules 96(1) to 96(3) deals in some detail with reference to appointment, constitution of the selection committee, methodology of selection and appointment to the post of teacher as well as Group-D employees. Significantly, DSE Rules 96(3A) and 96(3B) are exceptions to the earlier part of the DSE Rules. The said DSE Rule 96(3A) refers to various nominations which makes it clear that in the case of aided minority schools, such nominated persons, under different clauses stated therein, shall act only as advisers and will not have the power to vote or actually control the selection of an employee. Rule 96(3B) states that notwithstanding anything contained in sub-rule (3), the Selection Committee of a minority school shall not be limited by the number specified in the said sub-rule and its managing committee may fix such number. Obviously, all these provisions have been framed with the emphasis on the fact that authorities like the Administrator, Director and other officers do not have a direct, and in some cases, even indirect participation in the management and administration of the minority school which includes the selection and appointment of teachers. It attains a greater significance, once these provisions along with restrictions stated in the DSE Act are read in conjunction with Articles 29 and 30 of the Constitution.

24. Chapter-XI of the DSE Rules deal with Unaided Minority School. It requires that recruitment of employees of each recognized unaided minority school shall be made on the

recommendation of a Selection Committee to be constituted by the managing committee of that school. Rule 128(1) requires the minimum qualifications for appointment as a teacher of an unaided minority school shall not be less than those as are prescribed by the Affiliating Board. In the event, *no minimum qualifications have been specified by the Affiliating Board, in respect of the post of any teacher, the minimum qualifications for recruitment to the such post be made by the Administrator after considering such recommendations or suggestions as may be made by the unaided school in this behalf.* In terms of Rule 129, the appropriate Authority has been empowered to relax the minimum qualification for such period as it may deem fit and proper. Chapter XII deals with 'Admissions to Recognized Schools'.

25. Thus, the scheme of the DSE Act, in particular, is to give greater freedom to the aided minority institutions and not to impinge upon their minority status as granted under Article 30(1) of the Constitution. We shall shortly discuss the constitutional mandate and effect thereof with reference to the facts of the present case. On the analysis of the above, it is clear that Section 21 of the DSE Act has to be given its true meaning and permitted to operate in the larger field. The stringent power vested in the appropriate Authority in terms of the Section 20 cannot be enforced against a minority institution. It is the consequence flowing from the violations committed by management of a school that empowers the authorities to take over the management of the school within the scope of Section 21 of the DSE Act. Minority Institutions being an exception to these rules have been given a distinct and definite status under the Act and the Rules framed thereunder.

Discussion on law particularly with reference to the judgments relied upon by the respective parties.

26. Mr. P.P. Malhotra, the learned Additional Solicitor General of India, with great emphasis, argued that by providing and enforcing the intent of Rule 64(1)(b) of the DSE Rules, the

Government is not causing any discrimination. The said DSE Rule relating to reservation is uniformly applied to all schools. It was fairly stated that there is no dispute to the fact that the appellant institution is a linguistic minority institution. It is also contended that the controversy in the present case is covered by Kerala Education Bill, 1957, case (supra) and the appeal deserves to be dismissed.

27. The direction issued by the Directorate of Education for furnishing of such an undertaking is contemplated under Rule 64(1)(b) and its implementation is in consonance with the principle of equality before law and also within the ambit of Article 15 of the Constitution. The right is vested in the Government to make reservation, as such the grant-in-aid is to be used for a social object, namely, upliftment of reserved category, even by providing employment in minority institutions, like the appellant. This shall be the true spirit of the preamble of the Constitution, which requires attainment of the goal, to secure to all citizens, justice, social, economic and political. These expressions are of wide magnitude and the authorities are well within their competence to require minority institutions as well to comply with the rule of reservation and file undertakings as contemplated under Rule 64(1)(b) of the DSE Rules. The reliance has primarily been placed upon the judgment of this Court in the case of Kerala Education Bill, 1957 (supra); *T.M.A. Pai Foundation v. State of Karnataka* [(2002) 8 SCC 481]; Kanya Junior High School, *Bal Vidya Mandir v. U.P. Basic Shiksha Parishad* [(2006) 11 SCC 92], Secy. *Malankara Syrian Catholic College v. T. Jose* [(2007) 1 SCC 386] and *Brahmo Samaj Education Society v. State of W.B.* [(2004) 6 SCC 224].

28. On the contra, the submission made by Mr. K.L. Janjani, the learned counsel appearing on behalf of the appellant is that merely because the State is providing grant-in-aid to a minority institution, it will not clothe the authority with the power to interfere in the administration and management of a minority

institution. Right to appoint a teacher is a part of the management and, thus, is free from any restriction. In terms of Article 30 of the Constitution, the right of minority to establish and administer educational institutions of their own choice, is incapable of being interfered with by the authorities and the language of Rule 64(1)(b), as well as the directives issued by the respondents violates the constitutional protection available to the appellants in accordance with law. It is the contention of the appellant that the law enunciated in *Kerala Education Bill case,1957* (supra) has been watered down suitably by this Court in *T.M.A. Pai's case* (supra) and also that the provisions of DSE Act are not *pari materia*, much less, identical to that of *Kerala Education Bill, 1957 case* (supra). There are specific provisions in the DSE Act and the Rules exempting linguistic minority institutions and, as such, the State cannot derive any benefit from the said judgment. The purpose of allowing grant-in-aid is to create equality and parity with other institutions. But this does not mean that the authorities under the pretext of granting to the minority institutions additional protections impose conditions which would frustrate the very purpose and object of minority institution and for non-compliance thereof, deny the grant-in-aid. On the simple interpretation of Articles 15, 29 and 30 of the Constitution, it is crystal clear that the linguistic minority institution has the right to make appointments, free of restriction or reservation, as that alone will be in the interest of the linguistic minority. The learned counsel for the appellants relied upon the dictum of order in *T.M.A. Pai's case* (supra), in addition to the *Ahmedabad St. Xaviers College Society v. State of Gujarat* [AIR 1974 SC 1389]; *Father Thomas Shingare v. State of Maharashtra* [(2002) 1 SCC 758]; *T. Devadasan v. Union of India* [AIR 1964 SC 179], *Brahmo Samaj Education Society* (supra) and *Lt. Governor of Delhi v. V.K. Sodhi & Ors.* [AIR 2007 SC 2885] in support of his contentions.

29. In the light of the submissions made before us, it will be pertinent for us to examine how the law has travelled for all

these years in relation to the right of minority to run their institutions and the extent to which they can be subjected to control by the appropriate authorities, in accordance with law. The seven-Judge Bench of this Court in the case of *Kerala Education Bill, 1957* (supra) was concerned with constitutionality or otherwise of certain clauses of the Kerala Education Bill, 1957. While, discussing the scope of rights available to the minority institutions in relation to running of educational courses, the Court dealt with different aspects of the matter and discussed the constitutional provisions construed in light of the Kerala Education Bill. The Bill had provided different clauses which the institution was required to satisfy to receive the grant-in-aid. In para 29 of the judgment, the Court noticed various clauses of the Kerala Education Bill, the validity of which was challenged before this Court. The argument advanced before the Court, *inter alia*, was also with reference to the Anglo Indian Education Institutions, that they were entitled to receive the grant under Article 337 of the Constitution and the provisions of the said Bill, which legitimately come within the provisions which infringe their right not only under Article 337 of the Constitution, but also violate Article 30(1) of the Constitution. In that case they are prevented from effectively exercising its rights. A Bench noticed the grievances of the minorities in para 29 of the judgment and discussed the same in para 31 before arriving at the final conclusion.

30. The Court in that case was dealing with the Presidential Reference, in terms of Article 143 of the Constitution. While referring to the questions framed for the opinion of the Court, the Court noticed that the width of power of control thus sought to be assumed by the State evidently appeared to the President to be calculated to raise doubts as to the constitutional validity of some of the clauses of the said Bill on the ground of prohibited infringement of some of the fundamental rights granted to the minority communities by the Constitution. The Bench in Para 10 noticed the questions which are as under:-

(1) "Does sub-clause 5 of clause 3 of the Kerala Education Bill read with clause 36 thereof or any of the provisions of the said sub-clause 36 thereof or any of the provisions of the said sub-clause, offend article 14 of the Constitution in any particulars or to any extent?

(2) Do sub-clause (5) of clause (3), sub-clause (3) of clause 8 and clause 9 to 13 of the Kerala Education Bill or any provisions thereof, offend clause 91) of article 30 of the Constitution in any particulars or to any extent?

(3) Does clause 15 of the Kerala Education Bill or any provisions thereof, offend article 14 of the Constitution in any particulars or to any extent?

(4) Does clause 33 of the Kerala Education Bill, or any provisions thereof, offend article 226 of the Constitution in any particulars or to any extent?"

The answers to question Nos. 1 and 3 :

"That result, therefore, is that the charge of invalidity of the several clauses of the Bill which fall within the ambit of questions 1 and 3 on the ground of the infraction of Article 14 must stand repelled and our answers to both the questions 1 and 3 must, therefore, be in the negative".

Answer to question No. 2 :-

"*Yes, so far as Anglo Indian education institutions entitled to grant under Article*

337 are concerned. (ii) As regards other minorities not entitled to grant as of right under any express provision of he constitution but are in receipt of aid or desire such aid and also as regards Anglo Indian educational institutions in so far as they are receiving aid in excess of what are due to them under Article 337 clauses 8(3) and 9 to 13 do not offend Article 30(1) but clause 3(5) in so far as it makes such educational institutions subject to clauses 14 and 15 do not offend Article 30(1). (iii) Clause 7 (except sub clauses (1) and (3) which applies only to aided schools), clause10 in so far as they apply to recognized schools to be established after the said Bill comes into force do not offend Article 30(1) but clause 3(5) in so far as it makes the new schools established after the commencement of the Bill subject to clause 20 does offend Article 30(1)."

In the said case, the Court held that right of the minorities to some extent was restricted in the sense that general control still could be exercised by the authorities concerned, but in accordance with law. That is how Clause 11 of the Bill, which has been very heavily relied upon by the respondents before us, completely put an embargo on the appointment of teachers of their choice and the teachers could only be appointed out of the panel selected by the Public Service Commission. This clause was held not to be in violation of the Constitution, but clauses 14 and 15, which related to taking over of the management of an aided school for the conditions stipulated therein, were held to be unconstitutional and bad. This was in view of the law stated under the Bill and its scheme that weighed with the Court to record findings afore-noticed.

31. Still another Seven Judge Bench of this Court, in the case of the *Ahmedabad St. Xavier's College Society* (supra) was, primarily, concerned with the scope of Articles 29 and 30 of the Constitution, relating to the rights of minorities to impart general education and applicability of the concept of affiliation to such institutions. Of course, the Court held that there was no fundamental right of a minority institution to get affiliation from a University. When a minority institution applies to a University to be affiliated, it expresses its choice to participate in the system of general education and courses of instructions prescribed by that University, and it agrees to follow the uniform courses of study. Therefore, measures which will regulate the courses of study, the qualifications and appointment of teachers, the conditions of employment of teachers, the health, hygiene of students and the other facilities are germane to affiliation of minority institutions. With regard to grant of an appropriate protection of such community in terms of Article 30 of the Constitution, the Court held as under :-

> "**12**. The real reason embodied in Article 30 (1) of the Constitution is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country The sphere of general secular education is intended to develop the commonness of the boys and girls of our country. This is in the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separate. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole.

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> **30.** Educational institutions are temples of learning. The virtues of human intelligence are mastered and harmonized by education. Where there is complete harmony between the teacher and the taught, where the teacher imparts and the student receives, where there is compete dedication of the teacher and the taught in learning, where there is discipline between the teacher and the taught, where both are worshippers of learning, no discord or challenge will arise. An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important. The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measure are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no trace or color of minority. A minority institution should shine in exemplary eclectism in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority character."

As is evident from the above noticed dictum of the Court the emphasis had been laid on the right of the minority institutions to administer institution. Appointment of teacher is an important part of administration of educational institution and administrative freedom of the minority in that regard.

32. Now we may refer to a judgment of this Court in the

case of Managing Committee, *Khalsa Middle School v. Mohinder Kaur* [(1993) Supp. 4 SCC 26]. In this case, the Court was concerned with the amendments made in the Rules and Regulations of the Society. The date of passing of the resolution or its registration, which would be the effective date while dealing with the termination of service of a teacher without obtaining the approval of the Director of Education, could not be annulled for violating the provisions of the DSE Act. While registering the Khalsa Education Society, which was running a school known as Khalsa Primary School, belonging to a minority, it lost its status of minority, which was restored in July, 1979. The action was initiated during the interregnum period when the Society was working as non-minority institution, the Court took the view that as a non-minority institution, it was required to comply with the conditions of the DSE Act and the Rules framed thereunder, but once the character of minority institution was restored, the provisions will not be attracted. In this regard, the Court held as under :-

> "**10**……..Here we are concerned with the amendment in the Rules and Regulations of the Society. In the absence of any requirement in the Societies Registration Act that the alteration in the Rules and Regulations must be registered with the Registrar, it cannot be held that registration of the amendment is a condition precedent for such an alteration to come into effect. It is, therefore, not possible to accept the contention of Shri Mehta that the amendment which was made in the Rules and Regulations by resolution dated July 1, 1979 did not come into effect till March 13, 1980 when the amended Rules and Regulations were registered with the Registrar, Firms and Societies. The said amendment should be treated to have come into effect from the date on which the resolution making the said amendment was passed, i.e. July 1, 1979. As a result of the said amendment in the Rules and Regulations of the Society, the alterations made in the Rules and Regulations in 1963 were reversed and the position as it stood prior to the amendment of 1963 was restored. Consequently, the school which was a minority institution till the amendment of the Rules and Regulations in 1963 and had ceased to be a minority institution as a result of the amendment in 1963 regained its status as a minority institution after July 1, 1979, when the rules and regulations were amended and the original position was restored. In view of the restoration of the minority character of the institution the provisions of the Education Act and the Education Rules ceased to be applicable to the institution after July 1, 1979. The impugned order of termination order of the services of the respondent was passed on December 31, 1979, i.e., after the school had become a minority institution. The said order cannot, therefore, be held to be invalid on the ground that it was passed in contravention of Section 8 of the Education Act. The order passed by the Delhi High Court quashing the said order as well as the disciplinary proceedings cannot, therefore, be upheld. The respondent was placed under suspension on August 11, 1972 and continued under suspension till April 9, 1973 on which date Education Act came into force. In other words she was under suspension at a time when the Education Act was not in force. The order of suspension cannot be judged on the basis of the provisions of the Education Act and the Education Rules. We are, therefore, unable to uphold the direction of the High Court quashing her order of suspension."

The aforesaid judgment states principle of law of far reaching consequences, i.e. an institution which is run by a minority linguistic or religious would not be controlled exclusively by the provisions of the DSE Act and the Rules framed thereunder, as the grant of approval would tantamount to interfere in the internal management of a minority institution.

33. Now, we may refer to the case of *T.M.A. Pai* (supra) which has been strongly relied upon by learned counsel appearing from both the sides before us. In this judgment, the

Court had practically discussed the entire case law on the subject and particularly, the case of Kerala Education Bill, 1957 (supra) as well as *Ahmedabad St. Xavier's case* (supra). It may be noticed that the law stated by the Seven-Judge Bench in *Kerala Education Bill, 1957 case* (supra), to some extent, has been diluted. Various aspects of this case, we shall shortly proceed to discuss, but let us first examine what the Court has held and in what context. It is really not necessary for us to get into detailed factual matrix and all the principles that have been enunciated by the Eleven-Judge Bench. It will be better for us to restrict ourselves to the discussion only in relation to the question of involvement in the present case. The learned Additional Solicitor General relied upon paras 72, 73, 107, 136, 138, 141, 144 and 450 of the judgment in support of his submissions.

34. On the contrary, the learned counsel for the appellants submitted that the paragraphs relied upon by the respondents are the minority view and not the part of the majority judgment. With this, he placed reliance upon paras 89, 116 and 123 of the judgment. In order to avoid any ambiguity or confusion, we must clarify at the outset that till paragraph 161, it is the majority view of the T.M.A. Pai's case (supra) whereafter different Judge/Judges have expressed their views and given independent conclusions and answers to the questions framed. Thus, it will be expected from us and we would only refer to the decision and finding of the majority view, which is binding on the Court.

35. The respondents have placed reliance upon the law stated by the Bench that any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by majority or the minority. Such a limitation must be read into Article 30. The rule under Article 30(1) cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. It is, of course, true that Government regulations cannot destroy the minority character of the institution or make a right to establish

and administer a mere illusion, but the right under Article 30 is not so absolute as to be above the law. The appellant also seek to derive benefit from the view that the Courts have also held that the right to administer is not absolute and is subject to reasonable regulations for the benefit of the institutions as the vehicle of education consistent with the national interest. Such general laws of the land would be also applicable to the minority institutions as well. There is no reason why regulations or conditions concerning generally the welfare of the students and teachers should not be made applicable in order to provide a proper academic atmosphere. As such, the provisions do not, in any way, interfere with the right of administration or management under Article 30(1). Any law, rule or regulation, that would put the educational institutions run by the minorities at a disadvantage, when compared to the institutions run by the others, will have to be struck down. At the same time, there may not be any reverse discrimination.

36. It was observed in *St. Xavier's case* (supra), at page 192 of the judgment that the whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection, they will be denied equality. The emphasis by the appellants is more on paragraphs 88 to 90 to say that Articles 29 and 30 are a group of articles relating to cultural and educational rights. Article 29(1) gives the right to any section of the citizens having a distinct language, script or culture of its own, to conserve the same. Article 29(2) refers to admission to a educational institution established by anyone, but which is maintained by the State or receives aid out of State funds. In other words, State-maintained or aided educational institutions, whether established by the Government or the majority or a minority community cannot deny admission to a citizen on the ground of religion, race, caste or language. Article 30(1) states the right of minorities to establish and administer educational institutions of their choice, as provided under that Article. The fundamental freedom is to establish and

to administer educational institutions. It is a right to establish and administer institutions to cater the educational needs of the minorities or sections thereof.

37. Before we really analyze the dictum of this Court in its various judgments and examine the scope of their application to the facts of the present case, it would be necessary for us to refer to certain specific paragraphs of the judgment, besides the above portions which have been relied upon by the learned counsel appearing for the respective parties. The basic questions which would arise for consideration with regard to the facts of the present case are the extent of the right to establish, administer and management of institution by the linguistic minorities, the extent of control or restrictions that can be imposed by the State and obviously the right of a minority institution to receive grant-in-aid. In the case of T.M.A. Pai (supra), the Court was primarily concerned with the ambit and scope of grant of admission to the students in various academic courses in the minority institutions aided or unaided. In that case, the Court was basically not concerned with the methodology to be adopted by the minority institutions and the restrictions that can be imposed by the Government with regard to the recruitment of teachers like Rule 64(1)(b) of the DSE Rules. So to understand, the impact of the dictum in T.M. Pai's case (supra), we may usefully refer to certain paragraphs of the judgment itself.

> **"123.** After referring to the earlier cases in relation to the appointment of teachers, it was noted by Khanna, J., that the conclusion which followed was that a law which interfered with a minority's choice of qualified teachers, or its disciplinary control over teachers and other members of the staff of the institution, was void, as it was violative of Article 30(1). While it was permissible for the State and its educational authorities to prescribe the qualifications of teachers, it was held that once the teachers possessing the requisite qualifications were selected by the minorities

> for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution was regarded as one of the essential ingredients under Article 30(1). The Court's attention was drawn to the fact that in *Kerala Education Bill, 1957 case* this Court had opined that clauses 11 and 12 made it obligatory for all aided schools to select teachers from a panel selected from each district by the Public Service Commission and that no teacher of an aided school could be dismissed, removed or reduced in rank without the previous sanction of the authorized officer. At SCR p. 245, Khanna, J., observed that in cases subsequent to the opinion in *Kerala Education Bill, 1957 case* this Court had held similar provisions as clause 11 and clause 12 to be violative of Article 30(1) of the minority institution. He then observed as follows: (SCC p.792, para 109)
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> "The opinion expressed by this Court in *Re Kerala Education Bill, 1957* was of an advisory character and though great weight should be attached to it because of its persuasive value, the said opinion cannot override the opinion subsequently expressed by this Court in contested cases. It is the law declared by this Court in the subsequent contested cases which would have a binding effect. The words 'as at present advised' as well as the preceding sentence indicate that the view expressed by this Court in *Re Kerala Education Bill, 1957* in this respect was hesitant and tentative and not a final view in the matter."
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> **124.** In *Lily Kurian* v. *Sr. Lewina* this Court struck down the power of the Vice-Chancellor to veto the decision of the management to impose a penalty on a teacher. It was held that the power of the Vice-Chancellor, while hearing an appeal against the imposition of the penalty, was uncanalized and unguided. In *Christian Medical College*

Hospital Employees' Union v. *Christian Medical College Vellore Assn.* this Court upheld the application of industrial law to minority colleges, and it was held that providing a remedy against unfair dismissals would not infringe Article 30. In *Gandhi Faiz-e-am College* v. *University of Agra* a law which sought to regulate the working of minority institutions by providing that a broad-based management committee could be reconstituted by including therein the Principal and the seniormost teacher, was valid and not violative of the right under Article 30(1) of the Constitution. In *All Saints High School* v. *Govt. of A.P.* a regulation providing that no teacher would be dismissed, removed or reduced in rank, or terminated otherwise except with the prior approval of the competent authority, was held to be invalid, as it sought to confer an unqualified power upon the competent authority. In *Frank Anthony Public School Employees' Assn.* v. *Union of India* the regulation providing for prior approval for dismissal was held to be invalid, while the provision for an appeal against the order of dismissal by an employee to a tribunal was upheld. The regulation requiring prior approval before suspending an employee was held to be valid, but the provision, which exempted unaided minority schools from the regulation that equated the pay and other benefits of employees of recognized schools with those in schools run by the authority, was held to be invalid and violative of the equality clause. It was held by this Court that the regulations regarding pay and allowances for teachers and staff would not violate Article 30.

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135. We agree with the contention of the learned Solicitor-General that the Constitution in Part III does not contain or give any absolute right. All rights conferred in Part III of the Constitution are subject to at least other provisions of the said Part. It is difficult to comprehend that the framers of

the Constitution would have given such an absolute right to the religious or linguistic minorities, which would enable them to establish and administer educational institutions in a manner so as to be in conflict with the other Parts of the Constitution. We find it difficult to accept that in the establishment and administration of educational institutions by the religious and linguistic minorities, no law of the land, even the Constitution, is to apply to them.

136. Decisions of this Court have held that the right to administer does not include the right to maladminister. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also — for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality.

137. It follows from the aforesaid decisions that even though the words of Article 30(1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under Article 30(1).

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141. The grant of aid is not a constitutional imperative. Article 337 only gives the right to assistance by way of

grant to the Anglo-Indian community for a specified period of time. If no aid is granted to anyone, Article 30(1) would not justify a demand for aid, and it cannot be said that the absence of aid makes the right under Article 30(1) illusory. The founding fathers have not incorporated the right to grants in Article 30, whereas they have done so under Article 337; what, then, is the meaning, scope and effect of Article 30(2)? Article 30(2) only means what it states viz. that a minority institution shall not be discriminated against where aid to educational institutions is granted. In other words the State cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. We would, however, like to clarify that if an abject surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2). However, conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of administration. If, however, aid were denied on the ground that the educational institution is under the management of a minority, then such a denial would be completely invalid.

142. The implication of Article 30(2) is also that it recognizes that the minority nature of the institution should continue, notwithstanding the grant of aid. In other words, when a grant is given to all institutions for imparting secular education, a minority institution is also entitled to receive it, subject to the fulfilment of the requisite criteria, and the State gives the grant knowing that a linguistic or minority educational institution will also receive the same. Of course, the State cannot be compelled to grant aid, but the receipt of aid cannot be a reason for altering the nature or character of the recipient educational institution.

143. This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfilment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant.

144. It cannot be argued that no conditions can be imposed while giving aid to a minority institution. Whether it is an institution run by the majority or the minority, all conditions that have relevance to the proper utilization of the grant-in-aid by an educational institution can be imposed. All that Article 30(2) states is that on the ground that an institution is under the management of a minority, whether based on religion or language, grant of aid to that educational institution cannot be discriminated against, if other educational institutions are entitled to receive aid. The conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether it is a majority-run institution or a minority-run institution. As in the case of a majority-run institution, the moment a minority institution obtains a grant of aid, Article 28 of the Constitution comes into play. When an educational institution is maintained out of State funds, no religious instruction can be provided therein. Article 28(1) does not state that it applies only to educational institutions that are not established or maintained by religious or linguistic minorities. Furthermore, upon the receipt of aid, the

provisions of Article 28(3) would apply to all educational institutions whether run by the minorities or the non-minorities. Article 28(3) is the right of a person studying in a State-recognized institution or in an educational institution receiving aid from State funds, not to take part in any religious instruction, if imparted by such institution, without his/her consent (or his/her guardian's consent if such a person is a minor). Just as Articles 28(1) and (3) become applicable the moment any educational institution takes aid, likewise, Article 29(2) would also be attracted and become applicable to an educational institution maintained by the State or receiving aid out of State funds.

It was strenuously contended that the right to give admission is one of the essential ingredients of the right to administer conferred on the religious or linguistic minority, and that this right should not be curtailed in any manner. It is difficult to accept this contention. If Articles 28(1) and (3) apply to a minority institution that receives aid out of State funds, there is nothing in the language of Article 30 that would make the provisions of Article 29(2) inapplicable. Like Article 28(1) and Article 28(3), Article 29(2) refers to "*any educational institution maintained by the State or receiving aid out of State funds*". A minority institution would fall within the ambit of Article 29(2) in the same manner in which Article 28(1) and Article 28(3) would be applicable to an aided minority institution. It is true that one of the rights to administer an educational institution is to grant admission to the students. As long as an educational institution, whether belonging to the minority or the majority community, does not receive aid, it would, in our opinion, be its right and discretion to grant admission to such students as it chooses or selects subject to what has been clarified before. Out of the various rights that the minority institution has in the administration of the institution, Article 29(2) curtails the right to grant admission to a certain extent. By virtue of

Article 29(2), no citizen can be denied admission by an aided minority institution on the grounds only of religion, race, caste, language or any of them. It is no doubt true that Article 29(2) does curtail one of the powers of the minority institution, but on receiving aid, some of the rights that an unaided minority institution has, are also curtailed by Articles 28(1) and 28(3). A minority educational institution has a right to impart religious instruction — this right is taken away by Article 28(1), if that minority institution is maintained wholly out of State funds. Similarly on receiving aid out of State funds or on being recognized by the State, the absolute right of a minority institution requiring a student to attend religious instruction is curtailed by Article 28(3). If the curtailment of the right to administer a minority institution on receiving aid or being wholly maintained out of State funds as provided by Article 28 is valid, there is no reason why Article 29(2) should not be held to be applicable. There is nothing in the language of Articles 28(1) and (3), Article 29(2) and Article 30 to suggest that, on receiving aid, Articles 28(1) and (3) will apply, but Article 29(2) will not. Therefore, the contention that the institutions covered by Article 30 are outside the injunction of Article 29(2) cannot be accepted."

38. The Court then proceeded to discuss the concept of equality and secularism and noticed that for a healthy family, it is important that each member is strong and healthy and all members have the same constitution, whether physical or mental. For harmonious growth and health, it is but natural for the parents to give more attention and food to the weaker child, so as to help him or her to become stronger. Noticing recognition and preservation of different types of people with diverse languages and different beliefs is essential, the Court answered the 11 questions framed therein . It is not necessary for us to refer to all the questions and answers, suffices, it would be to notice the relevant questions and answers given by the majority in para 161 of the judgment.

"Q. 1. What is the meaning and content of the expression "minorities" in Article 30 of the Constitution of India?

A. Linguistic and religious minorities are covered by the expression "minority" under Article 30 of the Constitution. Since reorganization of the States in India has been on linguistic lines, therefore, for the purpose of determining the minority, the unit will be the State and not the whole of India. Thus, religious and linguistic minorities, who have been put on a par in Article 30, have to be considered Statewise.

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Q. 4. Whether the admission of students to minority educational institution, whether aided or unaided, can be regulated by the State Government or by the university to which the institution is affiliated?

A. Admission of students to unaided minority educational institutions viz. schools and undergraduate colleges where the scope for merit-based selection is practically nil, cannot be regulated by the State or university concerned, except for providing the qualifications and minimum conditions of eligibility in the interest of academic standards.

The right to admit students being an essential facet of the right to administer educational institutions of their choice, as contemplated under Article 30 of the Constitution, the State Government or the university may not be entitled to interfere with that right, so long as the admission to the unaided educational institutions is on a transparent basis and the merit is adequately taken care of. The right to administer, not being absolute, there could be regulatory measures for ensuring educational standards and maintaining excellence thereof, and it is more so in the matter of admissions to professional institutions.

A minority institution does not cease to be so, the moment

grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and at the same time, would be required to admit a reasonable extent of non-minority students, so that the rights under Article 30(1) are not substantially impaired and further the citizens' rights under Article 29(2) are not infringed. What would be a reasonable extent, would vary from the types of institution, the courses of education for which admission is being sought and other factors like educational needs. The State Government concerned has to notify the percentage of the non-minority students to be admitted in the light of the above observations. Observance of *inter se* merit amongst the applicants belonging to the minority group could be ensured. In the case of aided professional institutions, it can also be stipulated that passing of the common entrance test held by the State agency is necessary to seek admission. As regards non-minority students who are eligible to seek admission for the remaining seats, admission should normally be on the basis of the common entrance test held by the State agency followed by counselling wherever it exists.

Q. 5. **(*a*)** Whether the minorities' rights to establish and administer educational institutions of their choice will include the procedure and method of admission and selection of students?

A. A minority institution may have its own procedure and method of admission as well as selection of students, but such a procedure must be fair and transparent, and the selection of students in professional and higher education colleges should be on the basis of merit. The procedure adopted or selection made should not be tantamount to maladministration. Even an unaided minority institution ought not to ignore the merit of the students for admission, while exercising its right to admit students to the colleges

aforesaid, as in that event, the institution will fail to achieve excellence.

***Q. 5.* (*b*)** Whether the minority institutions' right of admission of students and to lay down procedure and method of admission, if any, would be affected in any way by the receipt of State aid?

A. While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe bye-rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the State *qua* non-minority students. The merit may be determined either through a common entrance test conducted by the university or the Government concerned followed by counselling, or on the basis of an entrance test conducted by individual institutions — the method to be followed is for the university or the Government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the Government or the university to provide that consideration should be shown to the weaker sections of the society.

***Q. 5.* (*c*)** Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of

control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.

Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee.

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Q. 9. Whether the decision of this Court in *Unni Krishnan, J.P.* v. *State of A.P.* (except where it holds that primary education is a fundamental right) and the scheme framed thereunder require reconsideration/ modification and if yes, what?

A. The scheme framed by this Court in *Unni Krishnan case* and the direction to impose the same, except where it holds that primary education is a fundamental right, is unconstitutional. However, the principle that there should not be capitation fee or profiteering is correct. Reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering."

39. The above paragraphs and the conclusions arrived at by the Court, certainly suggest that the Court did not specifically or impliedly over ruled or expressed any different view than what was taken by the Court in *Ahmedabad St. Xavier's case* (supra) as well as discussed the impact of *Kerala Education Bill, 1957 case* (supra) with reference to Clauses 11 and 12, then the Court held that the view expressed in Kerala Education Bill, 1957 case (supra) was tentative. The view of the Court is that it is not an absolute right of the minority institution, but a right where certain conditions could be applied but such conditions should not, in any way, destroy or completely diminish the status and constitutional direction available to that minority.

40. With the passage of time this Court had the occasion to deal with the clarificatory enunciation of law stated in *T.M.A. Pai's case* (supra) and dealt with different cases depending on the facts and circumstances of those cases. In the case of *Brahmo Samaj Education Society* (supra), a Bench of this Court was concerned with the appointment of persons to the post of teachers including principal under the West Bengal College Teachers (Security of Services) Act, 1975, the West Bengal College Services Commission, 1978 and the Regulations framed thereunder. A particular procedure was stated under these rules for making these appointments as per the regulations, National Eligibility Test (NET) is conducted by UGC (University Grants Commission) for determining teaching eligibility criteria of the candidate, which was added as an essential qualification for appointment as a teacher and, even

further, restrictions were introduced by adding College Service Commission and appointments were sought to be made through this Commission. The Brahmo Samaj Education Society challenged this procedure and being a religious minority claiming benefit under Articles 25, 26 and 30 (1) of the Constitution, questioned the constitutional validity of these provisions. The Court considered the question whether the appointment of teachers in an aided institution by the College Service Commission by restricting the petitioner's right to appointment is a reasonable restriction. After following the law stated in T.M.A. Pai's case (supra), the Court held as under :

"6. The question now before us is to decide whether the appointment of teachers in an aided institution by the College Service Commission by restricting the petitioners' right to appointment is a reasonable restriction in the interest of general public or not. The petitioners have a right to establish and administer educational institution. Merely because the petitioners are receiving aid, their autonomy of administration cannot be totally restricted and institutions cannot be treated as a government-owned one. Of course the State can impose such conditions as are necessary for the proper maintenance of standards of education and to check maladministration…..

