STATE OF PUNJAB
v.
CENTRAL BUREAU OF INVESTIGATION & ORS.
(SLP (Criminal) No. 792 of 2008)

SEPTEMBER 02, 2011

[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

Code of Criminal Procedure, 1973 – ss. 173 (8) and 482 – Investigation into FIR – Charge-sheet filed u/s. 173 against accused person – Also three more FIRs lodged – Subsequently, news item published in newspaper – High Court taking suo motu notice and directing CBI to investigate into the case – Correctness of – Held: In a case where charge-sheet has been filed, s. 173(8) cannot limit or affect the inherent powers of the High Court to pass an order u/s.482 for fresh investigation or re-investigation if the High Court is satisfied that such fresh investigation or re-investigation is necessary to secure the ends of justice – As regards investigation by CBI, the High Court held that investigation of the case by the investigating officer, even of the rank of DSP would not be fair and truthful because senior functionaries of the State police and political leaders were involved, and justice would not be done if local police investigated – Thus, direction of High Court for investigation by CBI was justified.

Respondent No. 3 filed an FIR against her husband and 'SK' alleging offences u/ss. 366, 376, 406, 420, 506, 344 read with s. 34 IPC. Pursuant thereto, investigation was carried out. Charge-sheet was submitted in the court u/s. 173 Cr.P.C. naming few persons as accused. This resulted in registration of three more FIRs and the same were also investigated. Thereafter, a news item was published in the newspaper headlined 'Moga Sex Scandal. The High Court took *suo motu* notice of the

news item and issued notices to the State Government, Senior Police Officials and directed the Deputy Superintendent of Police to file the status report of the investigation of the case. Subsequently, fifth FIR was registered u/ss. 376, 342 and 34 IPC. Thereafter, DSP filed a status report as also two Municipal Councilors of the District filed an application alleging that many innocent persons were implicated in the FIR registered by respondent No. 3 at the instance of local influential political persons and police officials/officers, and apprehended that the investigation might not be fair and proper. Meanwhile, the Additional Director General of Police entrusted the investigation into the previous four FIRs to a special investigation team(SIT). The High Court holding that the SIT had been constituted without the permission of the court directed that the investigation of the cases be carried out by CBI in the interest of justice in exercise of its power u/s 482 Cr.P.C. Therefore, the appellant-State filed the instant Special Leave Petition.

Dismissing the Special Leave Petition, the Court

HELD: 1.1 Under sub-section (2) of Section 173 Cr.P.C. a police report (charge sheet or challan) is filed by the police after investigation is complete. Sub-section (8) of Section 173 states that nothing in the Section shall be deemed to preclude any further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate. Thus, even where charge sheet or challan has been filed by the police under sub-section (2) of Section 173, the police can undertake further investigation but not fresh investigation or re-investigation in respect of an offence under sub-section (8) of Section 173 of the Cr.P.C. [Para 13] [294-C-E]

1.2 Section 482 of the Cr.P.C., however, states that nothing in the Cr.P.C. shall be deemed to limit or affect

the inherent powers of the High Court to make such orders as is necessary to give effect to any order under the Cr.P.C. or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Thus, the provisions of the Cr.P.C. do not limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Court or to prevent the abuse of any process of the Court or otherwise to secure the ends of justice. The language of sub-section (8) of Section 173 of the Cr.P.C., therefore, cannot limit or affect the inherent powers of the High Court to pass an order under Section 482 of the Cr.P.C. for fresh investigation or re-investigation if the High Court is satisfied that such fresh investigation or re-investigation is necessary to secure the ends of justice. [Para 14] [294-F-H; 295-A]

1.3 The investigating agency or the court subordinate to the High Court exercising powers under Cr.P.C. have to exercise the powers within the four corners of the Cr.P.C. and this would mean that the investigating agency may undertake further investigation and the subordinate court may direct further investigation into the case where charge sheet has been filed under sub-section (2) of Section 173 of the Cr.P.C. and such further investigation will not mean fresh investigation or re-investigation. But these limitations in sub-section (8) of Section 173 of the Cr.P.C. in a case where charge sheet has been filed will not apply to the exercise of inherent powers of the High Court under Section 482 of the Cr.P.C. for securing the ends of justice. [Para 15] [296-B-D]

1.4 On a reading of the reasons given by the High Court, it is found that the High Court was of the view that the investigating officer even of the rank of DSP was not in a position to investigate the case fairly and truthfully because senior functionaries of the State police and

political leaders were to be named and political and administrative compulsions were making it difficult for the investigating team to go any further to bring home the truth. It further observed that not less than eight police officials, political leaders, advocates, municipal councilors besides a number of persons belonging to general public had been named in the status report of the State local police. In the peculiar facts and circumstances of the case, the High Court felt that justice would not be done to the case if the investigation stays in the hands of the local police and for these reasons directed that the investigation of the case be handed over to the CBI. The narration of the facts and circumstances of this judgment also support the conclusion of the High Court that investigation by an independent agency such as the CBI was absolutely necessary in the interests of justice. Moreover, even though the High Court in the impugned order did make a mention that in case challan has been filed, then the petition will stand as having become infructuous in the order dated 12.12.2007, the High Court stayed further proceedings before the trial court in the case arising out of the FIR registered by respondent No. 3 till further orders. Thus, the High Court was of the view that even though investigation is complete in one case and charge sheet has been filed by the Police, it was necessary in the ends of justice that the CBI should carry out an investigation into the case. Therefore, it is not a fit case in which power should be exercised under Article 136 of the Constitution and grant leave to appeal. [Paras 17 and 19] [298-D-H; 299-G-H]

Vineet Narain v. Union of India **(1998) 1 SCC 226: 1997 (6) Suppl.SCR 595;** *Mithabhai Pashabhai Patel v. State of Gujarat* **(2009) 6 SCC 332: 2009 (7) SCR 1126;** *Ram Lal Narang v. State (Delhi Administration* **(1979) 2 SCC 322;** *Nirmal Singh Kahlon v. State of Punjab and Ors.* **(2009) 1 SCC 441: 2008 (14) SCR 1049;** *State of West Bengal and*

Ors. v. Committee for Protection of Democratic Rights, West Bengal and Ors. **(2010) 2 SCC 571 – referred to.**

Case Law Reference:

1997 (6) Suppl. SCR 595	**Referred to**	**Para 8**
2009 (7) SCR 1126	**Referred to**	**Para 8**
(1979) 2 SCC 322	**Referred to**	**Para 10**
2008 (14) SCR 1049	**Referred to**	**Para 16**
(2010) 2 SCC 571	**Referred to**	**Para 18**

CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Criminal) No. 792 of 2008.

From the Judgment and Order dated 11.12.2007 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 51260 of 2007.

Aparajita Singh, Kuldip Singh, R.K. Pandey, H.S. Sandhu, K.K. Pandey and Mohit Paul for the Appellant.

H.P. Raval. ASG, Anoop G. Choudari, June Choudari, A.K. Sharma, P.K. Dey, Satyakam, Anano Mukherjee, Anirudh Sharma, Harish Parekh, Ch. Shamsuddin Khan, Subhash Kaushik, B. Krishna Prasad, Rishi Malhotra, Prem Malhotra, Mrinmayee Sahu and P.V. Yogeswaran for the Respondents.

The Judgment of the Court was delivered by

AK. PATNAIK, J. 1. This petition under Article 136 of the Constitution has been filed by the State of Punjab praying for special leave to appeal against the order dated 11.12.2007 of the High Court of Punjab and Haryana in Criminal Miscellaneous No. 51620 of 2007 (for short "the impugned order").

2. The facts very briefly are that on 18.04.2007 respondent no.3 lodged FIR No. 82 at Police Station City-I, Moga against

Simran Kaur @ Indu and her husband Ajay Kumar alleging offences under Sections 366, 376, 406, 420, 506, 344 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC'). Pursuant to the FIR, Simran Kaur and Ajay Kumar were arrested on 19.04.2007, but Ajay Kumar managed to escape from the custody of police and FIR No. 83, Police Station City-I, Moga dated 19.04.2007 under Section 224 of the IPC was registered against him. In course of investigation of the case, respondent no.3 made a statement before the police under Section 161 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') on 23.04.2007 naming 14 other persons who had sex with her against her will and some of these persons were arrested by Sub-Inspector Raman Kumar. The statement of respondent no.3 was recorded on 25.04.2007 under Section 164 of the Cr.P.C. by the Chief Judicial Magistrate, Moga. On 08.05.2007, the investigation of the case was entrusted to Inspector Amarjit Singh, S.H.O. PS City-I, Moga. Some of the persons named by respondent no.3 in her statements were found to be innocent and were released. After completing the investigation, Inspector Amarjit Singh submitted a charge sheet on 01.06.2007 in Court under Section 173 of the Cr.P.C naming Simran Kaur @ Indu, Ajay Kumar, Vimal Kumar, Subhash Chander, Ramesh Kumar, Randhir Singh, Iqbal Singh, Bharat Bhushan and Inderjit Singh as accused persons.

3. On 04.06.2007 FIR No. 160 was registered under Sections 342, 323 and 506 read with Section 34 of the IPC at PS Baghapuran against several accused persons. One of the accused persons Ranjit Singh, however, made a complaint to the Additional Director General of Police (Law and Order) that he has been falsely implicated by Inspector Amarjit Singh in connivance with Manjeet Kaur because he had recorded a conversation by Inspector Amarjit Singh with him in the mobile that he would be arrested if he did not pay a certain amount to him and a compact disc containing the recorded conversation was prepared and attached with the complaint. Investigation into this case was entrusted to Inspector Bhupinder Singh, Deputy

Superintendent of Police, Bhaga Pura, District Moga. On completion of the enquiry it was found that the allegations against the accused persons were false. Accordingly, on 24.10.2007 FIR No. 198 was registered at PS City –I, Moga under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 read with Sections 384, 211 and 120-B of the IPC against Inspector Amarjit Singh and Manjeet Kaur and respondent no.3 and Inspector Amarjit Singh were arrested. During investigation it also came to light that Sub-Inspector Raman Singh, the then S.H.O., PS Badhnikalan was helping Manjeet Kaur and respondent no.3 and that Sub-Inspector Raman Singh had accepted illegal gratification. Accordingly, offences under Sections 195, 201, 202, 218, 219, 221, 465, 468 and 471 of the IPC were added in the case registered as FIR no. 198 of 2007 and Sub-Inspector Raman Singh was also named as an accused alongwith Inspector Amarjit Singh. Sub-Inspector Raman Kumar was also dismissed from service by the Senior Superintendent of Police.

4. On 11.11.2007, Manjeet Kaur and respondent no.3 were arrested and during interrogation respondent no.3 alleged that on 04.11.2007, Sub-Inspector Raman Kumar took her and Bhupinder Kumar @ Rocky Sharma to a place at Karnal in Haryana, where Bhupinder Kumar @ Rocky Sharma raped her during the night of 04/05.11.2007. On 13.11.2007, a news item was published in the Hindustan Times headlined 'Moga Sex Scandal' and two ladies, namely, respondent no.3 of Village Varsaal and her relative Manjeet Kaur of Village Badduwal had been arrested. This news was also published in the Tribune dated 12.11.2007.

5. The High Court took suo motu notice of the news items and issued notices to the State of Punjab, Senior Superintendent of Police, Moga and Deputy Inspector General of Police, Ferozpur Range and directed the Deputy Superintendent of Police, Bhupinder Singh, who was investigating into the case, to file the status report of the investigation on the next date of hearing. On 15.11.2007,

Bhupinder Kumar was arrested and FIR No. 225 was registered at Police Station Tarawari, Distt. Karnal under Sections 376, 342 and 34 of the IPC against him. On 19.11.2007, status report was submitted before the High Court by Deputy Superintendent of Police, Bhupinder Singh stating that the investigation is still in progress. On 19.11.2007, a Criminal Miscellaneous Application was moved by an advocate on behalf of Bhushan Garg and Inderjit Singh, two Municipal Councilors of Moga, alleging that at the instance of local influential political persons and senior police officers, many innocent persons, including Bhushan Garg and Inderjit Singh were implicated in FIR No.82 dated 18.04.2007 registered with Police Station City-I, Moga. The applicants apprehended that the investigation may not be fair and proper because senior police officers and highly influential persons were involved in the case.

6. When the case was taken up before the High Court on 20.11.2007, the Additional Advocate General placed before the High Court a copy of the order of the Additional Director General of Police (Crime), Punjab dated 19.11.2007 entrusting the investigation into FIR No. 82 dated 18.04.2007, FIR No. 83 dated 19.04.2007, FIR No. 160 dated 04.06.2007 and FIR No. 198 dated 24.10.2007 to a special investigation team (for short 'the SIT'). On 20.11.2007, the High Court observed that the SIT had been constituted without the permission of the Court and issued notice to the CBI for the purpose of entrusting the investigation of the case to the CBI.

7. Pursuant to the notice, the CBI appeared and stated in its reply that the CBI was over burdened with investigation of the cases referred to by this Court, the High Court and the Union of India and that it was facing acute shortage of man power and resources and therefore the case should not be entrusted to the CBI particularly when it does not have any interstate and international ramifications. The High Court, after hearing the learned counsel for the parties and after considering various status reports filed by the state police passed the impugned

order on 11.12.2007 directing that the investigation of the cases be entrusted to the CBI. On 12.12.2007, the High Court passed an order clarifying that the CBI has been directed by the order dated 11.12.2007 to investigate into FIR No.82, FIR No.83 and FIR No.198 of P.S. City I, Moga, FIR No.160 of P.S. Baghapurana and FIR No.225 of P.S. Tarawari, District Karnal (Haryana). By the order dated 12.12.2007, the High Court also stayed further proceedings before the Trial Court in the case arising out of FIR No.82 of P.S. City I, Moga, till further orders.

8. Dr. Rajeev Dhawan, appearing for the petitioner (State of Punjab) submitted that the High Court had failed to appreciate that on 01.06.2007 charge sheet had already been filed against nine accused persons after investigation into FIR No. 82 of Police Station City-I, Moga, and, therefore, no direction could be given to the CBI to conduct the investigation into the case. He cited the observations of this Court in *Vineet Narain v. Union of India* [(1998) 1 SCC 226] that the task of the monitoring Court would end the moment charge sheet was filed in respect of a particular investigation and thereafter the ordinary procedure of law would then take over. He submitted that after the charge sheet is filed, the Court has powers under sub-section (8) of Section 173 of the Cr.P.C. to direct further investigation by the police, but the Court has no power to direct a fresh investigation or reinvestigation into the case by the police. He submitted that the High Court, therefore, could not have directed the CBI to start a fresh investigation or reinvestigation of the case after the police had filed charge sheet under sub-section (2) of Section 173 of the Cr.P.C. In support of this submission, he cited the decision of this Court in Mithabhai Pashabhai Patel v. State of Gujarat [(2009) 6 SCC 332] in which this Court made a distinction between further investigation and reinvestigation and held that under sub-section (8) of Section 173 of the Cr.P.C., the Court can grant permission for further investigation and not for reinvestigation.

9. Mr. Anoop G. Chaudhari, learned counsel for respondent no.3, argued that once challan is filed and charges

are framed, the High Court cannot direct reinvestigation by the CBI. He submitted that in the present case, the challan had been filed on 01.06.2007 in respect of FIR No.82, Police Station City-I, Moga dated 18.04.2007 and the Court had also framed charges on 08.11.2007 and therefore the High Court could not have passed the impugned order on 11.12.2007 directing the CBI to carryout a fresh investigation or reinvestigation into the case. He submitted that the High Court was conscious of this limitation on the power of the Court to direct further investigation and mentioned in the impugned order dated 11.12.2007 that if the challan had been presented to the Court, the Miscellaneous Petition will stand as having become infructuous. He submitted that the impugned order passed by the High Court that the investigation of the case will be taken up by the CBI was, therefore, bad in law and should be set aside by this Court.

10. Mr. H.P. Raval, learned Additional Solicitor General for Respondent No.1 (the CBI), on the other hand, submitted that this Court has held in *Ram Lal Narang v. State (Delhi Administration* [(1979) 2 SCC 322] that even where a Magistrate has taken cognizance of an offence upon a police report submitted under Section 173 of the Cr.P.C., the right of the police to further investigate was not exhausted and the police can exercise such right as often as necessary when fresh information came to light. He also relied on a recent decision of this Court in *Nirmal Singh Kahlon v. State of Punjab & Ors.* [(2009) 1 SCC 441] wherein this Court has sustained the order of the High Court directing investigation by the CBI even after the charge sheet had been filed by the State police on completion of the investigation. He submitted that in *Nirmal Singh Kahlon* (supra) this Court has clarified that the observations in *Vineet Narain* (supra) cited by Dr. Dhawan are applicable to cases where the investigation was being monitored and in such cases the monitoring of the High Court will come to an end after the charge sheet is filed. He submitted that in the present case, the High Court found that the state

police is not a position to carry out a fair and truthful investigation and has directed the investigation by the CBI in the interest of justice in exercise of its powers under Section 482 of the Cr.P.C.

11. Mr. Raval further submitted that pursuant to impugned order of the High Court the CBI has carried out the investigation into the cases and the status report of the cases is as follows:

S. No.	CBI Case No.	Local Police Case No.	Status of the case
1.	RCCHG2007S0031	FIR No. 82, dated 18.04.2007 of P.S. City I, Moga.	1) Investigation completed, which revealed that a false rape case was registered by the Moga Police. 2) Charge sheet has been filed under Sections 366-A and 406 of the IPC and Sections 4 & 5 of the Immoral Traffic (Prevention) Act, 1956 against two persons, namely, Simran Kaur @ Indu and Ajay Kumar on 10.11.2008.
2.	RCCHG2007A0030	FIR No.198, dated 24.10.2007 of P.S. City I, Moga.	Investigation completed and charge sheet has been filed in Court on 09.11.2009 in which the senior police officers of the rank of SSP and SP are sought to be prosecuted after sanction from the Central Government.
3.	RCCHG2008S0003	FIR No.83, dated 19.04.2007 of P.S. City I, Moga.	1) Investigation completed and charge sheet has been filed in the Court on 10.11.2008 against Ajay Kumar and the Court convicted the accused on 30.09.2009. 2) Accused has filed an appeal in the Court of Ld. Special Judge, Punjab, Patiala and the appeal has been dismissed on 09.02.2011. Accused has filed CRR No. 460 of 2011 in the High Court, which is pending.
4.	RCCHG2008S0001	FIR No.160, dated 04.06.2007 of P.S. Baghapurana, District Moga	Investigation completed and closure report has been filed in Court on 10.11.2008 and the Court has accepted the closure report on 12.12.2008.
5.	RCCHG2008S0002	FIR No.225, dated 15.11.2007 of P. S. Tarawari, District Karnal (Haryana)	Investigation completed and closure report filed in the Court and the same has been accepted on 03.06.2009.

12. Sub-sections (1), (2) and (8) of Section 173 and Section 482 of the Cr.P.C. which are relevant for deciding this case are quoted herein below:

"Section 173. Report of police officer on completion of investigation –

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2)(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating –

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under Section 170;

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under Section 376, 376A, 376B, 376C or 376D of the Indian Penal Code.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

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(8) Nothing in this Section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-Section (2) has been forwarded to the Magistrate and, where upon such an investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)".

"Section 482. Saving of inherent power of High Court – Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice".

13. Sub-section (1) of Section 173 of the Cr.P.C. provides that every investigation by the police shall be completed without unnecessary delay and sub-section (2) of Section 173 provides that as soon as such investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government. Under sub-section (2) of Section 173, a police report (charge sheet or challan) is filed by the police after investigation is complete. Sub-section (8) of Section 173 states that nothing in the Section shall be deemed to preclude any further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate. Thus, even where charge sheet or challan has been filed by the police under sub-section (2) of Section 173, the police can undertake further investigation but not fresh investigation or re-investigation in respect of an offence under sub-section (8) of Section 173 of the Cr.P.C.

14. Section 482 of the Cr.P.C., however, states that nothing in the Cr.P.C. shall be deemed to limit or affect the inherent powers of the High Court to make such orders as is necessary to give effect to any order under the Cr.P.C. or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Thus, the provisions of the Cr.P.C. do not limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Court or to prevent the abuse of any process of the Court or otherwise to secure the ends of justice. The language of sub-section (8) of Section 173 of the Cr.P.C.,

therefore, cannot limit or affect the inherent powers of the High Court to pass an order under Section 482 of the Cr.P.C. for fresh investigation or re-investigation if the High Court is satisfied that such fresh investigation or re-investigation is necessary to secure the ends of justice.

15. We find support for this conclusion in the following observations of this Court in *Mithabhai Pashabhai Patel v. State of Gujarat* (supra) cited by Mr. Dhawan:

> "13. It is, however, beyond any cavil that "further investigation" and "reinvestigation" stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a "State" to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. Pasayat, J. in *Ramachandran v. R. Udhayakumar* [(2008) 5 SCC 413] opined as under: (SCC p. 415, para 7)
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> > "7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation."
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> A distinction, therefore, exists between a reinvestigation and further investigation."
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> "15. The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The Courts subordinate to the High Court even do not have any inherent power under Section 482 of the Code of Criminal Procedure or otherwise. The pre-cognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the Code."

It is clear from the aforesaid observations of this Court that the investigating agency or the Court subordinate to the High Court exercising powers under Cr.P.C. have to exercise the powers within the four corners of the Cr.P.C. and this would mean that the investigating agency may undertake further investigation and the subordinate court may direct further investigation into the case where charge sheet has been filed under sub-section (2) of Section 173 of the Cr.P.C. and such further investigation will not mean fresh investigation or re-investigation. But these limitations in sub-section (8) of Section 173 of the Cr.P.C. in a case where charge sheet has been filed will not apply to the exercise of inherent powers of the High Court under Section 482 of the Cr.P.C. for securing the ends of justice.

16. This position of law will also be clear from the decision of this Court in *Nirmal Singh Kahlon v. State of Punjab & Ors.* (supra) cited by Mr. Raval. The facts of that case are that the State police had investigated into the allegations of irregularities in selection of a large number of candidates for the post of Panchayat Secretaries and had filed a charge sheet against Nirmal Singh Kahlon. Yet the High Court in a PIL under Article 226 of the Constitution passed orders on 07.05.2003 directing investigation by the CBI into the case as it thought that such investigation by the CBI was "not only just and proper but a necessity". Nirmal Singh Kahlon challenged the decision of the High Court before this Court contending inter alia that sub-section (8) of Section 173 of the Cr.P.C. did not envisage an investigation by the CBI after filing of a charge sheet and the Court of Magistrate alone has the jurisdiction to issue any further direction for investigation before this Court. Amongst the authorities cited on behalf of Nirmal Singh Kahlon was the decision of this Court in Vineet Narain case that once the investigation is over and charge sheet is filed the task of the

monitoring Court comes to an end. Yet this Court sustained the order of the High Court with inter alia the following reasons:

> "63. The High Court in this case was not monitoring any investigation. It only desired that the investigation should be carried out by an independent agency. Its anxiety, as is evident from the order dated 3-4-2002, was to see that the officers of the State do not get away. If that be so, the submission of Mr. Rao that the monitoring of an investigation comes to an end after the charge-sheet is filed, as has been held by this Court in *Vineet Narain and M.C. Mehta (Taj Corridor Scam) v. Union of India* [(2007) 1 SCC 110], loses all significance".

Though the decision of this Court in *Nirmal Singh Kahlon v. State of Punjab & Ors.* (supra) is in the context of the power of the High Court under Article 226 of the Constitution, the above observations will equally apply to a case where the power of the High Court under Section 482 of the Cr.P.C. is exercised to direct investigation of a case by an independent agency to secure the ends of justice.