7. But that control cannot extend to the day-to-day administration of the institution. It is categorically stated in *T.M.A. Pai* (SCC at p. 551, para 72) that the State can regulate the method of selection and appointment of teachers after prescribing requisite qualification for the same. Independence for the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution. The State can very well provide the basic qualification for teachers. Under the University Grants Commission Act, 1956, the University Grants Commission (UGC) had laid down qualifications to a teaching post in

a university by passing Regulations. As per these Regulations UGC conducts National Eligibility Test (NET) for determining teaching eligibility of candidates. UGC has also authorised accredited States to conduct State-Level Eligibility Test (SLET). Only a person who has qualified NET or SLET will be eligible for appointment as a teacher in an aided institution. This is the required basic qualification for a teacher. The petitioners' right to administer includes the right to appoint teachers of their choice among the NET-/SLET- qualified candidates.

8. Argument on behalf of the State that the appointment through the College Service Commission is to maintain the equal standard of education all throughout the State of West Bengal, does not impress us. The equal standard of teachers are already maintained by NET/SLET. Similarly, receiving aid from State coffers can also not be treated as a justification for imposition of any restrictions that cannot be imposed otherwise."

In the above case, the Court did not rest with laying down the above law but even directed the State Government to take due notice of the declarations made in the *T.M.A. Pai's case* (supra) and to take appropriate steps in that regard.

41. Thereafter, a Five-Judge Bench of this Court in *Islamic Academy of Eduation v. State of Karnataka* [(2003) 6 SCC 697], while dealing with the right of the minorities, aided as well as unaided institutions including professional educational institutions, in relation to the process of admission and fee structure, specified that the constitution of committees for admission and fee structure process was improper in relation to unaided minority institutions while certain other specifications were given with regard to the minority aided institutions but the Court specifically noted that non-minority educational institutions, in certain matters, cannot and do not stand on the same footing as minority educational institutions which enjoys the protection of Article 30 and the preferential right to admit

students of their own community. Further noticing that the whole object of conferring the right on minority is that they will be on equality with the majority, the Court further held as under :

"**9**.....Undoubtedly, at first blush it does appear that these paragraphs equate both types of educational institutions. However, on a careful reading of these paragraphs it is evident that the essence of what has been laid down is that the minority educational institutions have a guarantee or assurance to establish and administer educational institutions of their choice. These paragraphs merely provide that laws, rules and regulations cannot be such that they favour majority institutions over minority institutions. We do not read these paragraphs to mean that non-minority educational institutions would have the same rights as those conferred on minority educational institutions by Article 30 of the Constitution of India. Non-minority educational institutions do not have the protection of Article 30. Thus, in certain matters they cannot and do not stand on a similar footing as minority educational institutions. Even though the principle behind Article 30 is to ensure that the minorities are protected and are given an equal treatment yet the special right given under Article 30 does give them certain advantages. Just to take a few examples, the Government may decide to nationalise education. In that case it may be enacted that private educational institutions will not be permitted. Non-minority educational institutions may become bound by such an enactment. However, the right given under Article 30 to minorities cannot be done away with and the minorities will still have a fundamental right to establish and administer educational institutions of their choice. Similarly, even though the Government may have a right to take over management of a non-minority educational institution, the management of a minority educational institution cannot be taken over because of the protection given under Article 30. Of course, we must not be understood to mean that

even in national interest a minority institute cannot be closed down. Further, minority educational institutions have preferential right to admit students of their own community/ language. No such rights exist so far as non-minority educational institutions are concerned.

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14…….Whilst discussing Article 30 under the heading *"To what extent can the rights of aided private minority institutions to administer be regulated"* reliance has been placed, in the majority judgment, on previous judgments in the cases of *Kerala Education Bill, 1957, Re*, *Sidhajbhai Sabhai* v. *State of Gujarat*, *Rev. Father W. Proost* v. *State of Bihar*, *State of Kerala* v. *Very Rev. Mother Provincial* and *Ahmedabad St. Xavier's College Society* v. *State of Gujarat*. All these cases have recognised and upheld the rights of minorities under Article 30. These cases have held that in the guise of regulations, rights under Article 30 cannot be abrogated. It has been held, even in respect of aided minority institutions that they must have full autonomy in administration of that institution. It has been held that the right to administer includes the right to admit students of their own community/ language. Thus an unaided minority professional college cannot be in a worse position than an aided minority professional college. It is for this reason that paragraph 68 provides that a different percentage can be fixed for unaided minority professional colleges. The expression "different percentage for minority professional institutions" carries a different meaning than the expression "certain percentage for unaided professional colleges". In fixing the percentage for unaided minority professional colleges the State must keep in mind, apart from local needs, the interest/need of that community in the State. The need of that community, in the State, would be paramount vis-à-vis the local needs."

42. In an attempt to clarify the matters beyond controversy, a Seven-Judge Bench of this Court in the case of *P.A. Inamdar v. State of Maharashtra* [(2005) 6 SCC 537], discussed the entire gamut of law in relation to minority educational institutions and noticed that the right conferred by Article 30 was more in the nature of protection for minorities. It protects minority institutions from regulatory legislations framed under Article 19 (6), but still they were not immune from regulatory control. The Court was primarily concerned in that case with admission of the students to different institutions where it observed that even within the scope and ambit of Article 30(1) there was a need for imposing reasonable restrictions even on the minority institutions, and such direction would not vitiate and hurt the minority status. There are two basic concepts - one relating to imposition of conditions with regard to the management of the institutions and secondly the power of the State to step in where there are questions of national interest. The Court did approve the permitted operation of the committees with reference to rationality and reasonableness and the two significant matters were decided by the Court as follows :

> **"103.** To establish an educational institution is a fundamental right. Several educational institutions have come up. In Kerala Education Bill[6] "minority educational institutions" came to be classified into three categories, namely, (i) those which do not seek either aid or recognition from the State; (ii) those which want aid; and (iii) those which want only recognition but not aid. It was held that the first category protected by Article 30(1) can "exercise that right to their hearts' content" unhampered by restrictions. The second category is most significant. Most of the educational institutions would fall in that category as no educational institution can, in modern times, afford to subsist and efficiently function without some State aid. So it is with the third category. An educational institution may survive without aid but would still stand in need of recognition because in the absence of recognition,

education imparted therein may not really serve the purpose as for want of recognition the students passing out from such educational institutions may not be entitled to admission in other educational institutions for higher studies and may also not be eligible for securing jobs. Once an educational institution is granted aid or aspires for recognition, the State may grant aid or recognition accompanied by certain restrictions or conditions which must be followed as essential to the grant of such aid or recognition. This Court clarified in Kerala Education Bill that "the right to establish and administer educational institutions" conferred by Article 30(1) does not include the right to maladminister, and that is very obvious. Merely because an educational institution belongs to a minority it cannot ask for aid or recognition though running in unhealthy surroundings, without any competent teachers and which does not maintain even a fair standard of teaching or which teaches matters subversive to the welfare of the scholars. Therefore, the State may prescribe reasonable regulations to ensure the excellence of the educational institutions to be granted aid or to be recognised. To wit, it is open to the State to lay down conditions for recognition such as, an institution must have a particular amount of funds or properties or number of students or standard of education and so on. The dividing line is that in the name of laying down conditions for aid or recognition the State cannot directly or indirectly defeat the very protection conferred by Article 30(1) on the minority to establish and administer educational institutions. Dealing with the third category of institutions, which seek only recognition but not aid, Their Lordships held that "the right to establish and administer educational institutions of their choice" must mean the right to establish real institutions which will effectively serve the needs of the community and scholars who resort to these educational institutions. The dividing line between how far the regulation would remain within the constitutional limits and

when the regulations would cross the limits and be vulnerable is fine yet perceptible and has been demonstrated in several judicial pronouncements which can be cited as illustrations. They have been dealt with meticulous precision coupled with brevity by S.B. Sinha, J. in his opinion in Islamic Academy. The considerations for granting recognition to a minority educational institution and casting accompanying regulations would be similar as applicable to a non-minority institution subject to two overriding considerations: (i) the recognition is not denied solely on the ground of the educational institution being one belonging to minority, and (ii) the regulation is neither aimed at nor has the effect of depriving the institution of its minority status.

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134. However, different considerations would apply for graduate and postgraduate level of education, as also for technical and professional educational institutions. Such education cannot be imparted by any institution unless recognised by or affiliated with any competent authority created by law, such as a university, Board, Central or State Government or the like. Excellence in education and maintenance of high standards at this level are a must. To fulfil these objectives, the State can and rather must, in national interest, step in. The education, knowledge and learning at this level possessed by individuals collectively constitutes national wealth."

The apparent analysis was that the emphasis has to be on the need for preserving its minority character so as to enjoy the privilege of protection under Article 30(1).

43. Still, in the case of Kanya Junior High School, *Bal Vidya Mandir v. U.P. Basic Shiksha Parishad* [(2006) 11 SCC 92], this Court observed that the law did not contemplate granting of any higher rights to the minority as opposed to

majority and it only conferred additional protection. Referring to *P.A. Inamdar's case* (supra), the Court declared that the object underlying Article 30(1) is to see the desire of minorities that their children should be brought up properly, efficiently and acquire eligibility for higher university education. It further noticed that under the provisions of law, the approval of District Basic Education Officer was not necessary before terminating the services of a teacher, as the institution was recognized as a minority institution. Last of the judgment, which has some bearing on the subject in question, is on the principle reiterated by a Bench of this Court in the case of Secy. *Malankara Syrian Catholic College* (supra), where the Court again dealt with the aided minority educational institutions and terms and conditions of services of employees. The Court in para 12 of the judgment framed the following two questions :

"**12.** The rival contentions give rise to the following questions:

(i) To what extent, the State can regulate the right of the minorities to administer their educational institutions, when such institutions receive aid from the State?

(ii) Whether the right to choose a Principal is part of the right of minorities under Article 30(1) to establish and administer educational institutions of their choice. If so, would Section 57(3) of the Act violate Article 30(1) of the Constitution of India?"

The Answer to question no. 1 was provided in para 21 while question no. 2 was answered in para Nos. 27 and 28 of the judgment which read as under :

"**21.** We may also recapitulate the extent of regulation by the State, permissible in respect of employees of minority educational institutions receiving aid from the State, as clarified and crystallised in T.M.A. Pai. The State can prescribe:

(i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,

(ii) the service conditions of employees without interfering with the overall administrative control by the management over the staff,

(iii) a mechanism for redressal of the grievances of the employees,

(iv) the conditions for the proper utilisation of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.

In other words, all laws made by the State to regulate the administration of educational institutions and grant of aid will apply to minority educational institutions also. But if any such regulations interfere with the overall administrative control by the management over the staff, or abridges/ dilutes, in any other manner, the right to establish and administer educational institutions, such regulations, to that extent, will be inapplicable to minority institutions.

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27. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognised as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by T.M.A. Pai. Having regard to the key role played by the Principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid will make no difference.

28. The appellant contends that the protection extended

by Article 30(1) cannot be used against a member of the teaching staff who belongs to the same minority community. It is contended that a minority institution cannot ignore the rights of eligible lecturers belonging to the same community, senior to the person proposed to be selected, merely because the institution has the right to select a Principal of its choice. But this contention ignores the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the person's outlook and philosophy and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited to head the institution, provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions."

The above answers to the questions formulated demonstrates that the Court has kept a clear line of distinction between laws made by the State to regulate the administration of educational institutions receiving grant-in-aid but if such regulations interfere with overall administrative control by the management over the staff or abridges or dilutes, in any other manner, the right to establish and administer educational institutions, in that event, to such extent, the regulations will be inapplicable to the minorities.

Discussion on constitutional provisions read in conjunction with the provisions of the Delhi School Education Act,1973 and the Rules framed thereunder with reference to the legal principles above enunciated

44. Undoubtedly, the Preamble of our Constitution mandates 'to secure to all its citizens justice - social, economic and political'. The Constitution has been held to be a living and organic thing and not a mere law and it is expected to be

construed broadly and liberally. Thus, these expressions must be given liberal construction so as to further the constitutional mandate. The social and economic justice would take within its ambit the progress and development of the entire nation without reference to caste, creed, colour or the section of the society to which they belong.

45. Article 14 of the Constitution commands equality before law or the equal protection of laws. The concept of equality is wide enough to include equality in advantages available to the public at large as a result of State action. The Constitution has itself made out certain exceptions to the general rule of equality in terms of Articles 15 and 16. Article 15 (1) spells out a prohibitory intent against the State that it would not discriminate against any citizen on the ground only of religion, race, caste, sex, place of birth or any of them. In other words, the State cannot deny the equality on the basis of the aforestated factors. Despite this mandate, Article 15(3) spells out an exception to Article 15(1) and 15(2) as well as to the concept of basic equality and empowers the State to make special provisions for women and children. Similarly, by Article 15(4), which was introduced by 1st Constitutional Amendment of 1951, the State is further empowered to make any special provisions for advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes. Article 15(5), which was introduced by 93rd Constitutional Amendment of 2005, made out another exception to the general rule of equality and this sub-Article, while giving power to the State to enact special laws, also carves out an exception in regard to which this power cannot be exercised, i.e. minority educational institutions referred to in clause (1) of Article 30. Article 15(5) reads as under :

"Nothing in this article or in sub-clause (*g*) of Clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the

> Scheduled Castes or the Scheduled Tribes insofar as such special provisions relate to their admission to the educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in Clause (1) of Article 30."

46. Article 16 further guarantees to the citizens equality of opportunity in matters of public employment. Article 16(2) again prohibits discrimination in respect of any employment or office under the State on the ground of religion, race, caste, sex, descent, place of birth, residence or any of them. These factors cannot render any citizen ineligible for appointment for public employment. Clauses (3) to (4B) are the provisions which empowers the State to make any law in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union Territory, any requirement as to a residence within that State or Union Territory, prior to such employment or appointment. It also empowers the State from making any provision for the reservation of appointments or posts in favour of any backward class which, in the opinion of the State, is not adequately represented in the service under the State. The State is also vested with the power of reserving the vacancies in a particular year and make reservation in favour of Scheduled Castes and Scheduled Tribes, which are not adequately represented in service of the State, in matters of promotion with consequential seniority. Putting it simply, the State is entitled to make law and reservations in different fields for Scheduled Castes and Scheduled Tribes and the persons belonging to backward class in the services under the State, in accordance with law.

47. While dealing with the cultural and educational rights under the Constitution, the framers have devoted specific attention to the minorities in our country while enacting Articles 29 and 30. Article 29 grants complete protection to any section

of the citizens residing in the territory of India having a distinct language, script or culture of its own and freedom to conserve the same. Besides granting this freedom, this Article also mandates that no citizen shall be denied admission to any educational institution maintained by the State or receiving aid out of the State funds on the grounds of discrimination stated in Articles 15 and 16 of the Constitution. Article 30 gives certain rights to the minorities, i.e. all minorities whether religious or linguistic, have the right to establish and administer educational institutions of their choice. Article 30(2) has to be noticed with some emphasis. It requires the State not to discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language, while granting aid to the educational institution. The Article reads as under :

> "**30**. Right of minorities to establish and administer educational institutions.—(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language."

48. The principle of free primary education had been introduced as a constitutional right by this Court in Unni Krishnan, *J.P. V. State of A.P.* [(1993) 1 SCC 645]. The Court, while dealing with the case of *T.M.A. Pai* (supra), not only reiterated the same with approval but made right to receive secondary education as a fundamental right. The dictum of this Court then led to 86th constitutional amendment by Amendment Act of 2002 wherein Article 21-A was introduced placing a clear obligation on the State to provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may by law determine. The judgments of the Court and the constitutional law introduced a new dimension to the right of the children to receive education. To achieve this object, the State had to introduce various incentives and

policies to invite the private sector into the field of dispensation of education. This obviously, led to certain liberalization in the field of private sector dealing with the different levels of education. All the schools, which then came up, had to be recognized by the competent authority and they had to work under the regulatory measures declared by the State but in accordance with law. The private sector could be dissected into two sectors – aided and non-aided schools. The aided schools could further be divided into two sections – minority institutions receiving grant in aid and, non-minority institutions receiving grant-in-aid.

49. As is evident from the above narrated principles, the Government does not enjoy identical control over the management of the schools belonging to the minority and/or majority schools. In view of the above ground reality and amendment in law, Article 30(2) provides a definite protection to the minority institutions that they would not be discriminated against providing of grant-in-aid. This aspect is further dealt with some clarity in Chapter VI relating to grant-in-aid under the provisions of the DSE Rules, 1973. In terms of Rule 60, every aided school will continue to get the aid subject to the provisions of the DSE Rules. Rule 64 of DSE Rules contemplates that aid to be given upon furnishing of suitable undertaking by the managing committee. The grant-in-aid, then, would be given only upon satisfaction of the conditions stipulated in Rule 65. Second proviso to Rule 10 requires that *wherever a linguistic minority school decides to impart education in a language other than the language of such linguistic minority, in that event the Administrator shall not be under any obligation to give grant-in-aid to such schools.* In other words, a school run by linguistic minority would be entitled to receive grant-in-aid if it is imparting education in the language of the minority, of course, by satisfying other stated conditions. The right to receive grant thus has to be accepted as a legitimate right in contra-distinction or opposed to legal right to get recognition including the case of a minority

institution. This principle has been reiterated by this Court in catena of judgments including the judgments referred by us above. The logical impact of Article 30(2) read with the provisions of the DSE Act and the Rules framed thereunder is that, to receive grant-in-aid is a legitimate right of a school subject to satisfying the requirements of law. Article 30(2) thus, has been worded in a negative language not permitting the State to discriminate the minority institution in relation to the matters of grant-in-aid.

50. Article 15(5) of the Constitution excludes the minority educational institutions from the power of the State to make any provision by law for the advancement of any socially and educationally backward classes of the citizens or for Scheduled Castes and Scheduled Tribes in relation to their admission to educational institutions including private educational institutions whether aided or unaided. This Article is capable of very wide interpretation and vests the State with power of wide magnitude to achieve the purpose stated in the Article. But, the framers of the Constitution have specifically excluded minority educational institutions from operation of this clause. Article 16 which ensures equality of opportunity in matters of public employment again has been worded so as to prohibit discrimination and, at the same time, vests the State with power to make provisions, laws and reservations in relation to a particular class or classes of persons. It is of some significance to notice that power of the State to exercise such power is in relation to the 'service under the State'. This expression has been used in all the clauses of the Article which relates to providing of employment and framing of laws/reservations in those categories. Upon its true construction, this expression itself is capable of a wide construction and must be construed liberally and cannot be restricted to its narrow sense. The expression 'service under the State' would obviously include service directly under the State Government or its instrumentalities and/or even the sectors which can be termed as a State within the meaning of Article 12 of the Constitution.

Once an organization or society falls outside the ambit of this circumference, in that event, it will be difficult for the Courts to hold that the State has a right to frame such laws or provisions or make reservations in the field of employment of those societies.

51. The interpretation of the word 'State' really does not require any deliberation as this aspect is no more *res-integra* and has been settled by the law stated in the case of *Ajay Hasia v. Khalid Mujib Sehravardi* [(1981) 1 SCC 722], where this Court spelt out the test that would be applicable in determining whether a Corporation or a Government Company or a private body is an instrumentality or agency of the State. Primarily, there are different type of controls, which can be exercised by the State over any other authority, society, organization or private body to bring it within the ambit of the expression 'State' or 'other authority' appearing in Article 12 of the Constitution. These are financial control, managerial and administrative control and functional control. To put it differently, what is the administrative control that the Government exercises upon such a body, whether functions of that body are governmental functions or closely related thereto, quantum of State control, volume of financial assistances, character and structure of the body and cumulative effect of these factors etc. This has been followed consistently in the case of *Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies* (Urban) [(2005) 5 SCC 632] and in a very recent judgment in the case of *State of U.P. v. Radhey Shyam Rai* [(2009) 5 SCC 577], wherein this Court held that Uttar Pradesh Ganna Kishan Sansthan (Sansthan) is a State because these criteria were satisfied and even the State could take over the functions of the Sansthan. Unless all these three aspects are established or they are stated to be satisfied, it will not be permissible to term that society, organization or body as a 'State'.

52. There is no doubt, that there may be minority institutions which are receiving grant-in-aid from the

Government. But, merely receiving grant-in-aid per se would not make such school or institution 'State' within the meaning of Article 12 of the Constitution of India. Even this aspect we need not discuss in any great detail as the question stands settled by the judgment of this Court in the case of *V.K. Sodhi* (supra), wherein this Court has dealt with the question whether State Council of Education, Research and Training is not State or other authority within the meaning of Article 12. The Court returned the finding that though the finances were being provided by the State, the State Government does not have deep and pervasive control over the working of the Council and it was an independent society and thus, is not a State. The Court held as under :

> "**11**. The two elements, one, of a function of the State, namely, the coordinating of education and the other, of the Council being dependant on the funding by the State, satisfied two of the tests indicated by the decisions of this Court. But, at the same time, from that alone it could not be assumed that SCERT is a State. It has to be noted that though finance is made available by the State, in the matter of administration of that finance, the Council is supreme. The administration is also completely with the Council. There is no governmental interference or control either financially, functionally or administratively, in the working of the Council. These were the aspects taken note of in Chander Mohan Khanna (supra) to come to the conclusion that NCERT is not a State or other authority within the meaning of Article 12 of the Constitution of India. No doubt, in *Chander Mohan Khanna* (supra), the Bench noted that the fact that education was a State function could not make any difference. This part of the reasoning in *Chander Mohan Khanna* (supra) case has been specifically disapproved by the majority in *Pradeep Kumar Biswas* (supra). The majority noted that the objects of forming Indian Institute of Chemical Biology was with the view of entrusting it with a function that is fundamental to

the governance of the country and quoted with approval the following passage in *Rajasthan SEB v. Mohan Lal* [(1967) 3 S.C.R. 377]:

"The State, as defined in Article 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people.

The majority then stated:

"We are in respectful agreement with this statement of the law. The observations to the contrary in Chander Mohan Khanna v. NCERT relied on by the learned Attorney-General in this context, do not represent the correct legal position."

xxx xxx xxx xxx xxx

13. We also find substantial differences in the two set ups. *Sabhajit Tewary* (supra), after referring to the rules of the Council of Scientific and Industrial Research which was registered under the Societies Registration Act, concluded that it was not a State within the meaning of Article 12 of the Constitution. While overruling the said decision, the majority in *Pradeep Kumar Biswas* (supra) took the view that the dominant role played by the Government of India in the governing body and the ubiquitous control of the Government in the Council and the complete subjugation of the Governing Body to the will of the Central Government, the inability of the Council to lay down or change the terms and conditions of service of its employees and the inability to alter any bye-law without the approval of the Government of India and the owning by the Central Government of the assets and funds of the Council though normally owned by the society, all indicated that there was effective and pervasive control over the functioning of the Council and since it was also entrusted with a Governmental function, the justifiable conclusion was that it was a State within the

meaning of Article 12 of the Constitution. The majority also noticed that on a winding up of that Council, the entire assets were to vest in the Central Government and that was also a relevant indication. Their Lordships in the majority also specifically overruled as a legal principle that a Society registered under the Societies Registration Act or a company incorporated under the Companies Act, is by that reason alone excluded from the concept of State under Article 12 of the Constitution. In the case of SCERT, in addition to the operational autonomy of the Executive Committee, it could also amend its bye-laws subject to the provisions of the Delhi Societies Registration Act though with the previous concurrence of the Government of Delhi and that the proceedings of the Council are to be made available by the Secretary for inspection of the Registrar of Societies as per the provisions of the Societies Registration Act. The records and proceedings of the Council have also to be made available for inspection by the Registrar of Societies. In the case of dissolution of SCERT, the liabilities and assets are to be taken over at book value by the Government of Delhi which had to appoint a liquidator for completing the dissolution of the Body. The creditors' loans and other liabilities of SCERT shall have preference and bear a first charge on the assets of the Council at the time of dissolution. This is not an unconditional vesting of the assets on dissolution with the Government. It is also provided that the provisions of the Societies Registration Act, 1860 had to be complied with in the matter of filing list of office-bearers every year with the Registrar and the carrying out of the amendments in accordance with the procedure laid down in the Act of 1860 and the dissolution being in terms of Sections 13 and 14 of the Societies Registration Act, 1860 and making all the provisions of the Societies Registration Act applicable to the Society. These provisions, in our view, indicate that SCERT is subservient to the provisions of the Societies Registration Act rather than to the State Government and

that the intention was to keep SCERT as an independent body and the role of the State Government cannot be compared to that of the Central Government in the case of Council of Scientific and Industrial Research.

14. As we understand it, even going by paragraph 40 of the judgment in *Pradeep Kumar Biswas* (supra), which we have quoted above, we have to consider the cumulative effect of all the facts available in the case. So considered, we are inclined to hold that SCERT is not a State or other authority within the meaning of Article 12 of the Constitution of India. As we see it, the High Court has not independently discussed the relevant rules governing the functioning and administration of SCERT. It has proceeded on the basis that in the face of *Pradeep Kumar Biswas* (supra) decision, the decision in *Chander Mohan Khanna* (supra) must be taken to be overruled and no further discussion of the question is necessary. But, in our view, even going by *Pradeep Kumar Biswas* (supra), each case has to be considered with reference to the facts available for determining whether the body concerned is a State or other authority within the meaning of Article 12 of the Constitution of India. So considered, we find that the Government does not have deep and pervasive control over the working of SCERT. It does not have financial control in the sense that once the finances are made available to it, the administration of those finances is left to SCERT and there is no further governmental control. In this situation, we accept the submission on behalf of the appellants and hold that SCERT is not a State or other authority within the meaning of Article 12 of the Constitution of India. After all, the very formation of an independent society under the Societies Registration Act would also suggest that the intention was not to make the body a mere appendage of the State. We reverse the finding of the High Court on this aspect."

53. The principle above enunciated clearly shows that it is the cumulative effect of all the three essential features which would finally help in determining whether a society, body or an association is 'State' or not. We have referred to various provisions of the DSE Act, 1973 and particularly, the Rules framed thereunder. The DSE Rules specifically contemplate that the State Government will not have any strict control over the management of these institutions. Even the members, who are nominated by the Director of Education, would only have a right of limited participation with no right of voting. Rule 59(b)(iv), requires two other persons who are or have been teachers of any other school or college, to be nominated by the Advisory Board on the Managing Committee of a school. However, this clause shall not apply to a minority institution in terms of the proviso to the said Rule. The limited extent of control exercisable by the authorities is demonstrated in DSE Rules 44, 59 and 96(3A) & (3B). Every school is required, when it desires to establish a new school, to give intimation in writing to the Administrator or its office to establish such a school to specifically exempt the minorities' institutions from application of this detailed provision. In addition to this, the management of a minority school cannot be taken over by the authorities in terms of Section 20 of the DSE Act as the statute itself prohibits the application of Section 20 to such school in terms of Section 21 of the Act. Besides these statutory provisions and the scheme under the DSE Act, various judgments of this Court have also consistently taken the view that the State has no right of interference in the establishment, administration and management of a school run by linguistic minority except the power to regulate as specified.

54. The right to establish and administer includes a right to appoint teachers. Thus, except providing grant-in-aid as per the DSE Rules and having no power to discriminate in terms of Article 30(2) of the Constitution, the Government has a very limited regulatory control over the minority institutions and no control whatsoever on the managing committee, internal

management of the school and, of course, has no power to take over such an institution. This Court has also expressed the view in some judgments that in respect of minority or even minority institutions, steps can be taken even for closure of such institutions in the national interest which of course may be a rare exception. Once the State lacks basic power of jurisdiction to make special provisions and reservations in relation to minority institutions, which do not form part of service under the State, it will be difficult for the Court to hold that Rule 64(1)(b) can be enforced against aided minority institution. There are still other aspects which can usefully be examined to analyze this issue in a greater detail. In *T.M.A. Pai's case* (supra) the right to establish an institution is provided. The Court held that the right to establish an institution is provided in Article 19(1)(g) of the Constitution. Such right, however, is subject to reasonable restriction, which may be brought about in terms of clause (6) thereof. Further, that minority, whether based on religion or language, however, has a fundamental right to establish and administer educational institution of its own choice under Article 30(1).

55. The right under clause (1) of Article 30 is not absolute but subject to reasonable restrictions which, inter alia, may be framed having regard to the public interest and national interest of the country. Regulation can also be framed to prevent mal-administration as well as for laying down standards of education, teaching, maintenance of discipline, public order, health, morality etc. It is also well settled that a minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority education institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and, at the same time, would be required to admit a reasonable extent of non-minority students, to the extent, that the right in Article 30(1) is not substantially impaired and further, the citizen's right under Article 29 (2) is not infringed.

56. A minority institution may have its own procedure and method of admission as well as the selection of students but it has to be a fair and transparent method. The State has the power to frame regulations which are reasonable and do not impinge upon the basic character of the minority institutions. This Court, in some of the decisions, has taken the view that the width of the rights and limitations thereof of unaided institutions, whether run by a majority or by a minority, must conform to the maintenance of excellence and with a view to achieve the said goal indisputably, the regulations can be made by the State. It is also equally true that the right to administer does not amount to the right to mal-administer and the right is not free from regulations. The regulatory measures are necessary for ensuring orderly, efficient and sound administration. The regulatory measures can be laid down by the State in the administration of minority institutions. The right of the State is to be exercised primarily to prevent mal-administration and such regulations are permissible regulations. These regulations could relate to guidelines for the efficiency and excellence of educational standards, ensuring the security of the services of the teachers or other employees, framing rules and regulations governing the conditions of service of teachers and employees and their pay and allowances and prescribing course of study or syllabi of the nature of books etc. Some of the impermissible regulations are refusal to affiliation without sufficient reasons, such conditions as would completely destroy the autonomous status of the educational institution, by introduction of outside authority either directly or through its nominees in the Governing Body or the Managing Committee of minority institution to conduct its affairs etc. These have been illustrated by this Court in the Case of *State of Kerala v. Very Rev. Mother Provincial* [1970) 2 SCC 417, *All Saints High School v. Govt. of A.P.* [(1980) 2 SCC 478] and *T.M.A. Pai's case* (supra). Even in the *Kerala Education Bill, 1957 case* (supra), referred for opinion by the President under Article 143(1) of the Constitution, this Court while answering question No.2 emphasized upon the freedom and extent of protection

available to the minority institutions. Referring to the fact that Articles 29 and 30 are set out in Part-III of the Constitution, which guarantees fundamental rights, the text and margin notes of both the Articles show that their purpose is to confer those fundamental rights on certain sections of community, which constitute minority communities. The Court held that Article 30(1) cannot be limited and should equally operate in favour of educational institution, whether established pre or post the commencement of the Constitution. The Bench repelled the contention that by admission of an outsider, the minority institution will loose its character as such, and held:

> "To say that an institution which receives aid on account of its being a minority educational institution must not refuse to admit any member of any other community only on the grounds therein mentioned and then to say that as soon as such institution admits such an outsider it will cease to be a minority institution is tantamount to saying that minority institutions will not, as minority institutions, be entitled to any aid".

While admitting non-members, the institution does not shed its character or ceases to be a minority institution. The freedom of minority institutions was further explained by the Bench by saying that it is the choice of the minority institution, to establish such educational institutions as well serve both purposes that of conserving their religion, language or culture and also the purpose of giving a thorough good general education to their children. So, they could even impart education in their own language or in any other language, which choice essentially has to be left to the minority institution. The constitution itself uses the word 'choice' in Article 30(1), which indicates the extent of liberty and freedom, the framers of the Constitution intended to grant to the minority community. Thus, there arises no occasion for the Court to read restrictions into such freedom on the ground of policy. It may amount to intrusion into the very minority character and protection available to the community in

law. The right to frame regulations, therefore, is not itself an unregulated right. It has its own limitations and sphere within which such regulations would be framed and made operative.

57. It is not necessary for us to examine the extent of power to make regulations, which can be enforced against linguistic minority institutions, as we have already discussed the same in the earlier part of the judgment. No doubt, right conferred on minorities under Article 30 is only to ensure equality with the majority but, at the same time, what protection is available to them and what right is granted to them under Article 30 of the Constitution cannot be diluted or impaired on the pretext of framing of regulations in exercise of its statutory powers by the State. The permissible regulations, as afore-indicated, can always be framed and where there is a mal-administration or even where a minority linguistic or religious school is being run against the public or national interest, appropriate steps can be taken by the authorities including closure but in accordance with law. The minimum qualifications, experience, other criteria for making appointments etc are the matters which will fall squarely within the power of the State to frame regulations but power to veto or command that a particular person or class of persons ought to be appointed to the school failing which the grant-in-aid will be withdrawn, will apparently be a subject which would be arbitrary and unenforceable. Even in *T.M.A. Pai's case* (supra), which view was reiterated by this Court in the case of Secy. *Malankara Syrian Catholic College* (supra), it was held that the conditions for proper utilization of the aid by the educational institution was a matter within the empowerment of the State to frame regulations but without abridging or diluting the right to establish and administer educational institutions. In that case, while dealing with the appointment of a person as Principal, the Court clearly stated the dictum that the freedom to choose the person to be appointed as Principal has always been recognized as a vital facet to right to administer the educational institution. It being an important part of the administration and even if the institution is aided, there can be

no interference with the said right. The power to frame regulations and control the management is subject to another restriction which was reiterated by the Court in *P.A. Inamdar's case* (supra) stating that it is necessary that the objective of establishing the institution was not defeated.

58. At last, what is the purpose of granting protection or privilege to the minorities in terms of Article 29, and at the same time, applying negative language in Article 30(2) in relation to State action for releasing grant-in-aid, as well as the provisions of DSE Act, 1973 and the rules framed thereunder? It is obvious that the constitutional intent is to bring the minorities at parity or equality with the majority as well as give them right to establish, administer and run minority educational institutions. With the primary object of Article 21A of the Constitution in mind, the State was expected to expand its policy as well as methodology for imparting education. DSE Act, as we have already noticed, was enacted primarily for the purpose of better organization and development of school education in the Union Territory of Delhi and for matters connected therewith or incidental thereto. Thus, the very object and propose of this enactment was to improve the standard as well as management of school education. It will be too far fetched to read into this object that the law was intended to make inroads into character and privileges of the minority. Besides, in the given facts and circumstances of the case, the Court is also duty bound to advance the cause or the purpose for which the law is enacted. Different laws relating to these fields, thus, must be read harmoniously, construed purposively and implemented to further advancement of the objects, sought to be achieved by such collective implementation of law. While, you keep the rule of purposive interpretation in mind, you also further add such substantive or ancillary matters which would advance the purpose of the enactment still further.To sum up, we will term it as 'doctrine of purposive advancement'. The power to regulate, undisputedly, is not unlimited. It has more restriction than freedom particularly, in relation to the

management of linguistic minority institutions. The rules, which were expected to be framed in terms of Section 28 of the DSE Act, were for the purpose of carrying out the provisions of the Act. Even, otherwise, it is a settled principle of law that Rules must fall within the ambit and scope of the principal legislation. Section 21 is sufficiently indicative of the inbuilt restrictions that the framers of the law intended to impose upon the State while exercising its power in relation to a linguistic minority school.

59. To appoint a teacher is part of the regular administration and management of the School. Of course, what should be the qualification or eligibility criteria for a teacher to be appointed can be defined and, in fact, has been defined by the Government of N.C.T. of Delhi and within that specified parameters, the right of the linguistic minority institution to appoint a teacher cannot be interfered with. The paramount feature of the above laws was to bring efficiency and excellence in the field of school education and, therefore, it is expected of the minority institutions to select the best teacher to the faculty. To provide and enforce the any regulation, which will practically defeat this purpose would have to be avoided. A linguistic minority is entitled to conserve its language and culture by a constitutional mandate. Thus, it must select people who satisfy the prescribed criteria, qualification and eligibility and at the same time ensure better cultural and linguistic compatibility to the minority institution. At this stage, at the cost of repetition, we may again refer to the judgment of this Court in *T.M.A. Pai's case* (supra), where in para 123, the Court specifically noticed that while it was permissible for the State and its educational authorities to prescribe qualifications of a teacher, once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of the teachers. Further, the Court specifically noticed the view recorded by Khanna, J. in reference to *Kerala Education Bill, 1957 case* (supra), and to clauses 11 and 12 of the Bill in particular, where the learned Judge had declared that, it is the law declared by the Supreme

Court in subsequently contested cases as opposed to the Presidential reference, which would have a binding effect and said:

> "**123**……The words 'as at present advised' as well as the preceding sentence indicate the view expressed by this Court in relation to *Kerala Education Bill, 1957,* in this respect was hesitant and tentative and not a final view in the matter."

What the Court had expressed in para 123 above, appears to have found favour with the Bench dealing with the case of T.M.A. Pai (supra). In any case, nothing to the contrary was observed or held in the subsequent judgment by the larger Bench.

60. The concept of equality stated under Article 30(2) has to be read in conjunction with the protection under Article 29 and thus it must then be given effect to achieve excellence in the field of education. Providing of grant-in-aid, which travels from Article 30(2) to the provisions of the DSE Act and Chapter VI of the Rules framed thereunder, is again to be used for the same purpose, subject to regulations which themselves must fall within the permissible legislative competence. The purpose of grant-in-aid cannot be construed so as to destroy, impair or even dilute the very character of the linguistic minority institutions. All these powers must ultimately, stand in comity to the provisions of the Constitution, which is the paramount law. The Court will have to strike the balance between different facets relating to grant-in-aid, right to education being the fundamental right, protection available to religious or linguistic minorities under the Constitution and the primary object to improve and provide efficiency and excellence in school education. In our considered view, it will not be permissible to infringe the constitutional protection in exercise of State policy or by a subordinate legislation to frame such rules which will impinge upon the character or in any way substantially dilute the right of the minority to administer and manage affairs of its

school. Even though in the case of Mohinder Kaur (supra), the Bench of this Court held that upon restoration of the minority character of the institution, the provisions of the Act and the rules framed thereunder would cease to apply to a minority institution. We still would not go that far and would preferably follow the view expressed by larger Bench of this Court in *T.M.A. Pai's case* (supra) and even rely upon other subsequent judgments, which have taken the view that the State has the right to frame such regulations which will achieve the object of the Act. Even if it is assumed that there is no complete eclipse of the DSE Act in the Rules in the case of minority institutions, still Rule 64(1)(b), if enforced, would adversely effect and dilute the right and protection available to the minority school under the Constitution.

61. Now, we will revert back to the facts of the present case. There is no dispute to the fact that the appellant-school is a linguistic minority institution and has been running as such for a considerable time. Admittedly, it was receiving grant-in-aid for all this period. Its minority status was duly accepted and declared by the judgment of the Delhi High Court in the case of this very institution and which has attained finality. In this very judgment, the Court also held that certain provisions of DSE Rules, 1973 would not apply to this minority school. Thereafter, vide letter dated 12th March, 1985, the Managing Committee was required to give an undertaking that it would make reservation in service for Scheduled Castes and Schedule Tribes, to which the school had replied relying upon the judgment of the Delhi High Court in its own case. However, vide letter dated 21st March, 1986, Secretary (Education), Government of N.C.T., Delhi had informed the appellants that the circular requiring Government aided schools to comply with the provisions relating to reservation was not applicable to the minority institutions. In face of the judgment of the Court, such a requirement was not carried out by the appellant-school and the controversy was put at rest vide letter dated 21st March, 1986 and the institution continued to receive the grant-in-aid.

However, in September, 1989, again, a letter was addressed to all the government aided schools including the appellant stating that it was a precondition for all agencies receiving grant-in-aid, not only to enforce the requirement of providing reservation in the posts but even not to make any regular appointments in the general category till the vacancies in the reserved category were filled up. This was challenged before the High Court. At the very outset, we may notice that we entirely do not approve the view expressed by the learned Single Judge of the Delhi High Court in the case of *Sumanjit Kaur* (supra) insofar as it held that the regulation would be unconstitutional since they are likely to interfere with the choice of the medium of instruction as well as minority character of the institution by compelling the appointments to the teaching faculty of the persons, who may be inimical towards the minority community.

62. We are of the considered view that the learned Single Judge as well as the Division Bench erred in law in stating the above proposition as it is *contra-legam*. The Preamble of our Constitution requires the people of India to constitute into a 'Sovereign Socialist Secular Democratic Republic'. Secularism, therefore, is the essence of our democratic system. Secularism and brotherhoodness is a golden thread that runs into the entire constitutional scheme formulated by the framers of the Constitution. The view of the learned Single Judge and the Division Bench in the case of *Sumanjit Kaur* (supra), runs contra to the enunciated law. We are afraid that while deciding a constitutional matter in accordance with law, the Court would not be competent to raise a presumption of inimical attitude of and towards one community or the other. We do not approve the view of the High Court that a provision of an Act or a Circular issued thereunder could be declared as unconstitutional on such presumptuous ground. However, to the extent that it may interfere with the choice of medium of instructions as well as minority character of the institution to some extent is a finding recorded in accordance with law. The Division Bench while entertaining the appeal against the

judgment of the learned Single Judge, had primarily concentrated on the point that the selection of the teacher was valid and not violative of the Rules and accepted the findings recorded by the learned Single Judge, resulting in grant of relief to the appellants. Further, in our considered view and for the reasons afore-recorded, the judgment of the Division Bench in the present case while dismissing the writ petition filed by the appellants before that Court cannot be sustained in law. Further, in the judgment under appeal the Division Bench was right in not accepting the reason given by the learned Single Judge founded on other persons being inimical towards minority. It was expected of the Division Bench to critically analyze other reasons given by the learned Single Judge in the case of *Sumanjit Kaur* (supra), which had been followed in the present case. We could have had the benefit of the independent view of the Division Bench as well. Reasoning is considered as the soul of the judgment. The Bench referred to the fact that the view in the Kerala Education Bill, 1957 case (supra) was tentative but still erred in ignoring paragraph 123 of the *T.M.A. Pai's case* (supra) as well as the other judgments referred by us, presumably, as they might not have been brought to the notice of the Bench. The discussion does not analyze the various principles enunciated in regard to the protection available to the linguistic minorities under Article 29 of the Constitution and the result of principle of equality introduced by Article 30(2) of the Constitution. For the detailed reasons recorded in this judgment, we are unable to persuade ourselves to accept the view of the Division Bench in the Judgment under appeal.

63. A linguistic minority has constitution and character of its own. A provision of law or a Circular, which would be enforced against the general class, may not be enforceable with the same rigors against the minority institution, particularly where it relates to establishment and management of the school. It has been held that founders of the minority institution have faith and confidence in their own committee or body

consisting of the persons selected by them. Thus, they could choose their managing committee as well as they have a right to choose its teachers. Minority institutions have some kind of autonomy in their administration. This would entail the right to administer effectively and to manage and conduct the affairs of the institution. There is a fine distinction between a restriction on the right of administration and a regulation prescribing the manner of administration. What should be prevented is the mal-administration. Just as regulatory measures are necessary for maintaining the educational character and content of the minority institutions, similarly, regulatory measures are necessary for ensuring orderly, efficient and sound administration. Every linguistic minority may have its own socio, economic and cultural limitations. It has a constitutional right to conserve such culture and language. Thus, it would have a right to choose teachers, who possess the eligibility and qualifications, as provided, without really being impressed by the fact of their religion and community. Its own limitations may not permit, for cultural, economic or other good reasons, to induct teachers from a particular class or community. The direction, as contemplated under Rule 64(1)(b), could be enforced against the general or majority category of the Government aided school but, it may not be appropriate to enforce such condition against linguistic minority schools. This may amount to interference with their right of choice and, at the same time, may dilute their character of linguistic minority. It would be impermissible in law to bring such actions under the cover of equality which in fact, would diminish the very essence of their character or status. Linguistic and cultural compatibility can be legitimately claimed as one of the desirable features of a linguistic minority in relation to selection of eligible and qualified teachers.

64. A linguistic minority institution is entitled to the protection and the right of equality enshrined in the provisions of the Constitution. The power is vested in the State to frame regulations, with an object to ensure better organization and

development of school education and matters incidental thereto. Such power must operate within its limitation while ensuring that it does not, in any way, dilute or impairs the basic character of linguistic minority. Its right to establish and administer has to be construed liberally to bring it in alignment with the constitutional protections available to such communities. The minority society can hardly be compelled to perform acts or deeds which *per se* would tantamount to infringement of its right to manage and control. In fact, it would tantamount to imposing impermissible restriction. A school which has been established and granted status of a linguistic minority for years, it will not be proper to stop its grant-in-aid for the reason that it has failed to comply with a condition or restriction which is impermissible in law, particularly, when the teacher appointed or proposed to be appointed by such institution satisfy the laid down criteria and/or eligibility conditions. The minority has an inbuilt right to appoint persons, which in its opinion are better culturally and linguistically compatible to the institution.

65. To frame policy is the domain of the Government. If, as a matter of policy, the Government has decided to implement the reservation policy for upliftment of the socially or otherwise backward classes, then essentially it must do so within the frame work of the Constitution and the laws. The concept of reservation has been provided, primarily, under Article 16 of the Constitution. Therefore, it would be the requirement of law that such policies are framed and enforced within the four corners of law and to achieve the laudable cause of upliftment of a particular section of the society. In regard to the ambit and scope of reservation, this Court in the case of *M. Nagaraj v. Union of India* [(2006) 8 SCC 212] held as under :-

> **"39.** Reservation as a concept is very wide. Different people understand reservation to mean different things. One view of reservation as a generic concept is that reservation is an anti-poverty measure. There is a different

view which says that reservation is merely providing a right of access and that it is not a right to redressal. Similarly, affirmative action as a generic concept has a different connotation. Some say that reservation is not a part of affirmative action whereas others say that it is a part of affirmative action.

40. Our Constitution has, however, incorporated the word "reservation" in Article 16(4) which word is not there in Article 15(4). Therefore, the word "reservation" as a subject of Article 16(4) is different from the word S"reservation" as a general concept.

41. Applying the above test, we have to consider the word "reservation" in the context of Article 16(4) and it is in that context that Article 335 of the Constitution which provides for relaxation of the standards of evaluation has to be seen. We have to go by what the Constitution-framers intended originally and not by general concepts or principles. Therefore, schematic interpretation of the Constitution has to be applied and this is the basis of the working test evolved by Chandrachud, J. in the *Election case*[14]."

66. Thus, the framework of reservation policy should be such, as to fit in within the constitutional scheme of our democracy. As and when the Government changes its policy decision, it is expected to give valid reasons and act in the larger interest of the entire community rather than a section thereof. In its wisdom and apparently in accordance with law Government had taken a policy decision and issued the circular dated 21st March, 1986 exempting the minority institutions from complying with the requirements of the Rule 64(1)(b) of the DSE Rules. Despite this and judgment of the High Court there was a change of mind by the State that resulted in issuance of the subsequent circular of September, 1989. From the record before us, no reasons have been recorded in support of the decision superseding the circular dated 21st March, 1986. It is a settled canon of administrative jurisprudence that state action, must be supported by some valid reasons and should be upon due application of mind. In the affidavits filed on behalf of the State, nothing in this regard could be pointed out and in fact, none was pointed out during the course of arguments. Absence of reasoning and apparent non-application of mind would give colour of arbitrariness to the state action. This aspect attains greater lucidity in light of the well accepted norm that minority institution cannot stand on the same footing as a non-minority institution.

67. Besides that, State actions should be *actio quaelibet it sua via* and every discharge of its duties, functions and governance should also be within the constitutional framework. This principle equally applies to the Government while acting in the field of reservation as well. It would not be possible for the Courts to permit the State to impinge upon or violate directly or indirectly the constitutional rights and protections granted to various classes including the minorities. Thus, the State may not be well within its constitutional duty to compel the linguistic minority institution to accept a policy decision, enforcement of which will infringe their fundamental right and/or protection. On the contrary, the minority can validly question such a decision of the State in law. The service in an aided linguistic minority school cannot be construed as 'a service under the State' even with the aid of Article 12 of the Constitution. Resultantly, we have no hesitation in coming to the conclusion that Rule 64(1)(b) cannot be enforced against the linguistic minority school. Having answered this question in favour of the appellant and against the State, we do not consider it necessary to go into the constitutional validity or otherwise of Rule 64(1)(b) of the Rules, which question we leave open.

68. For the reasons afore-stated, we allow the appeal and hold that Rule 64(1)(b) and the circular of September, 1989, are not enforceable against the linguistic minority school in the NCT of Delhi. There shall be no order as to costs.

R.P. Appeal allowed.

DHARNIDHAR

v.

STATE OF U.P.

(Criminal Appeal No. 239 of 2005)

JULY 8, 2010

[DR. B.S. CHAUHAN AND SWATANTER KUMAR, JJ.]

Penal Code, 1860:

ss.302/34 and 302/149 – Murders of father and son at two different places – Conviction by trial court affirmed by High Court – HELD: Courts below rightly convicted and sentenced four accused u/s 302/34 for murder of the son – Thereafter as all the four accused went to kill the father and there the fifth accused joined them and took active part in committing the second murder, courts below rightly convicted and sentenced all the five accused u/s 302/149.

ss.34 and 149 – Ingredients and applicability of – Explained.

Criminal Law:

Motive – Relevance of – Explained.

Evidence:

Interested witness – Connotation of – Explained – HELD: The family members of the two deceased being present at the respective places of occurrence and having seen the incidents of murders of their brother and father, it was but natural for the prosecution to produce them as the main eye-witnesses – Their evidence stands corroborated by medical evidence – Both the courts below rightly believed them – Penal Code, 1860 – ss.302/34 and 302/149.

Code of Criminal Procedure, 1973:

s.313 - Power of court to examine accused – Object of – Explained – Penal Code, 1860 – ss.302/34 and 302/149.

The five appellants were prosecuted for murders of the brother and the father of the complainant (PW-1). The prosecution case was that four of the accused (except accused DD) armed with guns and spear reached the place where 'BS', the brother of PW-1, had gone to sharpen his gandasa. Accused 'SD' inflicted a spear blow on the shoulder of 'BS' and thereafter the remaining three accused fired at him with their respective guns, resulting in his death at the spot. Then the four accused went to the fields where 'PL', the father of PW-1 was irrigating his bajra crop. There the accused 'DD' also joined them. Three of the accused who were armed with guns fired at 'PL', who fell down. Accused 'DD' cut the neck of 'PL' with a 'Kulhadi'. The trial court convicted four accused, *inter ala,* u/s 302/34 IPC as regards the murder of 'BS' and all the five accused, *inter alia,* u/s 302/149 for the murder of 'PL'. Their appeals were dismissed by the High Court.

It was contended for the appellants that (i) the alleged eyewitnesses being the family members, were interested witnesses and, as such, the conviction based on their evidence was liable to be set aside; (ii) the prosecution failed to prove motive for the crime; (iii) the evidence of the doctor (PW-6) who conducted the autopsies and that of PW-2 who claimed to have been present at both the places of occurrences, raised serious doubts and, therefore, the courts below should have held that the prosecution failed to prove its case beyond doubt; and (iv) that both the courts below fell in error of law in convicting accused 'RS', 'BD' and 'SD' with the aid of s.34 IPC and accused 'DD' with the aid of s.149 IPC, as in the facts and circumstances of the case, ingredients of the respective provisions were not satisfied by the prosecution.

Dismissing the appeals, the Court

HELD: 1.1. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes, and deposes before the court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown over-board, but has to be examined carefully before accepting the same. In the light of the judgments, it is clear that the statements of the alleged interested witnesses can be safely relied upon by the court in support of the prosecution story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons, who are closely related to the deceased. When their statements find corroboration by other witnesses, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, then there is no reason why the statement of so called 'interested witnesses' cannot be relied upon by the Court. [para 9] [193-A-E]

1.2. In the instant case, there is no doubt that PW1 and PW2, both are related to the deceased who were attacked by the accused in their presence but they could not intervene and save the victims because of the fear of the guns and the manner in which the incident occurred. It was but natural for the prosecution to produce PW1 and PW2 as the main eye witnesses as they had actually seen the occurrence. They have been believed by the trial Court, as well as by the High Court. Even before this Court, no serious attempt has been made and in fact, nothing appears from the record to show that these two witnesses were not present on the site. No error can be found in the concurrent findings of fact recorded by the trial court, as well as by the High Court that these two

witnesses were present at the respective places and had actually seen the occurrence. Their statements about gun fires, as well as the injuries caused by the 'kulhardi' and spear respectively are duly supported by the medical evidence, as well as by the statements of the investigating officer. [para 8-9] [193-E-F; 191-F-H; 193-F]

Jayabalan v. U.T. of Pondicherry **2009 (15) SCR 736 = (2010)1 SCC 199;** and *Ram Bharosey v. State of U.P.* **2009 (15) SCR 947 = AIR 2010 SC 917 - relied on.**

2.1 As regards the motive, it has come on record that the father of appellant 'RS' was murdered, for which 'BS' (deceased in the instant case) was prosecuted. Deceased 'PL', father of 'BS', was doing *pairvi* on behalf of and along with 'BS' in which he was finally acquitted. The evidence of PWs1 to 3 indicates that the relations between the two families were quite strained. The way the crime has been committed clearly indicates that the family of 'RS' would have been unhappy with the acquittal of 'BS' in that murder case. This itself indicates some kind of motive for committing the crime in question. However, it is not always necessary for the prosecution to establish a definite motive for the commission of the crime. It will always be relatable to the facts and circumstances of a given case. However, in cases which are entirely or mainly based upon and rest on circumstantial evidence, motive can have greater relevancy or significance. [para 10-11] [194-A-D; 195-H; 196-A]

Babu Lodhi vs. State of U.P. **(1987) 2 SCC 352;** *Prem Kumar vs. State of Bihar* **1995 (2) SCR 455 = (1995) 3 SCC 228;** and *State of Punjab vs. Kuljit Singh* **2003 (2) RCR (Criminal) 629 – relied on.**

2.2 Significance of relevancy of motive would primarily depend upon the facts and circumstances of a given case. In the case in hand, there are eye witnesses

whose version is supported by expert and other evidence. Their statements find corroboration and, in fact, they completely fit in with the case put forward by the prosecution and there is hardly any occasion for the Court to doubt the version of the prosecution. [para 11] [196-B-D]

3.1 As regards some variations or doubts in the statements of the doctor and the eye witnesses, it is significant to note that the witnesses have been examined in the court after a considerable lapse of time. It is neither unnatural nor unexpected that there could be some minor variations in the statements of the prosecution witnesses. The statement of PW2 on which heavy reliance was placed by the appellant, does not really, in any way, vitiate the case of the prosecution which is aptly supported by the statements of PW1 and PW6 (doctor) and the statements of other witnesses. PW 6 has clearly stated that the dead bodies of the deceased contained the injuries of gun fire as well as that of 'kulhari' and spear. This witness was cross examined at some length, but nothing favourable to the accused could come on record. Thus, the medical evidence fully corroborates the statements of PW1 and PW3. Even if the statement of PW-2 is ignored, there is no reason whatsoever to doubt the version given by PW-1 and PW-3, whose presence at the site was natural. [para 12-13] [196-F-H; 197-A-C; 198-D-E]

3.2 Besides, it must be noticed that upon the statement of accused 'SD', the spear (Ext. Ka 1) was recovered in presence of PW 7 who corroborated the evidence of PW 9. The spear was sent for chemical and serological examination, and the report showed that it contained human blood. Thus, the involvement of accused 'SD' along with other accused persons, the recovery of the weapons and the report of the chemical

examiner completes the chain of events relating to the commission of the crime. [para 13] [198-E-H]

4.1. As regards the allegedly unnatural conduct attributed to the accused, in leaving the brother of deceased 'BS' who was right in front of them at the place of first occurrence, and rather going to the other site to kill 'PL', the father of deceased' BS', there is specific evidence on record which has been noticed by the High Court as well as the trial court that 'BS' was prosecuted for the murder of father of accused 'RS' and was acquitted. The case was contested by 'PL', the father of 'BS'. There is some motive apparent for commission of the crime, which further indicates in the light of this evidence that they preferred to kill 'BS' and his father. This cannot be said to be a conduct unnatural or of such a nature that it is not normally expected of a person intending to commit a crime. [para 13] [199-C-F]

4.2. PW-3, the son of the deceased 'PL', in his examination-in-chief, has specifically deposed that he was an eye-witness only to the murder of 'PL', his father and never referred to the murder of his brother, 'BS'. The truthfulness and bona fide of this witness can hardly be doubted. He has further deposed that accused 'DD' had not come with other accused but had suddenly entered there and snatched the 'kulhadi' from his father, and with that 'kulhadi', he caused injury on the neck of deceased 'PL'. His statement is fully supported by PW1, as well as the Investigating Officer. [para 14] [199-G-H; 200-A-C]

4.3. The trial court rightly rejected the defence plea to draw adverse inference for non-examination of one 'J' by the prosecution, who was stated to be present and was the only independent witness. The prosecution has filed an affidavit that the said witness had been won over by the accused and thus he was not examined. [para 14] [200-D-F]

Mst. Balbir Kaur vs. State of Punjab **1997 Crl.L.J. 273 – relied on.**

5.1. It is significant to note that when the accused were being examined u/s 313 Cr.P.C., they barely denied the incident and stated that there were land disputes and that they were falsely implicated. No evidence in that behalf had been adduced by the accused persons. Even if this statement is assumed to be correct, now the accused cannot turn their back and deny the existence of dispute between the parties. This would further be one of the links in the chain completing the crime. It is a settled principle of law that the statement made by an accused u/s 313 Cr.P.C. can be used by the court to the extent it is in line with the prosecution case. However, the same cannot be the sole basis for convicting an accused. [para 16] [201-B-E]

5.2. The legislative intent behind s.313 Cr.PC appears to have twin objects: firstly, to provide an opportunity to the accused to explain the circumstances appearing against him and, secondly, for the court to have an opportunity to examine the accused and to elicit an explanation from him, which may be free from the fear of being trapped for an embarrassing admission or statement. It is for the accused to avail of that opportunity and if he fails to do so then it is for the court to examine the case of the prosecution on its evidence with reference to the statement made by the accused u/s 313 Cr.P.C. The possibility of the accused being falsely implicated in the instant case, stands ruled out. The statement of the witnesses, read in conjunction with the documents filed on record, the expert evidence, recovery of weapons and blood stained earth, clearly establishes beyond reasonable doubt, the guilt of the accused. [para 16-17] [201-F-H; 202-A-B; 203-E-F]

Hate Singh Bhagat Singh vs. State of Madhya Bharat

AIR1953 SC 468; and *Narayan Singh vs. State of Punjab* **(1963) 3 SCR 678 – referred to.**

6.1 As far as involvement of the accused persons concerned in the commission of crime in terms of s. 34 IPC is concerned, it is obvious that a criminal act was committed by them in furtherance of a common intention, and each of them was liable to be prosecuted for the same, once they had murdered 'BS'. Section 34, involves vicarious liability and, therefore, if intention is proved but no overt act is committed, the section can still be invoked. It is not mandatory for the prosecution to bring direct evidence of common intention on record and this depends on the facts and circumstances of the case. The intention could develop even during the course of occurrence. In the instant case, all the 4 accused had gone together armed with three guns and one spear and after shouting, making their minds clear, fired at 'BS' causing gun injuries and spear injury to the victim. The medical evidence is clear that these injuries could be caused by gun, spear and kulhadi. The attendant circumstances fully support the case of the prosecution. [para 18-19] [204-D; 205-G-H; 206-A-E]

Surendra Chauhan vs. State of Madhya Pradesh **2000 (2) SCR 515 = AIR 2000 SC 1436;** *Ramaswamy Ayhangar vs. State of Tamil Nadu* **(1976) 3 SCC 779;** and *Rajesh Govind Jagesh vs. State of Maharashtra* **1999 (4) Suppl. SCR 277 = (1999) 8 SCC 428 – relied on.**

6.2 As regards the offence u/s 302/149 IPC, the crucial question to be determined in a case involving s.149 IPC is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects. For determination of the common object of the unlawful assembly, the conduct of each of the members of the said assembly before the attack, at the time of attack and thereafter, as well as the

motive for the crime are some of the relevant considerations. However, the time of forming an unlawful intent is not material and it can develop during the course of the incident at the spot *co instanti*. It is not even expected of the prosecution to detail particular or independent roles played by each accused once they are members of unlawful assembly and have assaulted the deceased, which resulted in his death. Every person of such an unlawful assembly, can be held to be liable. [para 19 and 22] [209-D-F; 207-A-B]

Sheo Prasad Bhore v. State of Assam **(2007) 3 SCC 120;** *Md. Ankoos vs. Public Prosecutor, High Court of A.P*. **2009 (15) SCR 616 = AIR 2010 SC 566;** *Pandurang Chandrakant Mhatre v. State of Maharashtra* **2009 (15) SCR 58 = (2009) 10 SCC 773;** *Masalti v. State of U.P.* **1964 (8) SCR 133;** and *Maranadu v. State by inspector of Police, Tamil Nadu* **(2008) 16 SCC 529 – relied on.**

6.3 In the instant case, it has been shown in the evidence that after committing the murder of 'BS', the four accused moved to the fields, where 'PL' was watering his *bajra* crop, after having clearly made up their minds and with a common object to kill him. Once they reached the spot, they were joined by the accused 'DD', who also participated in the commission of the crime and, in fact, played an active role by snatching the 'kulhadi' of the deceased and causing injury on his neck. The said injury and the gun injuries proved to be fatal, which ultimately resulted in the death of 'PL' on the spot. Thus, every one of them participated in the commission of the crime, besides the fact that they had a common object to kill 'PL'. [para 19 and 23] [209-G-H; 210-A; 206-B-C]

6.4 There is no legal or other infirmity in the judgment of the trial court, as well as that of the High Court in holding that the four accused, in the case of murder of 'BS', were guilty of the offence punishable u/s 302 read

with s. 34; furthermore, in the case of the deceased 'PL', all the five accused were guilty of the offence punishable u/s 302 read with s.149 IPC. [para 23] [210-B-C]

Case Law Reference:

2009 (15) SCR 736	**relied on**	**para 8**
2009 (15) SCR 947	**relied on**	**para 9**
(1987) 2 SCC 352	**relied on**	**para 10**
1995 (2) SCR 455	**relied on**	**para10**
2003 (2) RCR (Criminal) 629	**relied on**	**para 11**
1997 Crl.L.J. 273	**relied on**	**para 14**
AIR1953 SC 468	**referred to**	**para 16**
(1963) 3 SCR 678	**referred to**	**para 16**
2000 (2) SCR 515	**relied on**	**para 19**
(1976) 3 SCC 779	**relied on**	**para 19**
1999 (4) Suppl. SCR 277	**relied on**	**para 19**
(2007) 3 SCC 120	**relied on**	**para 19**
2009 (15) SCR 616	**relied on**	**para 20**
2009 (15) SCR 58	**relied on**	**para 21**
1964 (8) SCR 133	**relied on**	**para 22**
(2008) 16 SCC 529	**relied on**	**para 22**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 239 of 2005.

From the Judgment and Order dated 22.03.2004 of the High Court of Judicature at Allahabad in Criminal Appeal No. 1475 of 1992.

WITH

Criminal Appeal No. 429 of 2005

Criminal Appeal No. 430 of 2005

Shally Bhasin Maheshwari, Anne Mathew and Rishi Maheshwari for the Appellant.

Ratnakar Dash, Rajeev K. Dubey and Kamlendra Mishra for the Respondents.

The Judgment of the Court was delivered by

SWATANTER KUMAR, J. 1. The accused Ram Sanehi, Baladin, Ramadin, Shiv Dayal and Dharnidhar were tried for the murder of two persons differently, namely, Bahadur Singh and his father Pyare Lal in Sessions Trial No. 44 of 1989. The ld. Sessions Judge, Jhansi, vide its judgment dated 7th August, 1992 after finding all the accused guilty of different offences, including Section 302 of the Indian Penal Code (hereinafter referred to as "IPC") punished them. The order of punishment reads as under:

> "Accused Ram Sanehi, Ramadin, Baladin and Shiv Dayal are hereby sentenced to suffer life imprisonment under section 302/34, I.P.C. for committing murder of Bahadur Singh. They and accused Dharnidhar are also sentenced to life imprisonment under section 302/149, I.P.C. for committing murder of Pyare Lal. Accused Ram Sanehi, Ramadin, Baladin and Shiv Dayal are mentioned to the year's R.I. u/s 148 I.P.C. and accused Dharnidhar is sentenced to six month's R.I. u/s 147, I.P.C. All these sentences shall run concurrently.

2. All the accused preferred appeals against the judgment of conviction and order of sentence before the High Court which also came to be dismissed vide judgment dated March 22, 2004, wherein the High Court declined to interfere either with

the findings of conviction or order of sentence which consequently stood confirmed. Accused Dharnidhar filed Criminal Appeal No. 239 of 2005 against the judgment of the High Court, accused Ram Sanehi along with other accused filed an appeal being Criminal Appeal No. 429 of 2005 and Shiv Dayal preferred a separate appeal being Criminal Appeal No. 430 of 2005 against the judgment of the High Court. Thus, by this judgment we shall dispose of all the above three appeals as they are directed against the common judgment of the High Court and are based upon common evidence. The challenge to the judgment of the High Court and the Ld. Sessions Judge, *inter alia*, is primarily on the following grounds:

i) The alleged eye witnesses PW1 and PW3 are family members of the deceased and as such are interested witnesses. The conviction of the appellants is based, primarily, on the statements of these witnesses, which as such, is liable to be set aside.

ii) The prosecution has failed to prove any motive for the alleged commission of the crime. The appellants had no motive to commit the said crime and, therefore, the story put forward by the prosecution stands falsified.

iii) The evidence, including the evidence of Dr. P.N. Dwivedi (PW6) creates serious doubts in the case advanced by the prosecution. Particularly, when the Court had disbelieved Devi Singh, PW2, who is alleged to have been a witness to both the incidents, the Court ought to have come to the conclusion that the prosecution has failed to prove its case beyond any reasonable doubt. The conduct and role of the accused as attributed by the prosecution is not only improbable, but

is impossible to be believed. It is contended that why would the accused leave the brother of deceased Bahadur Singh, who was standing there at the time of his murder and go all the way to kill his father Pyare Lal. Seeing this, in the light of the documentary and ocular evidence, benefit of doubt ought to have been given to the appellants.

iv) The learned trial Court as well the High Court has fallen in error of law in convicting accused Ram Sanehi, Baladin, Ramadin and Shiv Dayal with the aid of Section 34 and accused Dharnidhar with the aid of Section 149 of the IPC respectively. In the facts and circumstances of the case, the basic ingredients for application of these provisions had not been satisfied by the prosecution. Thus, the conviction is vitiated in law.