17. This leads us to the next question whether the High Court in the facts of the present case passed the order for investigation by the CBI to secure the ends of justice. The reasons given by the High Court in the impugned order dated 11.12.2007 for directing investigation by the CBI are extracted herein below:

> "The Investigating Officer, who is a D.S.P. in rank, will not be in a position to investigate the case fairly and truthfully, as senior functionaries of the State in the Police Department and political leaders are being named. By this we are not casting any doubts on the investigating team, but it seems that political and administrative compulsions are making it difficult for the investigating team to go any further to bring home the truth. Apart from revolving around a few persons who have been named in the status report,

> nothing worthwhile is coming out regarding the interrogation of the police officers, political leaders and others. The investigation seems to have slowed down because of political considerations.
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> Not less than eight police officials, political leaders, Advocates, Municipal Councilors and number of persons from the general public have been named in the status report. We feel that justice would not be done to the case, if it stays in the hands of the Punjab Police. Having said this, we want to make one thing very clear that the team comprising of Shri Ishwar Chander, D.I.G, Shri L.K. Yadav, S.S.P. Moga and Shri Bhupinder Singh, D.S.P. have done a commendable job in unearthing the scam.
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> We feel it a fit case to be handed over to the C.B.I."

On a reading of the reasons given by the High Court, we find that the High Court was of the view that the investigating officer even of the rank of DSP was not in a position to investigate the case fairly and truthfully because senior functionaries of the State police and political leaders were to be named and political and administrative compulsions were making it difficult for the investigating team to go any further to bring home the truth. It further observed that not less than eight police officials, political leaders, advocates, municipal councilors besides a number of persons belonging to general public had been named in the status report of the State local police. In the peculiar facts and circumstances of the case, the High Court felt that justice would not be done to the case if the investigation stays in the hands of the local police and for these reasons directed that the investigation of the case be handed over to the CBI. The narration of the facts and circumstances in paragraph 2, 3, 4 and 5 of this judgment also support the conclusion of the High Court that investigation by an independent agency such as the CBI was absolutely necessary in the interests of justice. Moreover, even though the High Court in the impugned order dated 11.12.2007 did make a mention

that in case challan has been filed, then the petition will stand as having become infructuous in the order dated 12.12.2007, the High Court has stayed further proceedings before the trial court in the case arising out of FIR No.82 of P.S. City I, Moga, till further orders. Thus, the High Court was of the view that even though investigation is complete in one case and charge sheet has been filed by the Police, it was necessary in the ends of justice that the CBI should carry out an investigation into the case.

18. In the recent case of *State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others* [(2010) 2 SCC 571] a Constitution Bench of this Court, while holding that no Act of Parliament can exclude or curtail the powers of the High Court under Article 226 of the Constitution, has cautioned that the extra-ordinary powers of the High Court under Article 226 of the Constitution must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and confidence in investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and enforcing fundamental rights. This caution equally applies to the cases where the High Court exercises inherent powers under Section 482 of the Cr.P.C. to direct investigation by the CBI for securing the ends of justice. In the facts and circumstances of this case, however, the High Court has held that the state local police was unable to carry out investigation into the cases and for securing the ends of justice the investigation has to be handed over to the CBI. In other words, this was one of those extra-ordinary cases where the direction of the High Court for investigation by the CBI was justified.

19. This is, therefore, not a fit case in which we should exercise our powers under Article 136 of the Constitution and grant leave to appeal. The Special Leave Petition is dismissed.

N.J. Special Leave Petition dismissed.

RAGHUVANSH DEWANCHAND BHASIN
v.
STATE OF MAHARASHTRA & ANR.
(Criminal Appeal No.1758 of 2011)

SEPTEMBER 9, 2011.

[D.K. JAIN AND H.L. DATTU, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

Chapter VI – Processes to compel appearance – Warrant of arrest – In a complaint case for offence punishable u/s 324 IPC on the date of hearing at preliminary stage, appellant being absent the court issued a non-bailable warrant against him – Held: Courts have to be extra-cautious and careful while directing issue of non-bailable warrant, else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India – The power has to be exercised judiciously and not arbitrarily, having regard, inter-alia, to the nature and seriousness of the offence involved; the past conduct of the accused, his age and the possibility of his absconding – In the instant case, having regard to nature of the complaint against the appellant and his stature in the community and the fact that he was regularly attending the court proceedings, it was not a fit case where non-bailable warrant should have been issued – The attendance of the appellant could have been secured by issuing summons or at best by a bailable warrant – Constitution of India, 1950 – Articles 21 and 22(1).

ADMINISTRATION OF JUSTICE:

Criminal Justice – Execution of warrants to compel appearance in court – non-bailable warrant issued against appellant executed even after it had been cancelled –

Appellant, in spite of his telling that the warrant had been cancelled, was arrested before a public gathering during Independence Day celebrations, produced before the Duty Magistrate and was released the same day – Writ petition by appellant before High Court seeking disciplinary action against Inspector of Police concerned as also compensation damages and costs to be paid by him – High Court directing the Inspector to pay Rs. 2,000/- to the appellant – Held: The High Court has rightly held that the Inspector did not perform his duty in the manner expected of a responsible police officer – As a matter of fact, being the guardian of the liberty of a person, a heavy responsibility devolved on him to ensure that his office was not misused by the complainant to settle personal scores – The so-called urgency or promptness in execution led to undesirable interference with the liberty of the appellant – Such a conduct cannot receive a judicial imprimatur – However, the appellant does not deserve further monetary compensation – Being a practicing Advocate himself, the appellant was fully conversant with the court procedure and, therefore, should have procured a copy of memo/order whereby the non-bailable warrant was cancelled by the court – Though the conduct of the Inspector deserves to be deplored, yet, strictly speaking his action in detaining the appellant on the strength of the warrant in his possession, perhaps motivated, cannot be said to be per se without the authority of law – Therefore, no other action against him is warranted – He has been sufficiently reprimanded – Constitution of India, 1950 – Article 21 r/w Articles 226 and 32.

Compensation – HELD: The power and jurisdiction of Supreme Court and High Courts to grant monetary compensation in exercise of its jurisdiction respectively under Articles 32 and 226 of the Constitution to a victim whose fundamental rights under Article 21 of the Constitution are

violated are well-established – High Court has awarded Rs.2,000/- to the appellant – Having considered the case in the light of the fact-situation, the appellant does not deserve further monetary compensation.

*Processes to compel appearance in court – Issuance of a warrant with endorsement "non-bailable" – Though no such terminology is found in the Code or Form-2, nevertheless, the endorsement of the expression "non-bailable" on a warrant is to facilitate the executing authority as well as the person against whom the warrant is sought to be executed to make them aware as to the nature of the warrant that has been issued – Merely because the warrant uses the expression "non-bailable", that by itself cannot render the warrant bad in law – In order to check or obviate the possibility of misuse of an arrest warrant, in addition to the statutory and constitutional requirements, **guidelines** laid down to be adopted in all cases where non-bailable warrants are issued by the courts – Code of Criminal Procedure, 1973 – ss. 70, 71 and 476 r/w Second Schedule, Form-2.*

In a case arising out of a criminal complaint against the appellant, a practicing Advocate, for an offence punishable u/s 324 IPC, at the preliminary stage of hearing, the trial court, on 7.8.2002, finding him to be absent, issued a non-bailable warrant against him returnable on 31.10.2002. The warrant was forwarded to the Police Station concerned. On 12.8.2002, the appellant put in appearance before the court and the warrant was cancelled. On 15.8.2002, at the instance of the complainant, respondent no.2, an Inspector of Police, directed a constable to accompany the complainant and execute the said non-bailable warrant. The appellant, in spite of his telling that the warrant had been cancelled, was arrested before a public gathering during the independence day celebrations. He was produced before

the Duty Magistrate and was released the same day. He then filed a writ petition before the High Court alleging mala fides and humiliation at the hands of respondent no. 2 in collusion with the complainant and prayed for suitable disciplinary action against respondent no. 2, and for compensation, damages and costs to be paid by him. The High Court allowed the writ petition and directed respondent no. 2 to pay an amount of Rs. 2000/- as costs to the appellant from his own account. The appellant, having failed to get the desired relief, filed the appeal.

Dismissing the appeal, the Court

HELD: 1.1 Since the execution of a non-bailable warrant directly involves curtailment of liberty of a person, warrant of arrest cannot be issued mechanically, but only after recording satisfaction that in the facts and circumstances of the case, it is warranted. The courts have to be extra-cautious and careful while directing issuance of non-bailable warrant, else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India. It is for the court, which is clothed with the discretion to determine whether the presence of an accused can be secured by a bailable or non-bailable warrant, to strike the balance between the need of law enforcement on the one hand and the protection of the citizen from highhandedness at the hands of the law enforcement agencies on the other. [para 9] [312-D-F]

1.2 The power and jurisdiction of the court to issue appropriate warrant against an accused on his failure to attend the court on the date of hearing of the matter cannot be disputed. Nevertheless, such power has to be exercised judiciously and not arbitrarily, having regard, inter-alia, to the nature and seriousness of the offence involved, the past conduct of the accused, his age and

the possibility of his absconding. [para 9] [313-A-B]

State of U.P. Vs. Poosu & Anr. **1976 (3) SCR 1005 = 1976 (3) SCC 1 - relied on.**

1.3 In Inder Mohan Goswami's case*, this Court, keeping in view the right to life and personal liberty, enshrined in Articles 21 and 22(1) of the Constitution, enumerated some of the circumstances which the Court should bear in mind while issuing non-bailable warrant. [para 10-11] [313-C; 314-E-F]

Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors. **2007 (10) SCR 847 = 2007 (12) SCC 1 - relied on.**

1.4 In the instant case, having regard to nature of the complaint against the appellant and his stature in the community and the fact that admittedly he was regularly attending the court proceedings, it was not a fit case where non-bailable warrant should have been issued by the Additional Chief Metropolitan Magistrate. The attendance of the appellant could have been secured by issuing summons or at best by a bailable warrant. Therefore, the High Court rightly held that in the facts and circumstances of the case, issuance of non-bailable warrant was manifestly unjustified. [para 12] [314-G-H; 315-A-B]

2.1 As regards the conduct of respondent No.2, at whose direction the warrant was executed, he was aware that the non-bailable warrant issued on account of failure on the part of the appellant to attend the court proceedings on 7.8.2002, was returnable only on 31.10.2002. Undoubtedly, respondent No.2 was duty bound to execute the warrant as expeditiously as possible, but there is no justifiable reason for the urgency in executing the warrant on a National holiday, more so

when it had been issued more than a week ago. It is apparent from the record that the warrant was executed at the behest of the complainant in order to denigrate and humiliate the appellant at a public place, in public view, during the course of Independence Day celebrations. This Court is convinced that respondent No.2, in collusion with the complainant, played with the personal liberty of the appellant in a high handed manner. The High Court has rightly held that respondent No.2 did not perform his duty in the manner expected of a responsible police officer. As a matter of fact, being the guardian of the liberty of a person, a heavy responsibility devolved on him to ensure that his office was not misused by the complainant to settle personal scores. The so-called urgency or promptness in execution led to undesirable interference with the liberty of the appellant. Such a conduct cannot receive a judicial imprimatur. [para 13] [315-C-H; 316-A-C]

2.2 It is trite principle of law that in matters involving infringement or deprivation of a fundamental right, abuse of process of law, harassment etc., the courts have ample power to award adequate compensation to an aggrieved person not only to remedy the wrong done to him but also to serve as a deterrent for the wrong doer. The power and jurisdiction of this Court and the High Courts to grant monetary compensation in exercise of its jurisdiction respectively under Articles 32 and 226 of the Constitution of India to a victim whose fundamental rights under Article 21 of the Constitution are violated are thus, well-established. [para 15 and 19] [316-F; 319-G]

Rudul Sah Vs. State of Bihar & Anr. **1983 (3) SCR 508 = 1983 (4) SCC 141,** *Bhim Singh, MLA Vs. State of J & K & Ors.* **1985 (4) SCC 677; and** *Nilabati Behera (Smt) Alias Lalita Behera Vs. State of Orissa & Ors* **1993 (2) SCR 581 = 1993 (2) SCC 746 - relied on.**

2.3 Having considered the case in the light of the fact-situation, this Court is of the opinion that the appellant does not deserve further monetary compensation. It is true that the appellant not only suffered humiliation in the public gathering, and remained in judicial custody for some time but, being a practicing Advocate himself, he was fully conversant with the court procedure and, therefore, should have procured a copy of memo/order dated 12.8.2002, whereby the non-bailable warrant was cancelled by the court. Admittedly, the appellant applied and obtained a copy of such order only on 16.8.2002. Though the conduct of respondent No.2 in arresting the appellant, ignoring his plea that the non-bailable warrant issued by the court in a bailable offence had been cancelled, deserves to be deplored, yet, strictly speaking the action of respondent No.2 in detaining the appellant on the strength of the warrant in his possession, perhaps motivated, cannot be said to be per se without the authority of law. In that view of the matter, no other action against respondent No.2 is warranted. He has been sufficiently reprimanded. [para 19-20] [319-G-H; 320-A-E]

3. As regards the issue whether the Courts can at all issue a warrant, called a "non-bailable" warrant, it is true that neither s. 70 nor s. 71, appearing in Chapter VI of the Code of Criminal Procedure, 1973, enumerating the processes to compel appearance, nor Form 2 of the Second Schedule to the Code, uses the expression like "non-bailable". Section 70 merely speaks of form of warrant of arrest, and ordains that it will remain in force until it is cancelled. Similarly s. 71 talks of discretionary power of court to specify about the security to be taken in case the person is to be released on his arrest pursuant to the execution of the warrant issued u/s 70 of the Code. Sub-s. (2) of s. 71 of the Code specifies the endorsements which can be made on a warrant.

Nevertheless, the endorsement of the expression "non-bailable" on a warrant is to facilitate the executing authority as well as the person against whom the warrant is sought to be executed to make them aware as to the nature of the warrant that has been issued. Merely because Form No.2, issued u/s 476 of the Code, and set forth in the Second Schedule, nowhere uses the expression bailable or non-bailable warrant, that does not prohibit the courts from using the said word or expression while issuing the warrant or even to make endorsement to that effect on the warrant so issued. Any endorsement/variation, which is made on such warrant for the benefit of the person against whom the warrant is issued or the persons who are required to execute the warrant, would not render the warrant to be bad in law. What is material is that there is a power vested in the court to issue a warrant and that power is to be exercised judiciously depending upon the facts and circumstances of each case. Being so, merely because the warrant uses the expression like "non-bailable" and that such terminology is not to be found in either s. 70 or s. 71 of the Code that by itself cannot render the warrant bad in law. Therefore, no ground is made out warranting interference with the impugned judgment of the High Court. [para 21-22] [320-F-H; 321-A-F]

4. In order to prevent such a paradoxical situation, as has arisen in the instant case, and to check or obviate the possibility of misuse of an arrest warrant, in addition to the statutory and constitutional requirements, guidelines are laid down in the instant judgment, to be adopted in all cases where non-bailable warrants are issued by the courts. This Court expects and hopes that all the High Courts will issue appropriate directions in this behalf to the Subordinate Courts, which shall endeavour to put into practice the directions issued in the instant judgment. [para 23-24] [321-G-H; 322-A; 325-A-B]

Case Law Reference:

1976 (3) SCR 1005	**relied on**	**para 9**
2007 (10) SCR 847	**relied on**	**para 10**
1983 (3) SCR 508	**relied on**	**para 16**
1985 (4) SCC 677	**relied on**	**para 17**
1993 (2) SCR 581	**relied on**	**para 18**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1758 of 2011.

From the Judgment & Order dated 26.11.2007 of the High Court of Bombay in Cr. W.P. No. 1086 of 2002.

Shankar Chillarge, AAG, R.D. Bhasin (In-Person) Jay Savla, Dharmendra, Ashok Shahani, Renuka Sahu, Shilpi Choudhry, Asha G. Nair for the appearing parties.

The Judgment of the Court was delivered by

D.K. JAIN, J.: 1. Leave granted.

2. This appeal, by special leave, is directed against the judgment and order dated 26th November 2007, rendered by the High Court of Judicature at Bombay, in CRL. W.P. No.1086/2002. By the impugned judgment, while allowing the writ petition filed by the appellant, alleging harassment on account of his arrest on the strength of a non-bailable warrant, which had been cancelled, the High Court has directed the delinquent police officer to pay by way of costs to the appellant an amount of Rs. 2,000/- from his own account.

3. Shorn of unnecessary details, the facts material for adjudication of the present case, may be stated thus:

Some time in the year 2000, one, Mr. Prem Harchandrai filed a complaint, being C.C. No. 163/P/2000, against the appellant, a practicing Advocate, under Section 324 of the Indian Penal Code, 1860 (for short "the IPC"), in relation to some incident alleged to have taken place in the 'Radio Club' at Mumbai, considered to be a club for the elite. When at a preliminary stage, the case came up for hearing before the Additional Chief Metropolitan Magistrate on 7th August, 2002, finding the appellant to be absent, the Court issued a non-bailable warrant against him returnable on 31st October, 2002. The warrant was forwarded to the Colaba Police Station for execution. However, on 12th August, 2002, on appellant's putting in an appearance before the Court, the warrant was cancelled.

4. On 15th August, 2002, the complainant approached the Colaba Police Station and insisted on the arrest of the appellant in pursuance of the said non-bailable warrant. Thereupon, respondent No. 2, who at that point of time was posted as an Inspector of Police at the Colaba Police Station, directed a constable to accompany the complainant, and execute the warrant. When the appellant was sought to be arrested, he informed the constable that the said warrant had already been cancelled. However, as he could not produce any documentary evidence relating to cancellation of warrant, the appellant was arrested before a public gathering which had assembled at the Radio Club, in connection with the Independence day celebrations. He was produced before the duty Magistrate at about 2 P.M., the same day. The Magistrate directed the release of the appellant. It appears that the appellant obtained the necessary confirmation about cancellation of the warrant on the next day i.e. 16th August 2002 and produced the same before respondent No. 2 on the same day. Alleging malafides and humiliation at the hands of respondent No. 2, in collusion with the complainant, the appellant approached the High Court, inter-alia, praying for suitable disciplinary action against

respondent No.2; adequate compensation; damages and costs by the said respondent from his own pocket.

5. As aforesaid, the High Court, vide impugned judgment has allowed the writ petition, *inter alia*, observing thus :

> "We therefore, find that there was no justification for issuance of non-bailable warrant on 7th August, 2002 merely because the petitioner had remained absent in Criminal Case No. 163/P/2000 (*sic*) by the Metropolitan Magistrate. The Magistrate could have issued either a notice or a bailable warrant depending upon the facts revealed from the records. Once the warrant was cancelled on 12th August, 2002, it was necessary for the Court to immediately communicate the same to the concerned Police authority so that no inconvenience could have been caused to the person against whom the warrant was initially issued. Once the warrant was sought to be executed on holiday and the concerned police officer was categorically informed that the warrant had already been cancelled and the police officer being fully aware of the circumstances and nature of the case in which warrant had been issued, it was necessary for the police officer to ascertain and to find out whether the warrant which was sought to be executed was still enforceable or had already been cancelled and not to rush to execute the warrant in those circumstances and that too on a holiday. Having produced the necessary documents confirming the cancellation of the warrant much prior to the date on which it was sought to be (sic) enforced, it was the duty of the police officer to tender the necessary apology to the petitioner for executing such warrant on the holiday, and the concerned officer having failed to tender the apology it apparently shows that he had not performed his duty in the manner he was required to perform as a responsible police officer. Even the affidavit filed by the respondent No. 2 nowhere

discloses any repentance for having executed the warrant which was already cancelled. It is a clear case of unnecessary interference with the liberty of a citizen."

6. Thus, having failed to get the desired relief from the High Court, the appellant is before us in this appeal.

7. Arguing the case in person, it was strenuously urged by the appellant that having regard to the nature of offence alleged against him, in the first place, the Additional Chief Metropolitan Magistrate erred in law in issuing non-bailable warrant in a routine manner, without application of mind, merely because the appellant had failed to appear in court on 7th August 2002. It was asserted that since neither Section 70 nor Section 71 of the Code of Criminal Procedure, 1973 (for short "the Code") uses the expression "non-bailable" a Magistrate is not authorised to issue non-bailable warrant of arrest even when an accused fails to appear in the court. It was submitted that having held that the respondent No.2 was guilty of misconduct, the High Court failed to punish the said respondent under Sections 342 and 345 of the IPC. It was argued that the misconduct of respondent No.2 was so high that he should have been forthwith suspended from his job and ordered to be tried in a competent criminal court. According to the appellant, the direction of the High Court asking respondent No.2 to pay an amount of Rs. 2,000/- by way of cost to the appellant was no justice at all and if a strict action is not taken against such delinquent officers, they will continue to disregard the orders of the courts with impunity.

8. *Per contra*, Mr. Jay Savla, learned counsel appearing for respondent No.2 submitted that since the appellant was unable to furnish any document or order to establish that non-bailable warrant issued against him by the court had been cancelled, the police authorities were left with no option and in fact were duty bound to execute the same. It was also urged

that, as per the prevalent practice, whenever any non-bailable warrant is cancelled by the court, either memo or order addressed to the Senior Inspector of Police of the concerned police station is issued and forwarded directly to the concerned police station with a direction to return the said warrant to the court. But in the present case no such memo or order in writing had been received at the police station on or before 15th August 2002, when it was executed. Learned counsel submitted that the said respondent having performed his duty bona fide and in good faith, in pursuance of order issued by the court having jurisdiction, the said respondent had not committed any illegal act warranting any action against him.

9. It needs little emphasis that since the execution of a non-bailable warrant directly involves curtailment of liberty of a person, warrant of arrest cannot be issued mechanically, but only after recording satisfaction that in the facts and circumstances of the case, it is warranted. The Courts have to be extra-cautious and careful while directing issue of non-bailable warrant, else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India. At the same time, there is no gainsaying that the welfare of an individual must yield to that of the community. Therefore, in order to maintain rule of law and to keep the society in functional harmony, it is necessary to strike a balance between an individual's rights, liberties and privileges on the one hand, and the State on the other. Indeed, it is a complex exercise. As Justice Cardozo puts it "on the one side is the social need that crime shall be repressed. On the other, the social need that law shall not be flouted by the insolence of office. There are dangers in any choice." Be that as it may, it is for the court, which is clothed with the discretion to determine whether the presence of an accused can be secured by a bailable or non-bailable warrant, to strike the balance between the need of law enforcement on the one hand and the protection of the citizen from highhandedness at the hands of the law

enforcement agencies on the other. The power and jurisdiction of the court to issue appropriate warrant against an accused on his failure to attend the court on the date of hearing of the matter cannot be disputed. Nevertheless, such power has to be exercised judiciously and not arbitrarily, having regard, inter-alia, to the nature and seriousness of the offence involved; the past conduct of the accused; his age and the possibility of his absconding. (Also See: *State of U.P. Vs. Poosu & Anr.*[1]).

10. In *Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors.*[2], a Bench of three learned Judges of this Court cautioned that before issuing non-bailable warrants, the Courts should strike a balance between societal interests and personal liberty and exercise its discretion cautiously. Enumerating some of the circumstances which the Court should bear in mind while issuing non-bailable warrant, it was observed:

> "53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:
>
> - it is reasonable to believe that the person will not voluntarily appear in court; or
> - the police authorities are unable to find the person to serve him with a summon; or
> - it is considered that the person could harm someone if not placed into custody immediately.
>
> 54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.
>
> 55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants."