3. On the contrary, learned counsel appearing for the respondent has vehemently argued that there was sufficient documentary and expert evidence on record. The version of the eye witnesses cannot be doubted, their presence on the site was natural and they had no reason to falsely implicate all or any of the accused in the murder of their brother and father. It is contended that the version of eye witnesses is fully supported by expert evidence and the statement of the Investigating Officer. Once the prosecution is able to fully corroborate the incident as recorded in the FIR, the judgment under appeal cannot be interfered with.

4. In order to examine the rival contentions raised in the present appeals, it will be necessary for us to refer to the facts appearing from the case of the prosecution.

5. On 19.11.1988 at about 6.15 P.M. one Deo Pal, who

was examined as PW1, had lodged the FIR in the Police Station at Kakkarwai stating that on the evening of 19.11.1988 at about 4.30 P.M., he along with his brother Devi Singh and one Kallu were sitting in the cattle shed of Jawahar, carpenter. He had gone to sharpen his sickle. After about 10 minutes, his brother Bahadur Singh (since deceased) came there to sharpen his gandasa. In the meanwhile, appellants Ram Sanehi, Baladin @ Balla, Shiv Dayal and Ramadin came there. Accused Shiv Dayal has a sphere and Ram Sanehi, Baladin and Ramadin had guns. Appellant Shiv Dayal inflicted sphere blow on the left shoulder of Bahadur Singh and thereafter, the three accused carrying guns fired from their respective guns. After receiving the bullet injuries, Bahadur Singh fell down and died. The witnesses, present there, were not able to save him because of the fear caused by the accused persons. After murdering Bahadur Singh, Ram Sanehi said that they had killed him and his father Pyare Lal should also be killed. Saying these words, the appellants proceeded towards the fields where Pyare Lal was watering his *bajara* crops. Deopal, Devi Singh and his wife Moola Bai were present in the field. At that time, appellant Dharnidhar also came there and joined the other appellants. Dharnidhar snatched the *kulhari* of Pyare Lal. Thereafter, the said three accused, who were carrying guns, fired on Pyare Lal. Sustaining the fire arm injuries, Pyare Lal fell down. Not satisfied with the same, Dharnidhar then cut his neck with *kulhari.* Deopal then raised an alarm and made a hue and cry. Several village persons rushed towards the spot but before they could reach, the appellants escaped and went towards the jungle. This incident took place at about 4.45p.m. PW1 reported the matter to the police station, as already noticed, and on the basis of the report, H.C. Shiv Charan prepared the report (Ext.Ka 27) made endorsement on the same at the G.D. report (Ext. Ka 28) and registered the case against all the appellants under Sections 147, 149, 302 and 149 of the I.P.C.

6. The case was initially investigated by Ram Autar Mathur

(PW 10) who went to the spot along with two constables but the investigation could not be completed because of paucity of light. Next morning the I.O. conducted inquest of the body of deceased Bahadur Singh and recovered one empty cartridge from the spot, collected blood stained and simple earth sample from the spot and prepared recovery memos. He also completed the investigation at the place of the murder of Pyare Lal. The dead bodies of Bahadur Singh and Pyare Lal were subjected to autopsy on 21.11.1988 by PW6, and he found the following injuries on the bodies of the deceased.

"Postmortem report of Bahadur Singh

Ante mortem injuries:-

(1) Gun shot wound of entry 2 ½ cm x 2 cm x thoracic cavity deep on the left nipple. Blackening present. Direction from front to back. Margins inverted.

(2) Gun shot wound of entry 1 cm x 0.75 cm x thoracic cavity deep on upper and medical portions of chest of right side, 2 cm below from medical margin of clavicle. Blackening present and direction from back to front and backwards. Margins inverted.

(3) Two gun shot wounds of exit measuring 1 cm x 0.75 cm diameter in an area of 2 cm on right lower portion of back of chest. Corresponding to injury no.2.

(4) Gun shot wound of entry 2 cm x 2 cm on left lower portion of back, 30 cm below from left shoulder joint, direction from left to right.

(5) Gun shot wound of entry 2 cm x 1 cm x muscle deep on epigastria portion of abdomen 18 cm above from umbilicus.

Direction front to back.

(6) Gun shot wound of entry 2 cm x 1 cm on the epigtastrian portion of abdomen, 1 cm above from injury no. 5, Direction from front to back.

(7) Contusion 4 cm x 3 cm on middle and front of forehead.

(8) Contusion 5 cm x 2 cm on middle and right side of back of chest, 4 cm away from mid line.

(9) Contusion 3 cm x 2 cm on lower and left side of back of chest.

(10) Incised wound 2 cm x 2 cm x muscle deep, 9 cm below from the left shoulder.

Internal examination showed that third and fourth ribs of left side and third rib of right side were fractured. Pleura was lacerated. Both lungs were lacerated. Thoracic cavity contained about 1 ½ liters of liquid blood. Peritoneal cavity contained about ½ liter of Liquid Blood. Stomach was lacerated and contained semi digested food material. Liver, gall bladder and spleen were lacerated, death was caused due to shock and hemorrhage resulting from ante mortem injuries.

The doctor recovered one cork and 21 metallic pellets from left lung and thoracic cavity. One cork and 12 metallic shots were recovered from right lung, liver and thoracic cavity. Two corks, 18 metallic shots were

recovered from spleen stomach and abdominal cavity.

Postmortem report of Pyare Lal

Ante mortem injuries:-

(1) Incised wound 8 cm x 3 cm x bone deep on right lower jaw. 4 cm below from angle of mouth right side.

(2) Incised wound 10 cm x 6 cm x bone deep on front portion of neck. Under lying bone of cervical vertebrae No. 3 fractured. Soft tissues and muscle cut.

(3) Gun shot wound of entry 3 cm x 2 cm x muscle deep on lower and front portion of left arm. Direction from left to right, 8 cm above from elbow joint. Blackening present. Margins inverted.

(4) Gun shot wound of exit 4 cm x 2 ½ cm on lower and front portion of left arm. Margins everted. Injury corresponding to injury no. 3.

(5) Gun shot wound of entry 2 cm x 2 cm x muscle deep on left exilla.

(6) Gun shot wound of entry 2 ½ cm x 1 ½ cm x thoracic cavity deep on left side of chest 11 cm below from left axilla. Blackening present, direction from left to right, Margins inverted.

(7) Gun shot wound to exit five in number, smallest being ½ cm 2 x ½ cm and largest being 0.75 cm x ½ in an area of 12 cm x 6 cm on right portion of chest, 10 cm below from axilla right side and 18 cm above from

right anterior supra iliac spines, Injury corresponded to injury no. 6.

(8) Gun shot wound of entry 1 cm x 1 cm x abdominal cavity deep on upper and left portion of abdomen, 10 cm above from umbilicus, Blackening present. Margins inverted. Directions from front to back.

(9) Abrasion 5 cm x 1 ½ cm on right lower front portion of thigh, 7 cm above from knee joint.

(10) Abrasion 2 cm x 2 cm on the rest of the middle finger of right hand.

Internal examination showed that brain was pulpy. Third cervical vertebrae was fractured. Pleura was lacerated. Larynx, trachea and bronchi were cut. Both lungs were lacerated. Neck was cut. Abdominal cavity contained about 200 ml liquid blood. Stomach was lacerated. Liver was partially lacerated. Cause of death was shock and hemorrhage resulting from ante mortem injuries.

The doctor recovered one cork, one big metallic shot and two small metallic shot from stomach, 2 corks and 5 small metallic shorts were recovered from right and left lung."

7. The prosecution had amongst others examined Deopal, PW1, Devi Singh, PW 2 and Manohar, PW 3 who had claimed to be the eye witnesses to either or both of the murders. During the course of investigation, recoveries were made upon the statements made by the accused. Thakur Das, PW 7 was an independent witness for the recovery of sphere, as pointed out by accused Shiv Dayal. The investigation of the case was conducted by different officers. H.C. Shiv Charan Singh, PW 11 was posted as Head Muherer and he had prepared (Ext.

Ka 27) as well as registered the case in GD as (Ext.Ka 28). PW1 and PW2 had fully supported the case of the prosecution. The blood marks were found at both the places of occurrence. After completing the investigation, challan under Section 173 of the Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.') was filed before the Court of competent jurisdiction. After the case was committed to the Court of Sessions, all the accused were tried in accordance with the law. Statement under Section 313 Cr.P.C. was recorded and finally, as noticed above, they were convicted and sentenced by the trial Court and the same was sustained by the High Court, giving rise to the present appeals.

8. The arguments raised on behalf of the appellants, in fact, can be discussed together inasmuch as they are based upon somewhat common submissions. There is no doubt that PW1 and PW2, both are related to the deceased. The contention raised before us is that both of them are interested witnesses and have not stated true facts before the Court and thus, their statements should be entirely disbelieved. We are unable to find any merit in this contention. It has come on record that Pyare Lal was pursuing a case in which members of the family of the accused persons were involved in a murder. There was apparently some anger and rift between the families. According to the story of the prosecution, they had come prepared to kill Bahadur Singh as well as Pyare Lal as they were carrying guns, sphere etc. The deceased were attacked by the accused in the presence of their brothers, who could not intervene and save them because of the fear of the gun fire and the manner in which the incident occurred. It was but natural for the prosecution to produce PW1 and PW2 as the main eye witnesses as they had actually seen the occurrence and they have been believed by the trial Court, as well as by the High Court. Even before us, no serious attempt has been made and infact, nothing appears from the record to show that these two witnesses were not present on the site. There is no hard and fast rule that family members can never be true witnesses to

the occurrence and that they will always depose falsely before the Court. It will always depend upon the facts and circumstances of a given case. In the case of *Jayabalan v. U.T. of Pondicherry* [(2010)1 SCC 199], this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim. The Court held as under:

> " 23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.
>
> 24. From a perusal of the record, we find that the evidence of PWs 1 to 4 is clear and categorical in reference to the frequent quarrels between the deceased and the appellant. They have clearly and consistently supported the prosecution version with regard to the beating and the ill-treatment meted out to the deceased by the appellant on several occasions which compelled the deceased to leave the appellant's house and take shelter in her parental house with an intention to live there permanently. PWs 1 to 4 have unequivocally stated that the deceased feared threat to her life from the appellant. The aforesaid version narrated by the prosecution witnesses, viz. PWs 1 to 4 also finds corroboration from the facts stated in the complaint."

9. Similar view was taken by this Court in *Ram Bharosey*

v. State of U.P. [AIR 2010 SC 917], where the Court stated the dictum of law that a close relative of the deceased does not, *per se*, become an interested witness. An interested witness is one who is interested in securing the conviction of a person out of vengeance or enmity or due to disputes and deposes before the Court only with that intention and not to further the cause of justice. The law relating to appreciation of evidence of an interested witness is well settled, according to which, the version of an interested witness cannot be thrown over- board, but has to be examined carefully before accepting the same. In the light of the above judgments, it is clear that the statements of the alleged interested witnesses can be safely relied upon by the Court in support of the prosecution's story. But this needs to be done with care and to ensure that the administration of criminal justice is not undermined by the persons, who are closely related to the deceased. When their statements find corroboration by other witnesses, expert evidence and the circumstances of the case clearly depict completion of the chain of evidence pointing out to the guilt of the accused, then we see no reason why the statement of so called 'interested witnesses' cannot be relied upon by the Court. In the present case, the circumstances are such that we cannot find any error in the concurrent findings of fact recorded by the Trial Court, as well as by the High Court that these two witnesses were present at the respective places and had actually seen the occurrence. Their statements about gun fires, as well as the injuries caused by the kulhari and sphere respectively are duly supported by the medical evidence, as well as by the statements of the investigating officers. Thus, we find that the contention raised on behalf of the appellants is liable to be rejected.

10. The second contention raised on behalf of the appellants is that the prosecution has failed to prove any motive for the commission of the crime, and in absence of clear and emphatic motive, the order of conviction is liable to be set aside and the accused are entitled to acquittal. This submission, firstly, is based on misreading of the record and secondly, it is

devoid of any merit. It has come on record that one Umrao, father of appellant Ram Sanehi was murdered. Bahadur Singh (deceased) was prosecuted for the said murder. Pyare Lal (deceased), father of Bahadur Singh, was doing *pairvi* on behalf of and along with Bahadur Singh, in which he was finally acquitted. It is also the case of the prosecution that there was enmity between these persons and all other appellants and the family of Ram Sanehi, appellant. The evidence of PW1, PW2 and PW3 indicates that the relations between these two families were quite strained, and the way the crime has been committed clearly indicates that the family of Ram Sanehi would have been unhappy with the acquittal of Bahadur Singh in that murder case. This itself indicates some kind of motive for committing the crime in question. Be that as it may, it is not always necessary for the prosecution to establish a definite motive for the commission of the crime. It will always be relatable to the facts and circumstances of a given case. It will not be correct to say as an absolute proposition of law, that the existence of a strong or definite motive is a *sine qua non* to holding an accused guilty of a criminal offence. It is not correct to say that absence of motive essentially results in the acquittal of an accused if he is otherwise found to be guilty. In the case of *Babu Lodhi vs. State of U.P.* [(1987) 2 SCC 352], this Court took the view that in so far as the adequacy of motive is concerned, it is not a matter which can be accurately weighed on the scales of a balance. In *Prem Kumar vs. State of Bihar* [(1995) 3 SCC 228] the Court discussed the concept of motive as applicable to Indian criminal jurisprudence and held as under:

> "5. .....The Courts below have concurrently held that the *motive* suggested by the prosecution against the accused persons is established. When there is sufficient direct evidence regarding the commission of the offence, the question of motive will not loom large in the mind of the court. It is true that this Court has held in State of *U.P. v. Moti Ram* [(1990) 4 SCC 389]

that in a case where the prosecution party and the accused party were in animosity on account of series of incidents over a considerable length of time, the motive is a double-edged weapon and the key question for consideration is whether the prosecution had convincingly and satisfactorily established the guilt of all or any of the accused beyond reasonable doubt by letting in reliable and cogent evidence. Very often, a motive is alleged to indicate the high degree of probability that the offence was committed by the person who was prompted by the motive. In our opinion, in a case when motive alleged against the accused is fully established, it provides a foundational material to connect the chain of circumstances. We hold that if motive is proved or established, it affords a key or pointer, to scan the evidence in the case, in that perspective and as a satisfactory circumstance of corroboration. It is a very relevant, and important aspect - (a) to highlight the intention of the accused and (b) the approach to be made in appreciating the totality of the circumstances including the evidence disclosed in the case. The relevance of motive and the importance or value to be given to it are tersely stated by Shamsul Huda in delivering *the Tagore Law Lectures (1902) - The Principles of the Law of Crimes in British India*, at page 176, as follows:

'But proof of the existence of a motive is not necessary for a conviction for any offence. But where the motive is proved it is evidence of the evil intent and is also relevant to show that the person who had the motive to commit a crime actually committed, it, although such evidence alone would not ordinarily be sufficient. Under Section 8 of the Evidence Act any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact'."

11. However, in cases which are entirely or mainly based

upon and rest on circumstantial evidence, motive can have greater relevancy or significance (Babu Lodhi and Prem Kumar's case (supra). But it is equally true that when positive evidence against the accused is clear in relation to the offence, motive is not of much importance. Mere absence of motive, even if assumed, will not per se entitle the accused to acquittal, if otherwise, the commission of the crime is proved by cogent and reliable evidence (*State of Punjab vs. Kuljit Singh* [2003 (2) RCR (Criminal) 629]. Significance of relevancy of motive would primarily depend upon the facts and circumstances of a given case. In the case in hand, there are eye witnesses whose version is supported by expert and other evidence. Their statements find corroboration and infact, they completely fit in with the case put forward by the prosecution and there is hardly any occasion for the Court to doubt the version of the prosecution. Firstly, we find that there exists some motive for Ram Sanehi and other appellants, who are his family members, to commit the crime, but in case of direct and clear evidence, there is no need for the Court to attach undue emphasis or importance to the motive behind the crime. The principles afore stated would clearly apply to the facts of the present case and we cannot find fault in the concurrent judgments, which is the subject matter of the present appeals.

12. It is further argued that there are some variations or doubts in the statements of the doctor and the eye witnesses. Emphasis was placed on the fact that the trial Court, in para 6 of its judgment, disbelieved Devi Singh, PW 2, and thus the obvious conclusion ought to have been that the prosecution has failed to bring home the guilt of the accused. This contention, again, does not impress us. Witnesses have been examined in the Court after a considerable lapse of time. It is neither unnatural nor unexpected that there could be some minor variations in the statements of the prosecution witnesses. Both PW1 and PW2 were the relations of both the deceased and were eye witnesses to the occurrence. Certain part of the statement of Devi Singh, PW2, have been doubted by the trial

Court, in view of the fact that at one place he stated that he had gone to village Durkhuru on the date of the occurrence and thereafter, in reply to the Court's question he was consistent with his statement made under Section 161 of the Cr.P.C. as well as the examination-in-chief, that he had gone to village Durkhuru on the day subsequent to the date of the occurrence. The statement of PW2 does not really, in any way, vitiate the case of the prosecution which is aptly supported by the statements of PW1, PW2, PW6 and the statements of other witnesses. PW 6 has clearly stated that the dead bodies of the deceased contained the injuries of gun fire as well as that of kulhari and sphere. It will be useful to refer to the statement of this witness, particularly, with reference to gun shots, bhala as well as kulhari.

> "The injury No. 10 of Bahadur was possible by the Bhala which was exhibit – 1. The witness has been shown the sphere/Bhala the injury No. 1 to 6 can be caused by fire arms injuries No. 7 & 8 can be caused to fallen when fallen. But at one time both the injuries caused which is not possible. The injuries No. 9 may be caused by fall. These injuries caused and it may be possible that these injuries caused on dated 19.11.88 at 4.30 o' clock in the evening. These injuries were normal but these injuries are sufficient for death.
>
> I had seized from the body of the deceased one cork and 21 metal pallets from the left side's lungs. One Cork and 12 pallets were seized from the right lung and from forensic cavity of muscles. 2 Corks and 18 pallets were recovered from the lever and stomach cavity.
>
> From the body of the deceased one Baniyan and one Chaddi, One Lungi was recovered and after preparing its Bundles were given to the constable.
>
> The injury No. 1 and 2 by Kulahdi Ex2 was possible to have occurred. Axe was shown to the witness injury No.3 to 8

> is possible to be caused by fire arms. Injury No. 9 to 10 could be caused by falling on the ground. These injuries were sufficient to cause death. These injuries could have been possibly caused on 19.11.88 at about 4.30 in the evening.
>
> One cork one big pellet and two small pellets' were recovered from his level and two corks and five small pallets were recovered from his left and right lever. These articles were handed over to the constable after sealing it. That from the body of the deceased one Kurta, One Dhoti, One Baniyan and One ring of Coper were recovered which were sealed and handed over to the Constable who had come with."

13. This witness was cross examined at some length, but nothing favourable to the accused could come on record. The statement of this witness clearly shows that there were gun shot injuries on the bodies of both the deceased as well as sphere and kulhari injuries on their shoulder and neck respectively. Thus, medical evidence fully corroborates the statements of PW1 and PW3. Even if the statement of Devi Singh, PW2, is ignored, there is no reason whatsoever before the Court to doubt the version given by PW1 and PW3. Their presence at the site was natural. In addition to this, it must be noticed that upon the statement of Shiv Dayal, the sphere (Ext. Ka 1) was recovered from the bushes of the village Kharwanch in presence of Thakur Das, PW 7, and Kanhaiya Lal. Thakur Das, PW 7, appeared as a witness and corroborated the evidence of Ranjit Singh, PW 9. The sphere was sent for chemical and serological examination. The report of the Chemical Examiner and Serologist (Ext. Ka 32) was received and it showed that the sphere contained human blood. The involvement of accused Shiv Dayal along with other accused persons, the recovery of the weapons and the fact that human blood was traced on the recovered weapon completes the chain of events relating to the commission of the crime. It will not be in conformity with the

settled canons of criminal jurisprudence to disregard the evidence merely because Devi Singh, PW 2, had made a variable statement which could be the result of confusion or lack of understanding the question in its proper perspective, more so, when he immediately in answer to the Court's question, stated, that he had gone to village Durkhuru on the day subsequent to the commission of the crime and not on the same day. It will be unfair, in any case, to disbelieve the presence of PW1 and PW3 at the respective places of occurrence and their statements, merely because PW2's statement creates certain doubts as regards his presence. As already noticed, the counsel for the appellant had, with some vehemence, argued about the unnatural conduct attributed by the prosecution to the accused. It was argued that brother of deceased Bahadur Singh was right in front of the accused at the place of first occurrence, and they would have killed him rather than going to the other site to kill Pyare Lal, the father of deceased Bahadur Singh. This argument hardly cuts ice, much less, leads to any favourable conclusion for the accused. There is specific evidence on record which has been noticed by the High Court as well as by the Trial Court that Bahadur Singh was prosecuted for the murder of Umrao, Ram Sanehi's father and was acquitted. The case was contested by Pyare Lal, father of Bahadur Singh. We have already indicated that there is some motive apparent for commission of the crime, which further indicates in the light of this evidence that they preferred to kill Bahadur Singh and his father Pyare Lal. This cannot be said to be unnatural or of such a nature that it is not normally expected of a person intending to commit a crime.

14. Another reason is the statement of PW3. PW3, Manohar is the son of the deceased Pyare Lal and has supported the case of the prosecution. If this witness was lying, then he would have certainly deposed that he also was an eye-witness to the first occurrence i.e. murder of Bahadur Singh. However, in his examination-in-chief, he has specifically deposed that he was an eye-witness only to the murder of

Pyare Lal, his father and never referred to the murder of his brother, Bahadur Singh. The truthfulness and bona fide of this witness can hardly be doubted. He has further deposed that Dharnidhar had not come with other accused but had suddenly entered there and snatched the kulhadi from his father. With that kulhadi, he has caused injury on the neck of the deceased Pyare Lal. If this witness was to falsely implicate all the accused, nothing preventing him from stating that Dharnidhar had come with all other accused and they together attacked the deceased and also that he was a witness to the murder of Bahadur Singh and that even Dharnidhar was involved in the murder of his brother. His statement is fully supported by PW1, as well as the Investigating Officer. If they were falsely implicated, in all probability, PW1, PW2 and the Investigating Officer could have named Dharnidhar in relation to the first occurrence, i.e. murder of Bahadur Singh. The attempt was also made to create a dent in the case of the prosecution on the ground that Jawahar, who was stated to be present, was not examined by the prosecution and was the only independent witness. Thus, adverse inference should be drawn against the prosecution for this purpose. This contention has rightly been rejected by the learned trial Court and for correct reasons. The prosecution has filed an affidavit that the said witness has been won over by the accused and thus he was not examined. The Courts have already relied upon the judgment of this Court in *Mst. Balbir Kaur vs. State of Punjab* [1997 Crl.L.J. 273] and observed as under:

> "It is undoubtedly the duty of the prosecution to lay before the Court all material evidence available to it which is necessary for unfolding its case; but it would be unsound to lay down as a general rule that every witness must be examined even though his evidence may not be very material or even it is known that he has been won over or terrorized. In such a case, it is always open to the defence to examine such witnesses and the Court can also call such witness in the box in the interest of justice under Section 540 Cr.P.C."

15. Therefore, we have no hesitation in rejecting this contention raised on behalf of the appellants.

16. Still another aspect of this case is that when the accused were being examined under Section 313 Cr.P.C., they, barely, denied the incident and stated that there were land disputes. No evidence in that behalf had been adduced by the accused persons. Even if this statement is assumed to be correct, now the accused cannot turn their back and deny the existence of dispute between the parties. This would further be one of the links in the chain completing the crime of murder. Besides giving a general denial even to the basic facts, the accused in the last two questions put to them by the Court, in their statements under Section 313 of the Cr.P.C., stated that Deopal etc. are from the same family and they have falsely given evidence against them. They also stated that Deopal and the family of the deceased wanted to grab their land and, therefore, they have falsely implicated them in the present case. It is a settled principle of law that the statement made by the accused under Section 313 of the Cr.P.C. can be used by the Court to the extent that it is in line with the case of the prosecution. The same cannot be the sole basis for convicting an accused. In the present case, the statement of accused before the Court, to some extent, falls in line with the case of the prosecution and to that extent, the case of the prosecution can be substantiated and treated as correct by the Court. The legislative intent behind this section appears to have twin objects. Firstly, to provide an opportunity to the accused to explain the circumstances appearing against him. Secondly, for the Court to have an opportunity to examine the accused and to elicit an explanation from him, which may be free from the fear of being trapped for an embarrassing admission or statement. The proper methodology to be adopted by the Court while recording the statement of the accused under Section 313 of the Cr.P.C. is to invite the attention of the accused to the circumstances and substantial evidence in relation to the offence, for which he has been charged and invite his

explanation. In other words, it provides an opportunity to an accused to state before the Court as to what is the truth and what is his defence, in accordance with law. It was for the accused to avail of that opportunity and if he fails to do so then it is for the Court to examine the case of the prosecution on its evidence with reference to the statement made by the accused under Section 313 of the Cr.P.C. In *Hate Singh Bhagat Singh vs. State of Madhya Bharat* [AIR1953 SC 468], while dealing with Section 342 of the old Cr.P.C. equivalent to Section 313 of the present Cr.P.C. observed that answer of the accused given can be used in other enquiries or trials for other offences. In the case of *Narayan Singh vs. State of Punjab* [(1963) 3 SCR 678 a Three Judge Bench of this Court held as under:

> "Under Section 342 of the Cr.P.C. of Criminal Procedure by the first Sub-section, insofar as it is material, the Court may at any stage of the enquiry or trial and after the witnesses for the prosecution have been examined and before the accused is called upon for his defence shall put questions to the accused person for the purpose of enabling him to explain any circumstance appearing in the evidence against him. Examination under Section 342 is primarily to be directed to those matters on which evidence has been led for the prosecution to ascertain from the accused his version or explanation if any, of the incident which forms the subject matter of the charge and his defence. By Sub-section (3), the answers given by the accused may "be taken into consideration" at the enquiry or the trial. If the accused person in his examination under Section 342 confesses to the commission of the offence charged against him the Court may, relying upon that confession, proceed to convict him, but if he does not confess and in explaining circumstance appearing in the evidence against him sets up his own version and seeks to explain his conduct pleading that he has committed no offence, the statement of the accused can only be taken into consideration in its entirety.

Following the law laid down in Narayan Singh's case (supra) the Apex Court in State of Maharashtra v. Sukhdeo Singh [1992 CriLJ 3454] further dealt with the question whether a statement recorded under Section 313 of the Cr.P.C. can constitute the sole basis for conviction and recorded a finding that the answers given by the accused in response to his examination under Section 313 of the Cr.P.C. of 1973 can be taken into consideration in such an inquiry or trial though such a statement strictly is not evidence and observed in paragraph 52 thus:

Even on the first principle we see no reason why the Court could not act on the admission or confession made by the accused in the course of the trial or in his statement recorded under Section 313 of the Cr.P.C.....

It is thus well established in law that admission or confession of accused in the statement under Section 313 of the Cr.P.C. recorded in the course of trial can be acted upon and the Court can rely on these confessions to proceed to convict him."

17. The possibility of the accused being falsely implicated in this case, in our opinion, stands ruled out. The statement of the afore- referred witnesses, read in conjunction with the documents filed on record, expert evidence, recovery of weapons and blood stained earth, clearly establishes beyond reasonable doubt, the guilt of the accused.

18. Having discussed the merits of the case, we would now proceed to deal with the last contention raised on behalf of the appellant-accused that the Court could not have convicted all the accused with the aid of Section 34 and/or 149 IPC. There is no doubt that Shiv Dayal has been attributed a common role for the second incident and has been convicted on the basis of Section 34 and/or 149 IPC. As per the case of the prosecution there were 5 persons involved in the commission of the crime. Shiv Dayal was stated to have given sphere blow

to the deceased Bahadur Singh and thereafter with the intention to kill Pyare Lal, moved together with the other accused to the site where Pyare Lal was murdered. Dharnidhar had joined Ram Sanehi, Baladin, Ramadin and Shiv Dayal. Thus, there were 5 persons who constituted a common unlawful assembly and were carrying weapons with an intention to commit an offence. They had knowledge and intention in mind that they are going to kill Pyare Lal, as is evident from the evidence on record. The learned counsel appearing for the appellants contended that there was neither any common object nor any intention on the part of the accused to kill Pyare Lal and for that matter, even Bahadur Singh. They have been falsely implicated in the case by the prosecution. As far as the plea of false implication is concerned we have already rejected it and as far as their involvement in the commission of crime in terms of Section 34 IPC is concerned, it is obvious that a criminal act has been committed by them in furtherance of a common intention, and each of them was liable to be prosecuted for the same, once they had murdered Bahadur Singh. PW1, who was an eye witness to the said murder, in his examination-in-chief stated as under:

"These persons are present in the court now. Shiv Dayal has been thrown the bhala to my brother namely Bahadur which was hit to his left shoulder sides chest portion. Then Ramsanehi, Balaprasad and Ramadin had fired with their own riffles respectively. My brother Bahadur fallen on the ground we persons who were present there has not said any *word on account of fear. Then Ram Sanehi said that we have killed him Now his father Pyarelal is to be killed. Saying such words these persons have been gone the court yard.* After their departure I have seen my brother Bahadur. He was dead. My brother Bahadur was lay down in the court yard which was in front door of the Jawahar Badhai. I Devi and Lally have been followed to Ram Sanehi and others and reached to the court yard of the field where my father was busy in storing the jwar. My brother Manohar

and mother Mula bai were present there. I have seen that these four accused were present there. In the meanwhile Dharnidhar came from some where/or from some place Dharnidhar has snatched the Kulhadi (an axe) from the hands of my father. Ram Sanehi, Baladin alias Balla & Ramadin had fired on my father from their own riffles. My father lay down on the ground. Dharnidhar was cutting the neck of my father. We have started shouting. After hearing the shouting so many persons rushed out here. But they could not reach at the spot. After seeing the crowd of people of the village these accused persons have been run out to the jungle area. My father had been fallen at the distance of 7 steps away from the Mahua Tree in the Ladaiya fields. When the accused persons left that place at that time we had gone to seen the condition of my father."

(emphasis supplied)

19. Let us examine the judgments of this Court in relation to common intention and commission of crime by the members of an unlawful assembly. It is a settled principle of law that to show common intention to commit a crime it is not necessary for the prosecution to establish, as a matter of fact, that there was a pre-meeting of the minds and planning before the crime was committed. In the case of *Surendra Chauhan vs. State of Madhya Pradesh* [AIR 2000 SC 1436], this Court held that common intention can be developed on the spur of the moment. Also, under Section 34, a person must be physically present at the place of actual commission of the crime. The essence is the simultaneous consensus of the minds of persons participating in the criminal act and such consensus can be developed on the spot. It is not mandatory for the prosecution to bring direct evidence of common intention on record and this depends on the facts and circumstances of the case. The intention could develop even during the course of occurrence. In this regard reference can be made to *Ramaswamy*

Ayhangar vs. State of Tamil Nadu [(1976) 3 SCC 779] and *Rajesh Govind Jagesh vs. State of Maharashtra* [(1999) 8 SCC 428]. In other words, to apply Section 34, two or more accused should be present and two factors must be established i.e. common intention and participation of the accused in the crime. Section 34 moreover, involves vicarious liability and therefore, if intention is proved but no overt act is committed, the section can still be invoked. In the present case all the 4 accused had gone together armed with three guns and one sphere and after shouting, making their minds clear, had fired at Bahadur Singh causing gun injuries and sphere injury on his shoulder. The learned Trial Court, besides recording the finding against the accused on motive and referring to the recovery of the sphere, has also, in great detail, dealt with the injuries caused by the accused upon the two deceased. In terms of the medical reports proved by PW 6, (being Ext. K3 and K4), there were four gun shots on the body of each of the deceased and in addition thereto one incised wound near the shoulder of Bahadur Singh and two incised wounds on the neck of Pyare Lal. The medical evidence is clear that these injuries could be caused by gun, sphere and kulhari. The attending circumstances fully support the case of the prosecution. PW1 and PW3, who were present at the different places of occurrence, have frankly stated that they were to intervene and save their brother and father but because of the fear of the gun they could not do so. Having found the above four accused guilty on the strength of Section 302 read with Section 34 of the IPC, the Trial Court held all the 5 accused are guilty of Section 302 read with Section 149 of the IPC for the murder of Pyare Lal. It has been shown in the evidence that after committing the murder of Bahadur Singh, they moved to the fields where Pyare Lal was watching his *bajra* crop, after having clearly made up their minds and with a common object to kill Pyare Lal. Once they reached the spot, they were joined by Dharnidhar, who also participated in the commission of the crime and in fact, played an active role by snatching the kulhari of the deceased and causing injury on his neck. The said injury and the gun injuries

proved to be fatal, which ultimately resulted in the death of Pyare Lal on the spot itself. In fact, it is not even expected of the prosecution to assign particular or independent roles played by each accused once they are members of unlawful assembly and have assaulted the deceased persons, which resulted in their death. Every person of such an unlawful assembly, can be held to be liable. In the case of *Sheo Prasad Bhore v. State of Assam* [(2007) 3 SCC 120], this court took a similar view.