1. (1976) 3 SCC 1.
2. (2007) 12 SCC 1.

11. We deferentially concur with these directions, and emphasize that since these directions flow from the right to life and personal liberty, enshrined in Articles 21 and 22(1) of our Constitution, they need to be strictly complied with. However, we may hasten to add that these are only broad guidelines and not rigid rules of universal application when facts and behavioral patterns are bound to differ from case to case. Since discretion in this behalf is entrusted with the court, it is not advisable to lay down immutable formulae on the basis whereof discretion could be exercised. As aforesaid, it is for the court concerned to assess the situation and exercise discretion judiciously, dispassionately and without prejudice.

12. Viewed in this perspective, we regret to note that in the present case, having regard to nature of the complaint against the appellant and his stature in the community and the fact that admittedly the appellant was regularly attending the

court proceedings, it was not a fit case where non-bailable warrant should have been issued by the Additional Chief Metropolitan Magistrate. In our opinion, the attendance of the appellant could have been secured by issuing summons or at best by a bailable warrant. We are, therefore, in complete agreement with the High Court that in the facts and circumstances of the case, issuance of non-bailable warrant was manifestly unjustified.

13. We shall now advert to a more anxious point, viz. the conduct of respondent No.2, at whose direction the warrant was executed. It needs no emphasis that any form of degrading treatment would fall within the inhibition of Article 21 of the Constitution. In the present case, respondent No.2 was aware that the non-bailable warrant issued on account of failure on the part of the appellant to attend the court proceedings on 7th August 2002, was returnable only on 31st October 2002. Undoubtedly, respondent No.2 was duty bound to execute the warrant as expeditiously as possible but we are unable to fathom any justifiable reason for the urgency in executing the warrant on a National holiday, more so when it had been issued more than a week ago and even the complaint against the appellant was in relation to the offence punishable under Section 324 of the IPC. The complaint related to the year 2000. At the relevant time, the offence punishable under Section 324 of the IPC was a bailable offence. It is apparent from the record that the warrant was executed at the behest of the complainant in order to denigrate and humiliate the appellant at a public place, in public view, during the course of Independence day celebrations at Radio Club. We are convinced that respondent No.2, in collusion with the complainant, played with the personal liberty of the appellant in a high handed manner. The unfortunate sequel of an unmindful action on the part of respondent No.2 was that the appellant, a practicing Advocate, with no criminal history, remained in police custody for quite some time without any justification whatsoever and suffered unwarranted

humiliation and degradation in front of his fellow members of the Club. Regrettably, he lost his freedom though for a short while, on the Independence day. Here also, we agree with the High Court that respondent No.2 did not perform his duty in the manner expected of a responsible police officer. As a matter of fact, being the guardian of the liberty of a person, a heavy responsibility devolved on him to ensure that his office was not misused by the complainant to settle personal scores. The so-called urgency or promptness in execution led to undesirable interference with the liberty of the appellant. Such a conduct cannot receive a judicial imprimatur.

14. That takes us to the core issue, namely, whether the appellant is entitled to any compensation for the humiliation and harassment suffered by him on account of the wrong perpetrated by respondent No.2, in addition to what has been awarded by the High Court. As aforesaid, the grievance of the appellant is that imposition of a fine of Rs. 2,000/- on respondent No.2 is grossly inadequate. His prayer is that in addition to an adequate amount of compensation, respondent No.2 should also be prosecuted and proceeded against departmentally for his wrongful confinement.

15. It is trite principle of law that in matters involving infringement or deprivation of a fundamental right; abuse of process of law, harassment etc., the courts have ample power to award adequate compensation to an aggrieved person not only to remedy the wrong done to him but also to serve as a deterrent for the wrong doer.

16. In *Rudul Sah Vs. State of Bihar & Anr.*[3], *Y.V. Chandrachud,* CJ, speaking for a Bench of three learned Judges of this Court had observed thus:

> "One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the

3. (1983) 4 SCC 141.

mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt."

17. In *Bhim Singh, MLA Vs. State of J & K & Ors.*[4], holding illegal detention in police custody of the petitioner Bhim Singh to be violative of his rights under Articles 21 and 22(2) of the Constitution, this Court, in exercise of its power to award compensation under Article 32, directed the State to pay monetary compensation to the petitioner. Relying on *Rudal Sah* (supra), O. Chinnappa Reddy, J. echoed the following views:

"When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation".

18. In *Nilabati Behera (Smt) Alias Lalita Behera Vs. State of Orissa & Ors.*[5], clearing the doubt and indicating the precise nature of the constitutional remedy under Articles 32 and 226 of the Constitution to award compensation for contravention of fundamental rights, which had arisen because of the observation that "the petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial" in *Rudul Sah* (supra), J.S. Verma, J. (as His Lordship then was) stated as under:

"It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms,

4. (1985) 4 SCC 677.

5. (1993) 2 SCC 746

the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights."

In the same decision, in his concurring judgment, Dr. A.S. Anand, J. (as His Lordship then was), explaining the scope and purpose of public law proceedings and private law proceedings stated as under:

"The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is

based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law."

19. The power and jurisdiction of this Court and the High Courts to grant monetary compensation in exercise of its jurisdiction respectively under Articles 32 and 226 of the Constitution of India to a victim whose fundamental rights under Article 21 of the Constitution are violated are thus, well-established. However, the question now is whether on facts in hand, the appellant is entitled to monetary compensation in addition to what has already been awarded to him by the High Court. Having considered the case in the light of the fact-

situation stated above, we are of the opinion that the appellant does not deserve further monetary compensation.

20. It is true that the appellant not only suffered humiliation in the public gathering, and remained in judicial custody for some time but we feel that for what he had undergone on 15th August 2002, some blame lies at his door as well. Being a practicing Advocate himself, the appellant was fully conversant with the court procedure and, therefore, should have procured a copy of memo/order dated 12th August 2002, whereby the non-bailable warrant was cancelled by the court. As noticed above, admittedly, the appellant applied and obtained a copy of such order only on 16th August 2002. Though the conduct of respondent No.2 in arresting the appellant, ignoring his plea that the non-bailable warrant issued by the court in a bailable offence had been cancelled, deserves to be deplored, yet, strictly speaking the action of respondent No.2 in detaining the appellant on the strength of the warrant in his possession, perhaps motivated, cannot be said to be per se without the authority of law. In that view of the matter, in our opinion, no other action against respondent No.2 is warranted. He has been sufficiently reprimanded.

21. The last issue raised that remains to be considered is whether the Courts can at all issue a warrant, called a “non-bailable” warrant because no such terminology is found in the Code as well as in Form 2 of the Second Schedule to the Code. It is true that neither Section 70 nor Section 71, appearing in Chapter VI of the Code, enumerating the processes to compel appearance, as also Form 2 uses the expression like “non-bailable”. Section 70 merely speaks of form of warrant of arrest, and ordains that it will remain in force until it is cancelled. Similarly Section 71 talks of discretionary power of Court to specify about the security to be taken in case the person is to be released on his arrest pursuant to the execution of the warrant issued under Section 70 of the Code.

Sub-section (2) of Section 71 of the Code specifies the endorsements which can be made on a warrant. Nevertheless, we feel that the endorsement of the expression "non-bailable" on a warrant is to facilitate the executing authority as well as the person against whom the warrant is sought to be executed to make them aware as to the nature of the warrant that has been issued. In our view, merely because Form No.2, issued under Section 476 of the Code, and set forth in the Second schedule, nowhere uses the expression bailable or non-bailable warrant, that does not prohibit the Courts from using the said word or expression while issuing the warrant or even to make endorsement to that effect on the warrant so issued. Any endorsement/variation, which is made on such warrant for the benefit of the person against whom the warrant is issued or the persons who are required to execute the warrant, would not render the warrant to be bad in law. What is material is that there is a power vested in the Court to issue a warrant and that power is to be exercised judiciously depending upon the facts and circumstances of each case. Being so, merely because the warrant uses the expression like "non-bailable" and that such terminology is not to be found in either Section 70 or Section 71 of the Code that by itself cannot render the warrant bad in law. The argument is devoid of substance and is rejected accordingly.

22. In view of the aforegoing discussion, no ground is made out warranting our interference with the impugned judgment of the High Court. We confirm the judgment and dismiss the appeal accordingly, but with no order as to costs.

23. However, before parting with the judgment, we feel that in order to prevent such a paradoxical situation, we are faced with in the instant case, and to check or obviate the possibility of misuse of an arrest warrant, in addition to the statutory and constitutional requirements to which reference has been made above, it would be appropriate to issue the following guidelines

to be adopted in all cases where non-bailable warrants are issued by the Courts:-

(a) All the High Court shall ensure that the Subordinate Courts use printed and machine numbered Form No.2 for issuing warrant of arrest and each such form is duly accounted for;

(b) Before authenticating, the court must ensure that complete particulars of the case are mentioned on the warrant;

(c) The presiding Judge of the court (or responsible officer specially authorized for the purpose in case of High Courts) issuing the warrant should put his full and legible signatures on the process, also ensuring that Court seal bearing complete particulars of the Court is prominently endorsed thereon;

(d) The Court must ensure that warrant is directed to a particular police officer (or authority) and, unless intended to be open-ended, it must be returnable whether executed or unexecuted, on or before the date specified therein;

(e) Every Court must maintain a register (in the format given below), in which each warrant of arrest issued must be entered chronologically and the serial number of such entry reflected on the top right hand of the process;

(f) No warrant of arrest shall be issued without being entered in the register mentioned above and the concerned court shall periodically check/monitor the same to confirm that every such process is always returned to the court with due report and placed on the record of the concerned case;

(g) A register similar to the one in clause (e) supra shall be maintained at the concerned police station. The Station House Officer of the concerned Police Station shall ensure that each warrant of arrest issued by the Court, when received is duly entered in the said register and is formally entrusted to a responsible officer for execution;

(h) Ordinarily, the Courts should not give a long time for return or execution of warrants, as experience has shown that warrants are prone to misuse if they remain in control of executing agencies for long;

(i) On the date fixed for the return of the warrant, the Court must insist upon a compliance report on the action taken thereon by the Station House Officer of the concerned Police Station or the Officer In-charge of the concerned agency;

(j) The report on such warrants must be clear, cogent and legible and duly forwarded by a superior police officer, so as to facilitate fixing of responsibility in case of misuse;

(k) In the event of warrant for execution beyond jurisdiction of the Court issuing it, procedure laid down in Sections 78 and 79 of the Code must be strictly and scrupulously followed; and

(l) In the event of cancellation of the arrest warrant by the Court, the order cancelling warrant shall be recorded in the case file and the register maintained. A copy thereof shall be sent to the concerned authority, requiring the process to be returned unexecuted forthwith. The date of receipt of the unexecuted warrant will be entered in the aforesaid registers. A copy of such order shall also be supplied to the accused.

Format of the Register

S. No.	The number printed on the form used	Case title and particulars	Name & particulars of the person against whom warrant of arrest is issued (accused/ witness)	The officer/ person to whom directed	Date of judicial order directing Arrest Warrant to be issued	Date of issue	Date of cancell-ation, if any	Due date of return	Report returned on	The action taken as reported	Remarks

Format of the Register

24. We expect and hope that all the High Courts will issue appropriate directions in this behalf to the Subordinate Courts, which shall endeavour to put into practice the aforesaid directions at the earliest, preferably within six months from today.

R.P. Appeal dismissed.

UNION OF INDIA & ORS.

v.

BODUPALLI GOPALASWAMI

(Criminal Appeal No. 876 of 2003)

SEPTEMBER 12, 2011

[R.V. RAVEENDRAN AND P. SATHASIVAM, JJ.]

SERVICE LAW:

Pension and pensionary benefits – Army – Officer dismissed from service after trial by General Court Martial – Order by President of India forfeiting pension of the delinquent officer – High Court quashing the order forfeiting the pension – Held: The power and discretion vested in the President by virtue of Regulation 16(a) of the Pension Regulations, to forfeit and deny the pension in full or in part to an officer, who is dismissed or cashiered, is independent of the punishment imposed u/s. 71 of the Act by the court martial – High Court having held that there was no irregularity in court martial proceedings nor any infirmity in the findings of guilt or the punishment imposed, committed an error in quashing the order of the President forfeiting the pension of the officer – However, if it is demonstrated that either the proceedings of GCM were violative of the Act/Rules or findings were perverse or punishment was shockingly disproportionate to the gravity of the offence proved, and if order of dismissal is set aside or punishment is reduced, then the order of forfeiture of pension will not survive – Pension Regulations for Army (Part I) – Regulation 16(a).

Dismissal – Army – Irregularities found in Butchery section of ASC (Supply) – Commandant, being over all controlling officer of supply depot tried by General Court Martial – Charges 1, 4 and 5(c) found proved – Dismissal from service – Held: The omission as regards charge 1 at best

would be technical lapse as far as the delinquent officer is concerned and further omissions attributed to him in regard to charges 4 and 5(c) were actually omissions by his subordinates who were charge-sheeted and punished – In the circumstances, the punishment of dismissal from service is shockingly disproportionate to the gravity of the offences held to have been proved – Accordingly, the order imposing punishment of dismissal from service is set aside – Consequently, order forfeiting the pension is also set aside – Instead, punishment of forfeiture of 8 years of service for purpose of pension and service reprimand imposed – Further, the Officer will not be entitled to any back wages form the date of his dismissal to the date of his superannuation – Army Act, 1950 – s.71.

ARMY RULES, 1954:

Rule 39 – Irregularity in constitution and conduct of court martial —Plea that Presiding Officer of Court Martial had earlier summarily tried two prosecution witnesses in regard to the same incident –Held: The act of summarily trying others for other offences relating to the same incident is not a ground of disqualification –Charges against the delinquent officer were completely different from the charges against the persons who were summarily tried – Presiding Officer did not suffer from any disqualifications enumerated in r. 39.

CONSTITUTION OF INDIA, 1950:

Articles 226 and 136 – Writ petition challenging the order of General Court Martial – Held: Unless the court martial has acted without jurisdiction or exceeded its jurisdiction or had acted perversely or arbitrarily, the proceedings and decision of the court martial will not be interfered in exercise of power of judicial review – In the instant case, the charges against the delinquent officer were technical in nature – While the Court may not interfere with the findings of guilt, in such a case, having regard to the nature of offences, the Court may

consider the proportionality of punishment to find out whether it is perverse and irrational – Even if accepting the finding of guilt, the punishment of dismissal from service is shockingly disproportionate to the gravity of the offences held to have been proved – Accordingly, the order of dismissal is set aside and punishment of forfeiture of 8 years of service for purpose of pension and service reprimand imposed – Judicial review.

Respondent no. 1 in Crl. A. No. 876 of 2003, who was the Commandant of 227 Company ASC (Supply), was, consequent upon the trial by the General Court Martial (GCM), dismissed from service with forfeiture of the entire pensionary benefits. The charges found proved against him were: (i) Charge 1 – Being the Contract Operating Officer for dressed meat, delinquent officer with intent to defraud, caused the acceptance of meat from the contractor with 'heart' as part of the meat knowing that the same was not acceptable part of carcasses as per para 86 of special conditions of the contract; (ii) Charge 4 – The delinquent officer as the Commandant incharge of the Supply Depot, failed to ensure that required stocks were maintained as reserve, in the Butchery as required by para 51(a) of the special conditions of the contract ; and (iii) Charge 5(c) – As the Commandant responsible for the overall control of the operation of the Butchery, the delinquent officer improperly failed to implement the standard operating procedure for Butchery resulting in 'passed' animals not being segregated and being allowed to mix with the other animals of the contractor.

The writ petition filed by respondent no. 1 was partly allowed by the High Court and it quashed the order dated 22.12.1995 by which the pension and pensionary benefits to him had been forfeited. Aggrieved, the Union of India challenged the said part of the order of the High Court in Crl. A. No. 876 of 2003; whereas the delinquent Officer filed Cr. A. no. 877 of 2003 against rejection of his

challenge to the findings of the GCM.

The questions for consideration before the Court were: (i) Whether the High Court having upheld the order imposing the punishment of dismissal was justified in quashing the order dated 22.12.1995 made under Pension Regulation 16(a), forfeiting the pension and directing reconsideration; (ii) whether the finding of the High Court, that conduct of the proceedings of the GCM did not violate any rules, calls for interference; (iii) whether the findings of guilt in regard to charges 1, 4 and 5(c) required interference; and (iv) whether the punishment of dismissal was excessively disproportionate to the gravity of the charges proved.

Disposing of the appeals, the Court

HELD:

Question No. 1:

1.1 The High Court was not right in holding that in the light of the legal principles laid down by the Full Bench of the Delhi High Court in the case of *Brig. A. K. Malhotra there was no justification for forfeiting the pension, as that the said decision has been reversed by this Court in *P. D. Yadav's case.* This Court has held that even if the GCM while imposing punishment, does not direct forfeiture of service or forfeiture of pension u/s. 71 of the Army Act, 1950, having regard to Regulation 16(a) of the Pension Regulations for Army (Part-I), it is permissible for the President of India to direct forfeiture of pension in regard to a person dismissed or cashiered consequent to a trial by the GCM; and that for passing an order for forfeiture of pension under Regulation 16(a), all that was necessary was the cashiering or dismissal of the officer from service and there was no further need, either to assign reasons for forfeiture or to consider whether the merit of his prior service warranted any**

relaxation or relief against forfeiture. [Paras 9 and 11] [342-G-H; 344-E-H]

Court in Union of India v. P. D. Yadav **2001 (4) Suppl. SCR 209 = 2002 (1) SCC 405 – relied on.**

Brig. A. K. Malhotra v. Union of India* **(1997) (4) SLR 51 – stood reversed in *P. D. Yadav*.

1.2 As clarified by this Court in *P.D.Yadav*, the power to deny pension as a consequence of an officer being cashiered or dismissed or removed from service, vests only with the President of India under Regulation 16(a) of the Pension Regulations. The President may direct either forfeiture of the entire pension or only a percentage of the pension. Further, s. 71 of the Act does not provide for forfeiture of pension as one of the punishments awardable by court martial. Imposition of punishments of cashiering and dismissal from service are provided in clauses (d) and (e) of s. 71. Neither clause (h) nor clause (k) nor any of the other clauses in s. 71 refers to and provides for forfeiture of pension as a penalty. Therefore, the question of court martial imposing the punishment of forfeiture of pension does not arise at all. The power and discretion vested in the President by virtue of Regulation 16(a) of the Pension Regulations, to forfeit and deny the pension in full or in part to an officer, who is dismissed or cashiered, is independent of the punishment imposed u/s. 71 of the Act by the court martial. Thus, the High Court having held that there was no irregularity in the court martial proceedings or infirmity in the findings of guilt and the punishment imposed committed an error in quashing the order dated 22.12.1995 passed by the President, forfeiting the pension of the appellant. [Paras 12 and 13] [345-A-E; 346-C-H]

1.3 However, on respondent No.1 demonstrating that

either the proceedings of the GCM violated the provisions of the Act/Rules/the procedure prescribed, or that the findings of guilt were perverse and unsustainable, or that the punishment was shockingly disproportionate to the gravity of the offences proved and warranted interference, if the order of dismissal is set aside or the punishment is reduced, then the very basis for issue of the order of forfeiture of pension under Regulation 16(a) of the Pension Regulations will disappear and consequently, that order of forfeiture also will not survive. [Para 13] [347-A-C]

Question No. 2:

2. As regards the plea of respondent no. 1 that there is a serious procedural irregularity in the constitution and conduct of the court martial in as much as the Presiding Officer of the Court Martial had earlier summarily tried two prosecution witnesses in regard to the same incident, a careful reading of Rule 39(c) of the Army Rules, 1954 demonstrates that the act of summarily trying others for other offences relating to the same incident is not a ground of disqualification. The charges against respondent no. 1 were completely different from the charges against the persons who were summarily tried. The Presiding Officer did not suffer from any of the disqualifications enumerated in Rule 39. The Convening Authority was, therefore, justified in directing the GCM to proceed with the trial. Respondent no.1 has not been able to demonstrate any error in the finding of the High Court that there was no infirmity in the constitution of the Court Martial and the procedure followed by it. [Para 14 - 16] [347-E-G; 349-B-C-E-F]

Question No. 3:

3.1 The principles relating to judicial review in regard to court martial proceedings are well settled. Unless the

court martial has acted without jurisdiction, or exceeded its jurisdiction or had acted perversely or arbitrarily, the proceedings and decision of the court martial will not be interfered in exercise of power of judicial review. [Para 17] [349-G-H]

Union of India vs. Major A. Hussain **1997 (6) Suppl. SCR 218 = 1998 (1) SCC 537 – relied on.**

3.2 The High Court has held that the trial was conducted in accordance with the rules and there was no violation of the procedure or principles of natural justice. This is not a case of no-evidence. Inadequacy and unreliability of evidence are not grounds for interference. The Court Martial had jurisdiction. Violation of prescribed procedure has not been made out. In exercise of power of judicial review, it is not possible to re-assess the evidence or sit in judgment over the finding of guilt recorded by the Military Tribunal. The scope of interference with the findings of the GCM is very narrow and should be exercised in rare cases. This is not one of them. Therefore, there is no reason to interfere with findings of guilt regarding changes 1, 4 and 5(c). [Para 18] [351-B-F]

Ranjit Thakur vs. Union of India **1988 (1) SCR 512 = 1987 (4) SCC 611 – relied on**

Union of India vs. R.K. Sharma **2001 (9) SCC 492 – referred to**

Question No. 4:

4.1 According to the charge-sheet, the first charge was an offence falling u/s. 52(f) of the Act which provides that subject to the provisions of the Act, any person who does anything with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person,

shall, on conviction by court martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is mentioned in the Act. The other two charges which are held to be proved relate to acts or omissions which are said to be "prejudicial to good order and military discipline" punishable u/s. 63 of the Act on conviction by Court Martial, with imprisonment for a term which may extend to seven years or such less punishment as is mentioned in the Act. [Para 21] [353-E-F]

4.2 Section 52(f) and s. 63 are very broadly and generally worded and deal with residuary offences, (one dealing with property and another dealing with discipline) to provide for and cover offences which are not specifically provided in ss. 34 to 64 of the Act. The offences under these residuary provisions may fall under a wide spectrum, ranging from the mildest technical violations to the severest offences relating to fraud or gross indiscipline. It is, therefore, necessary to find the degree of gravity of the offence when a person is found guilty of offences u/s. 52(f) or s. 63. Only then, the court can consider whether the punishment is so disproportionate to the gravity of the proved offences that it shocks the conscience of the court or is so perverse or irrational that it cannot be allowed to stand. As has been held by this Court repeatedly, there could be no judicial review merely because the court feels that the punishment should have been lesser or on the ground of sympathy or compassion. [Para 21] [353-G-H; 354-A-C]

4.3 In the instant case, it is pertinent to note that respondent no.1 being the Commandant, was to be in overall charge of the supply depot. The first charge that has been held to have been proved u/s. 52(f) of the Act is that respondent no.1 while commanding the supply

depot, being the Contract Operating Officer, caused the acceptance of meat from the contractor with heart as part of meat. What was established was that when the butchery was raided and the meat issued to units were inspected on 14.2.1990, it was found that out of the dressed meat weighing 1411.2 kgs. that was issued to various units, the weight of hearts found as part of the meat was 14.5 kgs. The Supervisory Officer and Veterinary Officer have been charged and punished in this behalf. The case against respondent no.1 was not that he had instructed heart to be accepted as part of dressed meat nor is it the case that heart was being regularly accepted as part of dressed meat from the contractor. The case against him was that when the butchery was being inspected on 14.2.1990, he, as Commandant, visited the butchery and during discussions with the inspecting officers made an observation that to the best of his knowledge, heart was an edible offal and could be issued on demand of units and also reiterated the said observation in his confidential report dated 15.2.1990. Making of the said remark has been interpreted as respondent no.1 accepting meat from the contractor with heart as part of the dressed meat, knowing well that heart was not acceptable part of carcass; to defraud the government. This charge depends upon the interpretation of para 86 of the special conditions of the contract and an inference that his understanding of para 86 amounted to causing acceptance of heart as part of the dressed meat. Therefore, all that is established is at best a wrong interpretation of clause 86 of the Special Conditions of Contract. The omissions attributed to respondent no.1 in regard to charges 4 and 5(c) were actually omissions by his sub-ordinates and in regard to charges 1,4 and 5(c) those sub-ordinates were cashiered and punished. The role of respondent no.1 being that of an overall controlling officer of the supply depot was limited and the charges, so far as he was concerned were technical in nature.

[Paras 22 – 24 and 27] [358-E-H; 359-A-C-G-H; 360-G-H; 362-F-H; 363-A-B]

4.4 In the circumstances, the punishment of dismissal from service is shockingly disproportionate to the gravity of the offences held to be proved. While this Court may not interfere with the findings of guilt, in a case of this nature, having regard to the nature of offences, this Court may consider the proportionality of punishment to find out whether it is perverse and irrational. Even accepting the said findings of guilt regarding charges (1), (4) and 5(c), it is clearly a case of shockingly disproportionate punishment being meted out to the Commandant for offering an alternative interpretation to clause 86 of the special conditions of the contract, for the lapses of his subordinate officer and for the breach committed by the contractor. In the normal course, this Court would have set aside the punishment and referred the matter back for consideration and imposition of a lesser punishment. But having regard to the fact that the matter is more than 20 years old and respondent no.1 reached the age of superannuation long ago, no purpose would be served, by referring it back to the appellants. [Para 28] [363-C-F]

4.5 On the facts and circumstances, interests of justice would be served if the punishment of dismissal is substituted: (a) forfeiture of eight years of service for the purpose of pension; and (b) Severe reprimand. As a consequence, the order forfeiting pension requires to be set aside as pension can be denied under Pension Regulation 16(a) of the Pension Regulations only to the officers who are cashiered, dismissed or removed from service. The order dated 30.7.1993 imposing the punishment of dismissal from service is set aside. As a consequence, the order dated 22.12.1995 forfeiting the pension, passed under Regulation 16(a), is also set aside. The authorities are directed to process and settle the

pension claim of respondent no.1. However, he will not be entitled to any back-wages from the date of his dismissal to the date of his superannuation, as a consequence of his dismissal being set aside. [Paras 28-29] [363-F-G; 364-A-D]

Case Law Reference:

(1997) (4) SLR 51	**reversed**	**Para 7**
2001 (4) Suppl. SCR 209	**relied on**	**Para 11**
1997 (6) Suppl. SCR 218	**relied on**	**Para 12**
1988 (1) SCR 512	**relied on**	**Para 19**
2001 (9) SCC 492	**referred to**	**Para 19**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 876 of 2003.

From the Judgment & Order dated 25.08.2000 of the High Court of Punjab & Haryana at Chadigarh in Crl. W.P. No. 1797 of 1997.

WITH

Crl. Appeal No. 877 of 2003.

P.P. Malhotra, ASG, Rajiv Nanda, Rahul Kaushik, B.K. Prasad (for B.V. Balaram Das) for the Appellants.

Y. Rajagopala Rao, R. Balasubramanyam, Y. Ramesh, Sureshta Bagga for the Respondent.

The Judgment of the Court was delivered by

R.V.RAVEENDRAN,J. 1. As the ranks of parties in the two appeals are different, for convenience, we will refer to the parties by their ranks in Criminal Appeal No.876/2003.

2. The first respondent was the officiating Commandant

and later the Commandant of 227 Company ASC (Supply) Type 'G', Ambala Cantonment (hereinafter referred to as the 'Supply Depot') from 19.10.1988 to 26.6.1990. The supply depot had three sections – Dry Rations, Fresh Rations and Butchery. The appellant as the Commandant was in overall charge of the supply depot. As per the standard operative procedure for the Butchery, the following staff were detailed for operation:

(i) Supervisory Officer - Cap. P. S. Malhotra

(ii) Veterinary Officer - Lt. Col. G. S. Srivastava

(iii) J.C.O. in-charge - Sub. G. L. Kalra

(iv) NCO in-charge - Havaldar Clerk D. L. Prasad

3. On receiving complaints about irregularities in the butchery, a team of three officers from the Central Bureau of Investigation and two Army Officers carried out a raid/surprise inspection of the butchery on 14.2.1990, with the prior permission of the second respondent. They intercepted eleven vehicles belonging to different units returning from butchery after collecting meat and checked the meat for quality and quantity. They also inspected the butchery. The Report of the Inspection Team disclosed certain irregularities in the quality of the dressed meat supplied by the contractor, (which were being issued to the indenting units), maintenance of live stock and supervision. As a consequence, the officials of the Butchery were all separately charge-sheeted.

4. The first respondent, who was the Commandant of the Supply Depot was also issued a charge-sheet dated 30.12.1992 containing the following charges :

First charge Army Act Section 52(f)	SUCH AN OFFENCE AS IS MENTIOEND IN CLAUSE (f) OF SECTION 52 OF THE ARMY ACT WITH INTENT TO DEFRAUD, In that he, at Ambala Cantonment, on 14 Feb.1990, while Commanding 27 Company Supply (ASC), being contract operating officer for meat dressed, with intent to defraud caused the acceptance of meat from the contractor with heart as part of meat, well knowing that the same was not acceptable part of carcasses as per para 86 of Special Condition of the Contract deed for the period from 1st May 1989 to 31st March, 1990, concerning meat supply at Ambala.
Second charge Army Act Section 63	AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE, In that he, at Ambala Cantonment, on 14 February 1990, while Commanding 27 Company Supply (ASC), having visited butchery of the said company at the time of inspection of carcasses by the Veterinary Officer and having found the carcasses dribbling with water, failed to ensure that wet meat dribbling with water is not issued to the Units, contrary to para 14(j) of Headquarters PH and HP area Shimla (ST Branch) Technical Instruction dated 30th November, 1989.

Third charge Army Act Section 63	AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE, In that he, at Ambala Cantonment, during the period from 26th February 1990 to 8th March 1990 while Commanding 27 Company Supply (ASC) failed to ensure that stock of reserve animals was maintained in the butchery of the said company as per para 51(a) of Special Condition of the Contract deed for the period from 1st May 1989 to 31st March 1990, consequently no animals were held in reserve in the said butchery during that period.
Fourth charge Army Act Section 63	AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE, In that he, at Ambala Cantonment, during the period from 11th March 1990 to 22nd March 1990, while Commanding 27 Company supply (ASC), failed to ensure that stock of reserve animals was maintained in the butchery of the said company as per para 51(a) of Special Conditions of the Contract deed for the period from 1st May, 1989 to 31st March, 1990, consequently no animals were held in reserve in the said butchery during that period.
Fifth charge Army Act Section 63	AN OMISSION PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE, In that he, at Ambala Cantonment, between 15th January 1990 and March 1990, while Officer Commanding 27 Company Supply (ASC) and responsible for overall control of the operation of unit butchery, improperly failed to implement the Standard Operating Procedure for Butchery Group Supply Depot Ambala Cantt dated 9th May, 1988, as amended, resulting in the following malpractices: (a) Duplicate Brands and Veterinary Officer's stamp were found in possession of contractor's butcher. (b) All rejected meat and other offals were not being destroyed as per laid down instructions. (c) Passed animals were not segregated but were allowed to mix with the other animals of contractor. (d) Hanging room was not sealed by the JCO Incharge butchery after taking the green weight of the carcasses. (e) Animals passed and branded were not segregated for a minimum mandatory period of 12 hours before slaughtering. (f) Over issue/under issue of meat was made to the units in connivance with the representatives of the units.

Charges 1 and 2 related to what was found during the inspection on 14.2.1990. Charges 3 and 4 related to failure to maintain adequate animals in reserve subsequent to 14.2.1990. Charge 5 related to miscellaneous omissions and commissions generally based upon what was observed during the inspection on 14.2.1990.

5. On 14.1.1993, a direction for trial of the first respondent by General Court Martial ('GCM' or 'Court Martial' for short) was issued. On the same day, an order convening the GCM was issued by the third appellant. The trial commenced on 22.1.1993 and concluded on 30.7.1993. At the end of the trial, the GCM found the first respondent not guilty of the second and third charges, but guilty of the first charge, fourth charge and item (c) of the fifth charge. On that basis, the GCM imposed the sentence of dismissal from service on first respondent on 30.7.1993.

6. In pursuance of it, a show cause notice dated 30.6.1995 was issued to the first respondent calling upon him to show cause why his pensionary benefits should not be forfeited under Rule 16(a) of the Pension Regulations for the Army (Part I), 1961 (for short 'the Pension Regulations'). After considering the first respondent's representation, the President of India ordered the forfeiture of the entire pensionary benefits of the first respondent, communicated by letter dated 22.12.1995 from the Defence Ministry to the Chief of Army Staff.

7. Feeling aggrieved, the first respondent filed writ petition in the Punjab & Haryana High Court (registered as Crl.WP No.1797/1997) challenging General Court Martial proceedings, findings of the General Court Martial holding him guilty of the charges, sentence of dismissal from service and the decision of the appellants to forfeit his pensionary benefits. The High Court by judgment dated 25.8.2000 allowed the writ petition in part. The High Court held that the GCM proceedings were in order, there was no violation of any rules or procedure. It also found no ground to interfere with findings of guilt or the sentence. Consequently, the punishment imposed by the GCM was upheld. But the High Court held that the order forfeiting the pension and pensionary benefits of the first respondent was invalid as no reasons were assigned in the order dated 22.12.1995, for forfeiture thereof. The High Court therefore quashed the order dated 22.12.1995 forfeiting the pension and

directed the appellants to reconsider the matter with reference to Regulation 16(a) of the Pension Regulations and the principles laid down by the Full Bench of the Delhi High Court in Brig.A.K. Malhotra v. Union of India – (1997) (4) SLR 51. In short, the writ petition was allowed to the extent of quashing forfeiture of the pension but dismissed in regard to the challenge to the proceedings of GCM and the order of dismissal.

8. Aggrieved by the quashing of the pension forfeiture order dated 22.12.1995, the appellants (Union of India and the Army Authorities) have filed Criminal Appeal No.876/2003. Aggrieved by the rejection of the challenge to the GCM findings and the imposition of the punishment, the first respondent has filed Criminal Appeal No.877/2003. On the contentions urged, the following questions arise for our consideration:

In Crl.Appeal No.876/2003

(i) Whether the High Court having upheld the order imposing the punishment of dismissal, is justified in quashing the order dated 22.12.1995 made under Pension Regulation 16(a), forfeiting the pension and directing reconsideration?

In Crl.Appeal No.877/2003

(ii) Whether the finding of the High Court that conduct of the proceedings of the GCM did not violate any rules, calls for interference?

(iii) Whether the findings of guilt in regard to charges 1, 4 and 5(c) require interference?

(iv) Whether the punishment of dismissal is excessively disproportionate to the gravity of the charges proved?

Re : Question (i)

9. The High Court having held that there was no irregularity in the court martial proceedings or infirmity in the findings of guilt and the punishment imposed, held that there was no justification for forfeiting the pension on the following reasoning :

> "…. the general court martial did not think it appropriate to order for the forfeiture of the pension and pensionary benefits under section 71(h) and (k) of the Army Act and the obvious inference seems to be that the court martial did not think it appropriate that despite the dismissal of the service of the petitioner, he should be awarded the forfeiture of pension and pensionary benefits as a punishment. As held by the Full Bench of the Delhi High Court in the case of Brig. A. K. Malhotra (supra), the pension and pensionary benefits are to eb granted in the normal course unless there are such circumstances existing under which the offence against the concerned officer is found to be extra-ordinarily grave and in that case sufficient reasons must be recorded for the forfeiture of the pension by the competent authority taking action on the administrative side. In the instant case the impugned order, Annexure P-12, shows that the forfeiture of the pension and pensionary benefits was ordered by having regard to circumstances of the case leading to the dismissal of the officer from service. In other words, the President considered the forfeiture of the pension and pensionary benefits only on the circumstances which led to the trial, conviction and sentence of dismissal from service of the petitioner by the General Court Martial. The impugned order, annexure P-12, does not show that it was considered to be a case of extra-ordinarily grave charge where the pension and pensionary benefits should have been forfeited or there were other valid and good reasons for the forfeiture of the pension and pensionary benefits.

10. For this purpose, the High Court relied upon the decision of the Delhi High Court in *Brig. A. K. Malhotra*. In the said decision, the Delhi High Court held that under section 71 of the Army Act, 1950 ('Act' for short), forfeiture of pension was provided as a measure of punishment for offences tried by the court martial and if the court martial did not, in a given case, think it fit to forfeit the pension while awarding the punishment, then the only inference that could be drawn is that the Court Martial was of the view that the punishment of dismissal alone was sufficient for the offences and there was no need to inflict the additional punishment of forfeiture of pension. The Delhi High Court further held that the normal rule is that pensionary and other benefits are to be granted unless the competent authority comes to the conclusion that the service of the officer taken as a whole was not satisfactory from the beginning or unless the offences which are proved and for which he had been sentenced are so extra-ordinarily grave that the entire previous satisfactory service has to be excluded from consideration. The High Court reasoned that if the offence was so extra-ordinarily grave, the court martial itself would have forfeited the pensionary benefits, and where the court martial did not deem it necessary, if the competent authority wanted to deny pension, he must record good and valid reasons as to why normal rule of granting pensionary benefits is not to be followed.

11. The direction of the High Court to reconsider the matter in the light of the legal principles laid down by the Full Bench of the Delhi High Court in *Brig. A.K. Malhotra* is no longer valid in view of the fact that the decision in *Brig. A.K. Malhotra* was reversed by this Court in *Union of India v. P.D. Yadav* - 2002 (1) SCC 405. This Court held that even if the GCM while imposing punishment, does not direct forfeiture of service or forfeiture of pension under section 71 of the Act having regard to Regulation 16(a) of the Pension Regulations, it is permissible for the President of India to direct forfeiture of pension in regard to a person dismissed or cashiered consequent to a trial by

the GCM. This Court also held that for passing an order for forfeiture of pension under Regulation 16(a), all that was necessary was that cashiering or dismissal of the officer from service and there was no further need, either to assign reasons for forfeiture or to consider whether the merit of his prior service warranted any relaxation or relief against forfeiture.

12. As clarified by this Court in *P.D.Yadav*, the power to deny pension as a consequence of an officer being cashiered or dismissed or removed from service, vests only with the President of India under Pension Regulation 16(a). The President of India may direct either forfeiture of the entire pension or only a percentage of the pension. Further section 71 of the Act does not provide for forfeiture of pension as one of the punishments awardable by Court Martial. Imposition of punishments of cashiering and dismissal from service are provided in clauses (d) and (e) of section 71. Clauses (h) and (k) of section 71 relied upon to hold that the Court Martial could also impose the punishment of forfeiture of pensionary benefits, are extracted below :

> "(h): The forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose.
>
> (k): The forfeiture in the case of a person's sentence to cashiering or dismissal from service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal."

Neither clause (h) nor clause (k) nor any of the other clauses in section 71 refers to and provides for forfeiture of pension as a penalty. This Court held:

> "Under Section 71(h), a punishment of forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose, can be imposed. If forfeiture of service has the effect of reducing total qualifying service required to earn pension, a person concerned is disentitled for

> pension itself. In other cases, it may have bearing in regard to claim for increased pay or any other purpose. If by virtue of such punishment itself, a person is not entitled for any pension, the question of passing an order forfeiting pension under Regulation 16(a) may not arise. As per Section 71(k), in case of a person sentenced to cashiering or dismissal from the service, a further punishment of forfeiture of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal may be imposed. Clause (k) of Section 71 does not speak of pension unlike clause (h) of the same Section. x x x x x
>
> Merely because punishment is not imposed under clause (h) or (k) of Section 71 and other punishments are imposed, it does not mean that the President is deprived of his power and jurisdiction to pass order under Regulation 16(a);…"

Therefore, the question of court martial imposing the punishment of forfeiture of pension does not arise at all. The court martial can impose any of the penalties enumerated in section 71 of the Act. Dismissal or cashiering of an officer does not lead to automatic forfeiture of pension. The power and discretion vested in the President of India by virtue of Pension Regulation 16(a), to forfeit and deny the pension in full or in part to an officer, who is dismissed or cashiered, is independent of the punishment imposed under section 71 of the Act by the court martial.

13. Having held that the proceedings of the GCM was proper and findings of guilt did not suffer from any infirmity and the punishment of dismissal did not call for any interference, the High Court could not have interfered with the power and discretion exercised under Pension Regulation 16(a). If there is no violation of rules in conducting the GCM and if there is no infirmity in the award of punishment, having regard to the decision of this Court in *P.D. Yadav,* the forfeiture of pension

was not required to be supported by any other independent reasons nor was it necessary to consider the previous service or gravity of the offence or other circumstances. The High Court therefore committed an error in quashing the order dated 22.12.1995 passed by the President of India, forfeiting the pension of the appellant. The appeal by the appellants (Criminal Appeal No.876 of 2003) is bound to succeed. But this is, however, subject to the decision in the appeal, preferred by the first respondent. If the first respondent is able to demonstrate in his appeal that either the proceedings of the GCM violated the provisions of the Act/Rules/the procedure prescribed, or that the findings of guilt were perverse and unsustainable, or that the punishment was shockingly disproportionate to the gravity of the proved offences and warranted interference, and if this Court accepting his contentions allows his appeal, and sets aside the order of dismissal or reduces the punishment, then the very basis for issue of the order of forfeiture of pension under Pension Regulation 16(a) will disappear and consequently, that order of forfeiture also will not survive. Therefore, we may now examine the contentions of the first respondent challenging the validity of the proceedings of the GCM and imposition of punishment.

Re : Question (ii)

14. The first respondent has contended that there is a serious procedural irregularity in the constitution and conduct of the court martial, that in spite of his challenge, it was not set right and therefore, the entire Court Martial proceedings and consequently, the punishment, were vitiated. According to first respondent, the Presiding Officer of the Court Martial - Brig. S.K. Kaushal had earlier summarily tried two prosecution witnesses – Sub. Baryam Singh and Sub. Harjinder Singh (who had drawn meat for their units on 14.2.1990) for drawing less quantity of meat and awarded the reprimand for negligent performance of duties. As the summary trials were in regard to the same incident when the prosecutor disclosed the said fact on 15.4.1990, the first respondent raised a challenge

objecting to Brig. S.K.Kaushal being the Presiding Officer, as he was disqualified from serving on a GCM having regard to clause (c) of sub-rule (2) of Rule 39 of the Army Rules 1954 ('Rules' for short). He further alleged that the Presiding Officer would have formulated an opinion in regard to the incident and consequently, be biased. In spite of it, the Convening Authority wrongly directed the GCM to proceed, overruling his objection under section 130 of the Act read with rule 44 of the Rules. He submits that participation by the Presiding Officer vitiated the entire proceedings, rendering the same invalid and void.

15. Rule 39 of the Army Rules 1954 reads thus :

"39. Ineligibility and disqualification of officers for court-martial.—(1) An officer is not eligible for serving on a court-martial if he is not subject to the Act.

(2) An officer is disqualified for serving on a general or district court-martial if he—

(a) Is an officer who convened the court; or

(b) Is the prosecutor or a witness for the prosecution; or

(c) Investigated the charges before trial, or took down the summary of evidence, or was a member of a court of inquiry respecting the matters on which the charges against the accused are founded, or was the squadron, battery, company, or other commander, who made preliminary inquiry into the case, or was a member of a previous court-martial which tried the accused in respect of the same offence; or

(d) Is the commanding officer of the accused, or of the corps to which the accused belongs; or

(e) Has a personal interest in the case.

(3) The provost-marshal or assistant provost-marshal is disqualified from serving on a general court-martial or

district court-martial."

It is clear from Rule 39 that an officer is disqualified for serving on a GCM if (i) he had investigated the charges before trial, or (ii) he took down the summary of evidence, or (iii) he was a member of a court of inquiry respecting the matters on which the charges against the accused were founded, or (iv) he was a Squadron, Battery, Company or other Commander who made preliminary inquiry into the case, or (v) he was a member of a previous Court Martial which tried the accused in respect of the same offence. A careful reading of the said Rule demonstrates that the act of summarily trying others for other offences relating to the same incident is not a ground of disqualification. The charges against the first respondent were completely different from the charges against the persons who were summarily tried by Brig. Kaushal. The Presiding Officer did not suffer from any of the disqualifications enumerated in Rule 39. The Convening Authority was therefore justified in directing the GCM to proceed with the trial. Therefore, the challenge to the constitution of the GCM with Brig. Kaushal as the Presiding Officer is liable to be rejected.

16. The High Court did not find any merit in the contention that after the Court Martial was constituted on 3.2.1993, the first respondent ought to have given 96 hours after giving the names of the members constituting the Court Martial. The first respondent has also not established his allegations that Judge Advocate was biased and Dy. JAG who ultimately reviewed the findings, was also biased as he was actively guiding the prosecution. The first respondent has not been able to demonstrate any error in the finding of the High Court that there was no infirmity in the constitution of the Court Martial and the procedure followed by it.

Re : Question (iii)

17. The principles relating to judicial review in regard to court martial proceedings are well settled. Unless the court

martial has acted without jurisdiction, or exceeded its jurisdiction or had acted perversely or arbitrarily, the proceedings and decision of the court martial will not be interfered in exercise of power of judicial review. In *Union of India vs. Major A. Hussain* – 1998 (1) SCC 537, this Court held :

> "Though court-martial proceedings are subject to judicial review by the High Court under Article 226 of the Constitution, the court-martial is not subject to the superintendence of the High Court under Article 227 of the Constitution. If a court-martial has been properly convened and there is no challenge to its composition and the proceedings are in accordance with the procedure prescribed, the High Court or for that matter any court must stay its hands. Proceedings of a court-martial are not to be compared with the proceedings in a criminal court under the CrPC where adjournments have become a matter of routine though that is also against the provisions of law. It has been rightly said that court-martial remains to a significant degree, a specialised part of overall mechanism by which the military discipline is preserved. It is for the special need for the armed forces that a person subject to Army Act is tried by court-martial for an act which is an offence under the Act. Court-martial discharges judicial function and to a great extent is a court where provisions of Evidence Act are applicable. A court-martial has also the same responsibility as any court to protect the rights of the accused charged before it and to follow the procedural safeguards. If one looks at the provisions of law relating to court-martial in the Army Act, the Army Rules, Defence Service Regulations and other Administrative Instructions of the Army, it is manifestly clear that the procedure prescribed is perhaps equally fair if not more than a criminal trial provides to the accused. When there is sufficient evidence to sustain conviction, it is unnecessary to examine if pre-trial investigation was

adequate or not. Requirement of proper and adequate investigation is not jurisdictional and any violation thereof does not invalidate the court-martial unless it is shown that the accused has been prejudiced or a mandatory provision has been violated. One may usefully refer to Rule 149 quoted above. The High Court should not allow the challenge to the validity of conviction and sentence of the accused when evidence is sufficient, court-martial has jurisdiction over the subject-matter and has followed the prescribed procedure and is within its powers to award punishment."