20. In the case of Md. Ankoos vs. Public Prosecutor, High Court of A.P. [AIR 2010 SC 566], this Court held as under:

> "28. ……Section 149 IPC creates constructive liability i.e. a person who is a member of the unlawful assembly is made guilty of the offence committed by another member of the same assembly in the circumstances mentioned in the Section, although he may have had no intention to commit that offence and had done no overt act except his presence in the assembly and sharing the common object of that assembly. The legal position is also fairly well settled that because of a mere defect in language or in the narration or in form of the charge, the conviction would not be rendered bad if accused has not been affected thereby……."

21. In the case of *Pandurang Chandrakant Mhatre v. State of Maharashtra* [(2009) 10 SCC 773], this Court enunciated the principle that under Section 149, two ingredients are required to be satisfied. Firstly, there has to be the commission of an offence by any member of an unlawful assembly. Secondly, such offence must have been committed in prosecution of the common object of that assembly or must be such that the members of that assembly knew it to be likely that the offence would be committed. The Court held as under:

> "65. Section 149 IPC creates a specific and distinct offence. Its two essential ingredients are:

> (i) commission of an offence by any member of an unlawful assembly and;
>
> (ii) such offence must have been committed in prosecution of the common object of that assembly or must be such as the members of that assembly knew it be likely to be committed.

66. In *Masalti v. State of U.P.* [AIR 1965 SC 202], this Court exposited:

> "17...What has to be proved against a person who is alleged to be a member of an unlawful assembly is that he was one of the persons constituting the assembly and he entertained along with the other members of the assembly the common object as defined by Section 141 IPC. Section 142 provides that whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly. In other words, an assembly of five or more persons actuated by, and entertaining one or more of the common object specified by the five clauses of Section 141, is an unlawful assembly. The crucial question to determine in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects as specified by Section 141. While determining this question, it becomes relevant to consider whether the assembly consisted of some persons who were merely passive witnesses and had joined the assembly as a matter of idle curiosity without intending to entertain the common object of the assembly."

xxx xxx xxx xxx

71. Having carefully examined the testimony of eye-witnesses, we find that prosecution has been able to establish that party of assailants comprised of more than

five persons and that they formed unlawful assembly. It is also seen from the evidence that at least five persons chased the deceased and then attacked him. These members of the unlawful assembly who chased and attacked the deceased definitely shared common object of causing murder of Suresh Atmaram Gharat. A-1 had died during pendency of the appeal before the High Court and, therefore, nothing further needs to be said about his role."

22. The principles controlling the application of provisions of Section 149 have been quite well settled by now. Years back, the bench of this court in *Masalti v. State of U.P.* [1964 (8) SCR 133] declared the dictum of law that the prosecution has to prove against a person, who is alleged to be a member of an unlawful assembly, that the person constitutes the assembly and has entertained along with the other members of the assembly, the common object, as defined by Section 141 of the IPC. The crucial question to be determined in such a case is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects. For determination of the common object of the unlawful assembly, the conduct of each of the members of the said assembly before the attack, at the time of attack and thereafter, as well as the motive for the crime are some of the relevant considerations. However, the time of forming an unlawful intent is not material because it is possible that in a given case an assembly, which is lawful to begin with, subsequently becomes unlawful. In other words, unlawful intent can develop during the course of the incident at the spot *co instanti*. *[Maranadu v. State by inspector of Police, Tamil Nadu* (2008) 16 SCC 529].

23. If we see the facts of the present case, it is obvious that the four accused were together and had openly declared their intention to kill Pyare Lal. They were then joined by Dharnidhar, in furtherance of this common object, to commit an offence In this manner an unlawful assembly was formed. Dharnidhar assaulted Pyare Lal with a kulhari. Thus, every one

of them participated in the commission of the crime, besides the fact that they had a common object to kill Pyare Lal. In these circumstances, we are unable to find any legal or other infirmity in the judgment of the Trial Court, as well as that of the High Court in holding that the four accused, in the case of murder of Bahadur Singh, were guilty of the offence under Section 302 read with Section 34. Furthermore, in the case of the deceased Pyare Lal, all five of the accused were guilty of the offence under Section 302 read with Section 149 IPC. Besides this fact, accused Ram Sanehi, Ramadin, Baladin and Shiv Dayal accused had also committed an offence under Section 148 of the IPC while accused Dharnidhar had committed an offence under Section 147 of the IPC.

24. In view of the above elaborate reasoning, we do not find any merit in the contentions raised on behalf of the appellants in all the appeals. The same are therefore rejected. Thus, we are unable to persuade ourselves to interfere in the judgment of the conviction or even in the order of sentence for that matter. Without hesitation we dismiss these appeals.

R.P. Appeal dismissed.

PRAVINBHAI KASHIRAMBHAI PATEL
v.
STATE OF GUJARAT & ORS.
(Special Leave Petition (Crl.) No.1923 of 2010)

JULY 8, 2010

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

Code of Criminal Procedure, 1973:

s.439(2) r/w s.482 – Cancellation of anticipatory bail – HELD: Principles normally required for granting regular bail or anticipatory bail have to be applied according to facts and nuances of each case – In the instant case, there being different versions in three different complaints and allegations with regard to certain offences sought to be added at a later stage of investigation, no case has been made out for allowing application u/s 439(2) r/w s.482

Three different complaints were made to police authorities with regard to incident stated to have taken place on 11.9.2008. In one complaint, it was alleged that at the instance of respondent nos. 2 and 3 a mob illegally entered the property of the complainant and his family members, threatened to dispossess them and to kill them if they resisted. It was, thereafter, alleged that the mob returned within half an hour and caused injuries to the complainant and his associates. In yet another complaint, allegations of snatching, theft of cash and ornaments and certain car accessories were also included. Respondent nos. 2 and 3 applied for and were granted anticipatory bail by the Court of Session. The petition filed before the High Court u/ss 439(2) and 482 CrPC for cancellation of the anticipatory bail was dismissed. Aggrieved, one of the complainants filed the petition.

Dismissing the petition, the Court

HELD: 1. The principles normally required to be followed while granting regular bail or anticipatory bail have to be applied according to the facts and circumstances of each case. Except for indicating the broad outlines for grant of bail and/or anticipatory bail, no strait-jacket formula can be prescribed for universal application, as each case for grant of bail has to be considered on its own merits and in the facts and nuances of each case. [para 14] [218-G-H; 219-A]

State of U.P. vs. Amarmani Tripathi 2005 Suppl. **(3) SCR 454 = (2005) 8 SCC 21 – relied on.**

Puran vs. Rambilas & Anr. **2001 (3) SCR 432 = (2001) 6 SCC 338;** *Superintendent of Police, CBI & Ors. vs. Tapan Kumar Singh* **2003 (3) SCR 485 = (2003) 6 SCC 175;** *Animireddy Venkata Ramana & Ors. vs. Public Prosecutor, High Court of Andhra Pradesh* **2008 (3) SCR 1078 = (2008) 5 SCC 368;** *State rep. by the C.B.I. vs. Anil Sharma* **1997 Suppl. (3) SCR 737 = (1997) 7 SCC 187;** and *Anil Kumar Tulsiyani vs. State of U.P. & Anr.* **2006 Suppl. (1) SCR 923 = (2006) 9 SCC 425 – referred to.**

1.2 In the instant case, on account of the different versions noticed in the three different complaints made in respect of the incident of 11.9.2008, and having regard to the fact that allegations with regard to offences punishable u/ss 395, 397, 467, 468 and 471 I.P.C. were sought to be added at a later stage of investigation, no case has been made out for allowing the petitioner's application u/s 439(2) read with s.482 Cr.P.C. [para 15] [219-B-C]

Case Law Reference:

2001 (3) SCR 432	**referred to**	**para 7**

2003 (3) SCR 485	**referred to**	**para 8**	A
2008 (3) SCR 1078	**referred to**	**para 9**	
1997 Suppl. 3 SCR 737	**referred to**	**para 10**	
2006 Suppl. 1 SCR 923	**referred to**	**para 10**	B
2005 Suppl. 3 SCR 454	**relied on**	**para 14**	

CRIMINAL APPELLATE JURISDICTION : SLP (CRIMINAL) No.1923 of 20110

From the Judgment & Order dated 18.02.2010 of the High Court of Gujarat at Ahemedabad in Criminal Misc. Application No. 12865 of 2009. C

Yatin N. Oza, B. B. Naik, S. Udaya Kumar Sagar, Bina Madhavan, Roma I. Fidelis, Shwetank Sailakwal (for Lawyer's Knit & Co.) for the Petitioner. D

Jaideep Gupta, D.N. Ray, Parthiv Shah, Lokesh K. Choudhary, Pradhuman Gohil, Sumita Ray, Hemantika Wahi, Jesal for the Respondents. E

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. In connection with an incident which is said to have occurred on 11th September, 2008 at about 11.00 a.m. and continued even thereafter, a complaint was made at about 5.30 p.m. to the Police Inspector, Anand Police Station, by one Patel Bipin Dahyabhai and three others. In the said complaint it was alleged that on the said date at 11.00 a.m. the Respondent No.2 and his associates together with a mob of about 20 persons carrying sticks, scythes and arms, illegally entered into Nidhwad Survey No.66, which the complainant contended belonging to him and his family members, and threatened to dispossess them by force from the said land and even held out threats to kill the complainant and his family members if they resisted. F G H

2. From the contents of the complaint itself it is clear that immediately after the said incident the petitioner tried to lodge a complaint with the Police Inspector of Anand Police Station, but such complaint was not registered and within half an hour thereafter the mob came back and assaulted the complainant and his associates with sticks and scythes and caused serious injuries to the petitioner herein and some of his other associates who had to be taken to the Anand Suvidha Hospital for treatment. In the written complaint it was mentioned that besides causing serious injuries to the complainant and his group, the Respondent No.2 and his associates caused damage to the vehicles belonging to the petitioner. Since the complaint was not registered, the petitioner and his associates were said to have gone to the Office of the D.S.P., where they were informed that the said Officer was not available and, ultimately, the written complaint was made, in which another incident allegedly involving the snatching and theft of cash and ornaments from one Manishbhai Patel and certain other car accessories, was also included.

3. After the said written complaint had been made, a First Information Report was also recorded at the instance of the petitioner herein by the P.S.O., Sanand District, Ahmedabad (Rural), on 11th September, 2008, at 10.15 p.m. at V.S. Hospital, where the complainant had been referred for treatment. In the First Information Report it was stated by the petitioner that when the mob of 30 to 40 persons rushed towards the informant and his brother and nephew, the Respondent No.2 and his son, Lalitbhai Babubhai Patel, were standing on the road beside their car and with the help of signs they are alleged to have directed the attackers to assault the petitioner and his family members. According to the Respondent Nos.2 and 3, there is yet another version of the incident contained in a letter addressed by the petitioner and others to the Director General of Police, Gujarat, wherein it was shown that the Respondent Nos.2 and 3 were present at Village Nighrad at the time of the alleged offence and after having

directed as to how the entire operation was to be carried out, they left the place. The Respondent Nos.2 and 3 thereafter applied for anticipatory bail and the same was allowed by the Additional Sessions Judge, Fast Track Court No.1, Ahmedabad (Rural), Mirzapur, by his order dated 11th November, 2009. While granting the prayer of the Respondent Nos.2 and 3 for grant of anticipatory bail, the learned trial court imposed various conditions to ensure that the investigation was not compromised in any way or that the Respondent Nos.2 and 3 cooperated with the investigation.

4. The said order allowing the prayer of the Respondent Nos.2 and 3 for grant of anticipatory bail was thereafter challenged by the petitioner herein before the High Court. The High Court, upon considering the material available and after considering the various decisions of this Court laying down the parameters for grant of anticipatory bail, dismissed the petitioner's application under sections 439(2) and 482 of the Criminal Procedure Code for setting aside the order dated 11th November, 2009, passed by the learned Additional Sessions Judge and to cancel the anticipatory bail granted to the Respondent Nos.2 and 3 herein.

5. This Special Leave Petition has been filed by the complainant being dissatisfied with the aforesaid order of the High Court upholding the order of the trial court granting anticipatory bail to the Respondent Nos.2 and 3 in connection with the F.I.R. dated 11th September, 2008.

6. Extensive submissions were made by Mr. Yatin N. Ojha, learned Senior Advocate, appearing for the petitioner, in support of his contentions that not only had the trial court erred in granting anticipatory bail to the Respondent Nos.2 and 3, but that the High Court had also erred in confirming the order of the learned Additional Sessions Judge. Mr. Ojha submitted that in the facts and circumstances of the case, the anticipatory bail granted to the Respondent Nos.2 and 3, in connection with the complaint filed by the petitioner, was liable to be set aside. Mr.

Ojha urged that when such serious charges in respect of offences alleged to have been committed under Sections 395, 397, 467, 468 and 471 I.P.C. had been made against the Respondent Nos.2 and 3 and their associates, the learned Additional Sessions Judge, having regard to the gravity of the offence, ought not to have allowed the prayer of the Respondent Nos.2 and 3 for grant of anticipatory bail.

7. In support of his aforesaid submissions, Mr. Ojha firstly referred to the decision of this Court in *Puran vs. Rambilas & Anr.* [(2001) 6 SCC 338], in which the grounds for cancellation of bail under Section 439(2) Cr.P.C. fell for consideration and it was held that an order granting bail, by ignoring material and evidence on record and without giving reasons, would be perverse and contrary to principles of law and such an order would itself provide a ground for moving an application for cancellation of bail. It was further observed that such ground for cancellation of bail would be different from the ground that the accused had misconducted himself or that some new facts called for cancellation of bail.

8. Mr. Ojha then referred to the decision of this Court in *Superintendent of Police, CBI & Ors. vs. Tapan Kumar Singh* [(2003) 6 SCC 175] in support of his submissions that there was no compulsion that all facts and details relating to the offence are to be included in the F.I.R. This Court observed that the information given must disclose the commission of a cognizable offence and must provide a basis for the Police Officer to suspect the commission of such an offence. Mr. Ojha submitted that in the instant case certain information was provided in the F.I.R. which was subsequently supplemented by addition of other charges upon further investigation into the complaint.

9. Mr. Ojha submitted that the said view was subsequently reiterated by this Court in various cases and as recently as in the case of *Animireddy Venkata Ramana & Ors. vs. Public Prosecutor, High Court of Andhra Pradesh* [(2008) 5 SCC

368], wherein it was reiterated that since in the F.I.R. the accused persons have been named and overt acts on their part have also been mentioned, it was not necessary that each and every detail of the incident was to be stated. It was further observed that a First Information Report is not meant to be encyclopaedic.

10. Mr. Ojha submitted that the grant of anticipatory bail to the Respondent Nos.2 and 3 was in violation of the principles laid down by this Court in *State rep. by the C.B.I. vs. Anil Sharma* [(1997) 7 SCC 187], in which the factors to be considered in exercise of the discretionary power were considered. The said case involved a member of the Legislative Assembly of the State of Himachal Pradesh, who was also a Minister of the Himachal Pradesh State Government for three years and was the son of a former Union Minister. It was held that in appropriate cases anticipatory bail should not be granted to persons holding high positions and/or wielding considerable influence and that the investigating agencies would be better placed to elicit more useful information and material during custodial interrogation and that the High Court had erred in ignoring the apprehension expressed by C.B.I. that considering the high office held by the applicant and wide influence that he could wield, the C.B.I. would be subjected to a great handicap in the interrogation process in case of grant of pre-arrest bail. Reference was also made to the decision of this Court in *Anil Kumar Tulsiyani vs. State of U.P. & Anr.* [(2006) 9 SCC 425], wherein it was indicated that among the relevant considerations for grant of bail in respect of non-bailable offences, was the gravity and the nature of the offence. Mr. Ojha urged that the decision in the said case was clearly attracted to the facts of the instant case, having regard to the gravity of the offences complained of against the Respondent Nos.2 and 3.

11. Mr. Ojha submitted that whether the Respondent Nos.2 and 3 have abused the privilege of anticipatory bail or not was not the only consideration for exercise of power under Section

439(2) Cr.P.C., what was equally important was the correctness of the manner in which the respondents had been admitted to bail by the trial court. Mr. Ojha urged that having regard to the gravity of the offences alleged, both the Additional Sessions Judge as well as the High Court had erred in granting anticipatory bail to the Respondent Nos.2 and 3 and the said orders were liable to be set aside.

12. Appearing for the State of Gujarat, Ms. Hemantika Wahi supported the case of the petitioner and contended that notwithstanding the fact that the investigation had been completed, custodial interrogation of Respondent Nos.2 and 3 was still required in order to elicit further evidence in connection with the case.

13. On behalf of the Respondent Nos.2 and 3 it was submitted that it is only after considering the various materials available on record in respect of the purported incident the prayer of the said respondents for grant of anticipatory bail was allowed. Mr. Jaideep Gupta, learned Senior Advocate appearing with Mr. Mukul Rohtagi, learned Senior Advocate, who had commenced the submissions on behalf of the said respondents, urged that except for the statement made on behalf of the State of Gujarat that custodial interrogation of the Respondent Nos.2 and 3 was necessary in connection with the investigation into the complaint made by the petitioner, no other case has been made out for cancellation of such bail.

14. The decisions cited by Mr. Ojha in support of his contentions, lay down the principles, which are normally required to be followed while granting regular bail or anticipatory bail, but the same have to be applied according to the facts and circumstances of each case. Except for indicating the broad outlines for grant of bail and/or anticipatory bail, no strait-jacket formula can be prescribed for universal application, as each case for grant of bail has to be considered on its own merits and in the facts and nuances of each case. In fact, the principles laid down by this Court in *State of U.P. vs. Amarmani*

Tripathi [(2005) 8 SCC 21], broadly covers the matters to be considered in an application for grant of bail, but even then the same may not fully cover the fact situation of each case.

15. In the instant case, on account of the different versions noticed in the three different complaints made in respect of the incident of 11th September, 2008, and having regard to the fact that allegations with regard to offences under Sections 395, 397, 467, 468 and 471 I.P.C. were sought to be added at a later stage of investigation, no case has been made out for allowing the petitioner's application under Section 439(2) read with Section 482 Cr.P.C.

16. Accordingly, while dismissing the Special Leave Petition, filed by Pravinbhai Kashirambhai Patel, we also make it clear that any observation made in this order shall be deemed to have been made only for the purposes of disposing of the Special Leave Petition and not for any other purpose.

17. The Special Leave Petition is dismissed accordingly.

R.P. Special Leave Petition dismissed.

RAKESH KUMAR GOEL ETC.

v.

U.P. STATE INDUSTRIAL DEVELOPMENT CORPORATION LTD. & ORS.

(Civil Appeal No. 5177 of 2010)

JULY 8, 2010

[S.H. KAPADIA, CJI., AND AFTAB ALAM, J.]

Land laws:

U.P. Zamindari Abolition and Land Reforms Rules, 1952 – r. 285-D – Auction sale – Allottees of Government land in arrears of land revenue – Recovery of government dues – Auction sale of Government plots in favour of highest bidders – Set aside by High Court on the ground of violation of r. 285-D – On appeal, held: Law under which the auction sale proceedings were held was deficient – Auction proceedings appear to be full of anomalies – On the contrary, bidders did not deposit twenty five percent of the bid amount immediately after the auction and there was no receipt showing payment immediately after the auction – Regarding one plot, sale was confirmed and sale certificate was issued in favour of the bidder even without payment of full price of the plot – In the guise of recovery of government dues, said bidders in collusion with their abettors in government departments tried to grab government lands – Thus, auction sale of plots in favour of the said bidders was illegal, bad and malafide – Bidders directed to pay Rs. 2 lakhs each as exemplary costs – There is need to update UPZALR Act and UPZALR Rules since they are completely deficient for dealing with land holdings in highly urbanised and industrialised regions – U.P. Zamindari Abolition and Land Reforms Act, 1950 – s. 279 – Cost – Legislation.

The two pieces of government land-A and B, were

allotted to BSPL and SAPL respectively. Both BSPL and SAPL were in arrears of land revenue. For the recovery of the government dues, the said lands were auctioned. The auction sale of two pieces of land was made in favour of the appellants. The High Court set aside the auction sale. It held that the auction sale of the two plots was a nullity because the appellants did not deposit one fourth of their bid accounts immediately on the conclusion of the auction but deposited the requisite amounts on the following day.

In appeal to this Court, the respondents-BSPL and SAPL contended that no auction was ever held and the whole thing was mere paper work.

Dismissing the appeal, the Court

HELD: 1. It is evident that the law under which the auction sale proceedings were held was itself quite deficient. But the enumeration of the shortcomings and the lacunae in the provisions of an archaic law is not to say that the auction proceedings of the two plots were otherwise fair and proper and suffered from some irregularities only due to the flaws in the law. On the contrary, there is no doubt that the auction sale of the two plots in favour of the appellants was illegal, fraudulent and collusive. In the guise of recovery of the government dues, the two appellants in collusion with their abettors in the government departments were trying to grab government lands and they almost succeeded but for the interference by the High Court. Though the High Court set aside the auction sale of the two plots on the technical ground of violation of Rule 285-D, on a consideration of the overall facts and circumstances, the auction sale was bad and malafide and was a blatant attempt to grab the public land. [Paras 25, 32 and 39] [241-B-C; 245-E; 249-B]

2. The disposal of public property partakes the

character of trust and the government or the public authorities are obliged to make all attempts to obtain the best available market price while disposing of public properties. [Para 37] [248-E-F]

Ram and Shyam Co. vs. State of Haryana **(1985) 3 SCC 267;** *V. Purushotham Rao vs. Union of India* **(2001) 10 SCC 305;** *Aggarwal and Modi Enterprises (P.) Ltd. vs. New Delhi Municipal Council* **(2007) 8 SCC 75;** *Meerut Development Authority vs. Association of Management Studies*, **(2009) 6 SCC 171;** *Anil Kumar Srivastava vs. State of UP* **(2004) 8 SCC 671 – referred to.**

3.1 Under the U.P. Zamindari Abolition and Land Reforms Rules, 1952 the only mode for advertisement of auction-sale is by affixation of the Sale Proclamation at a conspicuous place in the village where the property is located and by beat of drum. There is no provision of advertisement in the newspapers or by any other means to spread the information about the proposed auction on a large scale. There is no provision in the U.P. Zamindari Abolition and Land Reforms Act, 1950 or the 1952 Rules for fixation of reserve price before the property is put up for auction sale. However, the Collector of the District regularly notifies "circle rate" for different types of land and different locations. This circle rate is primarily used for computation of stamp duty for registration of document. In 2007 instructions were given to confirm sale only above the market price. There is also no provision enabling the authorities to bar someone with a criminal record or against whom there are tax dues or government dues of any other kinds from taking part in the sale of land by the government. [Paras 23 and 24] [240-D-H; 241-A]

3.2 In the departmental enquiry, the version given by HS-AWBN that the auction proceedings with respect to SAPL and BSPL were not held in the Tehsil office but

papers were prepared at the residence of the ADM, appears to be highly probable. The documents concerning the auction sale of the two plots in the government record taken at their face value, the auction proceedings of the plots appear to be full of anomalies. No notice or information about the attachment or sale of the two plots was given to the UPSIDC. No attention was paid to the claim of the Canara Bank that it had the first charge over plot no.2/1 which was given in mortgage to the bank as security for the loan advanced by it to BSPL. The Sale Proclamations did not indicate the area of the plots or the nature of the rights therein that would be the subject matter of the sale. There was practically no public advertisement (no newspaper publication or any thing of that sort) to give wider information to the general public about the auction. The only public announcement was done by the process server going to the site and calling out loudly that the two plots would be put to auction sale on the specified date for non-payment of government dues and asking the people to come for the auction in large numbers. No reserve price for the plots in question was indicated either in the Sale Proclamations or even in the Memos of Auction. The information about the stay order passed by he High Court was completely ignored. There is nothing to show that after the government dues were satisfied, the balance of the sale price was refunded to the land holders, the two private respondents BSPL and SAPL. [Paras 16 and 17] [234-F-H; 235-B-H; 236-A-B; 237-B-D]

3.3 Rule 285-D of the UPZALR Rules requires the highest bidder to deposit immediately twenty five percent of the amount bid by him. This was one of the conditions mentioned in the Auction Memos. In the two Auction Memos it was stated that the highest bidders for the two plots, namely RK and ML had deposited one fourth of their respective bid amounts immediately after the

auction. But the payment recorded in the Auction Memos is proved to be wrong and incorrect by reference to the Government Records. From entries 39 and 40 in the Register, where the payments were entered, it is clear that twenty five percent of the bid amounts for the two plots in question were deposited on June 16 and not immediately after the auction held on June 15, 1992 as claimed by the appellants. The counsel appearing for the appellants kept telling this Court for days on end the appellants had receipts in their possession showing that the deposits were made on June 15 itself. Notwithstanding the fact that the receipts were not filed in the High Court and neither were those enclosed with the SLP at the time of its filing, the counsel was allowed as much time as he wanted for producing those receipts. In the end he said that the receipts were misplaced and the appellants were not able to find them out. There is no doubt that all the time the counsel was wrongly briefed by the appellants. No receipts were produced in court because there were, in fact, no receipts showing payment immediately after the auction. The entries in Register no.4 shows that the balance seventy five percent of the bid (Rs.6,30,000/-) for plot no.2/1 of BSPL was never deposited at all. In other words, the sale of plot no.2/1 was confirmed and sale certificate was issued in favour of the appellant even without payment of the full price of the plot. [Paras 26, 27 and 28] [241-D-F; 242-E-H; 243-A-B]

3.4 The appellants and their abettors inside the revenue department of the government were so far able to show that for recovery of the Government dues the plots of land of BSPL (2/1) and SAPL (2/2) were put to auction on June 15, 1992 in which the two appellants were the highest bidders. The next stage was the confirmation of the sale after dealing with the objections. Even before the date of the auction the concerned

authorities were given information about the stay order passed by the High Court in respect of plot no.2/1. At that time they paid no heed to it but later on certified copies of the order were produced. On June 18, 1992 certified copies of the stay order passed by the High Court were submitted before the Tehsildar, Dadri, both by the private respondent and the Canara Bank. This was a real impediment to overcome before the sales could be confirmed and the appellants and their abettors inside the government could succeed in their designs. The High Court order was put away in a highly disingenuous way. A note was put up in which referring to the cause title of the writ petition, where the address of the writ petitioner, M/s Bramic Suri Pvt. Ltd. was shown as "Gyani Border, Post Office Chikambarpur, District Ghaziabad", it was declared that the High Court Order was with respect to some other property, situate at the site of the address given in the writ petition. On June 30, 1992 the note was perused by the District Magistrate and on the same date it was approved by the ADM (F & R). No one cared to see that Annexure 1 to the writ petition was a photostat copy of the very same Sale Proclamation on the basis of which the auction sale of plot no.2/1 was held and in the writ petition the prayer was to quash the Sale Proclamation at annexure 1 and in the stay petition the prayer was to stay its operation. It is not known whether this matter was brought to the notice of the High Court and whether the High Court took any action in the matter. It can only be said that this is one of the crudest manipulations coming to the notice of this Court [Para 29] [243-B-H; 244-A-B]

3.5 The plot no.2/2 was put up for auction sale for recovery of the demand of Central Excise dues raised by the Excise Superintendent. Against the adjudication order giving rise to the demand an appeal, along with a petition for stay-cum-waiver, was filed before the tribunal. The appeal and the stay petition were still pending before the

tribunal when the recovery proceedings were started in which the plot in question was put up for auction sale. In those circumstances, in this matter also, the private respondents approached the High Court with a writ petition which was disposed of by the High Court. [Para 30] [244-B-D]

3.6 In the counter affidavit filed on behalf of the private respondents it is stated that a copy of the High Court order was served upon the District Magistrate on July 15, 1992. In the Government record, however, there is no trace of the High Court order and there is no discussion about it in any of the notes. On the contrary on the same day (July 15, 1992) Sale Certificates were issued under the signature of the ADM (Finance), in favour of the appellants and were sent for registration. [Para 31] [245-C-D]

3.7 In the counter affidavit filed by the UPSIDC it was alleged that ML and his brother RK are notorious land grabbers in the districts of Ghaziabad and Gautam Budh Nagar and they had misappropriated about Rs.1125 crores. [Para 33] [245-F-G]

3.8 Against the auction sale of the plots, both the private respondents and UPSIDC filed their respective objections before the Commissioner, Meerut Division, but their objections were rejected by the Commissioner. The UPSIDC filed review petition before the Commissioner which too was dismissed on the ground that the objection petition was dismissed on merits by a speaking order. Against the order passed by the Commissioner, both the private respondent and the UPSIDC filed revisions before the Board of Revenue, Lucknow. Even while the revision of the private respondent was pending, the revision filed by the UPSIDC was dismissed by the Board of Revenue. Unfortunately, such a gross case could not be corrected

even at the highest level of the State Administration. [Para 36] [245-F-G]

3.9 At one stage, this Court considered asking the CBI to investigate the instant case as also other cases of auction sale and alienation of land by the Revenue Department of the State Government in the District of Ghaziabad. However, this Court refrains from doing so since the CBI is already overburdened and the matter is about 20 years old. The officers posted at Ghaziabad would no longer be there, some of them might even have retired. [Para 40] [249-C-D]

3.10 This Court is not for manipulators, speculators and land grabbers. The exemplary cost of Rs.2 lakhs is imposed on each of the two appellants. The amount of cost must be paid to the Supreme Court Legal Aid Committee within 12 weeks from today. In case receipts showing payment of the cost is not filed within the stipulated time, the amounts of cost would be realised from the appellants as fine under the provisions of the Code of Criminal Procedure. [Para 41] [249-E-G]

4. The existing provisions of the UPZALR Act and the UPZALR Rules are out of date by three quarters of a century. Those were designed to deal with agriculture holdings in a rural area. Even for that purpose the provisions appear to be far from satisfactory. But they have become woefully inadequate and completely deficient for dealing with land holdings and other immovable properties in highly urbanised and industrialised regions of the State. There is, therefore, an urgent need to update the law either by framing fresh Act and Rules or by thoroughly amending the existing ones. [Para 42] [249-H; 250-A-B]

Case Law Reference:

(1985) 3 SCC 267	**Referred to.**	**Para 37**
(2001) 10 SCC 305	**Referred to.**	**Para 37**
(2007) 8 SCC 75	**Referred to.**	**Para 37**
(2009) 6 SCC 171	**Referred to.**	**Para 37**
(2004) 8 SCC 671	**Referred to.**	**Para 37**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5177 of 2010.

From the Judgment & Order dated 07.09.2006 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition Nos. 3790 and 3799 of 2000.

V.A. Mohta, R.P. Bhatt, Ashok H. Desai, S.R. Singh, Shyam Diwan, Amit Sharma, Nilakanta Nayyar, Anupam Lal Das, Rakesh Uttamchandra Upadhyay, Reena Singh, Abhijeet K., T.N. Singh, Rajeev K. Dubey, Kamlendra Mishra, Pawan S. Bindra, Kavita Wadia, R.P. Singh, Principal Secretary (Revenue)-In-Person for the appearing parties.

The Judgment of the Court was delivered by

AFTAB ALAM, J. 1. Leave granted.

2. On the writ petitions filed by the UP State Industrial Development Corporation (respondent no.1) the Allahabad High Court set aside the auction sale of two pieces of land made in favour of the appellants. The High Court held that the auction sale of the two plots was a nullity because in violation of rule 285-D of the UP Zamindari Abolition and Land Reforms (UPZALR) Rules, 1952 the appellants did not deposit one fourth of their bid amounts immediately on the conclusion of the auction, but deposited the requisite amounts on the following day. Having thus held the auction sale legally untenable, the High Court did not advert to the other circumstances and the manner in which the auction sale was held.

3. The appellants came to this court taking the plea that they had deposited one fourth of their bid amounts on the day

the auction was held and the decision of the High Court was based on a patent error of law. Even while challenging the judgment of the High Court, the appellants were anxious to not enlarge the issues and to confine the case to the very limited question whether or not the requisite amounts in terms of rule 285-D were deposited on the date of the auction. But, earlier in course of hearing of the case, we came across certain disturbing features that compelled us to ask the State Government to bring on record all the relevant materials concerning the auction sale of the two pieces of land in question. And now, the more we examine the facts of the case the more we feel dismayed and distressed. It is plainly a case of appropriation of large areas of public/government land by some very unscrupulous people both outside and inside the State Government acting in cahoots. And we have reasons to fear that this is not an isolated case.

4. The two pieces of land that are at the centre of the dispute are plot nos.2/1 & 2/2 situated in the Industrial Estate, Sahibabad, in the district of Ghaziabad, UP. The two plots are owned by the Uttar Pradesh State Industrial Development Corporation (UPSIDC). Plot no.2/1 was allotted by the UPSIDC to M/s Bramic Suri Private Limited (BSPL) and plot no.2/2 to M/s Suri Asbestos Private Limited (SAPL). These two plots were purported to be purchased by Rakesh Kumar Goel (one of the two appellants) and M/s Moti Board Industries Private Limited, represented by its Director, Moti Lal Goel (the other appellant) in an auction sale held by the revenue authorities of the State Government. In course of hearing of the case, on our direction, the State of UP (respondent no.3) produced all the documents concerning the auction proceedings in respect of the two plots. Those were taken on record as "Additional Documents- Vol. 8", (relating to plot no.2/1) and "Additional Documents- Vol. 9", (relating to plot no.2/2). The following narration of facts is on the basis of the documents as contained in the two volumes.