18. The High Court after exhaustive consideration found that the trial was conducted in accordance with the rules and there was no violation of the procedure or principles of natural justice. On behalf of the prosecution, as many as 13 witnesses were examined. A large number of documents (marked A to Z, AA to ZZ and AAA to ZZZ and AAAA to GGGG), apart from three material objects (ME1 to ME 3) were exhibited. The first respondent was supplied with complete set of proceedings including all exhibits. He was permitted to have the assistance of a legal practitioner. He was given due opportunity to cross examine the witnesses and lead his own evidence. After completion of evidence, the General Court Martial put questions to the accused with reference to the evidence and gave him an opportunity to explain his position. Detailed submissions on behalf of the prosecution and the defence were heard. It was thereafter that the Court Martial gave its findings and imposed the punishment. This is not a case of no-evidence. Inadequacy and unreliability of evidence are not grounds for interference. The Court Martial had jurisdiction. Violation of prescribed procedure has not been made out. In exercise of power of judicial review, it is not possible to re-assess the evidence or sit in judgment over the finding of guilt recorded by the Military Tribunal. The scope of interference with the findings of the GCM is very narrow and should be exercised in rare cases. This is not one of them. We, therefore, find no reason to interfere with

findings of guilt regarding changes 1, 4 and 5(c).

Re : Question (iii)

19. This takes us to the last question as to whether the punishment of dismissal is shockingly disproportionate to the gravity of the charges. The principles relating to judicial review of punishment imposed, as a part of the decision making process by Court Martial, have been explained, in *Ranjit Thakur vs. Union of India* – 1987 (4) SCC 611, where this Court interfered with the punishment imposed by a court martial on the ground that it was strikingly disproportionate to the gravity of offence on the following reasoning :

> "Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

In *Union of India vs. R.K. Sharma* – 2001 (9) SCC 492, this Court explained the observations in Ranjit Thakur. It clarified that in Ranjit Thakur, the charge was ridiculous, the punishment was harsh and disproportionate and it was on such gross facts that this Court had held that the punishment was so strikingly disproportionate that it called for interference; and the said observations in Ranjit Thakur are not to be taken to mean that

a court can, while exercising the power of judicial review, interfere with the punishment merely because it considers the punishment to be disproportionate. It was held that only in extreme cases, which on their face, show perversity or irrationality, there could be judicial review and merely on compassionate grounds, courts should not interfere. In this background, we may examine the third question.

20. The charges that are held to be proved against the first respondent, are: (i) Being the Contract Operating Officer for dressed meat, the first respondent with intent to defraud, caused the acceptance of meat from the contractor with 'heart' as part of the meat knowing that the same was not acceptable part of carcasses as per para 86 of special conditions of the contract (vide first charge); (ii) The first respondent, as the Commandant incharge of the Supply Depot failed to ensure that required stocks were maintained as reserve, in the Butchery as required by para 51(a) of the special conditions of contract (vide fourth charge); (iii) The first respondent as the Commandant responsible for the overall control of the operation of the Butchery improperly failed to implement the standard operating procedure for Butchery resulting in 'passed' animals not being segregated and being allowed to mix with the other animals of the contractor.

21. According to the charge-sheet, the first charge was an offence falling under section 52(f) of the Act which provides that subject to the provisions of the Act, any person who does anything with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person, shall, on conviction by court martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is mentioned in the Act. The other two charges which are held to be proved relate to acts or omissions which are said to be "prejudicial to good order and military discipline" punishable under section 63 of the Act on conviction by Court Martial, with imprisonment for a term which may extend to seven years or

such less punishment as is mentioned in the Act. We may now consider the nature and content of the charges proved. Section 52(f) and section 63 are very broadly and generally worded and deal with residuary offences, (one dealing with property and another dealing with discipline) to provide for and cover offences which are not specifically provided in sections 34 to 64 of the Act. The offences under these residuary provisions may fall under a wide spectrum, ranging from the mildest technical violations to the severest offences relating to fraud or gross indiscipline. It is therefore necessary to find the degree of gravity of the offence when a person is found guilty of offences under section 52(f) or section 63. Only then, the court can consider whether the punishment is so disproportionate to the gravity of the proved offences that it shocks the conscience of the court or is so perverse or irrational that it cannot be allowed to stand. As held by this Court repeatedly, there could be no judicial review merely because the court feels that the punishment should have been lesser or on the ground of sympathy or compassion.

22. It is necessary to know who was responsible for what in the butchery. As per the standard operating procedure of Butchery, the responsibility has been divided among the Supervisory Officer, JCOs and NCOs. The duties of the supervisory officer included the following :

"Duties of Supervisory Officer

The Supervising Officer, Butchery will be responsible for the proper and efficient functioning of the butchery. He will :

(a) Be responsible for passing goat and sheep and maintaining the reserve stock of animals at all times.

(b) Ensure that proper branding of animals is carried out without any cruelty to the animals and the

branding so done lasts till the carcass is passed fit by the veterinary officer.

(c) Be personally responsible for the books and records showing reserve stock and animals passed. The records must be complete and up to date at all times and signed by him duly completed in all respects.

(d) Visit butchery during slaughter hours at least once a week.

(e) Ensure that the butchery surroundings are kept scrupulously clean.

(f) Ensure that branding irons are kept in sealed box in quarter guard and take the same whenever required for branding the animals.

(g) Ensure that branding irons are not left over with any body in the butchery. He will also ensure that weights and measures are calibrated periodically by the workshop.

(h) He will ensure that the quality of meat always conforms to ASC specifications and no deviation from these specifications will be allowed. In doing so he will ensure that the contractor does not use unfair means such as use of water except for cleaning of carcasses.

(i) He will be present in the butchery throughout the issue time and will ensure that units get their entitlements. He will also ensure that every unit rep signs for the quantity and quality of the items being collected. He will be responsible to check the following documents maint in the butchery for its correctness and will be responsible to put up the same to Commandant once a month :

xxxxxx

<u>The duties of JCOs:</u>

(a) "He is responsible for the smooth functioning of the butchery under the order of Supervising Officer.

(b) He will ensure that highest standard of cleanliness is maintained in the butchery.

(c) He will ensure that reserve stock of animals is maintained by the contractor at all times.

(d) He will ensure that strict security is observed as regards to segregation pen, hanging room, disposal of rejected meat by the VO and disposal of dead and rejected animals

(e) He will supervise the slaughter of all animals as per procedure laid down in order from time to time. He will be personally responsible to ensure that only jhatka meat is being issued unless otherwise demanded by a unit.

(f) He will be responsible to observe the slaughtering animals. He will ensure that only branded and segregated animals are slaughtered and will be present throughout the slaughtering times. He will ensure that no water is injected in the carcasses by contractor. He will ensure that the grown weight is taken and minimum 5 hrs setting time is allowed.

(g) He will ensure that books and records maintained in the butchery are kept up to date at all times.

(h) He will be responsible to supervise the issue of meat to troops and ensure that correct quantity as per their demand is issued and receipt of the same is obtained.

(i) He will ensure that proper duties are allotted to other NCO's and Sepoy detailed to assist him.

(j) He will ensure that from the time of slaughtering to the time of issue, the butchery will be open and NCO/Sepoy will sleep at night properly guarded in the butchery.

(k) He will be responsible for proper setting of meat in that he will see that the butchers do not use water for any other purpose except for the cleaning of carcasses.

(l) He will ensure that the meat is properly set before the postmortem is carried out by Veterinary Officer and will be responsible for retail issue to units.

The duties of the Veterinary Officer :

"He will be responsible for ante-mortem and post mortem inspection. His advice as a rule will be accepted unless there are other reasons. He will ensure that only good and hygienic meat is issued to troops. In doing so he will ensure :

a. That offals which are not edible are removed.

b. That the meat or the carcasses which is unfit for human consumption is removed.

c. He will ensure that the rejected meat potion/ carcasses are destroyed either by burning or by deep burying in his presence.

d. He will ensure that meat inspected by him is properly set and no water is dripping from the carcasses. He will bring to the notice of SO butchery and Commandant if any water is found in the carcasses so that remedial measures can be taken.

e. He will ensure that veterinary officer stamp has been put on each and every carcasses including the portion of carcasses after he had carried out the post mortem examination.

The Commandant was to be in overall charge of the supply depot and his duties were as under :

"(a) A CO will supervise and control all duties performed by those under his command, and will be held accountable for, and be responsible for the security and condition of, all public buildings, armaments, equipment and stores, of whatever description, appertaining to or on charge of his unit, corps or establishment.

(b) A CO is responsible for the correct receipt, issue, accounting and stock taking of all supplies, stores and equipment received or issued by the unit. He will ensure that daily issues are inspected and weighed in the presence of an officer or a Junior Commissioner Officer.

(c) A CO is responsible for the maintenance of discipline, efficiency and proper administration in the unit under his command. He is also responsible for its training and readiness for war."

23. We may now consider the first charge. The charge that has been held to have been proved is an offence under section 52(f) of the Act that is while commanding the supply depot, the first respondent being the Contract Operating Officer for dressed meat, with intent to defraud, caused the acceptance of meat from the contractor with heart as part of meat between 1.5.1989 and 31.3.1990, knowing that the same was not acceptable part of the carcass as per para 86 of the Special Conditions of Contract. What was established was that when the butchery was raided and the meat issued to units were inspected on 14.2.1990, it was found that out of the dressed meat weighing 1411.2 kgs. that was issued to various units,

the weight of hearts found as part of the meat was 14.5 kgs. The Supervisory Officer and Veterinary Officer have been charged and punished in this behalf. The case against the first respondent was not that he had instructed heart to be accepted as part of dressed meat nor is it the case that heart was being regularly accepted as part of dressed meat from the contractor. The case against first respondent was that when the butchery was being inspected on 14.2.1990, the first respondent as Commandant visited the butchery and during discussions with the inspecting officers made an observation that to the best of his knowledge, heart was an edible offal and could be issued on demand of units and also reiterated the said observation in his confidential report dated 15.2.1990. Making of the said remark has been interpreted as the first respondent accepting meat from the contractor with heart as part of the dressed meat, knowing well that heart was not acceptable part of carcass; to defraud the government. This charge depends upon the interpretation of para 86 of the special conditions of the contract and an inference that his understanding of para 86 amounted to causing acceptance of heart as part of the dressed meat.

24. Para 86 of the 'special conditions – meat dressed/meat on hoof' reads as under :

> "86. I/We agree that I/We will supply meat dressed (Jhatka/Halal) as per ASC Specification No.115, including liver, kidney and testicles passed fit by the Veterinary Officer/Contract Operating Officer of the total arising of carcasses and as a part of meat dressed at the rate of meat dressed (Jhatka/Halal) by weight as given in the schedule. Any other offals, cuttings and arising of meat carcasses will not be taken over by the Contract Operating Officer. The same will be removed by me/us and will be disposed off by me/us in any manner I/We like at my/our cost."
>
> (emphasis supplied)

The word 'offal' has two meanings. Firstly, it refers to the edible

internal parts of an animal such as heart, livers, kidneys, testicles and tongue. Secondly the term 'offal' refers to the refuse or waste that is cuttings and other non-edible parts of the animal which are either fallen or cut-off. One way of interpreting clause 86 of the special conditions of contract is that the dressed meat supplied may include liver, kidney, testicles (which are specifically mentioned) but not other edible internal parts like heart and tongue. The other interpretation in view of the use of the words "including liver, kidney, testicles" would be that the dressed meat can include all edible internal parts which include liver, kidney, and testicles as also heart, and what should be excluded from the supply are other waste like cuttings, fallen portions and inedible portions. Be that as it may. Even if we proceed on the basis that clause 86 should be interpreted as specifying that the dressed meat to be supplied could include only liver, kidney and testicles, but not heart, that by itself does not mean that the appellant committed any offence. On the day of raid and inspection, it was found that the supplies included heart (out of a take quantity of 1411.2 kg. of meat supplied to various indenting units, 14.5 kgs. were heart). The first respondent who visited the Butchery at the time of the inspection observed that the heart is also an edible offal and could be issued on demand by the units. He did not say that heart was a part of dressed meat under clause 86 or that heart was required to be regularly supplied as part of dressed meat. No evidence was given that he had instructed the butchery staff to accept 'heart' as part of dressed meat and issue it to the units. It is of some interest to note that the first respondent had stated that the earlier supply contract was in the monopoly of one Om Prakash and when that was broken and the contract was given to M/s Rajan Malik & Co., Om Prakash became inimical to M/s Rajan Malik & Co., that some of the persons employed by M/s Rajan Malik & Co. in the Butchery where ex-employees of Om Prakash owing allegiance to Om Prakash, that some mischief had been done at the instance of Om Prakash to prevent Rajan Malik & Co. from continuing as contractor, that the raid was at the instance of Om

Prakash and that he and his henchmen were present all through the inspection. The first respondent submitted that he was a victim in a fight between the contractors. Be that as it may. Therefore, all that is established is at best a wrong interpretation of clause 86 of the Special Conditions of Contract.

25. The charge 4 is that between 11.3.1990 and 22.3.1990, the first respondent failed to ensure that the reserve stock of animals were maintained in the butchery as per para 51(a) of the Special Conditions of Contract. Here again the charge should be properly understood. The first respondent was not the supplier of the animals. The government had entered into a contract with that supplier and clause 51(a) of Special Conditions is an undertaking by the Contractor which reads thus : "I/We shall maintain complete at all time from/upto ……. as reserve of not less than three days supply animals (sheep/goat) based on the average number of animals to be slaughtered as meat on hoof daily". Contract also provided (vide clause 52) that if the contractor failed to do so, the supply officer shall be at liberty to effect risk purchase be effected at the cost of the contractor and also take other steps. Therefore, failure to maintain reserve stocks of animals was not an omission on the part of any person in charge or overall charge of the butchery, but a breach by the contractor. The omission that could be attributed to the officer in-charge of the butchery or the first respondent is that when the contractor failed to maintain reserves failure to bring it to the contractor's notice or failure to take action to make risk purchase and other steps in terms of the contract. But the charge is not that risk purchase was not effected or that the first respondent failed to take necessary remedial steps. The evidence showed that arrangements were made to procure the animals required for slaughter on day to day basis to ensure no breaks in supply of meat. It has also come in evidence that ever since 1989, the first respondent had been informing and complaining to his higher ups that the Ambala area where the supply depot was situated, had a

shortage of stock of animals, that the contractor was not in a position to maintain the required reserves and therefore, suggesting that tenders should be invited from contractors in Delhi where there was an abundance of stocks. Therefore, an omission of the contractor cannot be considered to be an omission on part of the Contract Operating Officer, particularly when he had pointed out deficiencies, and taken remedial steps. Therefore, the effect of the finding in regard to charge (4) is that the contractor did not keep any animals as reserve between 11.3.1990 and 22.3.1990 as undertaken by it under clause 51(a) of the Special Conditions. The failure attributed to the supervisory staff of butchery and the first respondent who was in overall charge was that they failed to ensure that the contractor performed his obligations. What is established against first respondent under charge (4) is therefore, only a technical lapse.

26. Charge 5(c) is that the appellant failed to implement the standard operating procedure for butchery which required passed animals to be segregated and not allowed to mix with the other animals of the contractor. Animals that were branded and accepted for supply were the 'passed animals'. The evidence was not that passed animals and other animals were being kept together. The evidence was that on a particular day when the surprise inspection took place, the passed animals had not been segregated from the other animals of the contractor which were yet to be branded and passed. It was also not disputed that there was no specific directive relating to segregation. Even if there was any lapse, it was a lapse of the JCO as per the standard procedure for the butchery and not the Commandant of the supply depot. The omission that could be attributed is at best would be a technical lapse as far as the first respondent is concerned.

27. The omissions attributed to first respondent in regard to charges 4 and 5(c) were actually omissions by his sub-ordinates and those sub-ordinates were charge-sheeted. In

regard to the subject of charges (1) and (4), the supervisory officer Capt. Paramjeet Singh Malhotra was cashiered and sentenced to undergo rigorous imprisonment for 30 months and the Veterinary Officer Lt. Capt. G. S. Srivastava was punished with forfeiture of eight years past service for the purpose of pension and severely reprimanded. In regard to the subject of charges (4) and 5(c), the Supervisory Officer Capt. Paramjeet Singh Malhotra was punished. The role of the appellant being that of an overall controlling officer of the supply depot was limited and the charges in so far as the first respondent were technical in nature. But for the limitation of interference with regard to findings of fact in judicial review, this might even be a case for interference with the findings of guilt recorded. Be that as it may.

28. In the circumstances, the punishment of dismissal from service is shockingly disproportionate to the gravity of the offences held to be proved. While we may not interfere with the findings of guilt, in a case of this nature, having regard to the nature of offences, we may consider the proportionality of punishment to find out whether it is perverse and irrational. Even accepting the said findings of guilt regarding charges (1), (4) and 5(c), it is clearly a case of shockingly disproportionate punishment being meted out to the Commandant for offering an alternative interpretation to clause (86), for the lapses of his supervisory officer and for the breach committed by the contractor. In the normal course, we would have set aside the punishment and referred the matter back for consideration and imposition of a lesser punishment. But having regard to the fact that the matter is more than 20 years old and the first respondent reached the age of superannuation long ago, no purpose would be served, by referring it back to the appellants. We are of the view on the facts and circumstances, interests of justice would be served if the punishment of dismissal is substituted by the following punishment : (a) forfeiture of eight years of service for the purpose of pension; and (b) Severe reprimand. As a consequence, the order forfeiting pension requires to be set

aside as pension can be denied under Pension Regulation 16(a) only to the officers who are cashiered, dismissed or removed from service.

29. We accordingly dispose of the appeals as under :

(i) We allow Criminal Appeal No.876 of 2003 and set aside the order of the High Court quashing the order dated 22.12.1995.

(ii) We allow Criminal Appeal No.877 of 2003 filed by the first respondent and set aside the order of punishment dated 30.7.1993 imposing the punishment of dismissal from service and substitute the same with the punishment of forfeiture of eight years of service for purposes of pension and severe reprimand.

(iii) As a consequence of the punishment of dismissal being set aside and substituted by a lesser punishment necessarily, the order dated 22.12.1995 forfeiting the pension, passed under Pension Regulation 16(a), is set aside. The respondents are directed to process and settle his pension claim within six months.

(iv) The first respondent will not be entitled to any back-wages from the date of his dismissal to the date of his superannuation, as a consequence of his dismissal being set aside.

R.P. Appeals disposed of.

JAKIA NASIM AHESAN & ANR.
v.
STATE OF GUJARAT & ORS.
(Criminal Appeal No. 1765 of 2011)

SEPTEMBER 12, 2011

[D.K. JAIN, P. SATHASIVAM AND AFTAB ALAM, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973:

Chapter XII, s. 173(8) read with s. 482 Cr.P.C. and Article 226 read with Article 136 of the Constitution – Monitoring of investigation by Court – Gulberg Society case in State of Gujarat – Charge-sheet filed and case committed to Court of Session – Subsequently, petition by wife of the deceased MP before High Court seeking direction for registration of her complaint as an FIR against the persons named therein for offences punishable u/ss 302, 120-B IPC etc. and for entrusting investigation to an independent agency – Petition dismissed by High Court – Supreme Court directing the Special Investigation Team (SIT), which had been constituted to carry out further investigation in 9 cases, to look into the complaint of the appellant – SIT conducted further investigation and submitted its report to the Court – Amicus Curiae who was directed to examine the report of SIT also submitted his report – Held: In the instant case, a stage has been reached where the process of monitoring of the case must come to an end – It would neither be desirable nor advisable to retain further seisin over the case – Bearing in mind the scheme of Chapter XII of the Code, once the investigation has been conducted and completed by the SIT, in terms of the orders passed by the Court from time to time, there is no course available in law, save and except to forward the final report u/s 173 (2) of the Code to the court empowered to take cognizance of the offence alleged – The Chairman, SIT is directed to forward a final report, along with the entire

material collected by the SIT, to the court which had taken cognizance of Crime Report No.67 of 2002, as required u/s 173(2) – However, if for any stated reason the SIT opines in its report that there is no sufficient evidence or reasonable grounds for proceeding against any person named in the complaint, dated 8-6-2006, before taking a final decision on such 'closure' report, the court shall issue notice to the complainant in accordance with law as enunciated in ***Bhagwant Singh's case.***

M.C. Mehta (Taj Corridor Scam) Vs. Union of India & Ors. **2006 (9) Suppl. SCR 683 = 2007 (1) SCC 110 ;** *Bhagwant Singh Vs. Commissioner of Police & Anr.* **1985 (3) SCR 942 = 1985 (2) SCC 537;** *Union of India & Ors. Vs. Sushil Kumar Modi & Ors* **1998 (8) SCC 661;** *Vineet Narain & Ors. Vs. Union of India & Anr.* **1996 (1) SCR 1053 = 1996 (2) SCC 199;** *M.C. Mehta Vs. Union of India & Ors.* **2007 (10) SCR 1060 = 2008 (1) SCC 407; and** *Narmada Bai Vs. State of Gujarat & Ors.* **2011 (5) SCC 79 - relied on.**

Case Law Reference:

2006 (9) Suppl. SCR 683	**relied on**	**para 8**
1985 (3) SCR 942	**relied on**	**para 9**
1998 (8) SCC 661	**relied on**	**para 10**
1996 (1) SCR 1053	**relied on**	**para 10**
2007 (10) SCR 1060	**relied on**	**para 11**
2011 (5) SCC 79	**relied on**	**para 12**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1765 of 2011.

From the Judgment & Order dated 02.11.2007 of the High Court of Gujarat at Ahmedabad in Special Crl. Application No. 421 of 2007.

Raju Ramachandran, Mukul Rohtagi, Ranjit Kumar, Gaurav Agrawal, P. Ramesh Kumar, Aparna Bhat, Hemantika Wahi, Jesal, Suveni Banerjee, E.C. Agrawala, A. Venayagam Balan, N. Ganpathy for the appering parties.

The following order of the Court was delivered

O R D E R

1. Leave granted.

2. This appeal by special leave, arises out of the judgment dated 2nd November, 2007, delivered by the High Court of Gujarat at Ahmedabad in Special Criminal Application No. 421 of 2007, dismissing the writ petition preferred by one of the hapless victims of the abominable and woeful events which took place in the State of Gujarat between February, 2002 and May, 2002 after the abhorrent Godhra incident on 27th February, 2002. By the said petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code"), the appellant had sought for a direction to the Director General of Police, State of Gujarat, to register her private complaint dated 8th June, 2006 as a First Information Report and direct investigation therein by an independent agency. By the impugned judgment, the High Court has come to the conclusion that since a remedy under Section 190 read with Section 200 of the Code was available to the appellant, the writ petition was not tenable. The writ petition was accordingly dismissed by the High Court with the observation that if the appellant had got certain additional material against some persons accused in her complaint, it was open to her to approach the investigating agency, requesting further investigation, or, alternatively she could herself approach the Court concerned for further investigation in terms of Section 173(8) of the Code.

3. The appellant lost her husband, a former Member of Parliament, in the calamitous events which took place on 28th

February, 2002, in the surroundings of Gulberg Society, Ahmedabad, where the appellant resided along with her family. An FIR relating to the incident was registered by the Police with Meghaninagar Police Station, Ahmedabad. After investigation, on the filing of the charge-sheet, the case was committed to the Court of Sessions, Ahmedabad. It was the case of the appellant that subsequently she received certain material which showed that the incidents which took place during the period between 27th February, 2002 and 10th May, 2002, were aided, abetted and conspired by some responsible persons in power, in connivance with the State Administration, including the Police. The appellant thus sought registration of another FIR against certain persons named in the complaint, dated 8th June, 2006, for offences punishable under Section 302 read with Section 120B as also under Section 193 read with Sections 114, 186 & 153A, 186, 187 of the Indian Penal Code, 1860. However, as the police declined to take cognizance of her complaint, the appellant filed the aforementioned petition before the High Court. Having failed to convince the High Court that it was a fit case for investigation by an independent agency, the appellant-complainant, supported by an NGO, is before us in this appeal.

4. On 3rd March, 2008 while issuing notice to the Union of India and State of Gujarat, an Amicus Curiae was appointed to assist the Court. Vide order dated 27th April, 2009, the Special Investigation Team (for short "the SIT"), which had been constituted vide order dated 26th March, 2008 to carry out further investigations in nine cases, subject matter of Writ Petition No. 109 of 2003, was directed 'to look into', the complaint submitted by the appellant on 8th June, 2006 to the Director General of Police, Gujarat. Pursuant to the said direction Shri A.K. Malhotra, former D.I.G. (C.B.I.) and one of the members of the SIT, examined a number of witnesses and looked into a large number of documents made available to him. A report, dated 12th May, 2010, was submitted to this

Court by the Chairman, SIT, concurring with the findings of Shri A.K. Malhotra.

5. In his report dated 12th May, 2010, Shri A.K. Malhotra, *inter alia* recommended further investigation under Section 173(8) of the Code against certain Police officials and a Minister in the State Cabinet. Consequently, further investigation was conducted and a report dated 17th November, 2010, was submitted by the SIT. On 23rd November, 2010, Shri Raju Ramachandran, Senior Advocate and Shri Gaurav Agarwal, Advocate, replaced the previous Amicus Curiae, who had expressed his unwillingness to continue.

6. On 20th January, 2011, a preliminary note was submitted by Shri Raju Ramachandran, the learned Amicus Curiae; whereon, vide order dated 15th March, 2011, the SIT was directed to submit its report, and if necessary carry out further investigation in light of the observations made in the said note. The SIT conducted further investigation under Section 173(8) of the Code in Meghaninagar Police Station Crime Report No.67 of 2002—Gulberg Society case, and submitted a report on 24th April, 2011. After examining the said report, on 5th May, 2011, the following order was passed :

> "Pursuant to our order dated 15th March, 2011, the Chairman, Special Investigation Team (SIT) has filed report on the further investigations carried out by his team along with his remarks thereon. Statements of witnesses as also the documents have been placed on record in separate volumes. Let a copy of all these documents along with the report of the Chairman be supplied to Mr. Raju Ramachandran, the learned Amicus Curiae.
>
> The learned Amicus Curiae shall examine the report; analyze and have his own independent assessment of the statements of the witnesses recorded by the SIT and submit his comments thereon. It will be open to the learned Amicus Curiae to interact with any of the witnesses, who have been examined by the SIT, including the police officers, as he may deem fit.
>
> If the learned Amicus Curiae forms an opinion that on the basis of the material on record, any offence is made out against any person, he shall mention the same in his report."

7. The learned Amicus Curiae has now submitted his final report dated 25th July, 2011. In light of the above conspectus and the report of the learned Amicus Curiae, the question for determination is the future course of action in the matter.

8. We are of the opinion that bearing in mind the scheme of Chapter XII of the Code, once the investigation has been conducted and completed by the SIT, in terms of the orders passed by this Court from time to time, there is no course available in law, save and except to forward the final report under Section 173 (2) of the Code to the Court empowered to take cognizance of the offence alleged. As observed by a three-Judge Bench of this Court in *M.C. Mehta (Taj Corridor Scam) Vs. Union of India & Ors.*[1], in cases monitored by this Court, it is concerned with ensuring proper and honest performance of its duty by the investigating agency and not with the merits of the accusations in investigation, which are to be determined at the trial on the filing of the charge-sheet in the competent Court, according to the ordinary procedure prescribed by law.

9. Accordingly, we direct the Chairman, SIT to forward a final report, along with the entire material collected by the SIT, to the Court which had taken cognizance of Crime Report No.67 of 2002, as required under Section 173(2) of the Code. Before submission of its report, it will be open to the SIT to obtain from the Amicus Curiae copies of his reports submitted to this Court. The said Court will deal with the matter in accordance with law relating to the trial of the accused, named in the report/charge-sheet, including matters falling within the ambit and scope of Section 173(8) of the Code. However, at

1. (2007) 1 SCC 110.

this juncture, we deem it necessary to emphasise that if for any stated reason the SIT opines in its report, to be submitted in terms of this order, that there is no sufficient evidence or reasonable grounds for proceeding against any person named in the complaint, dated 8th June 2006, before taking a final decision on such 'closure' report, the Court shall issue notice to the complainant and make available to her copies of the statements of the witnesses, other related documents and the investigation report strictly in accordance with law as enunciated by this Court in *Bhagwant Singh Vs. Commissioner of Police & Anr.*[2]. For the sake of ready reference, we may note that in the said decision, it has been held that in a case where the Magistrate to whom a report is forwarded under Section 173(2)(i) of the Code, decides not to take cognizance of the offence and to drop the proceedings or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the FIR, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.

10. Having so directed, the next question is whether this Court should continue to monitor the case any further. The legal position on the point is made clear by this Court in *Union of India & Ors. Vs. Sushil Kumar Modi & Ors.*[3], wherein, relying on the decision in *Vineet Narain & Ors. Vs. Union of India & Anr.*[4], a Bench of three learned Judges had observed thus :

> "…that once a charge-sheet is filed in the competent court after completion of the investigation, the process of monitoring by this Court for the purpose of making the CBI and other investigative agencies concerned perform their function of investigating into the offences concerned comes to an end; and thereafter it is only the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused, including matters falling

2. (1985) 2 SCC 537.

3. (1998) 8 SCC 661.

4. (1996) 2 SCC 199.

> within the scope of Section 173(8) of the Code of Criminal Procedure. We make this observation only to reiterate this clear position in law so that no doubts in any quarter may survive."

11. In *M.C. Mehta Vs. Union of India & Ors.*[5], a question arose as to whether after the submission of the final report by the CBI in the Court of Special Judge, pursuant to this Court's directions, this Court should examine the legality and validity of CBI's action in seeking a sanction under Section 197 of the Code for the prosecution of some of the persons named in the final report. Dismissing the application moved by the learned Amicus Curiae seeking directions in this behalf, a three-Judge Bench, of which one of us (D.K. Jain, J.) was a member, observed thus:

> "The jurisdiction of the Court to issue a writ of continuous mandamus is only to see that proper investigation is carried out. Once the Court satisfies itself that a proper investigation has been carried out, it would not venture to take over the functions of the Magistrate or pass any order which would interfere with his judicial functions. Constitutional scheme of this country envisages dispute resolution mechanism by an independent and impartial tribunal. No authority, save and except a superior court in the hierarchy of judiciary, can issue any direction which otherwise takes away the discretionary jurisdiction of any court of law. Once a final report has been filed in terms of sub-section (1) of Section 173 of the Code of Criminal Procedure, it is the Magistrate and Magistrate alone who can take appropriate decision in the matter one way or the other. If he errs while passing a judicial order, the same may be a subject-matter of appeal or judicial review. There may be a possibility of the prosecuting agencies not approaching the higher forum against an order passed by the learned Magistrate, but the same by itself would not confer a jurisdiction on this Court to step in."

5. (2008) 1 SCC 407.

12. Recently, similar views have been echoed by this Court in *Narmada Bai Vs. State of Gujarat & Ors.*[6]. In that case, dealing with the question of further monitoring in a case upon submission of a report by the C.B.I. to this Court, on the conclusion of the investigation, referring to the earlier decisions in *Vineet Narain* (supra), *Sushil Kumar Modi* (supra) and *M.C. Mehta (Taj Corridor Scam)* (supra), speaking for the Bench, one of us, (P. Sathasivam, J.) has observed as under :

> "70. The above decisions make it clear that though this Court is competent to entrust the investigation to any independent agency, once the investigating agency complete their function of investigating into the offences, it is the court in which the charge-sheet is filed which is to deal with all matters relating to the trial of the accused including matters falling within the scope of Section 173(8) of the Code. Thus, generally, this Court may not require further monitoring of the case/investigation. However, we make it clear that if any of the parties including CBI require any further direction, they are free to approach this Court by way of an application."

13. Deferentially concurring with the dictum of this Court in the aforenoted decisions, we are of the opinion that in the instant case we have reached a stage where the process of monitoring of the case must come to an end. It would neither be desirable nor advisable to retain further seisin over this case. We dispose of this appeal accordingly.

14. Before parting, we direct the State of Gujarat to reimburse to Shri Raju Ramachandran, all the expenses borne by him for travel from Delhi to Ahmedabad and back. We also place on record our deep appreciation for the able assistance rendered to us by Shri Raju Ramachandran and Shri Gaurav Agarwal, the learned Amicus Curiae.

R.P. Appeal disposed of.

6. (2011) 5 SCC 79.

FRIENDS OF VICTORIA MEMORIAL

v.

HOWRAH GANATANTRIK NAGARIK SAMITY & ORS.

(SLP (Civil) Nos. 1135-1136 of 2009)

SEPTEMBER 12, 2011

[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

Environment Laws:

Public Interest Litigation – Protection and Preservation of Victoria Memorial Hall, Kolkata and its green surroundings – Filing of writ petition – Direction by High Court that parking of all cars around the compound of the Victoria Memorial Hall and nearby areas be immediately prohibited and such prohibition to continue for 24 hours every day including the holidays – Application filed before the High Court seeking permission for morning walkers to park their cars in the north and south zones of Victoria Memorial Hall for two hours in the early morning – Application dismissed – Held: Expert Committee recommended that parking activities add to pollution load around the Victoria Memorial Hall and thus, the parking of vehicles on all sides of the Victoria Memorial Hall compound should be totally banned – Those who want to walk and take their cars to the place of their walk have sufficient number of alternative places in Kolkata where they can go for their morning walks – Thus, orders of the High Court does not call for interference - Constitution of India, 1950 – Article 136.

CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 1135-1136 of 2009.

From the Judgment & Order dated 28.09.2007 of the Calcutta High Court in W.P. 7987 (W) of 2002.

Avijit Bhattacharjee, Sarbani Kar, Debnjani Das

Purkayashta, Bidyabrata Acharya, Pranab Kumar Mullick for the Petitioner.

Respondent-in-Person (R 1 & R 2), Dharam Bir Raj Vohra for the Respondent.

The order of the Court was delivered

O R D E R

A. K. PATNAIK, J. 1. Delay condoned.

2. These Special Leave Petitions under Article 136 of the Constitution are directed against the orders dated 28.09.2007 and 15.02.2008 of the Division Bench of the Calcutta High Court in Writ Petition No.7987 (W) of 2002.

3. The facts very briefly are that during the British rule, Victoria Memorial Hall was built in the memory of Queen Victoria in Central Kolkata. After independence, this monument continues to be known for its beautiful architecture and green surroundings. To the north of the Victoria Memorial Hall is a huge stretch of land known as 'the Maidan' which is covered by green grass and interspersed with a large number of trees, bushes and shrubs. To protect and preserve the Victoria Memorial Hall and its green surroundings, a public interest litigation (Writ Petition No. 7987(W) of 2002) was filed in the Calcutta High Court by the respondent nos. 1 to 5.

4. After hearing all concerned parties and considering the petitions, affidavits and counter affidavits and the recommendations of expert bodies, the High Court, inter alia, directed in the impugned order dated 28.09.2007 that parking of all cars around the compound of the Victoria Memorial Hall shown as red-marked portions in the annexed map and nearby areas would be immediately prohibited and such prohibition would continue for 24 hours every day including the holidays. A group of persons describing itself as 'the Friends of Victoria Memorial' then filed an application before the High Court for modification of the aforesaid direction so as to permit morning

walkers to park their cars in the north and south zones of Victoria Memorial Hall for two hours in the early morning. The High Court, however, dismissed the application by the impugned order dated 15.02.2008 saying that car parking has only been prohibited around Victoria Memorial Hall and persons desirous of morning walk may go to the Maidan which was lying vacant and may also walk by the side of Ganges or the Eden Garden area and the area around the grounds of Mohun Bagan, East Bengal and Mohammedan Sporting Clubs where there was no restriction of parking the vehicles. Aggrieved, the petitioner has filed these Special Leave Petitions.

5. We have heard learned counsel for the parties and we find from the recommendations of the Expert Committee (annexed to the Special Leave Petitions as Annexure P1) that a Committee of Experts has observed that parking activities add to pollution load around the Victoria Memorial Hall and have accordingly recommended that the parking of vehicles on all sides of the Victoria Memorial Hall compound should be totally banned. The High Court appears to have considered these recommendations of the Expert Committee and directed in the impugned order dated 28.09.2007 that parking around the Victoria Memorial Hall on the red-marked portions of the map would be prohibited. The High Court has also indicated in the impugned order dated 15.02.2008 that there were many other places in Kolkata, such as *Maidan*, the Eden Garden area and the area around the grounds of Mohun Bagan, East Bengal and Mohammedan Sporting Clubs as well as the area by the side of the river Ganges where there was no restriction of parking the vehicles. Those who want to walk and take their cars to the place of their walk thus have sufficient number of alternative places in Kolkata where they can go for their morning walks.

6. We are, therefore, not inclined to interfere with the impugned orders of the High Court and accordingly dismiss the Special Leave Petitions with no order as to costs.

N.J. SLP dismissed.

MAHESH & ANR.
v.
STATE OF MADHYA PRADESH
(Criminal Appeal No. 503 of 2008)

SEPTEMBER 13, 2011

[DR. MUKUNDAKAM SHARMA AND ANIL R. DAVE, JJ.]

Penal Code, 1860 – s. 302/34 – Conviction and sentence under – Altercation between parties resulting in fatal gun shot injuries to deceased by main accused – Trial court convicted the main accused u/s. 302 and sentenced him to life imprisonment and three years rigorous imprisonment under Arms Act – However, acquitted appellants (co-accused) on the ground of some embellishment in the prosecution case – High Court upheld conviction of the main accused as also passed similar order of conviction against the appellants – Appeal by the appellants – Held: PW 1 who filed the information with the police was not an eye-witness – As such non-mentioning about the role played by the appellants in the First Information Report not fatal to the prosecution case – Also recording of the statements of eye-witnesses after 8 days not fatal to the prosecution case since the police officer gave a plausible and possible explanation for same – Motive for the offence is established – There was an enmity between the complainant party and the accused persons – Prosecution examined at least three eye-witnesses to the occurrence of the incident who stated as to how the incident happened as also the different and various role played by the accused persons – Witnesses examined were relatives of the deceased and, thus there is no ground and reason why they should be disbelieved as also why they would not speak the truth – Prosecution witnesses stated that appellants held the hand of the deceased and also at the same time exhorted the main

accused to bring the gun and to fire upon the deceased so as to kill him, which is corroborated – Thus, it is proved and established that the appellants had the common intention of killing the deceased – They intentionally become a party to commit the murder of the deceased – Order of conviction and sentence passed against them by the High Court, is upheld – Doctrine of constructive criminal liability – Evidence – Witnesses.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 503 of 2008.

From the Judgment and Order dated 09.08.1999 of the Division Bench of High Court of Madhya Pradesh at Gwalior in Criminal Appeal No. 388 of 2001.

P.C. Agarwal, Ambuj Agarwal, Nitin Singh and Santosh Singh for the appellants.

Aishwarya Bhati, Jyoti Upadhyay, Kiran Singh, Rajnesh Bhaskar, Sanjoli and C.D. Singh for the Respondent.

The following order of the Court was delivered

O R D E R

1. This appeal is directed against the judgment and order dated 16.11.2007 passed by the Madhya Pradesh High Court, Jabalpur Bench at Gwalior in Criminal Appeal No. 388 of 2001. By the aforesaid judgment and order, the Division Bench of the High Court has not only confirmed the order of conviction and sentence of Shri Ramdutt, who was convicted by the Trial Court under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and for 3 years rigorous imprisonment under the Arms Act but also set aside the order of acquittal passed by the Trial Court in the cases of Mahesh and Kanhaiyalal.

2. The High Court by passing the impugned judgment and

order has convicted both the aforesaid accused persons under Section 302 read with Section 34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life. The sum and substance of the aforesaid order of conviction and sentence is that all the three accused persons have now been convicted under Section 302 read with Section 34 of the Indian Penal Code and, therefore, all of them have been sentenced to undergo rigorous imprisonment for life.

3. The prosecution story in brief is that on 1.11.1993, the complainant Badri Lal(PW 1) along with Rambabu (PW 3), son of deceased Kirori, went to their chilly field to water the same. The said field was adjacent to the field of Mahesh and Ramdutt who, at that point of time, were watering their field. When asked by the complainant and Rambabu about watering their field, Mahesh and Ramdutt told them that they can water their field only after watering of their field is completed by them.

4. It is alleged that on hearing this, PW 1 and PW 3 came back to their village to go back again in the afternoon, when while trying to release water to their field, they were assaulted by Ramdutt and Mahesh. It is alleged that after the said incident, Ramdutt and Mahesh came back running to the village and PW 1 and PW 3 also came behind them. When PW 1 and PW 3 reached the door, they heard the sound of gunshot fire. On hearing the sound, they ran towards the said direction, when on way, they saw Ramdutt and Mahesh running with guns in their hands. It is alleged that when Ramdutt and Mahesh saw PW 3, Mahesh fired a gunshot at Rambabu (PW 3) who saved himself by lying down. Thereafter, PW 1 and PW 3 reached in front of the door of Ramnarayan and Devi Prasad when PW 1 saw the body of his younger brother Kirori, lying dead on the ground, being hit by a gunshot which had hit him on chest and stomach. The body was surrounded by Deviprasad, Ramnath, Kirori's wife Malti, Rambabu's wife Sunita and other members, daughters-in-law and daughters.

5. At that stage, Malti told PW 1 that on hearing the news

of altercation at the field, Kirori was going towards the field when Ramdutt, Mahesh and Kanhaiya who were standing at their door and that Ramdutt, with the licenced single barrel gun of his father Kanhaiya, fired a shot at Kirori which had hit him near the abdomen as a result of which Kirori fell down and died.

6. The First Information Report was filed by PW 1 at about 3.15 p.m. at the Police Station which is 14 kms away from the village. On receipt of the First Information Report, a criminal case was registered and the police started investigation, during the course of which all the three accused persons were arrested. Charge-sheet was filed as against all the three accused persons. Pursuant to filing of chargesheet, trial was held during the course of which several witnesses were examined by the prosecution. The defence also examined one witness in support of their defence. The statements of all the three accused persons were recorded under Section 313 of the Cr P.C. and thereafter, the learned Trial Court, by the judgment and order passed on 9.8.1999, convicted Ramdutt under Section 302 IPC and passed an order sentencing him to life imprisonment and 3 years rigorous imprisonment under Arms Act, respectively. So far as the other two persons are concerned, namely Mahesh and Kanhaiya Lal, the present appellants, the Trial Court acquitted them on the ground that there had been some embellishment in the prosecution case like the allegation that the said accused persons holding the hand of the deceased at the time of firing upon them by Ramdutt.

7. Ramdutt (A1) and the State filed appeals before the High Court. Both the said appeals were taken up together and the same were disposed of by the common order by the High Court whereby the High Court not only upheld the order of conviction passed against Ramdutt but also passed a similar order of conviction and sentence as against Mahesh and Kanhaiya Lal who were acquitted by the trial court.

8. Being aggrieved by the aforesaid order of conviction by the High Court, Mahesh and Kanhaiya Lal, appellants herein,

have filed the present appeal in which notice was issued. So far as the Ramdutt - first accused is concerned, he has not filed any appeal and, therefore, it appears that he has accepted the order of conviction and sentence passed by the trial court and then, affirmed by the High Court. The present appeal, therefore, relates to the order of conviction and sentence passed against Mahesh and Kanhaiya Lal who are appellants before us.

9. We have heard the learned counsel appearing for the parties on this appeal who have taken us through the entire evidence on record as also the contents of the two judgments passed by the Trial Court and also by the High Court.

10. The contention that is raised by the learned counsel appearing for the appellants is that in the First Information Report which was filed by PW 1 at the earliest point of time after the incident, the role now attributed to the appellants herein were not mentioned at all and, therefore, there could not have been an order of conviction and sentence as against the two appellants. It was also submitted by him that the statements of the alleged eye-witnesses were recorded by the police after about 8 days of the occurrence and, therefore, there was enough scope to make out a make believe story and also to put in an embellishment and improvement relying on which the appellants are sought to be convicted.

11. According to the learned counsel appearing for the appellants, there were number of independent witnesses who were allegedly present at the time of occurrence of the incident, but none of them was examined and, therefore, the High Court should have doubted the manner in which a specific role is being attributed to the appellants herein. The learned counsel submits that there was no enmity between the parties and, therefore, there was no motive for commission of the crime, at least by the present appellants. He has also submitted that there are two versions which are sought to be raised and, therefore, the benefit of the same should go to the appellants herein.

12. We have considered the aforesaid submissions which were refuted by the learned counsel appearing for the respondent. She has drawn our attention to the evidence on record to submit that some of the translation of the deposition included in the paper book prepared by the appellants is not truly reflecting the accurate statement made by the persons in the Court.

13. In order to appreciate the aforesaid contentions, we have also examined the original records and on such perusal, we find that some of the English translations which have been placed before us by filing an additional paper book are indeed not the true reflection of the statements made by the witnesses before the Court.

14. Be that as it may, we would like to examine each of the contentions raised by the learned Counsel appearing for the appellants in the light of the records. So far as the first contention regarding informant not stating anything about the role of the appellants in the First Information Report is concerned, we find that the aforesaid First Information Report was submitted by PW 1 who was not an eye-witness to the incident. Although it has come in evidence that he was informed about the incident by PW 2, PW 4 and PW 5 immediately on his reaching the place of occurrence of the incident, yet since he was not the eye-witness to the incident, he may not have stated the said fact in the First Information Report for which it cannot be said that the entire prosecution case should falter. Besides, it is an established law that so far as the First Information Report is concerned, it is only a report submitted informing the police about the commission of the crime. It is not required that the said First Information Report should contain a detailed and vivid description of the entire incident. Further, it cannot be expected from the informant, especially, when the informant is a relative of the injured/deceased to give each and ever minute detail of the incident in the First Information Report. Therefore, PW 1 who had filed the

information with the police not being an eye-witness, it cannot be said that non mentioning about the role played by the present appellants in the First Information Report would be in any manner fatal to the case of the prosecution.

15. So far as the contention regarding recording of the statements by the police after 8 days of occurrence of the incident is concerned, a proper and appropriate explanation has been given by the Police Officer, who recorded the statements, stating that he had recorded the statements after about 8 days of the occurrence of the incident because religious rituals were going on. Due to the aforesaid reason, their statements could not have been recorded on 4.11.1993 which is also written in the case diary. In that view of the matter and there being a plausible and possible explanation given for recording the statements of eye-witnesses after 8 days, the same cannot, in any manner, demolish or vitiate the prosecution case.

16. It is also submitted by the counsel appearing for the appellants that there was no enmity between the parties which could establish the motive for the commission of crime. The said contention, on the face of it, is not acceptable for we find on records that the present appellants and the informant had an altercation in the field and because of the said altercation, the deceased came out of his house and was going to the field during the process of which the aforesaid incident had occurred wherein he was shot dead as alleged by the prosecution. Therefore, the motive for the offence is established. There was an enmity between the complainant party and the accused persons and, therefore, the aforesaid submission is found to be baseless.