5. BSPL had dues of Rs.1,55,309.85 plus interest @ Rs.26.38 per day from January 12, 1991 under the Employees State Insurance Act, 1948. The Regional Director, ESI on December 13, 1991 sent a certificate to the Collector, Ghaziabad under section 5 of the Revenue Recovery Act for recovery of the dues. In pursuance of the certificate the Additional Collector, Ghaziabad issued two proclamations on May 12, 1992, one for attachment under sections 284/286 of the UP Zamindari Abolition and Land Reforms Act, 1950 and the other restraining 'the defaulter' (BSPL) from selling or transferring the plot in any manner to anyone or from creating any charge on it. The service report of the proclamations, scribbled in hand on their reverse sides, simply said that, on going to the site the firm was found closed. The chowkidar declined to take copies of the proclamations. The copies of the proclamations were, therefore, affixed to the gate of the premises in presence of witnesses and it was announced in a loud voice that the premises, plot no.2/1 was under attachment for non payment of government dues. The next step in the proceedings was the issuance of the Sale Proclamation by the Additional Collector. In the Sale Proclamation it was stated as follows:

> "Permission has been granted for the sale of the above mentioned property under Section 284 (or Section 286) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 on account of the arrears of Rs.1,29,048.35, hence it is hereby ordered that the sale of the aforesaid property will be held in the forenoon (or in the afternoon as the case may be) of 15.6.1992 at the Tehsil premises.
>
> Plot No. 2/1, Site No.4, [full plot along with road].
>
> [Please write here that the land will be sold in an un-encumbered state or encumbered state under Section 284 and write such other particulars which the collector deems necessary]"

6. The Sale Proclamation is undated but its service report, written in hand on its reverse, is dated June 5, 1992. The service of the Sale Proclamation was also effected in the same way as the earlier two proclamations, that is to say by affixing a copy of the proclamation to the gate of the premises and by making announcement in a loud voice that the property will be auction sold on the specified date and asking the people to come for the auction in large numbers.

7. On June 9, 1992 a petition was filed on behalf of BSPL requesting the Tehsildar, Dadri (Ghaziabad) for grant of some time for payment of the government dues for the recovery of which the auction sale proclamation was issued. The petition submitted by the BSPL lies in the file of the auction proceeding but apparently no notice was taken of it. It seems that Canara Bank from where BSPL had taken a loan also got a wind of the auction proceedings concerning plot no.2/1. On June 10, 1992, the Canara Bank wrote a letter to the ADM (Finance), Ghaziabad stating that Site 4, plot no.2/1, Ghaziabad was mortgaged in its favour as security for the loan advanced to BSPL. The letter further stated that the bank had the first charge over the land in question and requested the ADM not to proceed with the proposed auction sale.

8. At this stage BSPL took the matter to the court and filed a writ petition (W. P. no.22295 of 1992) in the Allahabad High Court for quashing the Sale Proclamation fixing the auction sale of plot no. 2/1 on June 15, 1992. A photostat copy of the Sale Proclamation was annexed to the writ petition marked as Annexure 1. Along with the writ petition a stay petition was also filed in which a prayer was made in the following terms:

> "It is, therefore, MOST RESPECTFULLY PRAYED that this Hon'ble Court may very graciously be pleased to stay the operation of the impugned Auction Certificate (Annexure No.1 to the writ petition) issued by the respondent No.3— through which the date of auction has been fixed for

> 15.6.1992, during the pendency of the present writ petition before this Hon'ble Court ……."

9. On June 12, 1992 the High Court granted ad interim stay in favour of the writ petitioner, BSPL. (We may state here that on these facts being stated before us in course of hearing of the case, we summoned the original record of the writ petition from the Allahabad High Court and verified the facts from the original record). A certified copy of the order was produced later on but there is sufficient evidence to show that before the date fixed for the auction, the revenue authorities at Ghaziabad were informed about the stay order passed by the High Court through the lawyer's certificate.

10. At this stage, we may advert to the other plot no.2/2, which was allotted by the UPSIDC to SAPL. The material facts and circumstances concerning the auction sale of this plot are very similar to what is stated above in respect of plot no.2/1. SAPL had dues of Central Excise amounting to Rs.4,53,541.92. For recovery of the dues, Superintendent of Excise, Range I, Sahibabad, issued a certificate to the Collector, Ghaziabad, under section 11 of the Central Excise & Salt Act, 1944. The certificate gave rise to a proceeding and the Pargana Adhikari, Dadri, asked the Tehsildar to pass the attachment order for recovery of the government dues, writing as follows:

> "It is *heard* that the firm owns a Plot No. 2/2*. To my information there is no charge in respect of this property. The firm is closed since a long time. It is also heard* that the owner of the plot Sardar Jagjeet Singh S/o Harnam Singh wants to sell this plot. There is a small shed constructed in the said plot No.2/2. It is requested that orders to attach the said property be given so that, Government arrears may be recovered. The estimated value of the Plot No. 2/2 is Rs. 20.00 Lacs."
>
> (emphasis added)

11. Next, proclamations were issued on May 13, 1992, one for attachment of the plot and the other prohibiting SAPL from selling, transferring or mortgaging the property in favour of any other person. The service of the proclamations was effected exactly in the same manner as in the case of the other plot (being plot no.2/1). The Pargana Adhikari then made a request to the Tehsildar, Dadri for issuing the order for auction sale of the property that was lying under attachment. The Tehsildar issued the Sale Proclamation (undated) fixing the auction sale of this plot too on June 15, 1992. The service of the Sale Proclamation was effected in the same way as in case of the earlier proclamations. A petition for grant of some time for payment of the government dues was filed before the Tehsildar on June 9, 1992 on behalf of SAPL also.

12. Thus, with a slight variation of dates in regard to the earlier proclamations, the two plots came to be fixed up for auction sale on the same date, June 15, 1992.

13. There are memos of auction in respect of both the plots showing that their auction took place on June 15, 1992. From the memo of auction for plot no 2/1, it appears that five (5) bidders, including the appellant, Rakesh Kumar Goel, took part in the auction. The appellant made the highest bid of Rs.6,30,000/- and his bid was finally accepted. The memo also recorded that one fourth of the bid amount was deposited in the Nazarat in Register No.4.

14. The memo of auction for plot no.2/2 shows that there were five (5) bidders, including Moti Lal Goel, representing the second appellant. He made the highest bid of Rs.6,20,000/- which came to be accepted. The memo recorded that one fourth of the bid amount was received, vide Receipt no.043560. We shall presently see that the statement in both the memos in regard to payment of one fourth of the bid amounts was quite false.

15. The memos of auction did not care to disclose the

reserve amounts for the two plots but mentioned some terms and conditions subject to which the auction was held. Conditions 1 and 3 of the auction as stated in the auction memo for plot no.2/2 are relevant and may be reproduced here:

> "1. 1/4th of the bid amount shall be deposited by the highest bidder, just after the close of the Auction Proceedings. The remaining 3/4th of the bid amount shall be deposited within a period of 15 days. On failure, by the highest bidder, to deposit 3/4th of the bid amount within the aforesaid stipulated period of 15 days, the 1/4th of the bid amount, already deposited by the said bidder shall be forfeited in favour of the State Government.
>
> 2. xxxxx
>
> 3. The auction shall be approved after the expiry of 30 days meant for receiving any objection from anyone against the auction proceedings. The file shall be forwarded to the competent authority for approval of the auction proceeding after the expiry of the said period.
>
> 4. xxxxx"

16. According to the private respondents (BSPL & SAPL), no auction was ever held and the whole thing was mere paper work. Our attention was also drawn to certain facts coming to light in course of a departmental enquiry later held in the matter. In the departmental enquiry One Harbeer Singh, AWBN stated that auction proceedings with respect to SAPL and BSPL (lands) were not held in the Tehsil office but papers were prepared at the residence of the ADM. In the morning of June 15, 1992 he was called there. At the residence of the ADM, the Amin, Ram Kumar was writing the proceedings on one of the files and he was asked to write the proceedings on the other file. Harbeer Singh said that the auction proceedings at pages 40-41 were written by him and he wrote about the payment of

one fourth of the bid amount on the instruction of the Naib Tehsildar who was his superior officer.

17. In the overall facts of the case (which have only partly unfolded so far) the version given by Harbeer Singh appears to be highly probable. But even if we discount that and take the documents concerning the auction sale of the two plots in the government record at their face value, the auction proceedings of the two plots appear to be full of anomalies some of which may be enumerated as follows:

i. No notice or information about the attachment or sale of the two plots was given to the UPSIDC which is undeniably their owner.

ii. No attention was paid to the claim of the Canara Bank that it had the first charge over plot no.2/1 which was given in mortgage to the bank as security for the loan advanced by it to BSPL.

iii. The Sale Proclamations did not indicate the area of the plots or the nature of the rights therein that would be the subject matter of the sale; whether the auction would be in regard to proprietary interests in the two plots or only leasehold rights? In case of latter what would be the limitations and conditions of the leasehold rights?

iv. There was practically no public advertisement (no newspaper publication or any thing of that sort) to give wider information to the general public about the auction. The only public announcement was done by the process server going to the site and calling out loudly that the two plots would

be put to auction sale on the specified date for non-payment of government dues and asking the people to come for the auction in large numbers.

v. No reserve price for the plots in question was indicated either in the Sale Proclamations or even in the Memos of Auction.

vi. Even though no reserve price was mentioned in the Sale proclamations and the Auction Memos, from the other materials on record it appears that reserve prices were actually fixed for the two plots in question. The reserve price for plot no.2/1 was fixed at Rs.25 lakhs and for plot no.2/2 Rs.20 lakhs. Now, this gives rise to two questions. First, how could the reserve prices be so low? In the Additional Affidavit filed by the State in compliance with the order dated July 7, 2009 it was admitted that "the valuation of the properties were not computed in accordance with the procedure as prescribed under the aforesaid Chapter-XV of the Revenue Manual and were fixed without any basis". In this connection it is worthy to note that plot no.2/1 has an area of 27,800 Sq. yards and plot no.2/2, 35,700 Sq. yards; both the plots are situate in the industrial area, Sahibabad adjoining Delhi. According to the private respondents, the market value of those plots in 1992 would be in crores. We are inclined to think that the value of the two plots would be nearer the figure quoted by the respondents than the paltry amounts of Rs.25 lakhs and Rs.20 lakhs. The second and the far more important question is how the bids

of Rs.6,30,000/- and Rs.6, 20,000/- could be accepted for plot nos.2/1 and 2/2 when their reserve prices were Rs.25 lakhs and Rs.20 lakhs respectively? If the highest bid was much lower than the reserve price, the normal procedure is to reject all bids and to hold a re-auction on a later date.

vii. The information about the stay order passed by he High Court was completely ignored.

viii. There is nothing to show that after the government dues were satisfied, the balance of the sale price was refunded to the land holders, the two private respondents BSPL and SAPL.

18. At this stage, in fairness to all sides, it may be stated that a number of the anomalies in the auction proceedings as indicated above were possible only due to the grave flaws and lacunae in the relevant provisions of the law. The auction proceedings were held under the provisions of the UP Zamindari Abolition and Land Reforms Act, 1950 and UP Zamindari Abolition and Land Reforms Rules, 1952. Section 279 of the Act lays down the procedure for recovery of an arrear of land revenue and in so far as relevant for the present, provides as follows:

"279. Procedure for recovery of an arrear of land revenue.- (1) An arrear of land revenue may be recovered by any one or more of the following processes-

(a) xxxxxxxxxxxxxx

(b) xxxxxxxxxxxxxx

(c) xxxxxxxxxxxxxx

(d) by attachment of the holding in respect of which the arrear is due;

(e) by lease or sale of the holding in respect of which the arrear is due;

(f) by attachment and sale of other immovable property of the defaulter, and,

(g) xxxxxxxxxxxxxx

(2) The costs of any of the processes mentioned in sub-section(1) shall be added to and be recoverable in the same manner as the arrear of land revenue."

19. Section 284 empowers the Collector (which includes an Assistant Collector of the first class, authorized by the State Government to discharge the functions of the Collector) to attach the holding of the defaulter, to give it on lease for a period of up to 20 years or to sell the holding free from all encumbrances and appropriate the proceeds in satisfaction of the arrears and refund the excess, if any, to the defaulter. Section 286 gives power to the Collector to proceed against the interests of the defaulter in other immovable properties. Section 341 provides for the application of the provisions of the CPC unless expressly barred by any of the provisions of the UPZALR Act.

20. Coming now to the provisions of the UPZALR Rules, the relevant provisions, dealing with attachment and proclamation of sale, are contained in rules 273, 273-A and 282 which are as follows:

"273. Where any land is attached in pursuance of the provisions of clause (d) or (f) of Section 279 or sub-section (1) of Section 284 or of Section 286 or is let out under sub-section (2) of Section 284, a proclamation in Z.A. Form 73, shall be affixed at a conspicuous place in the village in which the land is situate, and it shall also be notified by beat of drum.

273A. The attachment of holing or other immovable poperty under clause (d) or (f) of section 279 or under section 284 or section 286, shall be effected in the manner prescribed in Order XXI, Rule 54 of the Code of Civil Procedure, 1908 and the order to the defaulter shall be issued in Z.A. Form 73-D.

282. Section 286- The proclamation for sale shall be in Z.A. Form 74"

21. Further details in regard to the sale of a holding or other immovable property for recovery of arrear are provided under rules 285-A to 285-N. For a very brief summary of the way a sale is to be conducted, we may refer to rule 285-A that provides that no sale under sections 284 and 286 would take place until after the expiry of at least 30 days from the date on which the proclamation under rule 282 was issued; rule 285-C lays down that there would be no sale in case, before the date fixed for the sale, the defaulter pays the arrears in respect of which the land was to be sold. Rules 285-D and 285-E are relevant for the present and are reproduced below:

"285-D. The person declared to be the purchaser shall be required to deposit immediately twenty-five per cent of the amount of his bid, and in default of such deposit the land shall forthwith be again put up and sold and such person shall be liable for the expenses attending the first sale and any deficiency of price which may occur on the re-sale which may be recovered from him by the Collector as if same were an arrear of land revenue.

285-E. The full amount of purchase money shall be paid by the purchaser on or before the fifteenth day from the date of the sale at the district treasury or any sub-treasury and in case of default the deposit, after the expenses of sale have been defrayed therefrom, shall be forfeited to Government and the property shall be re-sold and the defaulting purchaser shall forfeit all claims to the property,

or to any part of the sum for which it may be subsequently sold."

22. Rule 285-H and 285-I deal with applications/petitions that may be filed for setting aside the sale; rule 285-J provides for confirmation of sale on expiry of thirty days from the date of the auction, provided no objection is filed under rules 285-H or 285-I or, if any filed, has been disposed of. If no application is made within 30 days rule 285-K bars all claims on grounds of irregularity or mistake in publishing or conducting the sale. Rule 285-M provides for putting the purchaser of the property in its possession and the grant of the Sale Certificate to him.

23. It is, thus, to be seen that under the Rules the only mode for advertisement of auction-sale is by affixation of the Sale Proclamation at a conspicuous place in the village where the property is located and by beat of drum. There is no provision of advertisement in the newspapers or by any other means to spread the information about the proposed auction on a large scale. Form ZA 73 (under Rule 273) and form ZA 73-D (under Rule 273-A) only provide the physical description of the property and plot/house number and boundaries of the immovable property; Form 74 (rule 282) does not provide any description of the type of property (e.g., agricultural, homestead, industrial, etc.) or type of rights (e.g., lease and its term or freehold, etc.).

24. There is no provision in the Act or the Rules for fixation of reserve price before the property is put up for auction sale. We were, however, informed that the Collector of the District regularly notifies "circle rate" for different types of land and different locations. This circle rate is primarily used for computation of stamp duty for registration of document. We were informed that in 2007 instructions were given to confirm sale only above the market price. There is also no provision enabling the authorities to bar someone with a criminal record or against whom there are tax dues or government dues of any

other kinds from taking part in the sale of land by the government.

25. It is, thus, evident that the law under which the auction sale proceedings were held was itself quite deficient. But the enumeration of the shortcomings and the lacunae in the provisions of an archaic law is not to say that the auction proceedings of the two plots were otherwise fair and proper and suffered from some irregularities only due to the flaws in the law. On the contrary, we have no doubt in our mind that auction sale of the two plots was illegal, fraudulent and collusive and the appellants and their abettors in the revenue department of the State Government fully exploited the weaknesses of the law to their advantage. This would be evident as the facts of the case further unfold.

26. We have seen above that rule 285-D of the UPZALR Rules requires the highest bidder to deposit immediately twenty five percent of the amount bid by him. We also noted that this was one of the conditions mentioned in the Auction Memos. We have also seen that in the two Auction Memos it was stated that the highest bidders for the two plots, namely Rakesh Kumar Goel and Moti Lal Goel had deposited one fourth of their respective bid amounts immediately after the auction. But the payment recorded in the Auction Memos is proved to be wrong and incorrect by reference to the Government Records. All such payments are entered in Register no.4. In the Allahabad High Court where the auction sale of the two plots was challenged on grounds of violation of rule 285-D, the Register was produced by the Naib Tehsildar on being summoned by the Court. The High Court found that in Register no.4 there were only three entries at serial nos.39, 40 and 55 in respect of the auction sale of the two plots. These were as follows:

"39.	16.6.1992	1/4t part No.844499/ 16.6.1992 Immovable property of Ram Kumar SA, M/s Suri Asbestos Pvt. Ltd. through ML Moti Goel, Director, M/s.Moti Board Ind. Pvt. Ltd.	155000.00
40.	16.6.1992	1/4th part No. 844500/ 16.6.1992 of Immovable Property M/s Bramic Suri Pvt. Ltd. through Rakesh Kumar S/o. Lajja Ram, R/o. Navyug Market, Ghaziabad.	157500.00
55.	29.6.1992	3/4th part of No.846590/ 29.6.1992 of Immovable Property M/s Suri Asbestos property Pvt. Ltd through ML Moti Goel, Director, M/s. Moti Board Ind. Pvt. Ltd."	465000.00

27. From entries 39 and 40 it is clear that twenty five percent of the bid amounts for the two plots in question were deposited on June 16 and not immediately after the auction held on June 15, 1992 as claimed by the appellants. Mr. Mohta, learned senior advocate, appearing for the appellants kept telling us for days on end the appellants had receipts in their possession showing that the deposits were made on June 15 itself. Notwithstanding the fact that the receipts were not filed in the High Court and neither were those enclosed with the SLP at the time of its filing, Mr. Mohta was allowed as much time as he wanted for producing those receipts. In the end he said that the receipts were misplaced and the appellants were not able to find them out. We have no doubt in our mind that all the time Mr. Mohta was wrongly briefed by the appellants. No receipts were produced in court because there were, in fact, no receipts showing payment immediately after the auction.

28. The entries in Register no.4 show something else very important. It appears that the balance seventy five percent of

the bid (Rs.6,30,000/-) for plot no.2/1 of BSPL was never deposited at all. In other words the sale of plot no.2/1 was confirmed and sale certificate was issued in favour of the appellant even without payment of the full price of the plot.

29. Let us now see how the sale of the two plots was confirmed. The appellants and their abettors inside the revenue department of the government were so far able to show that for recovery of the Government dues the plots of land of BSPL (2/1) and SAPL (2/2) were put to auction on June 15, 1992 in which the two appellants were the highest bidders. The next stage was the confirmation of the sale after dealing with the objections. It is noted above that even before the date of the auction the concerned authorities were given information about the stay order passed by the Allahabad High Court in respect of plot no.2/1. At that time they paid no heed to it but later on certified copies of the order were produced. On June 18, 1992 certified copies of the stay order passed by the Allahabad High Court were submitted before the Tehsildar, Dadri, both by the private respondent and the Canara Bank. Now, this was a real impediment to overcome before the sales could be confirmed and the appellants and their abettors inside the government could succeed in their designs. The High Court order was put away in a highly disingenuous way. A note was put up in which referring to the cause title of the writ petition, where the address of the writ petitioner, M/s Bramic Suri Pvt. Ltd. was shown as "Gyani Border, Post Office Chikambarpur, District Ghaziabad", it was declared that the High Court Order was with respect to some other property, situate at the site of the address given in the writ petition. On June 30, 1992 the note was perused by the District Magistrate and on the same date it was approved by the ADM (F & R). No one cared to see that Annexure 1 to the writ petition was a photostat copy of the very same Sale Proclamation on the basis of which the auction sale of plot no.2/1 was held and in the writ petition the prayer was to quash the Sale Proclamation at annexure 1 and in the stay petition the prayer was to stay its operation. It is not known whether this

matter was brought to the notice of the High Court and whether the High Court took any action in the matter. We can only say that we find it one of the crudest manipulations coming to our notice.

30. Coming now to plot no.2/2 which was put up for auction sale for recovery of the demand of Central Excise dues raised by the Excise Superintendent. Against the adjudication order giving rise to the demand an appeal, along with a petition for stay-cum-waiver, was filed before the Central Excise and Gold Control Appellate Tribunal. The appeal and the stay petition were still pending before the Tribunal when the recovery proceedings were started in which the plot in question was put up for auction sale. In those circumstances, in this matter also, the private respondents approached the Allahabad High Court with a writ petition which was disposed of by the High Court by order dated July 13, 1992 observing as follows:

> "Having considered the matter carefully, we find that there is a good deal of justification made by the petitioner. In the circumstances, we consider it equitable and in the interest of justice to direct the respondents to stay their hands and not to proceed with the recovery proceedings till the stay-cum-waiver application is adjudicated by the tribunal. Accordingly, we direct the Central Excise and Gold Control Appellate Tribunal, New Delhi to decide the stay-cum-waiver application, within a period of six weeks, a certified copy of this order is filed before it. The petitioner undertakes to file a certified copy of the order within ten days before the Tribunal. We further direct that for a period of two months or till the disposal of the stay-cum-waiver application, whichever is earlier, recovery proceedings against the petitioner shall remain stayed and no further proceedings shall be taken in pursuance to sale proclamation, a copy of which has been filed as Annexure-3 to the writ petition. We however, make it clear that if the stay-cum-waiver application has already been decided or

if the petitioner fails to file a certified copy of the order before the Appellate Tribunal as directed above, the stay of the recovery proceedings granted by this court by this order shall be of no avail to the petitioner and it shall be open to the respondents to proceed against the petitioner in accordance with law."

31. In the counter affidavit filed on behalf of the private respondents it is stated that a copy of the High Court order was served upon the District Magistrate on July 15, 1992. In the Government record, however, there is no trace of the High Court order and there is no discussion about it in any of the notes. On the contrary on the same day (July 15, 1992) Sale Certificates were issued under the signature of the ADM (Finance), a certain Ram Bahadur in favour of the appellants and were sent for registration.

32. In the facts and circumstances discussed above, we do not have the slightest hesitation in holding that the auction sale of the two plots in question was fraudulent, collusive, sham and mala fide. In the guise of recovery of the government dues, the two appellants in collusion with their abettors in the government departments were trying to grab government lands and they almost succeeded but for the interference by the Allahabad High Court.

33. It may also be stated here that in the counter affidavit filed by the UPSIDC it was alleged that Moti Lal Goel and his brother Rakesh Kumar Goel are notorious land grabbers in the districts of Ghaziabad and Gautam Budh Nagar and they had misappropriated about Rs.1125 crores. The counter affidavit gave a large extract from the affidavit of the Tehsildar (judicial), Ghaziabad, filed in the case before the High Court. In the Tehsildar's affidavit filed before the High Court very serious allegations were made against Moti Lal Goel. In view of the statements made in the counter affidavit of UPSIDC, this court on April 24, 2009 passed the following order:

"……In this case serious allegations are made against the petitioner on the basis of petitioner indulging in land scam. An affidavit has been filed by the Deputy Manager, U.P. State Industrial Development Corporation Limited giving credentials of the petitioner with regard to the fraud allegedly committed of rupees more than one thousand crores. Several cases are pending before the Criminal Courts under Indian Penal Code as well as under Gangster Act. Although the present case arises from an auction sale, we want to know from the State of U.P. as to on what basis people with such credentials are allowed to take part in the auction and why is the State not responding to the Petition……."

Again on July 14, 2009, this court passed the order:

"……..It has been alleged and prima facie we are satisfied that over the years lands owned by State of U.P. are being alienated in the name of auction at an undervalued rate. It is also alleged that some of the alienations have taken place at gun point. These are very serious allegations. FIRs have been filed in this connection. We want the State of U.P., through its counsel, to submit a status report of cases filed against the Goel family allegedly involved in the aforesaid practices……."

34. In compliance with the order, an affidavit sworn by one Shri R.N. Upadhyaya, Special Secretary, Department of Revenue, Government of Uttar Pradesh was filed on July 25, 2009. In this affidavit, it is stated that Moti Lal Goel, Rakesh Kumar Goel and their family members were accused in sixteen (16) criminal cases in district Gautam Budh Nagar. Out of the sixteen (16) cases, three (3) were at the stage of investigation and one (1) was referred for inquiry to the CBI. In rest of the twelve (12) cases charge sheets were filed before the competent court in year 2005 and onwards. In the district of Ghaziabad, Moti Lal Goel, Rakesh Kumar Goel and their family

members were accused in ten (10) criminal cases. Out of the ten (10) cases, two (2) were at the stage of investigation and two (2) were referred to the CBI. In rest of the six (6) cases charge sheets were filed before the competent court in year 2005 onwards. In the affidavit a long list was given of the cases against Moti Lal Goel and Rakesh Kumar Goel and their other family members pending in the two districts. From the list of cases it appears that almost all the cases were under sections 420, 467, 468, 469 and 472 of the Penal Code and the different provisions of the Prevention of Corruption Act. In the affidavit it was further stated that according to the report of the District Magistrate, Ghaziabad, Moti Lal Goel and his family members had got their name falsely and fraudulently entered in the revenue record in respect of land measuring about 129 hectares, the market value of which, in the year 2005, was approximately Rs.1100 crores. Similarly, from the report of the District Magistrate, Gautam Budh Nagar, it appeared that Moti Lal Goel and his family members had got their name fraudulently entered in the revenue records in respect of land measuring 252 hectares, the market value of which in the year 2005 was about Rs.400 crores. The affidavit also gave the list of the lands in regard to which Moti Lal Goel and his family members had got their names allegedly fraudulently recorded in the revenue records.

35. These, in short, are the credentials of the two appellants and the manner in which the two plots in question were put to auction sale purportedly for recovery of the government dues.

36. Against the auction sale of the plots in question both the private respondents and the UPSIDC, the owner of the plots, filed their respective objections before the Commissioner, Meerut Division, but their objections were rejected by the order dated November 5, 1998 passed by the Commissioner in objection letter Nos.19 and 25 of 1991-1992. The UPSIDC filed review petition before the Commissioner which too was dismissed on May 3, 1999 on the ground that the objection

petition was dismissed on merits by a speaking order. Against the order passed by the Commissioner, both the private respondent and the UPSIDC filed revisions before the Board of Revenue, Lucknow. Even while the revision of the private respondent was pending, the revision filed by the UPSIDC was dismissed by order dated October 11, 1999 passed by the Board of Revenue in Revision No.10(LR) of 1998-1999. We feel sorry that such a gross case could not be corrected even at the highest level of the State Administration.

37. Whatever little redemption the State Government was able to attain in this case was through Mr. Ashok Desai, senior advocate, who appeared on its behalf at the stage of the final hearing of the case. Mr. Desai, with great fairness, did not try to support the auction sale of the plots in question even for a moment. On the contrary, he submitted that the auction proceedings broke all canons and principles laid down by this Court for the sale of government land by public auction. Mr. Desai invited our attention to a number of decisions of this Court where it is said that the disposal of public property partakes the character of trust and the government or the public authorities are obliged to make all attempts to obtain the best available market price while disposing of public properties. [*Ram and Shyam Co. vs. State of Haryana*, (1985) 3 SCC 267 (paragraphs 5, 6 12 & 15); *V. Purushotham Rao vs. Union of India*, (2001) 10 SCC 305 (paragraph 26); *Aggarwal and Modi Enterprises (P.) Ltd. vs. New Delhi Municipal Council* (2007) 8 SCC 75 (paragraph 23); *Meerut Development Authority vs. Association of Management Studies*, (2009) 6 SCC 171]. He also submitted that it was not open to the government or the public authority to dispose of public property below the reserve price. In support of the submission he invited our attention to a decision of this court in *Anil Kumar Srivastava vs. State of UP*, (2004) 8 SCC 671.

38. He also took us through the relevant provisions of the UPZALR Act and the UPZALR Rules as referred to above in

this judgment. We appreciate the assistance rendered by him to the Court.

39. In the facts and circumstances of the case, we are satisfied that the so called auction sale of the two plots in favour of the appellants was thoroughly illegal. Though the High Court set aside the auction sale of the two plots on the technical ground of violation of Rule 285-D, on a consideration of the overall facts and circumstances, we are satisfied that the auction sale was bad and malafide and was a blatant attempt to grab the public land. We, thus, find no merit in the appeal.

40. At one stage we considered asking the CBI to investigate the present case as also other cases of auction sale and alienation of land by the Revenue Department of the State Government in the District of Ghaziabad. We, however, refrain from doing so for two reasons. One, the CBI is already overburdened and secondly, the matter is about 20 years old. The officers posted at Ghaziabad would no longer be there, some of them might even have retired.

41. But this case certainly calls for exemplary costs to the appellants. We wish to make it absolutely clear that this Court is not for manipulators, speculators and land grabbers. The litigation in this Court is not like buying a lottery ticket that, if luck favours, might bring a windfall (even though illegitimate) but would cost no more than the expenses of litigation. That is not the way of this Court. We, accordingly, impose cost of Rs.2 lakhs on each of the two appellants. The amount of cost must be paid to the Supreme Court Legal Aid Committee within 12 weeks from today. In case receipts showing payment of the cost is not filed within the time as directed, the amounts of cost shall be realised from the appellants as fine under the provisions of the Code of Criminal Procedure.

42. Before parting with the records we feel obliged to say that the existing provisions of the UPZALR Act and the UPZALR Rules are out of date by three quarters of a century. Those were

designed to deal with agriculture holdings in a rural area. Even for that purpose the provisions appear to be far from satisfactory. But they have become woefully inadequate and completely deficient for dealing with land holdings and other immovable properties in highly urbanised and industrialised regions of the State. There is, therefore, an urgent need to update the law either by framing fresh Act and Rules or by thoroughly amending the existing ones.

43. In the result the appeal is dismissed with costs as indicated above. The dismissal of the appeal shall not stand in the way of the authorities to recover from the private respondents Government dues, if any, in accordance with law. We are also not expressing any opinion as to who would get possession over the two plots as the result of the setting aside of their auction sale. If the private respondents claim possession over the two plots the UPSIDC will take a decision on their claim, in accordance with law.

N.J. Appeal dismissed

DAIICHI SANKYO COMPANY LTD.
v.
JAYARAM CHIGURUPATI & ORS.
(Civil Appeal No. 7148 of 2009)

JULY 08, 2010

[S.H. KAPADIA, CJI, AFTAB ALAM AND SWATANTER KUMAR, JJ.]

Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997:

Regulations 20(4)(b), 20(12), 2(e)(1) and (2) – Offer price for acquisition of shares in case of indirect takeover of a company – Determination of – Ranbaxy acquired shares of Zenotech in January 2008 at a price of Rs.160 per equity share – On June 16, 2008, Daiichi made public announcement to the shareholders of Ranbaxy to acquire shares – Daiichi acquired more than 50% of share capital of Ranbaxy on October 20, 2008 and Ranbaxy became subsidiary of Daiichi – On January 19, 2009, Daiichi made public announcement to acquire shares of Zenotech @ Rs.113.62 per equity share – Whether Ranbaxy was a 'person acting in concert' with Daiichi and therefore whether the price paid by Ranbaxy to the shareholders of Zenotech in January 2008 was relevant for determining exit price offered by Daiichi to Zenotech's shareholder under Regulation 20(4)(b) – Held: Ranbaxy did not qualify as 'persons acting in concert' under Regulation 2(e)(1) for the acquisition of shares of Zenotech as Ranbaxy and Daiichi did not have any common object or purpose to acquire the shares or voting rights of the Zenotech when the agreement was executed between Ranbaxy and Daiichi on June 11, 2008 – Acquisition of Zenotech's shares by Daiichi was only consequential to the acquisition of Ranbaxy and was not a concerted action – Any acquisition of Zenotech shares made by Ranbaxy earlier at a time when

it was not a 'person acting in concert' with Daiichi was of no consequence and price paid by Ranbaxy for Zenotech shares at that time would not attract clause (b) of Regulation 20(4) – Securities and Exchange Board of India Act, 1992.

Regulation 2(e)(1) – Concept "person acting in concert" – Held: The concept is based on a target company on the one side, and on the other side two or more persons coming together with the shared common objective or purpose of substantial acquisition of shares etc. of the target company – Unless there is a target company, substantial acquisition of whose shares etc. is the common objective or purpose of two or more persons coming together, there can be no "persons acting in concert".