17. The prosecution has examined at least three eye-witnesses to the occurrence of the incident who have stated as to how the incident had happened. They have also stated the different and various role played by the accused persons. Since eye witnesses were available and examined, there was

no necessity of examining any other witness, inasmuch as, there is no necessity for the prosecution to multiply witnesses to prove and establish the prosecution case. There is no requirement in the law of evidence that any particular number of witnesses is to be examined to prove something. The evidence has to be weighed and not to be counted. The witnesses who were examined were relatives of the deceased and, therefore, there is no ground and reason why they should be disbelieved. There is also no reason why they would not speak the truth so as to see that the actual guilty persons are convicted.

18. It is also submitted that there has been an improvement and embellishment in the prosecution case and the role of the appellants have been exaggerated so as to see that all the members of the family are punished and are sent to jail.

19. In order to appreciate the said contention, we have looked into the records. In fact, we find that the English translation provided by the appellants in the additional paper book of the evidence of PW-2 on the role of the appellants in the incident alleged appears to be incorrect. Same is the case with the deposition of PW-4. The statements made by the said witnesses regarding the alleged role of the present appellants in the incident the English translation provided appears to be wrong. In that view of the matter, we perused the original depositions of the two witnesses which have been recorded in Hindi. On going through the same, we find that PW2 and PW4 have specifically stated that the present appellants were holding the deceased by his hands and also exhorted Ramdutt to bring the gun and to shoot at the deceased. The aforesaid statements of giving exhortion and holding the hand of the deceased and Ramdutt coming with the gun and fired at him are corroborated. It clearly proves and establishes from the said fact that the present appellants also had the common intention of killing the deceased. It is established from the records that they had intentionally become a party to commit the murder of the deceased.

20. Section 34 of the Indian Penal Code provides that if two or more persons intentionally do an act jointly, the position in law would be just the same as if each of them has done the offence individually by himself. This doctrine of constructive criminal liability is well-established in law. The very fact that the appellants were holding the hand of the deceased and also at the same time exhorting Ramdutt to bring the gun and to fire upon the deceased so as to kill him speaks volume and also prove and establish that they have done the act intentionally so as to see that the deceased is fired upon and shot dead.

21. In that view of the matter, we find no infirmity in the judgment and order passed by the High Court setting aside the order of acquittal so far the present appellants are concerned. We uphold the order of conviction and sentence passed against them and dismiss the appeal.

22. The applications which are pending, are also disposed of in terms of the aforesaid order.

N.J. Appeal dismissed.

A. SRIDHAR

v.

UNITED INDIA INSURANCE CO. LTD. & ANR.

(Civil Appeal No. 7823 of 2011)

SEPTEMBER 13, 2011

[G.S. SINGHVI AND H.L. DATTU, JJ.]

Motor Vehicles Act, 1988 – ss.166 and 140 – No fault liability – Appellant while riding the motor cycle met with an accident due to oil spill on road and suffered grievous injuries – Claim petition – Award of compensation of Rs. 1,60,000/- with 6% interest p.a. under the Insurance Policy by the Tribunal, reduced by High Court to Rs. 25,000/- u/s. 140 of the Act – Justification of – Held: Justified – The tribunal held that the appellant, while driving the motor vehicle on the fateful day, met with an accident not because of the fault of the owner of the vehicle or because of the fault of the other vehicle, but because of the oil spill on the road – Thus, negligence can be attributable only on the person who was driving the vehicle and thus, is not entitled to compensation under the Insurance Policy – High Court was justified in invoking the beneficial legislation and in directing the Insurance Company to pay limited amount by way of compensation to the injured person of an accident arising out of the use of a motor cycle on the basis of no fault liability – Legislation – Beneficial Legislation.

The appellant filed a petition under Section 166 of the Motor Vehicles Act, 1988 claiming Rs. 6,00,000/- as general damages/compensation since he suffered grievous injuries when the motor cycle he was riding along with a pillion rider met with an accident due to oil spill on the road. The Tribunal awarded compensation of Rs. 1,60,000/- together with interest at 6% per annum under the Insurance Policy. The High Court reduced the

compensation awarded to Rs.25,000/- under Section 140 of the Act. Thus, the appellant filed the instant appeal.

Dismissing the appeal, the Court

HELD: From the evidence on record, the Tribunal held that the appellant, while driving the motor vehicle on the fateful day, met with an accident not because of the fault of the owner of the vehicle or because of the fault of the other vehicle, but because of the oil spill on the road. Therefore, the negligence can be attributable only on the person who was driving the vehicle and thus, is not entitled to compensation under the Insurance Policy. Therefore, the High Court was justified in invoking the beneficial legislation and in directing the Insurance Company to pay limited amount by way of compensation to the injured person of an accident arising out of the use of a motor cycle on the basis of "no fault liability," since the accident has arisen out of use of motor vehicle and has resulted in grievous injuries to the claimant. Thus, there is no legal infirmity in the judgment and order passed by the High Court. [Paras 7 and 8] [389-A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7823 of 2011 etc.

Vivek Sharma, P.B. Suresh, Temple Law Firm for the Appellant.

K.L. Nandwani for the Respondents.

The Judgment of the Court was delivered by

H.L. DATTU, J. 1. Leave granted.

2. This appeal is directed against the Judgment and Order passed by the High Court of Madras, Chennai in Civil Miscellaneous Appeal No. 1779 of 2002, wherein, the Court

has allowed the appeal of the Insurance Company and reduced the compensation awarded by the Motor Accident Claims Tribunal, Chennai (for short, "the Tribunal") from Rs.1,60,000/- to Rs.25,000/- under Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as, "the Act").

3. In the Claim Petition filed under Section 166 of the Act, the appellant has stated that on 14.01.1998, at about 7.10 PM, while he was riding the motor cycle along with a pillion rider, the vehicle met with an accident due to oil spill on the road and suffered grievous injuries. Since the vehicle is insured with the respondent-Insurance Company, he is entitled for compensation of Rs. 6,00,000/- (Rupees Six Lakhs) as general damages/compensation.

4. The Insurance Company has denied its liability. The Tribunal, while considering the claim of the appellant, has come to the conclusion that the accident did not take place due to rash and negligence driving of the claimant but due to oil spilling on the road. Accordingly, the Tribunal has assessed the compensation payable to the claimant at a sum of Rs.1,60,000/- together with interest at 6% per annum under the Insurance Policy.

5. In the appeal filed by the Insurance Company, the High Court, has taken exception to the order passed by the Tribunal and has come to the conclusion that the Tribunal is not justified in allowing the claim petition moved under Section 166 of the Act and ought to have determined the compensation payable under Section 140 of the Act. Accordingly, the High Court has modified the award and has reduced the compensation payable to Rs. 25,000/-.

6. Aggrieved by the Judgment and Order, the claimant is before us in this appeal.

7. We have heard the learned counsel for the parties and

perused the record. From the evidence on record, the Tribunal holds that the appellant, while driving the motor vehicle on the fateful day, met with an accident not because of the fault of the owner of the vehicle or because of the fault of the other vehicle, but because of the oil spill on the road. Therefore, the negligence can be attributable only on the person who was driving the vehicle and hence, is not entitled to compensation under the Insurance Policy. Therefore, the High Court was justified in invoking the beneficial legislation and in directing the Insurance Company to pay limited amount by way of compensation to the injured person of an accident arising out of the use of a motor cycle on the basis of "no fault liability," since the accident has arisen out of use of motor vehicle and has resulted in grievous injuries to the claimant.

8. In view of the above, we do not see any legal infirmity in the Judgment and Order passed by the High Court. The appeal is, accordingly, dismissed. Costs are made easy.

N.J. Appeal dismissed.

KERALA STATE HOUSING BOARD & ORS.
v.
KERALA STATE HOUSING BOARD, NELLIKODE HOUSING COLONY ALLOTTEES ASSN. & ORS.
(Civil Appeal No.7835 of 2011)

SEPTEMBER 14, 2011

[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

Land Acquisition:

Interest on differential amount between tentative price and final price – Land acquired – Reference for enhancement of compensation pending – Sale deed in favour of allottees with stipulation to pay differential between tentative price and final price and to pay interest @ 15% on differential amount within 30 days of demand notice – Enhanced compensation deposited in 1997 – Demand notice served in 1999 – Claim for 15% interest – HELD: Interest till the date of deposit in 1997 would be payable @ 15%, and thereafter 8% – It is not disputed that notices of demand were served on the allottees not immediately after finalization of the compensation by the court and payment or deposit of the enhanced amount by the Board in the year 1997, but after a period of more than a year some time in 1999 – The respondents will be liable to pay interest to the appellant-Board on the differential amount between the tentative price and the final price at the rate of 8% per annum from the date of deposit or payment of the enhanced compensation by the Board in 1997 till payment of the differential amounts by the allottees.

Chandigarh Housing Board, Chandigarh v. *K.K. Kalsi & Ors*. **(2003) 12 SCC 734 – relied on**

Case Law Reference:

(2003) 12 SCC 734	**relied on**	**para 6**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7835 of 2011.

From the Judgment & Order dated 28.02.2006 of High Court of Kerala at Ernakulam in W.A. No. 1760 of 2004.

WITH

C.A. Nos. 7836 & 7837 of 2011.

M.T. Greorge for the Appellants.

P. Vishwanatha Shetty, A. Raghunath, K. Rajeev for the Respondents.

The Judgment of the Court was delivered by

A. K. PATNAIK, J. 1. Leave granted.

2. Civil Appeal arising out of S.L.P.(C) No.10580 of 2006 is against the judgment dated 28.02.2006 in Writ Appeal No.1760 of 2004 of the Division Bench of the Kerala High Court. Civil Appeal arising out of S.L.P.(C) No.21478 of 2008 is against the order dated 13.06.2008 in Writ Appeal No.1968 of 2007 disposing of the Writ Appeal in terms of the judgment dated 28.02.2006 in Writ Appeal No.1760 of 2004. Civil Appeal arising out of S.L.P.(C) No.21817 of 2008 is against the order 13.06.2008 in Writ Appeal No.1940 of 2008 disposing of the Writ Appeal in terms of the judgment dated 28.02.2006 in Writ Appeal No.1760 of 2004. These three appeals are being disposed of by this common order as common questions of fact and law arise in the appeals.

3. The facts very briefly are that in the years 1984 and 1985 land was acquired for allotment of plots under the Chevayur Housing Scheme and the Nellikode Housing Scheme respectively undertaken by the Kerala State Housing Board (for short 'the Board'). The landowners did not accept the compensation offered for the acquired land and sought a reference to the Civil Court under Section 18 of the Land

Acquisition Act, 1894. While the dispute in regard to quantum of compensation was pending, the Board entered into agreements of sale with various allottees of the plots of land during the years 1988-1990 and made a provision therein that the Board shall be entitled to re-fix the final price of the property agreed to be sold to the allottees taking into account inter alia the enhanced compensation awarded by the Courts and Tribunals and that the decision of the Board in fixing the revised price of the property shall be conclusive and final. It was also expressly agreed in the agreements of sale that after finalization of the price of the property agreed to be sold by the Board, the allottee shall pay to the Board together with interest at the rate of 15% per annum, the difference between the tentative price fixed and the price finally fixed for the property by the Board within thirty days of the date of a registered notice demanding the payment thereof or in such quarterly installments over a period not exceeding two years to be determined by the Board. After the reference cases were finalized and disposed of in the year 1997, the Board deposited the enhanced compensation with interest, but did not promptly serve the demand notices on the allottees for payment of the difference between the tentative price and the final price with interest and it was only in the year 1999 that the Board served the notices on the allottees to pay the said difference with interest at the rate of 15% per annum.

4. The allottees then filed Writ Petitions before the Kerala High Court and the learned Single Judge passed orders refusing to interfere with the claim of interest on the enhanced amounts of compensation on the differential amount till 1997 when the references were finally disposed of by the Court and the Board deposited the enhanced compensation with interest. The learned Single Judge, however, found that individual account statements giving the relevant details and calculations of the amounts demanded had not been served on the allottees and held that this was on account of the lethargy of the officials of the Board and, therefore, the Board was not entitled to any interest on the differential amount from the allottees for the

period from 1997 till the date of service of individual account statements on the allottees.

5. Aggrieved by the orders of the learned Single Judge, the Board filed Writ Appeals before the Division Bench of the Kerala High Court and by the impugned judgments and orders the Division Bench dismissed the appeals. In the impugned judgments and orders, the Division Bench of the High Court agreed with the view taken by the learned Single Judge that the Board was not entitled to claim any interest and that too at the rate of 15% per annum for the period from the date of deposit of enhanced compensation in 1997 till the date of service of the individual account statements saying that the Board cannot punish the allottees for its own lethargies. Aggrieved, the Board is in appeal before us.

6. Learned counsel for the appellant-Board submitted that there was a clause in the agreements of sale executed between the Board and the allottees that after finalization of the price of the property agreed to be sold by the Board, the allottee shall pay to the Board together with interest at the rate of 15% per annum, the difference between the tentative price fixed and the price finally fixed for the property by the Board within thirty days of the date of a registered notice demanding the payment thereof or in such quarterly installments over a period not exceeding two years to be determined by the Board. He submitted that it was only in the year 1998 that the price was finalized and the demand notices were served in the year 1999 on the allottees to pay the difference between the tentative price and the final price together with interest at the rate of 15% per annum as per the aforesaid clause in the agreements. He further submitted that till the allottees paid the difference between the tentative price and the final price, they retained the differential amount with them and made use thereof while the appellant-Board was deprived of the use of the money. He relied on the decision of this Court in *Chandigarh Housing Board, Chandigarh v. K.K. Kalsi & Ors.* [(2003) 12 SCC 734] wherein

it has been held that in such cases where the allottees have retained the money with them and made use thereof while the Board has been deprived of the use of the money, it will be equitable for the allottees to pay a reasonable interest to the Board on such money.

7. Learned counsel appearing for the respondents, on the other hand, supported the orders of the learned Single Judge and the impugned judgment and orders of the Division Bench of the Kerala High Court contending that there was no justification whatsoever for the appellant-Board to claim any interest on the differential amount between the tentative price and the final price from 1997 till the date of service of individual account statements on the allottees.

8. We have considered the submissions of the learned counsel for the parties and we find that the reason why a clause in the agreements of sale executed by the Board and the allottees for payment of interest at the rate of 15% per annum on the differential amount between the tentative price and the final price of the land allotted to the allottees was inserted was that in the proviso to Section 34 of the Land Acquisition Act, 1894 it is provided that if the compensation for the acquired land or any part thereof is not paid or deposited within a period of one year from the date on which possession of the acquired land is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry. Since references under Section 18 of the Land Acquisition Act, 1894 were pending in the Civil Court when the agreements of sale were executed by the Board and the allottees, a stipulation had to be made in the agreements of sale that as and when the Court finally determines the compensation and the Board becomes liable to pay enhanced compensation, the Board will have to deposit not only the enhanced compensation but also interest at the rate of 15%

per annum on such enhanced compensation. If this was the purpose of the clause in the agreements of sale between the Board and the allottees, once the compensation was finalized by the Court and the enhanced compensation was paid or deposited in the year 1997, the Board was not liable for any interest under the proviso to Section 34 of the Land Acquisition Act, 1894 from the date of such payment or deposit. Since the purpose of stipulating the rate of interest of 15% per annum was to take care of the liability on the enhanced compensation provided in the Land Acquisition Act, 1894 and not to enrich the Board by recovery of high rate of interest from the allottees, we agree with the view taken by the High Court that the Board was not entitled to interest at the rate of 15% per annum on the difference between the tentative price and the final price after the finalization of the compensation and payment or deposit of the enhanced compensation by the Board in the year 1997.

9. We, however, do not think that the High Court was right in taking a view that the appellant-Board was not entitled to any interest for the period from the date of payment or deposit of the enhanced compensation in 1997 till the date of service of individual account statements on the allottees. The relevant clause in the agreements of sale requires the Board to serve only a notice of demand on the allottee and such notice of demand must obviously indicate the tentative price and the final price as determined by the Board and the differential amount between the tentative price and the final price, which the allottee was required to pay along with interest. The clause did not stipulate that the individual account statements giving the details and calculations as enumerated in the orders of the learned Single Judge were also required to be served on the allottees by the Board. It is not disputed that notices of demand were served on the allottees not immediately after finalization of the compensation by the Court and payment or deposit of the enhanced amount by the Board in the year 1997, but after a period of more than an year some time in 1999. During the

period the allottees did not make payment of the differential amount between the tentative price and the final price, they retained the differential amount in their hands and used the same and the Board lost the opportunity to utilize this for its activities, the Board would be entitled to interest on the differential amount at a reasonable rate as has been held by this Court in *Chandigarh Housing Board, Chandigarh v. K.K. Kalsi & Ors.* (supra). In our considered opinion, interest at the rate of 8% per annum on such differential amount between the tentative price and the final price would be reasonable, which the allottees must pay to the Board.

10. We accordingly set aside the order passed by the learned Single Judge and the impugned judgment and orders of the Division Bench of the High Court and dispose of the Writ Petitions of the respondents with the direction that the respondents will be liable to pay interest to the appellant-Board on the differential amount between the tentative price and the final price at the rate of 8% per annum from the date of deposit or payment of the enhanced compensation by the Board in 1997 till payment of the differential amounts by the allottees. The appeals are allowed to the extent indicated above with no order as to costs.

R.P. Appeals allowed

BUDHADEV KARMASKAR
v.
STATE OF WEST BENGAL
(Criminal Appeal No. 135 of 2010)

SEPTEMBER 15, 2011

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Public Interest Litigation – Sex workers – Problems of – Panel had been set up vide earlier Court order dated 19.07.2011 with Mr. Pradip Ghosh, Senior Advocate, as its Chairman – Suggestions made by the Panel in its Third Interim report dated 12.09.2011 – Held: The suggestions are good – Sex workers face great difficulty in getting ration cards, voter's identity cards or in opening bank accounts, etc. – The authorities should see to it that sex workers do not face these difficulties as they are also citizens of India and have the same fundamental rights as others – Suggestions made by the Panel in its Third Interim Report be seriously taken into consideration by the Central Government, the State Governments and other authorities and hence all efforts be made to implement these suggestions expeditiously – Without a proper office and infrastructure the Panel will not be able to discharge its duties properly – Therefore, again the Central Government and the State Government of Delhi are requested to do the needful in this connection expeditiously – In pursuance of earlier order dated 24.08.2011 the Central Government has deposited a sum of Rs. 10 Lakh with the Secretary General of Supreme Court – Some of the States/ Union Territories have made payment as directed by Supreme Court – However, some of the States/Union Territories are yet to make payment – Those States or Union Territories which have not yet made payment are directed to make payment within three weeks (except those which have no sex workers) – Amount deposited with the Secretary

General of Supreme Court be transferred to the account of the Panel in the UCO Bank, Supreme Court Compound Branch – Case be listed on 15.11.2011 by which time another report shall be submitted by the Panel.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 135 of 2010.

From the Judgment and Order dated 25.07.2007 of the High Court of Calcutta in C.R.A. No. 487 of 2004.

Solicitor General of India. P.P. Malhotra, ASG, Pradip Ghosh, Jayant Bhushan, T.S. Doabia, Ashok Bhan, A. Mariarputham, S. Sundaravaradhan, Anand Grover, Dr. Manish Singhvi, Shail Kr. Dwivedi, Manjit Singh, S.V. Madhukar, A.A.G., Pijush K. Roy, Rebbeca George, Gautam Talukdar, Lajja Ram, Gaurav Sharma, Zaid Ali, Sushma Suri, Wasim Quadri, Anjani Aiyagari, Anil Katiyar, Sadhna Sandhu, S.S. Rawat, D.S. Mahra, Irshad Ahmad, Anitha Shenoy, Sandeep Singh, Alka Sinha, Anuvrat Sharma, D. Mahesh, Babu, Ramesh Allanki, Savita Dhanda, V. Pattabhi Ram, Riku Sarma, Navnit Kumar (for Corporate Law Group), Anil Shrivastav, Rituraj Biswas, Gopal Singh, Manish Kumar, Anjani Aiyagari, S. Wasim A. Quadiri, A.J. Faisal, Hemantika Wahi, Ashwani Kumar, Tarjit Singh, Kamal Mohan Gupta, Abhishek Sood, Rohit Kr. Singh, Sunil Fernandes, Suhaas R. Joshi, Astha Sharma, P.V. Dinesh, Rupesh Babu, Liz Mathew, Jogy Scaria, Sanjay V. Kharde (for Asha Gopalan Nair), Kh. Nobin Singh, Balaji Srinivasan, Radha Shyam Jena, Kuldip Singh, R.K. Pandey, H.S. Sandhu, K.K. Pandey, M. Mohit Mudgil, Aruna Mathur, Avneesh Arputham, Yusuf Khan Aruputham Aruna & Co. Aniruddha P. Mayee, Chanchal Kr. Ganguly, Abhijit Sengupta, T.C. Sharma, Anil K. Jha, Chhaya Kumari, S.K. Diwakar, Atul Jha, Dharmendra Kr. Sinha, Vibha Datta Makhija, V.G. Pragasam, S.J. Aristotle, Prabhu, Ramasubramanian, Savita Singh, Tripti Tandon, Amritananda Chakravorty, Mihir Samson, Prakash Kumar Singh, Ravi Kant, A. Subhashini, C.D. Singh, K.N.

Madhsoodhanan, M.T. George, Subramonium, Prasad, J.K. Bhatia, Manpreet Singh Doabia, Kiran Bhardwaj, Edward Belho, C.H. Kennedy, K. Inatoli Sema, Nimshim Voshum, Ranjan Mukherjee for the appearing parties.

The following order of the Court was delivered

O R D E R

Heard learned Amicus Curiae and learned counsel for the parties.

This case was initially a criminal appeal, but later was converted into a Public Interest Litigation suo motu by our order dated 14th February, 2011. By that order we dismissed the criminal appeal of the appellant and upheld his conviction. However, we were of the opinion that the problems of sex workers required urgent attention by this Court. Hence, we proceeded thereafter to continue with the case as a Public Interest Litigation and passed several orders thereon, including an order dated 19.07.2011 setting up a Panel with Mr. Pradip Ghosh, Senior Advocate, as its Chairman.

Today, the case has been listed again before us and a Third Interim Report dated 12.09.2011 of the Panel appointed by our order dated 19.07.2011 has been filed before us by the Chairman of the Panel Mr. Pradip Ghosh, learned senior counsel.

From a perusal of the report submitted by the Panel report it appears that the Panel has been doing very good and sincere work in connection with the task which we have entrusted to it. The Panel has taken great pains and has held regular meetings to discuss the problem of sex workers.

We have earlier pointed out in one of our orders that the problem of sex workers cannot be resolved in a very short time and will require long, patient effort. Our initial aim was to create

awareness in the public that sex workers are not bad girls, but they are in this profession due to poverty. No girl would ordinarily enjoy this kind of work, but she is compelled to do it for sheer survival. Most sex workers come from poor families, they are subjected to ill treatment by the owners of the brothels, they are often beaten, not given proper food or medical treatment, and made to do this degrading work. Probably much of the money paid by their customers is taken away by others.

We are happy to note that the Panel has set about its task in right earnest, and is considering ways and means to implement our ideas so that the sex workers can get some technical training through which they can earn their livelihood and thus lead a life of dignity which is guaranteed by Article 21 of the Constitution of India.