***Legislation**: Delegated legislation – Legislative practice in India that unlike an Act, a Regulation or the later amendments introduced in it are not preceded by the "Object and Purpose" clause – Absence of "Object and Purpose" clause in the Regulations creates difficulties for Courts in properly construing the provisions of Regulations dealing with the complex issues – Need for change in old practice and to add at the beginning the object and purpose clause to the delegated legislations as in the case of the primary legislations.*

On October 3, 2007 Ranbaxy entered into a Share Purchase and Share Subscription Agreement (SPSSA) jointly with Zenotech and its promoter whereby Ranbaxy agreed to purchase a large block of equity shares representing 27.35% of the company's fully paid up equity share capital, at a negotiated price of Rs.160 per equity share and to subscribe to 54.89 lacs fully paid up equity shares at the same price under a preferential allotment of Zenotech. On October 5, 2007, Ranbaxy made public announcement whereby it sought to acquire from the public shareholders, equity shares of Zenotech constituting 20% of its expanded share capital. In the

public announcement, Ranbaxy quoted offer price of Rs.160 per equity share. On November 23, 2007, Zenotech duly allotted 54.89 lacs fully paid up shares to Ranbaxy. The open offer made by Ranbaxy for Zenotech shares in terms of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (the Takeover Code or Takeover Regulations) closed on November 15 2008. Following the completion of the open offer formalities, Ranbaxy issued a post offer announcement on January 30, 2008. The announcement disclosed that though in the public announcement it offered to purchase shares amounting to 20% of Zenotech's capital, it actually received only 2.2% of the expanded share capital of the company and the promoters still retained large portion of their shareholding in Zenotech.

On June 11, 2008, Daiichi (appellant) entered into SPSSA jointly with Ranbaxy and its promoter whereby Daiichi agreed to acquire 30.91% of the fully paid up equity share capital of Ranbaxy by buying a sufficiently large block of shares from the company's promoters. Daiichi also agreed to subscribe to the shares representing in the aggregate 11% of fully paid up equity share capital of Ranbaxy and 238 lacs share warrants each warrant exercisable for one equity share of Ranbaxy. On June 16, 2008, Daiichi made a public announcement to the shareholders of Ranbaxy (other than sellers under SPSSA) to acquire in the aggregate 22.01% of the fully paid share capital of Ranbaxy. Daiichi's control over Ranbaxy consummated on October 20, 2008, when it acquired more than 50% of the share capital of Ranbaxy and from that date, Ranbaxy became a subsidiary of Daiichi. Daiichi made the public announcement in regard to Zenotech on January 19, 2009. In the public announcement, Daiichi offered Rs.113.62 for each share of Zenotech. The offer price was

based on the price of Zenotech shares quoted on the stock exchange.

Complaints were filed to SEBI by one of the promoters of Zenotech and another shareholder of Zenotech claiming that the offer price for Zenotech shares could not be less than Rs.160 per share and requested the SEBI to direct Daiichi to revise the offer price. The claim was rejected. Security Appellate Tribunal (SAT) allowed the appeals and directed Daiichi to offer Rs.160 per share to the shareholders of Zenotech. Aggrieved by the decision of SAT, Daiichi filed the appeals.

Allowing the appeals, the Court

HELD: 1.1. Regulation 2(b) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (the Takeover Code or Takeover Regulations), defines the term 'acquirer'. In terms of the definition, on entering into the SPSSA on June 11, 2008, Daiichi became the acquirer (directly) of Ranbaxy and also of Zenotech (indirectly through the acquisition of Ranbaxy). Regulation 20(12) of the Takeover Code says that the offer price for the shares of a company being taken over indirectly and as a consequence of the acquisition of the primary target, would be determined with reference to two dates, one when the public offer was made in regard to the "Parent company" (that is, the company, the acquisition of which resulted in the takeover of the secondary target company) and the other when the public offer is made for the secondary target company and the higher of the two would be taken as the offer price. In terms of the said sub-regulation, therefore, the share price of Zenotech was required to be determined as on June 16, 2008 (the date of the public announcement for Ranbaxy, the parent company) and as on January 19, 2009 (the date of the

public announcement for Zenotech, the indirectly target company). Regulation 20(12) mentions the dates with reference to which the offer price is to be determined but it does not say as to how the offer price is to be determined. Sub-regulations (4) and (5) remained unchanged and did not undergo any amendments following the introduction of sub-regulation (4) in regulation 14 and sub-regulation (12) in regulation 20. This is to say that the provisions of sub-regulations (4) and (5) applied both to cases of direct and indirect takeover; they were not designed only for cases of indirect takeover. [Paras 11, 12, 25] [267-E-G; 280-G-H; 281-A-E]

1.2. Sub-regulation (4) of regulation 20 prescribes three ways for determining the share price with the stipulation that the highest among them would be the offer price. Clause (a) of sub-regulation (4) refers to the negotiated price under the agreement. This would clearly apply to a case of direct takeover and shall have no application to a case of indirect takeover like the present one. Clause (b) is based on the price paid by the acquirer or persons acting in concert with him for acquisition of shares of the target company within the period of twenty six weeks prior the date of the public announcement and clause (c) is based on the price of the shares of the target company as quoted on the stock exchange. The appellant worked out the share price of Zenotech as on June 16, 2008 and January 19, 2009, following the different modes provided under regulation 20(4)(c) and, in the public announcement, offered Rs.113.62 per share, that being the highest among all. [Paras 26, 27] [281-F-H; 282-A, D-E]

1.3. On the date Daiichi entered into the SPSSA with Ranbaxy, it became acquirer both in relation to Ranbaxy and Zenotech directly in case of the former and indirectly in case of the latter. Regulation 20(4)(b) speaks of the

price paid by the acquirer or persons acting in concert with him for acquisition of shares, if any, during the twenty six weeks period prior to date of public announcement. It does not speak of any agreement to acquire shares or of any voting rights or control over the target company but the actual price paid for acquisition of its shares. The Appellate Tribunal proceeded on the basis that since Daiichi and Ranbaxy were "persons acting in concert" on the date of the public announcement made by Daiichi for Zenotech shares, clause (b) of regulation 20(4) would be attracted regardless of the fact that the two were not in that relationship on the dates of purchase of Zenotech shares by Ranbaxy. [Para 20 and 40] [272-G-H; 289-A-C, E-F]

1.4. The concept of "person acting in concert" under regulation 2(e)(1) is based on a target company on the one side, and on the other side two or more persons coming together with the shared common objective or purpose of substantial acquisition of shares etc. of the target company. Unless there is a target company, substantial acquisition of whose shares etc. is the common objective or purpose of two or more persons coming together there can be no "persons acting in concert". The other limb of the concept requires two or more persons joining together with the shared common objective and purpose of substantial acquisition of shares etc. of a certain target company. Two or more persons may join hands together with the shared common objective or purpose of any kind but so long as the common object and purpose is not of substantial acquisition of shares of a target company they would not comprise "persons acting in concert". The idea of "persons acting in concert" is not about a fortuitous relationship coming into existence by accident or chance. The relationship can come into being only by design, by meeting of minds between two or more

persons leading to the shared common objective or purpose of acquisition of substantial acquisition of shares etc. of the target company. The common objective or purpose may be in pursuance of an agreement or an understanding, formal or informal; the acquisition of shares etc. may be direct or indirect or the persons acting in concert may cooperate in actual acquisition of shares etc. or they may agree to cooperate in such acquisition. Nonetheless, the element of the shared common objective or purpose is the *sin qua non* for the relationship of "persons acting in concert" to come into being. Therefore, on signing the SPSSA, Daiichi and Ranbaxy did not come within the relationship of persons acting in concert within the meaning of regulation 2(e)(1) of the Takeover Code. [Paras 43, 44 and 45] [290-D-H; 291-A-H]

2.1. The deeming provision as contained in clause (2) of Regulation 2(e) cannot do away either with the target company or the common objective or purpose of substantial acquisition of shares etc. of the target company shared by two or more persons because to do so would be destructive of the very idea of "persons acting in concert" as defined in clause (1) of Regulation 2(e). Therefore, clause (2) of Regulation 2(e) containing the deeming clause cannot be seen as a 'stand alone' provision, independent of clause (1) of Regulation 2(e). The deeming provision under clause (2) operates only within the larger framework of clause (1) of regulation 2(e). The deeming provision simply says that in case of nine specified kinds of relationships, in each category, the person paired with the other would be deemed to be acting in concert with him/it. What it means is that if one partner in the pair makes or agrees to make substantial acquisition of shares etc. in a company it would be presumed that he/it was acting in pursuance of a common objective or purpose shared with the other partner of the

pair. Something more is required to comprise "persons acting in concert" than the mere relationship of a holding company and a subsidiary company. Merely because a company has a subsidiary company, the two cannot be dubbed as "persons acting in concert" unless another company is identified as the target company and either the holding company or the subsidiary make some positive move or show some definite inclination for substantial acquisition of shares etc. of the target company. [Paras 46, 47] [292-A-C; D-H; 293-A-B]

2.2. The deeming provision under sub-clause (2) would give rise to the presumption that Daiichi and Ranbaxy were "persons acting in concert", only from October 20, 2008, the date on which Ranbaxy became a subsidiary of Daiichi and not before that, provided of course the other conditions were also satisfied. Hence, the purchase of Zenotech shares by Ranbaxy in January 2008 cannot be said to be by a "person acting in concert" with Daiichi. The Appellate Tribunal was in error in proceeding on the basis that the material date for Ranbaxy and Daiichi to be acting in concert was the date of the public announcement for the Zenotech shares. [Paras 48, 49, 50] [293-B-H; 294-A-G; 295-A]

3. The Appellate Tribunal's error is the result of mixing up the provisions of sub-regulations (12) and (4) of Regulation 20. Sub-regulation (12) came to be introduced in Regulation 20 as a consequence of extension of time for making public announcement for the secondary and indirectly targeted company by insertion of sub-regulation (4) in Regulation 14. Sub-regulation (12) of Regulation 20 obliges the acquirer to work out the best value for the shares of the indirectly targeted company as obtaining on the date of the public announcement for the parent target company as well as on the date of the public announcement for the indirectly targeted company concerned and then to offer the

shareholders the better of the two values, so that the extension allowed for making the public announcement for the indirectly targeted company should not cause any prejudice to its shareholders. Sub-regulation (12) does not in any way affect sub-regulation (4) which remains unamended and it certainly does not alter the meaning of "person acting in concert" as used in that sub-section. [Para 51] [295-D-G]

4. For application of Regulation 20(4)(b) it is not relevant or material that the acquirer and the other person, who had acquired the shares of the target company on an earlier date, should be acting in concert at the time of the public announcement for the target company. What is material is that the other person was acting in concert with the acquirer at the time of purchase of shares of the target company. So far as Zenotech was concerned, Ranbaxy was not acting in concert with Daiichi either from the date of the SPSSA or even after becoming a subsidiary of Daiichi and the acquisition of Zenotech shares by Ranbaxy in the month of January 2008 did not come within the ambit of Regulation 20(4)(b). The offer price in the public announcement for Zenotech shares made by Daiichi was correctly worked out. [Paras 52, 55] [295-H; 296-A-B; F-H]

5. As per the legislative practice in India, unlike an Act, Regulations or any amendments introduced in it are not preceded by the "Object and Purpose" clause. The absence of the object and purpose in the Regulations or the later amendments introduced in it only adds to the difficulties of the court in properly construing the provisions of Regulations dealing with complex issues. The court, so to say, has to work in complete darkness without so much as a glimpse into the mind of the maker of the regulation. Regulations are brought in and later subjected to amendments without being preceded by any reports of any expert committees. Now, with more and more of the regulatory regime where highly important and complex and specialised spheres of human activity are governed by regulatory mechanisms framed under delegated legislation, it is high time to change the old practice and to add at the beginning the "Object and Purpose" clause to the delegated legislations as in the case of the primary legislations. [Para 57] [297-D-H; 298-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7148 of 2009.

From the Judgment & Order dated 7.10.2009 of the Securities Appellate Tribunal, Mumbai in Appeal No. 137 of 2009.

WITH

C.A. No. 7314 of 2009

G.E. Vahanvati, A.G., Fali S. Nariman, Arvind Datar, C.A. Sundaram, Shyam Divan, Ashok Desai, Anand S. Pathak, Nitin Wadhwa, Amit Mishra, Subhash Sharma, Siddharth Dutta, G. Adarsh, Rajshekhar Rao, Rahul Kumar, Karan Laihri, Senthil Jagadeesan, G. Ramakrishna Prasad, B. Suyodhan, Amarpal, Bharat J. Joshi, Pratap Venugopal, Surekha Raman, Dileep Poolakkot (for K.J. John & Co.) Somasekhar Sundareasan, Ananya Kumar, Ankur Saigal, Bina Gupta, Gaurav Singh, Tripti Ray, J.N. Bhushan, John Mathew, S. Dutta for the appearing parties.

The Judgment of the Court was delivered by

AFTAB ALAM, J. 1. Whether the offer of rupees one hundred thirteen and paise sixty two only (Rs.113.62) per share made by the appellant, M/s Daiichi Sankyo Company Ltd. in its public announcement dated January 19, 2009 for acquisition of the shares of Zenotech Laboratories Ltd. was fair and lawful or whether the offer price could not be less than rupees one hundred and sixty only (Rs.160.00) per share? This is the

question that falls for consideration in these two appeals. A correct answer to the question requires a proper construction and understanding of certain provision of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (the SEBI Takeover Regulations or Takeover Code).

2. The facts of the case are fairly simple and are admitted on all sides. The two appeals arise from almost identical facts but in this judgment we would be referring to the paper book of Civil Appeal No.7148 of 2009.

3. On October 3, 2007 Ranbaxy Laboratories Limited (respondent no.3), a company incorporated and registered under the Indian Companies Act, entered into a Share Purchase and Share Subscription Agreement jointly with Zenotech (respondent no.4) and its promoter, Dr. Jairam Chigurupati (respondent no.1 in Civil Appeal No.7148). The agreement provided for Ranbaxy to purchase from Zenotech's promoters a large block of equity shares (78,78,906 in number), representing 27.35% of the company's fully paid-up equity share capital, at the negotiated price of rupees one hundred and sixty (Rs.160.00) per equity share and to subscribe to 54,89,536 fully paid-up equity shares at the same price (rupees one hundred and sixty per share) under a preferential allotment by Zenotech. Having entered into the agreement to acquire shares that would entitle it to exercise voting rights in Zenotech far in excess of the statutorily prescribed limit of fifteen percent (and, in all likelihood, control over it) Ranbaxy was legally obliged to make a public announcement to acquire shares of the company from the ordinary shareholders. It did so on October 5, within four days of the agreement as required by law. In the public announcement it sought to acquire from the public shareholders, equity shares of Zenotech constituting twenty percent of its expanded share capital. In the public announcement Ranbaxy quoted offer price of rupees one hundred and sixty only (Rs.160.00) per equity share as the negotiated price under the agreement (SPSSA) was the

highest of the prices arrived at by the different ways prescribed by law. On November 8, 2007 the share purchase transaction between Ranbaxy and the promoters of Zenotech (Dr. Chigurupati and his family) was completed and at the annual general meeting of Zenotech held on the same day, the shareholders of Zenotech approved the preferential allotment of shares to Ranbaxy. On November 23, 2007 Zenotech duly allotted (by way of preferential allotment) 54,89,536 fully paid-up shares to Ranbaxy. The 'open offer' made by Ranbaxy for Zenotech shares, in terms of the Takeover Regulations, closed on November 15, 2008. Following the completion of the open offer formalities, Ranbaxy issued a post offer announcement on January 30, 2008. The announcement disclosed that though in the public announcement it offered to purchase shares amounting to twenty percent of Zenotech's capital it actually received shares comprising only 2.2 percent of the expanded share capital of the company and further that on completion of all transactions Ranbaxy's shareholding in Zenotech stood at 46.85% of the latter's share capital. It may be stated here that even after the sale in terms of the agreement the promoters (Dr. Chigurupati and his family) retained a large portion of their shareholding in Zenotech.

4. It needs to be stated here that up to this stage Daiichi was nowhere on the scene. It is no one's case that the acquisition of Zenotech's shares and control by Ranbaxy was at the instance of Daiichi or it was in furtherance of some overt or covert understanding between the two.

5. On June 11, 2008 Daiichi (the appellant in these two appeals) entered into a Share Purchase and Share Subscription Agreement (the 'SPSSA') jointly with (i) Malvinder Singh and others, the promoters of Ranbaxy, and (ii) Ranbaxy Laboratories Ltd. Under the agreement, Daiichi would acquire 30.91% of the fully paid-up equity share capital of Ranbaxy by buying a sufficiently large block of shares from the company's promoters. In addition, Daiichi would subscribe to (i) shares,

representing in the aggregate 11% of the fully paid-up equity share capital of Ranbaxy, and (ii) 2,38,34,333 share warrants, each warrant exercisable for one equity share of Ranbaxy. On the same day Ranbaxy informed the Stock Exchanges that in the meeting held on that date its Board of Directors had ratified the terms of the SPSSA and had decided to seek the approval of the company's shareholders for issuance of the shares and the warrants to Daiichi, on preferential basis, as stipulated in the SPSSA. In this letter dated June 11, 2008, addressed to the Stock Exchanges it was also stated that, since Ranbaxy was holding 46.85 percent of the equity shares of Zenotech, the SPSSA "has also triggered an 'Open Offer' to be made by 'Daiichi Sankyo' to the public shareholders of 'Zenotech' to acquire a minimum of 20% of the Equity Shares of 'Zenotech' at a price to be determined under the applicable SEBI Regulations". In order to complete its takeover of Ranbaxy as envisaged under the SPSSA, Daiichi went through the gamut of the statutory prescriptions. On June 16, 2008 it made a public announcement ('open offer') to the shareholders of Ranbaxy (other than the Sellers under the SPSSA) to acquire in the aggregate 22.01% of the fully paid-up equity share capital of Ranbaxy. The offer price in the public announcement, was rupees seven hundred and thirty seven only (Rs.737.00) for each share, which was the price Daiichi had paid to the company's promoters for acquisition of the shares under the agreement and which worked out to be the highest of the prices reckoned by the different ways prescribed by the law. Daiichi's control over Ranbaxy consummated on October 20, 2008 when it acquired more than fifty percent of the share capital of Ranbaxy (as it stood on that date) and on and from that date Ranbaxy became a subsidiary of Daiichi. The relation in which Ranbaxy came with Daiichi had another consequence, to which an allusion was made in the letter that Ranbaxy had addressed to the Stock Exchanges on the date of the SPSSA. Whether intended or not, as a result of its takeover (direct) of Ranbaxy, Daiichi also (indirectly) acquired control of 46.85% of the equity share capital in Zenotech, held by Ranbaxy. What on the date

of the SPSSA was an anticipated consequence, on October 20, 2008 became the reality and this date became the starting point for reckoning the period during which the "acquirer", Daiichi must make the public announcement (open offer) to the shareholders of Zenotech. Daiichi duly made the public announcement in regard to Zenotech on January 19, 2009. In the public announcement, Daiichi offered rupees one hundred thirteen and paise sixty two (Rs.113.62) for each share of Zenotech. The offer price was based on the price of the Zenotech shares quoted on the stock exchange.

6. In regard to the offer price of rupees one hundred thirteen and paise sixty two (Rs.113.62) made in the public announcement by Daiichi, N. Narayanan respondent no.1 in Civil Appeal No.7314 of 2009, who was holding 63000 shares in Zenotech made a complaint to the Securities and Exchange Board of India (SEBI) (vide. letters dated January 19, March 5, April 1, April 15, and May 7, 2009). He claimed that the offer price for Zenotech shares could not be less than rupees one hundred and sixty (Rs.160.00) per share and requested the SEBI to direct Daiichi to revise the offer price accordingly and also to pay interest @ 15% for the delay in coming out with the public announcement.

7. Respondent no.1 in Civil Appeal No.7148 of 2009, Dr. Chigurupati who was the Director, founder and promoter of Zenotech and who along with his wife was holding 26% equity shares in Zenotech made a similar complaint to SEBI through a detailed representation dated January 27, 2009.

The SEBI after due consideration of the matter turned down the claim of the respondents (vide letter dated June 18, 2009 in the case of N. Narayanan's complaint and letter dated June 22, 2009 in the case of the complaint of Dr. Chigurupati).

8. Against the decision of the SEBI, Dr. Chigurupati and N. Narayanan preferred separate appeals, being Appeal Nos.137 and 139 respectively of 2009 before the Security

Appellate Tribunal. The Security Appellate Tribunal upheld the claim of the respondents and by order dated October 7, 2009 allowed the appeals, reversed the decision of the SEBI, modified the letter of offer (sic) issued by Daiichi and directed Daiichi to offer rupees one hundred and sixty (Rs.160.00) per share to the shareholders of Zenotech. Daiichi has now brought the matter in appeal before this Court.

9. Since the offer price for the Zenotech shares quoted in the public announcement is the bone of contention between the parties, we need to see some clauses in the public offer in some detail. In paragraph 1.2 it was stated as follows:

> "1.2 There are no 'Persons Acting in Concert' within the meaning of Regulation 2(1)(e)(1) of the Regulations in relation to this offer. However, due to the applicability of Regulation 2(1)(e)(2) of the Regulations, there could be certain entities deemed to be Persons Acting in Concert with the Acquirer."

Paragraph 4 was about "Reason for Acquisition and Offer and Future Plan about the Target Company" and in paragraph 4.1 it was stated as follows:

> "4.1 As stated in Para(s) 1.4 and 1.5 above, as a result of the acquisition of its stake in RLL, together with the acquisition of control in RLL, the Acquirer has indirectly acquired 46.85% of the fully paid up equity share capital of the Target Company held by RLL, which in turn has resulted in an indirect substantial acquisition of shares and voting rights in the Target Company by the Acquirer for the purposes of Regulation 10 and 12 of the Regulations. Accordingly, this Offer is being made pursuant to Regulations 10 and 12 of the Regulations."

And the offer price was calculated and quoted in paragraph 1.9 as follows:

> "1.9 The shares of the Target Company are frequently traded on the BSE within the meaning of Regulation 20(5) of the Regulations.

The Offer price of Rs.113.62 per equity share is justified in terms of Regulation 20(4) of the Regulations as it is the higher of the following:"

i.	The negotiated price under the SPSSA#	N.A.
ii.	Highest price paid by Acquirer for any acquisition (including by way of allotment in a public or rights or preferential issue) during the 26 weeks prior to the date of the public announcement to shareholders of RLL	
iii.	The average of the weekly high and low of the closing prices of shares of the Target Company on BSE during the 26 weeks period preceding the date of public announcement to shareholders of RLL.	Rs. 113.62
iv.	The average of the daily high and low prices of the shares of the Target Company on BSE during the 2 week period preceding the date of public announcement to shareholders of RLL	Rs. 103.51
v.	Highest price paid by Acquirer for any acquisition (including by way of allotment in a public or rights or preferential issue) during the 26 weeks prior to the date of the P.A.	N.A.
vi.	The average of the weekly high and low of the closing prices of shares of target company on BSE during the 26 weeks period preceding the date of the P.A.	Rs.106.03
vii.	The average of the daily high and low prices of shares of target company on BSE during the 2 weeks period preceding the date of the P.A.	Rs.109.52

10. Now is the time to take a look at the statutory provisions controlling and regulating such transactions and to see how far the steps taken by Daiichi/Ranbaxy were in conformity with the mandates of the law. The relevant provisions are to be found in the Securities And Exchange Board of India (Substantial Acquisition Of Shares And Takeover) Regulations, 1997 (the Takeover Code or the Takeover Regulations) framed under section 30 of the Securities and Exchange Board of India Act, 1992. The Takeover Code was first notified by SEBI in November 1994. This was replaced by the 1997 Takeover Code after undergoing a number of amendments made in light of the recommendations of the first Bhagwati Committee's report of January 18, 1997. The 1997 Takeover Code provided for the regulatory mechanism for indirect acquisition of the kind we see in the present case. The 1997 Takeover Code underwent further amendments by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002, with effect from September 9, 2002 in light of the recommendations made by the second Bhagwati Committee's report submitted in May 2002.

11. Now, to the relevant provisions of the Takeover Code: regulation 2 has the definition clauses and sub-regulation (b) defines acquirer as follows:

> "2(b) "acquirer" means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer;"

12. Thus, in terms of the definition, on entering into the SPSSA on June 11, 2008 Daiichi became the acquirer (directly) of Ranbaxy and also of Zenotech (indirectly, through the acquisition of Ranbaxy).

13. Regulation 2(c) defines control and regulation 2(e) defines "Person acting in concert" which is as follows:

> "2 (e) "person acting in concert" comprises,—
>
> (1) persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company.
>
> (2) Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established :
>
> (i) a company, its holding company, or subsidiary or such company or company under the same management either individually or together with each other;
>
> (ii) a company with any of its directors, or any person entrusted with the management of the funds of the company;
>
> (iii) directors of companies referred to in sub-clause (i) of clause (2) and their associates;
>
> (iv) mutual fund with sponsor or trustee or asset management company;
>
> (v) foreign institutional investors with sub-account(s);
>
> (vi) merchant bankers with their client(s) as acquirer;
>
> (vii) portfolio managers with their client(s) as acquirer;
>
> (viii) venture capital funds with sponsors;
>
> (ix) banks with financial advisers, stock brokers of the acquirer, or any company which is a holding company, subsidiary or relative of the acquirer :

Provided that sub-clause (ix) shall not apply to a bank whose sole relationship with the acquirer or with any company, which is a holding company or a subsidiary of the acquirer or with a relative of the acquirer, is by way of providing normal commercial banking services or such activities in connection with the offer such as confirming availability of funds, handling acceptances and other registration work;

(x) any investment company with any person who has an interest as director, fund manager, trustee, or as a shareholder having not less than 2 per cent of the paid-up capital of that company or with any other investment company in which such person or his associate holds not less than 2 per cent of the paid-up capital of the latter company.

Note : For the purposes of this clause "associate" means,—

(a) any relative of that person within the meaning of section 6 of the Companies Act, 1956 (1 of 1956); and

(b) family trusts and Hindu undivided families; "

14. We shall presently examine the provisions of regulation 2(e) in greater detail as the result of the case would depend a good deal on how we understand the meaning of "persons acting in concert" and what meaning is put to regulation 2(e)(1) and especially 2(e)(2)(i).

15. Regulation 2(o) defines "Target Company" as follows:

"2(o) "target company" means a listed company whose shares or voting rights or control is directly or indirectly acquired or is being acquired;"

16. Thus, on the date of the SPSSA both Ranbaxy and Zenotech became "Target Companies" for Daiichi, the acquirer,

the former directly and the latter indirectly.

17. Chapter II of the Takeover Code deals with "Disclosures Of Shareholding And Control In A Listed Company" and Chapter III contains provisions dealing with "Substantial Acquisition Of Shares Or Voting Rights In And Acquisition Of Control Over A Listed Company". Chapter III begins with regulation 10 that makes it obligatory for an "acquirer" acquiring, in aggregate, fifteen percent or more of the voting rights in a company whether by acquisition of shares or voting rights to make a public announcement to acquire shares of that company in accordance with the provisions of the Takeover Regulations. Regulation 10, along with its marginal heading, reads as follows:

"Acquisition of [fifteen] per cent or more of the shares or voting rights of any company.

10. No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations."

18. Regulation 11 has the marginal heading, *"Consolidation of holdings"* and it lays down the obligations of an "acquirer" who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, fifteen percent or more but less than fifty five percent of the shares or voting rights in a company. At the end of regulation 11 there is an explanation that applies both to regulations 10 and 11. The explanation is relevant for our purpose and it reads as follows:

"Explanation. — For the purposes of regulation 10 and regulation 11, acquisition shall mean and include,—

(a) direct acquisition in a listed company to which the regulations apply;

(b) indirect acquisition by virtue of acquisition of companies, whether listed or unlisted, whether in India or abroad."

19. Regulation 10, as seen above makes it obligatory for an "acquirer" acquiring fifteen per cent or more of shares or voting rights in a listed company to make a public announcement to acquire shares of that company. Regulation 14 prescribes the time limit within which the public announcement stipulated in regulation 10 is to be made. Regulation 14 along with its marginal heading reads as follows:

"Timing of the public announcement of offer.

14. (1) The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein:

Provided that in case of disinvestment of a Public Sector Undertaking, the public announcement shall be made by the merchant banker not later than 4 working days of the acquirer executing the Share Purchase Agreement or Shareholders Agreement with the Central Government or the State Government as the case may be for the acquisition of shares or voting rights exceeding the percentage of shareholding referred to in regulation 10 or regulation 11 or the transfer of control over a target Public Sector Undertaking.

(2) In the case of an acquirer acquiring securities, including Global Depository Receipts or American Depository Receipts which, when taken together with the voting rights,

if any already held by him or persons acting in concert with him, would entitle him to voting rights, exceeding the percentage specified in regulation 10 or regulation 11, the public announcement referred to in sub-regulation (1) shall be made not later than four working days before he acquires voting rights on such securities upon conversion, or exercise of option, as the case may be.

Provided that in case of American Depository Receipts or Global Depository Receipts entitling the holder thereof to exercise voting rights in excess of percentage specified in regulation 10 or regulation 11, on the shares underlying such depository receipts, public announcement shall be made within four working days of acquisition of such depository receipts.

(3) The public announcement referred to in regulation 12 shall be made by the merchant banker not later than four working days after any such change or changes are decided to be made as would result in the acquisition of control over the target company by the acquirer.

(4) *In case of indirect acquisition or change in control, a public announcement shall be made by the acquirer within three months of consummation of such acquisition or change in control or restructuring of the parent or the company holding shares of or control over the target company in India.*"

(emphasis added)

20. It is noted above that on the date Daiichi entered into the SPSSA with Ranbaxy, it became the "acquirer" both in relation to Ranbaxy and Zenotech, directly in case of the former and indirectly in case of the latter. The period of time within which Daiichi was required to make the public announcement in respect of the two target companies (the former directly and the latter indirectly) were prescribed in sub-regulation (1) (not

later than four working days of entering into an agreement for acquisition of shares or voting rights) and sub-regulation (4) (within three months of consummation of such acquisition or change in control……) respectively of regulation 14.

21. It needs to be stated here that sub-regulation (4) was inserted in regulation 14 by the Second Amendment Regulation 2002 with effect from September 9, 2002 and before that date regulation 14 ended at sub-regulation (3). This means that before September 9, 2002 the Takeover Code in regulation 14(1), allowed only four days time for making the public announcement as required under regulation 10 for both direct and indirect acquisitions. In other words, in case the direct acquisition of a company would lead to the indirect acquisition of another target company the acquirer would be obliged to make the public announcements for both the target companies (direct and indirect) not later than four working days of entering into the agreement for acquisition of shares or voting rights in the directly targeted company. This would sometimes give rise to a number of practical difficulties. The problem was considered by the second Bhagwati Committee and in its report submitted in May 2002, the Committee made the following observations and recommendation:

"21. Indirect acquisition of a company through chain principle.

The Committee was of the opinion that the public offer for the company which gets acquired as a consequence of the takeover of the target company is triggered only upon the successful completion of the acquisition of the target. At the time of making the offer for the target company, such a takeover or rather its success is contingent and prospective and in the event of its failure, the consequent offer does not arise. Though the public announcement for the consequent offer could be made simultaneously, it would be conditional upon the successful completion of the

first offer. Such conditional offer has its own impact on the market and is not without practical and procedural difficulties. Hence the public announcement for the consequent offer can be allowed to be made within a pre-specified time period of say three months from the date of closure of the first offer.

The Committee recommended that:

1. The offer for a company which gets acquired as a result of acquisition of a target company can be subsequent to the successful completion of the takeover of the target by the acquirer. It should be made within 3 months of consummation of restructuring or arrangement by parent or holding company."

Sub-regulation (4) thus got inserted in regulation 14 in pursuance of the recommendation of the second Bhagwati Committee's report. The introduction of sub-regulation (4) in regulation 14 led to further consequential additions/ amendments in the Takeover Regulation that we shall see presently. 22. Regulation 16 deals with the "Contents of the public announcement of offer" and clause (ix) provides as follows: "(ix) the object and purpose of the acquisition of the shares and future plans, if any, of the acquirer for the target company, including disclosures whether the acquirer proposes to dispose of or otherwise encumber any assets of the target company in the succeeding two years except in the ordinary course of business of the target company: Provided that where the future plans are set out, the public announcement shall also set out how the acquirers propose to implement such future plans:

Provided further that the acquirer shall not sell, dispose of or otherwise encumber any substantial asset of the target company except with the prior approval of the shareholders;"

23. Then comes regulation 20 which deals with the "offer price" and is very important for our purpose. In so far as relevant for the present it is reproduced below:

"**Offer price.**

20.(1) The offer to acquire shares under regulation 10, 11 or 12 shall be made at a price not lower than the price determined as per sub-regulations (4) and (5).

(2) The offer price shall be payable—

(a) in cash;

(b) by issue, exchange and/transfer of shares (other than preference shares) of acquirer company, if the person seeking to acquire the shares is a listed body corporate; or

(c) by issue, exchange and, or transfer of secured instruments of acquirer company with a minimum 'A' grade rating from a credit rating agency registered with the Board;

(d) a combination of clause (a), (b) or (c) :

Provided that where the payment has been made in cash to any class of shareholders for acquiring their shares under any agreement or pursuant to any acquisition in the open market or in any other manner during the immediately preceding twelve months from the date of public announcement, the letter of offer shall provide an option to the shareholders to accept payment either in cash or by exchange of shares or other secured instruments referred to above:

Provided further that the mode of payment of consideration may be altered in case of revision in offer price or size subject to the condition that the amount to be paid in cash

as mentioned in any announcement or the letter of offer is not reduced.

(3) In case the offer price consists of consideration payable in the form of securities issuance of which requires approval of the shareholders, such approval shall be obtained by the acquirer within [seven] days from the date of closure of the offer:

Provided that in case the requisite approval is not obtained, the acquirer shall pay the entire consideration in cash.

(4) For the purposes of sub-regulation (1), the offer price shall be the highest of—

(a) the negotiated price under the agreement referred to in sub-regulation (1) of regulation 14;

(b) price paid by the acquirer or persons acting in concert with him for acquisition, if any, including by way of allotment in a public or rights or preferential issue during the twenty-six week period prior to the date of public announcement, whichever is higher;

(c) the average of the weekly high and low of the closing prices of the shares of the target company as quoted on the stock exchange where the shares of the company are most frequently traded during the twenty-six weeks or the average of the daily high and low of the prices of the shares as quoted on the stock exchange where the shares of the company are most frequently traded during the two weeks preceding the date of public announcement, whichever is higher:

Provided that the requirement of average of the daily high and low of the closing prices of the shares as quoted on the stock exchange where the shares of the company are most frequently traded during the two weeks preceding the

date of public announcement, shall not be applicable in case of disinvestment of a Public Sector Undertaking.

Explanation.—In case of disinvestment of a Public Sector Undertaking, the relevant date for the calculation of the average of the weekly prices of the shares of the Public Sector Undertaking, as quoted on the stock exchange where its shares are most frequently traded, shall be the date preceding the date when the Central Government or the State Government opens the financial bid.

(5) Where the shares of the target company are infrequently traded, the offer price shall be determined by the acquirer and the merchant banker taking into account the following factors:

(a) the negotiated price under the agreement referred to in sub-regulation (1) of regulation 14;

(b) the highest price paid by the acquirer or persons acting in concert with him for acquisitions, if any, including by way of allotment in a public or rights or preferential issue during the twenty-six week period prior to the date of public announcement;

(c) other parameters including return on net worth, book value of the shares of the target company, earning per share, price earning multiple vis-à-vis the industry average :

Provided that where considered necessary, the Board may require valuation of such infrequently traded shares by an independent merchant banker (other than the manager to the offer) or an independent chartered accountant of minimum ten years' standing or a public financial institution.

Explanation.—

(i) For the purpose of sub-regulation (5), shares shall be deemed to be infrequently traded if on the stock exchange, the annualised trading turnover in that share during the preceding six calendar months prior to the month in which the public announcement is made is less than five per cent (by number of shares) of the listed shares. For this purpose, the weighted average number of shares listed during the said six months period may be taken.

(ii) In case of disinvestment of a Public Sector Undertaking, the shares of such an undertaking shall be deemed to be infrequently traded, if on the stock exchange, the annualised trading turnover in the shares during the preceding six calendar months prior to the month, in which the Central Government or the State Government as the case may be opens the financial bid, is less than five per cent (by the number of shares) of the listed shares. For this purpose, the weighted average number of shares listed during the six months period may be taken.

(iii) In case of shares which have been listed within six months preceding the public announcement, the trading turnover may be annualised with reference to the actual number of days for which the shares have been listed.

(6) xxxxxxxxxxx

(7) xxxxxxxxxxx

(8) xxxxxxxxxxx

(9) xxxxxxxxxxx

(10) xxxxxxxxxx

(11) The letter of offer shall contain justification or the basis on which the price has been determined.

Explanation.?

(i) The highest price under clause (b) or the average price under clause (c) of sub-regulation (4) may be adjusted for quotations, if any, on cum-rights or cum-bonus or cum-dividend basis during the said period.

(ii) Where the public announcement of offer is pursuant to acquisition by way of firm allotment in a public issue or preferential allotment, the average price under clause (c) of sub-regulation (4) shall be calculated with reference to twenty-six week period preceding the date of the board resolution which authorised the firm allotment or preferential allotment.

(iii) Where the shareholders have been provided with an option to accept payment either in cash or by way of exchange of security, the pricing for the cash offer could be different from that of a share exchange offer or offer for exchange with secured instruments provided that the disclosures in the letter of offer contains suitable justification for such differential pricing and the pricing is subject to other provisions of this regulation.

(iv) Where the offer is subject to a minimum level of acceptance, the acquirer may, subject to the other provisions of this regulation, indicate a lower price for the minimum acceptance up to twenty per cent, should be the offer not receive full acceptance.

(12) The offer price for indirect acquisition or control shall be determined with reference to the date of the public announcement for the parent company and the date of the public announcement for acquisition of shares of the target company, whichever is higher, in accordance with sub-regulation (4) or sub-regulation (5).

24. In order to clearly understand the ways in which the offer

price is to be determined in the case of an indirect takeover of a company, as in the present case, it would be useful to examine regulation 20 from the rear end, that is to say starting from sub-regulation (12). This may sound a little strange but it is because sub-regulation (12) was introduced in the Takeover Code later, along with and as a consequence of insertion of sub-regulation (4) of regulation 14 to deal specifically with the offer pricing of the shares of a target company the acquisition of which takes place as a result of the direct takeover of some other company. We have seen above that the second Bhagwati Committee had, for good reasons, recommended for a separate and extended time period for making the public offer for a company that gets taken over following the acquisition of a target company. While making the recommendation, the Committee took care to see that the extended period for making the public offer does not act to the detriment of the ordinary shareholders of the company that gets taken over as a result of acquisition of a target company. It, accordingly, went on to observe and recommend as follows:

> "However, the investors of the 2nd company should get benefit of the best price available and for the purpose the reference dates of the public announcement for the first as well as the second offer may be taken for determining the offer price."

The Committee recommended that:

> "The price shall be determined as highest of the two prices determined as per the provisions of the Regulations, with reference to the date of the public announcement for the target company and the date of public announcement for the company which is consequently acquired."

25. Thus came sub-regulation (12) of regulation 20. Now, if we read regulation 20(12), it plainly says that the offer price for the shares of a company being taken over indirectly and as a consequence of the acquisition of the primary target, would

be determined with reference to two dates, one when the public offer was made in regard to the "Parent company" (that is, the company, the acquisition of which resulted in the takeover of the secondary target company) and the other when the public offer is made for the secondary target company and the higher of the two will be taken as the offer price. In terms of sub-regulation (12) of regulation 20, therefore, the share price of Zenotech was required to be determined as on June 16, 2008 (the date of the public announcement for Ranbaxy, the parent company) and as on January 19, 2009 (the date of the public announcement for Zenotech, the indirectly target company). Regulation 20(12) tells us the dates with reference to which the offer price is to be determined but it does not tell us how the offer price is to be determined. For that it refers us back to sub-regulations (4) and (5). It needs to be stated here that sub-regulations (4) and (5) remained unchanged and did not undergo any amendments following the introduction of sub-regulation (4) in regulation 14 and sub-regulation (12) in regulation 20. This is to say that the provisions of sub-regulations (4) and (5) apply both to cases of direct and indirect takeover; they were not designed only for cases of indirect takeover.

26. Sub-regulation (5) of regulation 20 lays down the method for determining the offer price for a company the shares of which are *infrequently traded*. That is not the case with Zenotech; hence, we may leave out sub-regulation (5). This takes us to sub-regulation (4) of regulation 20. Sub-regulation (4) prescribes three ways for determining the share price with the stipulation that the highest among them would be the offer price. Clause (a) of sub-regulation (4) refers to the negotiated price under the agreement. This would clearly apply to a case of direct takeover and shall have no application to a case of indirect takeover like the present one. Clause (b) is based on the price paid by the acquirer or persons acting in concert with him for acquisition of shares of the target company within the period of twenty six weeks prior the date of the public

announcement and clause (c) is based on the price of the shares of the target company as quoted on the stock exchange.

27. According to Daiichi, the appellant in these two appeals, regulation 20(4)(a) had no application in determining the offer price of Zenotech as there was no negotiated price under any agreement; its takeover of that company was indirect being a consequence and a fall out of its takeover of Ranbaxy. Regulation 20(4)(b) had similarly no application because neither Daiichi nor anyone acting in concert with it had purchased any shares of Zenotech within the period of twenty six weeks prior to the dates of the two public announcements, first for the shares of Ranbaxy and the second for the Zenotech shares. The only provisions, therefore, applicable in the case were those contained in clause (c) of regulation 20(4) under which the offer price was required to be determined on the basis of prices of the shares of Zenotech, the target company as quoted on the stock exchange. The appellant worked out the share price of Zenotech as on June 16, 2008 and January 19, 2009, following the different modes provided under regulation 20(4)(c) and, in the public announcement, offered rupees one hundred thirteen and paise sixty two (Rs.113.62) per share, that being the highest among all.

28. Here the respondents join issue with the appellant. According to the respondents, the provisions of regulation 20(4)(b) are fully applicable to the case and the appellants were completely wrong in disregarding it. The respondents contend that Daiichi and Ranbaxy came together as "persons acting in concert" on June 11, 2008 when the SPSSA was signed between the two companies or, in any event, on October 20, 2008 when Ranbaxy finally became a subsidiary of Daiichi. They continued in that relationship on January 19, 2009 when Daiichi made the public announcement for the shares of Zenotech. Further, Ranbaxy had paid rupees one hundred and sixty (Rs.160.00) per share for the Zenotech shares in January 2009 which falls within the period of twenty six weeks looking

back from June 16, 2008, the date on which Daiichi had made the public announcement for Ranbaxy shares. In terms of regulation 20(12) the date of the public announcement for the parent company (June 16, 2008) is one of two relevant dates with reference to which the offer price for acquisition of the shares of the target company (Zenotech) is to be determined. Thus, according to the respondents, clause (b) of regulation 20(4) was clearly attracted and the price (Rs.160.00) under that clause being higher than the price (Rs.113.62) worked out in terms clause (c) that alone could form the offer price in the public announcement.

29. The Securities Appellate Tribunal accepted the respondents' contention observing and holding as follows:

> "It is Daiichi's own case, as is clear from the public announcement made to the shareholders of the target company, that Ranbaxy became its subsidiary on October 20, 2008 when the acquisition of Ranbaxy got completed. Being a subsidiary, Ranbaxy shall be deemed to be acting in concert with Daiichi with effect from that date as per Regulation 2(1)(e)(2)(i) of the Takeover Code. According to this Regulation, "person acting in concert" comprises a company, its holding company or subsidiary unless the contrary is established. There is no question of the contrary being established in the instant case because Daiichi itself had made it known in the public announcement to the shareholders of the target company that Ranbaxy had become its subsidiary on October 20, 2008. It is, thus, clear that on January 19, 2009, *the material date* on which the offer price for indirect acquisition is being worked out, Ranbaxy, being a subsidiary, was acting in concert with the Daiichi and that it (Ranbaxy) had paid Rs.160 per share to the shareholders of the target company during January 16 and January 28, 2008 when it acquired their shares under the Ranbaxy-Zenotech deal which period falls within twenty-six weeks prior to June 16, 2008. In other words, Ranbaxy, a person acting in concert with Daiichi on January 19, 2009, had paid during twenty-six weeks prior to June 16, 2008, Rs.160 per share to the shareholders of the target company. In this view of the matter, the price paid by Ranbaxy to the shareholders of the target company has to be reckoned with in terms of sub-regulation 4(b) read with sub-regulation (12) of Regulation 20 while determining the offer price for the indirect acquisition of the target company."

30. Mr. F. S. Nariman, learned senior counsel appearing on behalf of the appellant, contended that the Appellate Tribunal grossly erred in holding that since Ranbaxy was a "person acting in concert" with Daiichi on the date of the public offer for acquisition of the shares of Zenotech, the price paid by it for acquisition of Zenotech shares in the past when the two companies were indisputably not in the relationship of "persons acting in concert" would be relevant for determining the offer price for Zenotech shares in terms of regulation 20(4)(b) read with regulation 20(12). Ranbaxy indeed became a subsidiary of Daiichi from October 20, 2009 but it did not acquire any share of Zenotech after that date or, even before that, after entering into the SPSSA with Daiichi on June 11, 2008. Any acquisition of Zenotech shares made by Ranbaxy earlier at a time when it was not a "person acting in concert" with Daiichi was of no consequence and the price paid by Ranbaxy for Zenotech shares at that time would certainly not attract sub-regulation (b) of regulation 20 (4) of the Takeover Regulations.

31. Mr. Ashok Desai, senior counsel appearing on behalf Ranbaxy fully supported the appellant's case.

32. The SEBI, though itself not in appeal against the judgment of the Appellate Tribunal and only impleaded as respondent in the two appeals, strongly defended its stand in rejecting the complaints made by the respondents before it. The

learned Attorney General appearing for the SEBI submitted that the judgment of the Appellate Tribunal coming under appeal was based on a complete misinterpretation of the expression "person acting in concert" as defined in regulation 2(e) of the Takeover Regulations. Taking a position even more forthright than the appellant, the learned Attorney General contended that the Daiichi and Ranbaxy never came within the definition of "person acting in concert". He submitted that the Appellate Tribunal erred in assuming that "being a subsidiary, Ranbaxy shall be deemed to be acting in concert with Daiichi as per regulation 2(e)(2)(i) of the Takeover Code". The Appellate Tribunal also missed the true import of the words "unless the contrary is established" at the conclusion of regulation 2(e)(2). The Attorney General submitted that the deeming provision under regulation 2(e)(2) needs to be read and understood in context and as part of the whole definition of "person acting in concert". He submitted that there may be two companies, one being the subsidiary of the other and yet no occasion may arise where they can be said to comprise "persons acting in concert" within the meaning of the Takeover Code. He submitted that the definition of a "person acting in concert" required something more than the mere relationship of a parent company and a subsidiary company.

33. Mr. C. A. Sundaram, and Mr. Shyam Divan, senior advocates representing respondent no.1 in Civil Appeal No.7148 of 2009 and respondent no.1 in Civil Appeal No.7314 respectively, strongly defended the judgment of the Appellate Tribunal. Mr. Sundaram submitted that though according to the Tribunal, Daiichi and Ranbaxy came within the relationship of "persons acting in concert" [in terms of regulation 2(e)(2)(i)] on October 19, 2008 when Ranbaxy became a subsidiary of Daiichi, as a matter of fact the two companies comprised "persons acting in concert" within the meaning of regulation 2(e)(1) itself on signing the SPSSA on June 11, 2008. On signing the SPSSA Daiichi "agreed" to takeover Zenotech through the acquisition of Ranbaxy and the fact was further

acknowledged in the letter sent by Ranbaxy to the Stock Exchanges on the same day. Referring to the definitions of "acquirer" [regulation 2(b)] and "persons acting in concert" [regulation 2(e)(1)] Mr. Sundaram contended that the mere agreement for acquisition of Zenotech would bring the two companies within the relationship of "persons acting in concert". Thus, Daiichi and Ranbaxy comprised "persons acting in concert" in terms of regulation 2(e)(1) from the date of the SPSSA itself even without taking the aid of the deeming provision in regulation 2(e)(2). Mr. Sundaram further submitted that the period from January 16 to 28, 2008 fell well within twenty six weeks from June 11, 2008 and hence, the price paid by Ranbaxy for acquisition of Zenotech shares in January 2008 must be taken into reckoning for determining the offer price in the public offer made for its shares by Daiichi.

34. The submission, which Mr. Sundaram called his alternate submission, does not need much discussion to be rejected. This is for the simple reason that regulation 20(4)(b) uses the words "….during the twenty six week period *prior to the date of public announcement,…".* It does not say "prior to date on which the acquirer and the purchaser came into the relationship of persons acting in concert".

35. The main argument of Mr. Sundaram, however, was that the expression 'persons acting in concert" used in regulation 20(4)(b) refers to a person who is *in praesenti*, that is, at the time of the public announcement acting in concert with the acquirer. This is exactly the basis of the Appellate Tribunal's judgment and if that is accepted the conclusion arrived at by the Tribunal simply follows. Ranbaxy was a person acting in concert with Daiichi on January 19, 2008, the date of the public announcement made by the latter for the Zenotech shares. Ranbaxy had purchased Zenotech shares during the period January 16 to 28, 2008 that fell within the twenty six weeks period from June 16, 2008, the date of the public announcement made by Daiichi for Ranbaxy shares. Hence, attracting

regulation 20(4)(b).

36. Mr. Divan made additional submissions in support of the view taken by the Appellate Tribunal upholding the respondents' claim. He submitted that regulation 2(1)(e)(1) expressly contemplates a situation where the parties **agree** to acquire shares or voting rights in the future. Hence, an agreement was sufficient to comprise "persons acting in concert" and no actual acquisition was necessary. He further pointed out that the definition of "persons acting in concert" in regulation 2(1)(e)(1) applies not only to acquisition of shares but **also extends to voting rights**. Hence, even an agreement between two parties to exercise the existing voting rights in cooperation with each other would bring them under the definition of "persons acting in concert" without any subsequent acquisition of shares. Mr. Divan contended that in the facts of this case, by virtue of the agreement dated June 11, 2008, Daiichi agreed to acquire voting rights to the extent of 46.85% in Zenotech, already held by Ranbaxy. On June 11, 2008, Daiichi might not have held any power over any voting rights in Zenotech but starting with October 20, 2008, Daiichi acquired absolute power over 46.85% voting rights in Zenotech. Thus, even if the requirement of a subsequent acquisition of voting rights was necessary, as argued on behalf of SEBI, it was satisfied on October 20, 2008.

37. Countering the submission made on behalf of the appellant and SEBI that for a holding company and its subsidiary to fulfil the test of "persons acting in concert' there must be an acquisition of shares **subsequent** to the holding-subsidiary relationship coming into existence. Mr. Divan gave an interesting example that may be noted here:

38. In Mr. Divan's example 3 persons, A, B and C, strangers to each other, make purchases of blocks of shares of a certain company X (which is listed and whose shares are frequently traded on the stock exchange), on different dates at

different prices. The purchase by each of them (A: 4%, B: 4% and C: 4.5%) being below 5%, the threshold for disclosure, none of them is obliged to make any disclosure of their acquisitions. Further, since the purchases were not by persons acting in concert, the acquisitions cannot be aggregated and there would be no obligation on any one to make an open offer for the shares of company X. Later on, all the three persons come together. They agree to pool the benefits of their shares with one another and to takeover company X, and they further agree that they would vote together going forward. C, having the largest stake, is nominated as the lead investor and all three enter into a shareholders' agreement on how to acquire more shares and make a public announcement under the takeover regulation. Following the agreement between them, C enters into an agreement with a financial institution to acquire another 5% block of shares of the company X at a price much lower than the price paid by A or B for their earlier acquisitions. Mr. Divan submitted that if the submission of the appellant and the SEBI are accepted than the result would be as follows:

1. Since there is no fresh acquisition and C has only entered into an agreement with the financial institution for the acquisition of shares, the three persons are not yet in concert.

2. Since the earlier purchases were made before A, B or C came together as "persons acting in concert" their earlier acquisitions (4%+4%+4.5%) cannot be aggregated with the proposed fresh acquisition of 5% by them after having entered into the agreement. Consequently, Regulation 10 of the Takeover Code would not come into play and there would be no requirement to make a public announcement.

39. He contended that such a simple ploy would defeat the whole object and purpose of the Takeover Code. We shall presently consider the illustration given by Mr. Divan and the validity of the inferences drawn by him on that basis.

40. From the rival contentions it is clear that the real controversy among the parties is about the applicability of regulation 20(4)(b) to determine the offer price for Zenotech shares in the public announcement made by Daiichi. Regulation 20(4)(b) speaks of the price *paid* by the acquirer or persons acting in concert with him for acquisition of shares , if any, during the twenty six weeks period prior to date of public announcement. It does not speak of any agreement to acquire shares or of any voting rights or control over the target company but the actual price paid for acquisition of its shares. Here a question arises, to what point in time does the expression "person acting in concert" used in regulation 20(4)(b) refer? Should the person be acting in concert with the acquirer at the time of the public announcement or at the time of acquisition of shares of the target company? To make the matter more explicit, assuming that Daiichi and Ranbaxy together comprised "persons acting in concert" on the date Daiichi made the public announcement for Zenotech shares, was it sufficient that they were in that relationship on that date or for the application of regulation 20(4)(b) it was necessary that Daiichi and Ranbaxy should have been in that relationship when Ranbaxy had made acquisition of Zenotech shares. The Appellate Tribunal has of course proceeded on the basis that since Daiichi and Ranbaxy were "persons acting in concert" on the date of the public announcement made by Daiichi for Zenotech shares sub-regulation (b) of regulation 20(4) would be attracted regardless of the fact that the two were not in that relationship on the dates of purchase of Zenotech shares by Ranbaxy.

41. On behalf of the respondents much argument was made to show that even before Ranbaxy became a subsidiary of Daiichi the two were covered by the definition of "persons acting in concert" on signing the SPSSA. Whether Ranbaxy became a persons acting in concert with Daiichi on signing the SPSSA or on becoming its subsidiary is one aspect of the matter but if the basis on which the Appellate Tribunal has proceeded is correct then it hardly matters if Ranbaxy was

acting in concert with Daiichi on signing the SPSSA or on becoming its subsidiary, as long as it was in that relationship with Daiichi when Daiichi made the public announcement for Zenotech shares.

42. We now proceed to examine the question whether Daiichi and Ranbaxy came together in the relationship of "persons acting in concert" as claimed by the respondents and connected with it the larger question as to the stage when the relationship of "persons acting in concert" must be in existence for the applicability of regulation 20(4)(b) of the Takeover Code. For this, we must first understand what is the true meaning of "persons acting in concert" as defined in regulation 2(e).

43. To begin with, the concept of "person acting in concert" under regulation 2(e)(1) is based on a target company on the one side, and on the other side two or more persons coming together with the shared common objective or purpose of substantial acquisition of shares etc. of the target company. Unless there is a *target company,* substantial acquisition of whose shares etc. is the common objective or purpose of two or more persons coming together there can be no "persons acting in concert". For, *dehors* the target company the idea of "persons acting in concert" is as irrelevant as a cheat with no one as victim of his deception. Two or more persons may join hands together with the shared common objective or purpose of any kind but so long as the common object and purpose is not of substantial acquisition of shares of a target company they would not comprise "persons acting in concert".

44. The other limb of the concept requires two or more persons joining together with the shared common objective and purpose of substantial acquisition of shares etc. of a certain target company. There can be no "persons acting in concert" unless there is a *shared common objective or purpose* between two or more persons of substantial acquisition of shares etc. of the target company. For, *dehors* the element of

the *shared common objective or purpose* the idea of "person acting in concert" is as meaningless as criminal conspiracy without any agreement to commit a criminal offence. The idea of "persons acting in concert" is not about a fortuitous relationship coming into existence by accident or chance. The relationship can come into being only by design, by meeting of minds between two or more persons leading to the shared common objective or purpose of acquisition of substantial acquisition of shares etc. of the target company. It is another matter that the common objective or purpose may be in pursuance of an agreement or an understanding, formal or informal; the acquisition of shares etc. may be direct or indirect or the persons acting in concert may cooperate in actual acquisition of shares etc. or they may agree to cooperate in such acquisition. Nonetheless, the element of the shared common objective or purpose is the *sin qua non* for the relationship of "persons acting in concert" to come into being.

45. The submission made on behalf of the respondents that on signing the SPSSA Ranbaxy became a person acting in concert with Daiichi overlooks this basic precondition and ingredient of the relationship. The consequential takeover of Zenotech and its acknowledgment are not same thing as the *shared common objective or purpose* of substantial acquisition of shares or voting rights or gaining control over Zenotech. As stated above, the relationship of "persons acting in concert" is not a fortuitous relationship. It can come into being only by design. Hence, unless it is shown that Daiichi and Ranbaxy entered into the SPSSA for the common objective or purpose of substantial acquisition of shares or voting rights or control over Zenotech they can not be said to have come in the relationship of "persons acting in concert". This is not even the case of the respondents. The inevitable conclusion, therefore, is that on signing the SPSSA Daiichi and Ranbaxy did not come within the relationship of persons acting in concert within the meaning of regulation 2(e)(1) of the Takeover Code.

46. We may now proceed to the deeming provision as contained in sub clause (2) of regulation 2(e). Here, it would be better to restate the obvious that the deeming provision can not do away either with the *target company or the common objective or purpose* of substantial acquisition of shares etc. of the target company shared by two or more persons because to do so would be destructive of the very idea of "persons acting in concert" as defined in sub-clause (1) of regulation 2(e). We, therefore, see no merit in the submission, as urged at one stage, on behalf of the respondents that sub-regulation (2) of regulation 2(e) containing the deeming clause should be seen as a 'stand alone' provision, independent of sub-regulation (1) of regulation 2(e). The deeming provision under sub-regulation (2) operates only within the larger framework of sub-regulation (1) of regulation 2(e).

47. Then what does the deeming provision do? The deeming provision simply says that in case of nine specified kinds of relationships, in each category, the person paired with the other *would be deemed to be* acting in concert with him/it. What it means is that if one partner in the pair makes or agrees to make substantial acquisition of shares etc. in a company it would be presumed that he/it was acting in pursuance of a common objective or purpose shared with the other partner of the pair. For example, if a company or its holding company makes or agrees to make a move for substantial acquisition of shares etc. of a certain target company then it would be presumed that the move is in pursuance of a common objective and purpose jointly shared by the holding company and the subsidiary company. But the mere fact that two companies are in the relationship of a holding company and a subsidiary company, without any thing else, is not sufficient to comprise "persons acting in concert". The Attorney General is quite right in his submission that something more is required to comprise "persons acting in concert" than the mere relationship of a holding company and a subsidiary company. There may be hundreds of instances of a company having a subsidiary

company but to dub them as "persons acting in concert" would be quite ridiculous unless another company is identified as the target company and either the holding company or the subsidiary make some positive move or show some definite inclination for substantial acquisition of shares etc. of the target company.

48. It needs further to be noted that the presumption created by virtue of the deeming provision is expressly left open to rebuttal as indicated by the concluding words "unless the contrary is established" occurring in sub-regulation (2). It is important to point this out here because the Appellate Tribunal has clearly misunderstood the nature and scope of the provision of rebuttal in observing as follows:

> "There is no question of the contrary being established in the instant case because Daiichi itself had made it known in the public announcement to the shareholders of the target company that Ranbaxy had become its subsidiary on October 20, 2008."

Regulation 2(e)(2) defines "person acting in concert". It is a deeming provision. It has to be read in conjunction with regulation 2(e)(1) which states that person acting in concert comprises of persons who in furtherance of a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly cooperate by acquiring or agreeing to acquire shares or voting rights in the target company or to acquire control over the target company. The word "comprises" in regulation 2(e) is significant. It applies to regulation 2(e)(2) as much as to regulation 2(e)(1). A fortiori, a person deemed to be acting in concert with others is also a person acting in concert. In other words, persons who are deemed to be acting in concert must have the intention or the aim of acquisition of shares of a target company. It is the conduct of the parties that determines their

identity. Whether a person is or is not acting in concert with the acquirer would depend upon the facts of each case. In order to hold that a person is acting in concert with the acquirer or with another person it must be established that the two share the common intention of acquisition of shares of some target company. For example, there is no hard and fast rule that every foreign institutional investor (FII) would share with the sub-account(s) the common objective of acquiring substantial stakes or control in some target company. Whether in a given case an FII and his sub-account(s) have a common objective of making investment in India to earn profits in unit holders or whether they have a common objective of acquiring substantial stakes or control in some target company would depend on the facts of each case. In the former case regulation 2(e)(2)(v) would not apply whereas in the latter case the said sub-regulation would apply. The above illustration brings out the true purport of the expression "unless the contrary is established" which expression finds place in regulation 2(e)(2).

49. Something else that is of utmost importance is to understand that the deeming fiction under sub-regulation (2) can only operate prospectively and not retrospectively. That is to say the deeming provision would give rise to the presumption, as explained above, only from the date two or more persons com together in one of the specified relationships and not from any earlier date. Thus, in the case in hand, the deeming provision under sub-regulation (2) would give rise to the presumption that Daiichi and Ranbaxy were "persons acting in concert", provided of course the other conditions as explained above were also satisfied, only from October 20, 2008, the date on which Ranbaxy became a subsidiary of Daiichi and not before that. Hence, the purchase of Zenotech shares by Ranbaxy in January 2008 cannot be said to be by a "person acting in concert" with Daiichi.

50. In light of the discussion made above, we are of the view, that the Appellate Tribunal was in error in proceeding on

the basis that the material date for Ranbaxy and Daiichi to be acting in concert was the date of the public announcement for the Zenotech shares. The Tribunal Observed:

> "It is, thus, clear that on January 19, 2009, *the material date* on which the offer price for indirect acquisition is being worked out, Ranbaxy, being a subsidiary, was acting in concert with the Daiichi and that it (Ranbaxy) had paid Rs.160 per share to the shareholders of the target company during January 16 and January 28, 2008 when it acquired their shares under the Ranbaxy-Zenotech deal which period falls within twenty-six weeks prior to June 16, 2008."

51. The Appellate Tribunal's error is the result of mixing up the provisions of sub-regulations (12) and (4) of regulation 20. As explained earlier sub-regulation (12) came to be introduced in regulation 20 as a consequence of extension of time for making public announcement for the secondary and indirectly targeted company by insertion of sub-regulation (4) in regulation 14. Sub-regulation (12) of regulation 20 obliges the acquirer to work out the best value for the shares of the indirectly targeted company as obtaining on the date of the public announcement for the parent target company as well as on the date of the public announcement for the concerned indirectly targeted company and then to offer the shareholders the better of the two values. This is for the simple reason that the extension allowed for making the public announcement for the indirectly targeted company should not cause any prejudice to its shareholders. Sub-regulation (12) does not in any way affect sub-regulation (4) which remains unamended and it certainly does not alter the meaning of "person acting in concert" as used in that sub-section.

52. We are clearly of the view that for the application of regulation 20(4)(b) it is not relevant or material that the acquirer and the other person, who had acquired the shares of the target

company on an earlier date, should be acting in concert at the time of the public announcement for the target company. What is material is that the other person was acting in concert with the acquirer at the time of purchase of shares of the target company.

53. The true meaning of the idea of "persons acting in concert", as explained above will also clear all the doubts sought to be created by Mr. Divan's illustration as noted above. In that illustration, persons A, B and C earlier purchased shares of company A separately and as strangers. Those purchases were, therefore naturally not by "persons acting in concert". But later on, all the three persons came together. *They agreed to pool the benefits of their share with one another and to takeover company X, and they further agreed* that they would vote together going forward. Thus the earlier purchases were brought within the concept subsequently by an express agreement between the three persons even though at the time of purchase the purchasers were not acting in concert. Hence, the earlier purchases too would fully attract the regulatory provisions of the Takeover Code.

54. This is how we are able to follow the correct meaning of the expression "person acting in concert" as defined in regulation 2(e) and as used in regulation 20(4)(b) of the Takeover Code.

55. In light of the discussion made above the inevitable conclusions are that in so far as Zenotech is concerned Ranbaxy was not acting in concert with Daiichi either from the date of the SPSSA or even after becoming a subsidiary of Daiichi and the acquisition of Zenotech shares by Ranbaxy in the month of January 2008 did not come within the ambit of regulation 20(4)(b). The offer price in the public announcement for Zenotech shares made by the appellant was correctly worked out. It follows that the judgment of the Appellate Tribunal is unsustainable and it has to be set aside.

56. It was submitted on behalf of the respondents that the Takeover Code was meant to safeguard and protect the interests of the shareholders. Therefore, in case there were two possible views of the matter the court should lean in favour of the one supporting the shareholders. The Attorney General strongly refuted the submission that the Takeover Code was intended solely to protect the shareholders interests. We, however, need not go into that question because in light of the above discussion, we find that the controversy is completely free from any confusion and the view canvassed on behalf of the respondents is not even a remotely possible view of the matter.

57. Before parting with the records of the case we would like to say that in arriving at the correct meaning of the provisions of the Takeover Code specially regulation 14(4) and 20(12) we were greatly helped by the reports of the two Committees headed by Justice Bhagwati. We mention the fact especially because as per the legislative practice in this country, unlike an Act, a regulation or any amendments introduced in it are not preceded by the "Object and Purpose" clause. The absence of the object and purpose in the regulation or the later amendments introduced in it only adds to the difficulties of the court in properly construing the provisions of regulations dealing with complex issues. The court, so to say, has to work in complete darkness without so much as a glimpse into the mind of the maker of the regulation. In this case, it was quite apparent that the 1997 Takeover Code and the later amendments introduced in it were intended to give effect to the recommendations of the two Committees headed by Justice Bhagwati. We were, thus, in a position to refer to the relevant portions of the two reports that provided us with the *raison d'être* for the amendment(s) or the introduction of a new provision and thus helped us in understanding the correct import of certain provisions. But this is not the case with many other regulations framed under different Acts. Regulations are brought in and later subjected to amendments without being preceded by any

reports of any expert committees. Now that we have more and more of the regulatory regime where highly important and complex and specialised spheres of human activity are governed by regulatory mechanisms framed under delegated legislation it is high time to change the old practice and to add at the beginning the "object and purpose" clause to the delegated legislations as in the case of the primary legislations.

58. In the result, the appeals are allowed but with no order as to costs.

D.G. Appeals allowed.