In the Third Interim Report the Panel has prayed for the following :-

(a) An appropriate order directing the State Governments and the Local Authorities to issue Ration Cards to the sex workers treating them as persons in special category and relaxing the rigours of the Rules/requirements regarding the verification of their address and without mentioning their profession in the Card;

(b) An appropriate order be made directing the Central Government and the Election Commission to issue Voter's Identity Cards to the sex workers in relaxation of the rules/ requirements in that behalf and without insisting on strict proof of their address/profession and without specifying their profession on the face of the Card;

(c) An order be made directing the Central Government and the State Governments to ensure that the admission of the children of sex workers in appropriate classes in the Government schools and Government sponsored schools and the schools run by the Municipal and District level

authorities is not hampered in any way, because of their impaired social status.

(d) An appropriate order be made directing the Central Government to suitably alter and widen the UJWALA Scheme within a period of six months as directed by order dated 24.08.2011 (vide paragraph 26 of the said order) made in this matter.

(e) An order or direction be made to the effect that the amount paid or to be paid by the Central Government, State Governments and the Union Territories to the Secretary General of this Hon'ble Court as directed by order dated 24.08.2011, be deposited in the Bank Account of the Panel in the UCO Bank Supreme Court Compound Branch, in the name of "Panel Appointed by Supreme Court in Criminal Appeal No. 135/2011" to be operated jointly by the Chairman of the Panel Mr. Pradip Ghosh and Mr. Jayant Bhusan, a member of the Panel, in terms of the order dated 24.08.2011.

(f) Such appropriate orders as may be deemed fit and proper be made, for compliance by the Central Government of the earlier order made by the Hon'ble Court on 24.08.2011 with regard to office accommodation, secretarial staff assistance and furnishing the office with necessary infrastructure and to furnish report of compliance in this Hon'ble Court within a period to be fixed by the Hon'ble Court."

We are of the opinion that the suggestions of the Panel are good suggestions. Sex workers face great difficulty in getting ration cards, voter's identity cards or in opening bank accounts, etc. We are of the opinion that the authorities should see to it that sex workers do not face these difficulties as they are also citizens of India and have the same fundamental rights as others.

We, therefore, recommend that the suggestions made by the Panel in its Third Interim Report (which has been quoted above) shall be seriously taken into consideration by the Central Government, the State Governments and other authorities and hence all efforts shall be made to implement these suggestions expeditiously. If there is any difficulty in implementing them, then on the next date we should be told about such difficulty.

Needless to say, without a proper office and infrastructure the Panel will not be able to discharge its duties properly. We, therefore, again request the Central Government and the State Government of Delhi to do the needful in this connection expeditiously.

We are informed that in pursuance of our order dated 24.08.2011 the Central Government has deposited a sum of Rs. 10 Lakh with the Secretary General of this Court. Some of the States/Union Territories have made payment as directed by us. However, some of the States/Union Territories are yet to make payment. We direct that those States or Union Territories which have not yet made payment shall make payment within three weeks from today (except those which have no sex workers).

We further direct that the amount deposited with the Secretary General of this Court shall be transferred to the account of the Panel in the UCO Bank, Supreme Court Compound Branch in Savings A/C No. 02070210000939.

List this case on 15.11.2011 by which time another report shall be submitted by the Panel. We hope and trust that the recommendations made by the Panel will be implemented by then by the concerned authorities.

B.B.B. Appeal Adjourned.

JAIPUR VIKAS PRADHIKARAN
v.
SRI ASHOK KUMAR CHOUDHARY & ORS.
(Civil Appeal No. 5099 of 2002)

SEPTEMBER 15, 2011.

[DR. MUKUNDAKAM SHARMA AND ANIL R. DAVE, JJ.]

ADVOCATES ACT, 1961:

s.35 – Advocate – Professional misconduct – Advocate engaged by Vikas Pradikaran as a retaining counsel – He appeared in a reference case on behalf of his sister in which Vikas Pradikaran was contesting the claims, and also accepted the engagement given to him by Vikas Pradikaran as it counsel to contest the claims in the said reference case, but did not defend it in the case, as a result of which the compensation was enhanced from Rs. 16,200/- to Rs. 1.25 crores by the reference court – The order was also not communicated to the client – Complaint by the Vikas Pradikaran against the Advocate – Held: The Advocate had conducted the case at one stage against the complainant despite being a paid retainer of it and also despite the fact that there was a conflict of interests – He was under an obligation to disclose his interest in the case and should have refused to accept the brief when offered to him – He betrayed the trust reposed on him by the complainant and paved the way for getting enhancement of compensation for his sister – The conduct of the Advocate in conducting the case clearly proves and establishes his misdemeanour and he is guilty of professional misconduct – It is directed that the Advocate be suspended from practice for a period of six months – Advocate – Professional ethics – Bar Council of India Rules, 1961.

The appellant, namely, Jaipur Vikas Pradhikaran which engaged respondent no.1 as its counsel on retainer basis, filed a complaint against him u/s.35 of the Advocates Act, 1961 as also against two other advocates, namely, respondent nos. 2 and 3, on the ground that respondent no.1 appeared for one of the claimants who was his sister and wife of respondent no. 3, in a reference case in which the complainant was contesting the claims; that respondent no. 1 should not have accepted the brief and his acceptance of the engagement without disclosing the material fact amounted to misconduct. It was the case of the complainant before the Disciplinary Committee of the State Bar Council that respondent no.2 was a chamber mate of respondent no.1 and respondent no. 3 was the brother-in-law of respondent no.1 and as such all the respondents were friends or closely related to each other and in connivance of respondent no.1, four relatives of respondent no.2 and the wife of respondent no.3 purchased the rights in the property in dispute which amounted to professional misconduct and respondent no.1 intentionally acted against the interest of the appellant in not defending it in the said reference case. Since the proceedings in the complaint could not be concluded by the Disciplinary Committee of the State Bar Council within the stipulated period of one year, the complaint was transferred to the Bar Council of India, which by its judgment dated 24.03.2002 dismissed the complaint. Aggrieved, the complainant filed the appeal.

Disposing of the appeal, the Court

HELD: 1.1 From the facts disclosed, it is established that an award was passed by the Collector in respect of the land in question on 4.3.1982 determining the value of the land at Rs.16,200/- for the entire land. At that stage the claimants were the three land owners. After the award was passed, the three land owners, transferred the right

to receive compensation to 'SS', who executed further assignment deed in favour of 4 relatives of respondent no. 2 and one Smt. 'A', the sister of respondent no. 1 and wife of respondent no.3, and they got themselves substituted as parties-claimants in the reference proceedings, namely, Reference Case No. 14/1982. After substitution, Smt. 'A' and 4 relatives of respondent No.2 were parties in the reference proceedings as claimants. Respondent no. 1 appeared in the said reference case on 19.1.1990 for his sister (wife of respondent no.3), namely Smt. 'A', and despite this, he accepted the engagement given to him by the appellant-complainant as its counsel to contest the claim of the said contesting claimants, one of which was his own sister. The records also disclose that in fact respondent no.1 was the retaining counsel of the appellant from the year 1989 and, therefore, he could not have entered appearance on behalf of the wife of respondent no. 3 on 19.1.1990. Respondent no. 1, therefore, not only appeared for the wife of respondent no. 3 in the same reference in which he also appeared for the appellant, who were contesting the claims of the claimants including his own sister. [para 18-19] [414-G-H; 415-A-F]

1.2 Further, on 7.12.1991, the written statement was required to be filed, but no such written statement was prepared nor was it filed and even respondent no. 1 did not appear in the said proceedings on that date, for which the defence of the appellant was struck off. Even the said fact was not brought to the notice of the appellant by respondent no.1. Even thereafter when the matter was listed for recording of evidence on 10.11.1993, respondent no. 1 informed the court that no evidence was being produced on behalf of the appellant. That statement appears to have been made without any positive instructions of the appellant in that regard and without even informing the appellant about the said fact.

Consequent upon the representation made by respondent no. 1, the evidence of the appellant was closed on 10.11.1993 and the case was fixed for arguments. On 2.12.1993 the order was passed by the reference court enhancing the compensation from Rs.16,200/- to Rs.1.25 crores. The said order was also not communicated by respondent no. 1 to the appellant. However, the order was later set aside. The defence taken was that there was some confusion with regard to the appearance slip on 19.1.1990, for the appearance slip which was filed in Reference Case No. 14/1482 on 19.1.1990 was meant for a different case. But the said appearance slip appears to have been manipulated later on by making over-writing on the same. [para 20] [416-A-D; 415-G]

1.3 In terms of the engagement of respondent no.1 and he being a retaining counsel, it is his obligation to provide all information regarding the development of the case and also to provide copies of the orders passed along with his opinion. It was necessary on his part and he was duty bound to take steps for recalling the order of striking off the defence. At least he should have sent such an advice. He had conducted the case at one stage against the appellant despite being a paid retainer of the appellant and also despite the fact that there was a conflict of interests. In fact, respondent no. 1 was under an obligation to disclose his interest in the case and should have refused to accept the brief when offered to him. Nothing of the nature was done and rather he had gone a step further by betraying the trust reposed on him by the complainant-appellant. He paved the way for getting enhancement of compensation for his sister. It is, therefore, established that respondent no. 1 stage managed the entire proceeding and set the course so that the higher claim of the newly substituted claimants are accepted. [para 21] [416-F-H; 417-A]

V.C. Rangadurai Vs. D. Gopalan and others **1979 (1) SCR 1054 = (1979) 1 SCC 308 – relied on.**

1.4 The activities of respondent no. 1 were unbecoming of a professional lawyer and also a clear case of misdemeanor and misconduct. He did not adhere to the professional ethics by which he was bound and failed to protect the interest of his client. The facts clearly prove and establish his misdemeanor and misconduct. This Court finds respondent no.1 guilty of professional misconduct. The order passed by the Disciplinary Committee of the Bar Council of India as regards respondent no. 1 is modified and it is ordered and directed that he shall be suspended as an Advocate from practice for a period of six months. [para 19,23,25-27 and 29] [415-F; 418-D; 419-C]

Pawan Kumar Sharma Vs. Gurdial Singh **1998 (2) Suppl. SCR 28 = (1998) 7 SCC 24 – relied on.**

2. So far the allegations against respondent no. 2 are concerned, he has appeared in Reference Case No. 14/ 1982 as a lawyer and he was not a claimant himself. It is true that he is sitting in the same chamber as that of respondent no.1, but from this mere fact, it cannot be held that he is also guilty of the same or similar misconduct as that of respondent no.1. Although his relatives have purchased the right to claim compensation and have substituted themselves as claimants, but he is only representing them in the capacity of an Advocate and except for that no other fact has been proved by the appellant which would lead to and prove his guilt or could be said to be misconduct. Respondent no. 3 was representing his wife only in the reference case and was the chamber-mate of respondent no.1. Although his wife was a claimant herself, and there could be an unholy alliance between his wife and respondent no.1, but there is not enough evidence on record to prove and establish

that respondent no. 3 has committed any misconduct. Therefore, the order of the Disciplinary Committee holding that respondent no. 2 and 3 are not guilty of the charges and allegations of misconduct made against them is upheld. [para 28-29] [418-G-H; 419-A-C]

Case Law Reference:

1979 (1) SCR 1054	**relied on**	**para 22**
1998 (2) Suppl. SCR 28	**relied on**	**para 25**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5099 of 2002.

From the Judgment & Order dated 24.03.2002 of the Disciplinary Committee of the Bar Council of India in B.C.I. Transfer Case No. 74 of 1995.

Mukul Kumar, Milind Kumar, D.S. Chauhan for the Appellant.

B.K. Satija, Subodh K. Pathak, D.K. Sinha, M.L. Lahoty, Paban K. Sharma, Gargi, Bhatta Bharlab for the Respondents.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. The present appeal, under section 38 of the Advocates Act, 1961, (hereinafter referred to as "the Act") is filed against the final judgment dated 24.03.2002 of the Disciplinary Committee of the Bar Council of India [hereinafter referred to as Disciplinary Committee] in BCI Transfer Case No. 74 of 1995, whereby the Committee dismissed the complaint of the appellant herein holding that no case of any misconduct is made out.

2. The facts leading to the filing of the present case are that the present complaint was filed under section 35 of the Act by Jaipur Development Authority against the present respondents before the State Bar Council of Rajasthan in the

year 1994 which was entrusted to the Disciplinary Committee of the State Bar Council of Rajasthan. Since the proceedings could not be completed in the stipulated period of one year, the complaint was transferred to the Bar Council of India in the year 1995, registered as Transfer Case No. 74 of 1995.

3. The allegations made in the complaint was that appellant engaged the Respondent No.1 herein on retainer basis in order to defend its cases pending in the different Courts at Jaipur, Rajasthan. In the year 1990, Respondent No.1 was appointed to defend Jaipur Development Authority in some Reference cases under section 18 of the Rajasthan Land Acquisition Act. Also, on 05.10.1990, Respondent No.1 was engaged to defend Jaipur Development Authority in the Land Acquisition Reference No. 14 of 1982, Abdul Samad & Ors Vs. Jaipur Development Authority in Civil Court at Jaipur City. Even his retainership fee was enhanced by additional amount of Rs. 600/- per month.

4. The Land Acquisition Reference No. 14 of 1982 was fixed for filing of the Written Statement in the Court on 07.12.1991. The Respondent No. 1 neither appeared in the Court on 07.12.1991, nor filed Written Statement on behalf of the appellant. Consequently, the Court closed the opportunity for filing the Written Statement on behalf of the appellant vide order dated 07.12.1991. The Respondent No.1 did not inform the appellant about the said order dated 07.12.1991 of the learned Court. The Claimant in the said Land Acquisition Reference No. 14 of 1982 examined the witnesses in the Court, but the respondent neither cross-examined those witnesses nor did he inform the appellant about this. Also, in the said Reference, the date was fixed as 10.11.1993 for producing of the entire evidence but no intimation regarding the aforesaid date was given by the Respondent to the appellant, as a result of which evidence of the Appellant was ordered to be closed by the learned Court. The Respondent also did not inform the appellant about the aforesaid order dated 10.11.1993.

5. Ultimately, the Land Acquisition Reference No. 14 of 1982 was decided on 02.12.1993 against the appellant and in that Judgment, an award of Rs. 1.25 crore was announced by the Court. Even the final order passed by the Court was not conveyed to the appellant. The appellant came to know about the passing of the aforesaid order for the first time on 24.03.1994 when Mr. Manak Chand Surana – Respondent No. 2 filed Execution Petition No. 20 of 1993 in the Executing Court and another Execution Petition was filed by Mrs. Asha Gupta, wife of Respondent No. 3.

6. The appellant sought indulgence of the State Bar Council of Rajasthan for taking appropriate action against the respondents as envisaged under section 35 of the Act on the aforesaid grounds. It was also contended that Respondent No. 2 work in the same chamber in which the Respondent No.1 has been sitting and that Respondent No. 3 is the brother-in-law of Respondent No.1. Hence, in this manner, all the Respondents are closely related to each other or friends and in connivance of Respondent No.1, the Respondent No. 2 and wife of Respondent No. 3 purchased the rights in the said property in order to earn profit out of the property in dispute which amounted to professional misconduct. The Respondent No.1 intentionally acted against the interest of the appellant in defending the said Reference.

7. The complaint was entrusted to the Disciplinary Committee of the State Bar Council of Rajasthan, but since the proceedings in the complaint could not be concluded by the Disciplinary Committee of the State Bar Council of Rajasthan within the stipulated period of one year, the same was transferred to the Bar Council of India in the year 1995.

8. The Bar Council of India vide final Judgment dated 24.03.2002, dismissed the complaint. It is against this judgment of the Bar Council of India dated 24.03.2002, that the Jaipur Vikas Pradhikaran has preferred an appeal under section 38

of the Act, upon which we heard the learned counsel appearing for the parties.

9. We heard the learned counsel appearing for the parties who had taken us through the entire records. Counsel appearing for the appellant submitted before us that the order passed by the Disciplinary Committee of the Bar Council of India was illegal and, therefore, is liable to be set aside. It was submitted by the counsel that the findings of the Disciplinary Committee that the allegation that the respondent no.1 did not conduct the case of the complainant properly was not proved on file is incorrect and against the records. He also assailed the findings of the Disciplinary Committee to the effect that the respondent no. 1 was not at all negligent in conducting the case of the complainant and submitted that the said findings are contrary to the records on which he had relied upon. Various instances of alleged misconducts, misdemeanors and misdeeds of the respondent no.1, respondent no. 2 and respondent no. 3 were brought out by analyzing and referring to the contents of the complaint and also the evidence led by the parties.

10. The counsel appearing for the appellant also analyzed the sequence of events and placed before us a list of dates to support the contention that the respondent no. 1 on and after accepting the engagement from the appellant acted in violation of the professional ethics and also abused the trust reposed on him. He has in that context placed the following facts for our consideration.

11. He submitted that the complaint which was filed by the appellant stated that the respondent no. 1 was retained by the appellant institution in the year 1989 to conduct all such cases pending before the Civil Court filed against the institution. That the respondent no. 1 was also authorised in 1990 to appear and plead in all the reference cases filed against the appellant herein and also in all pending references and due to the aforesaid engagement, the appellant granted a special enhancement of a sum of Rs.600/- per month to the respondent

no.1 in his monthly retainership. It is also disclosed from the records that the reference case no. 14/1982 which is the basis and the subject matter of the complaint filed, was a land acquisition matter under Section 18 of the Land Acquisition Act pending in the Civil Court, Jaipur City, Jaipur wherein the respondent no. 1 was authorised to conduct the case on behalf of the appellant as a counsel. The authorisation was on 5.10.1990 and he started conducting the said case from the said date. It is, however, also disclosed from the records placed before us that the aforesaid reference case no. 14/1982, the Collector passed an award in favour of the land owners, namely, Sh. Abdul Samad, Abdul Latif and Abdul Hamid determining the land compensation of Rs.16,200/- only for the entire land.

12. One Mrs. Shanta Sharma, thereafter purchased the right to seek compensation in the said land on 20.9.1980 and 5.2.1982. On 30.1.1990, Smt. Shanta Sharma executed an assignment deed in favour of relatives of respondent no. 2, namely, Vimla Surana, Rajendra Surana, Jitendra Surana and Manak Surana and Smt. Asha Gupta, wife of respondent no.3, who also happens to be the sister of respondent no.1. It is shown from the records that the respondent no.2 and the respondent no.3 have been appearing for the claimants claiming higher compensation before the Reference Court after the relatives of the respondent no. 2 and the wife of respondent no.3 got themselves substituted in place of original owners. They were contesting parties in the Reference Court who were represented by respondent no.2 and the respondent no.3.

13. He also pointed out that on 19.1.1990, respondent no. 1 appeared for the wife of the respondent no. 3 who was his sister, she having been substituted as a claimant in the proceeding. Despite the said fact, it appears that on 5.10.1990, the appellant engaged respondent no.1 as its counsel, which engagement was accepted by the respondent no. 1 without disclosing the fact that he had already appeared in the case on behalf of respondent no.3. Be that as it may, date was fixed

in the said proceeding on 7.12.1991 when the written statement was to be filed. It appears that the respondent no.1 who was representing the appellant herein, did not appear in the proceeding on that date nor had he prepared the written statement. Since the written statement was not filed, and the respondent no. 1 also did not appear on the date fixed, the defence of the appellant was struck off, but the said fact was not brought to the notice of the appellant by the respondent no.1. Thereafter in the said reference proceedings, a date was fixed for leading evidence. On the said date i.e. 10.11.1993, respondent no. 1 informed the court that no evidence is to be produced on behalf of the appellant. In view of the aforesaid statement made by the respondent no.1, an order was passed closing the evidence and fixing the matter for final hearing.

14. The reference was argued thereafter and it is the contention of the appellant that the respondent no. 1 did not argue the said reference properly. Be that as it may, on 2.12.1993, an order came to be passed enhancing the compensation for the acquired land from Rs.16,200/- to Rs.1.25 crores. The allegation of the appellant is that even the said order was not communicated and that the appellant came to know about the aforesaid position and also of the order increasing the value of compensation only from the execution case filed. Further allegation was that when the defence was struck out, the respondent no. 1 did not appear nor did he take any steps for getting the said order recalled. He also did not even communicate the order and even thereafter, there was no communication when the final order was passed despite the fact that he was required to inform the development of the case at each step. So far the respondent no. 2 and 3 are concerned, the allegation was that the said respondent no. 2 and 3 are also Advocates who share the same chamber with respondent no. 1. They also filed common and joint application for allotment of chamber which indicate that they are working together and, therefore, they are also parties to the aforesaid conspiracy of

obtaining practically an ex-parte order against the appellant so as to derive illegal benefit.

15. Be it stated herein that later on the application filed by the appellant, the aforesaid judgment and order of the Reference Court has since been set aside.

16. In view of the aforesaid alleged lapses and willful default on the part of the respondent no.1, the aforesaid complaint was filed by the appellant under Section 35 of the Advocates Act alleging misconduct against the respondent no.1, as also the respondent no. 2 and 3 on the ground that the respondent no.1 appeared for claimant prior to his engagement as counsel for the appellant. It was also alleged that since an assignment deed was made out in favour of the sister of the respondent no.1 on 30.1.1990, the respondent no. 1 should not have accepted the brief and the very fact that he accepted the engagement without disclosing the material facts, proves and establishes the allegation of misconduct.

17. The various contentions of the counsel appearing for the appellant were, however, refuted by the counsel appearing for all the respondents, namely, respondents no. 1, 2 and 3. They have relied upon the replies filed by the said respondents to the complaint filed and also on the findings recorded by the Disciplinary Committee while exonerating all the respondents.

18. In the light of the aforesaid submissions, let us examine the facts of the present case. From the facts disclosed hereinbefore, it is established that an award was passed by the Collector in respect of the land in question on 4.3.1982 determining the value of the land at Rs.16,200/- for the entire land. At that stage the claimants were the three land owners. After the aforesaid award was passed, the three land owners, namely, Abdul Samad and two others transferred the right to receive compensation to Smt. Shanta Sharma on 20.9.1980 and 5.2.1982. Smt. Shanta Sharma thereafter executed the assignment deed in favour of relatives of respondent no. 2 ,

namely, Vimla Surana, Rajendra Surana, Jitendera Surana and Manak Surana in whose favour also the aforesaid assignment deed was made out. The records available also disclose that the aforesaid relatives of respondent no.2 and Smt. Asha Gupta, wife of respondent no.3 also got themselves substituted in the reference proceedings, which is Reference Case No. 14/1982. These persons got themselves substituted only on the basis of such assignment without which they had no right to get themselves substituted in place of original owners. After substitution, Smt. Asha Gupta, the wife of respondent no.3 and sister of respondent no.1 and the aforesaid relatives of respondent no.2 were parties in the reference proceedings as claimants. Respondent no. 1 appeared in the said reference case on 19.1.1990 for his sister (wife of respondent no.3).

19. Despite the aforesaid fact, the respondent no.1 accepted the engagement given to him by the appellant as its counsel to contest the claim of the aforesaid contesting claimants, one of which was his own sister. We also find from the records that in fact the respondent no.1 was the retaining counsel of the appellant from the year 1989 and, therefore, he could not have entered appearance on behalf of the wife of the respondent no. 3 on 19.1.1990. The respondent no. 1 therefore not only appeared for the wife of the respondent no. 3 in the same reference in which he also appeared for the appellant, who were contesting the claims of the claimant including his own sister. These activities of the respondent no. 1 were unbecoming of a professional lawyer and also clear cases of misconduct.

20. The defence taken was that there was some confusion with regard to the appearance slip on 19.1.1990 for the appearance slip which was filed in the aforesaid reference case on 19.1.1990 was meant for a different case. But the said appearance slip appears to have been manipulated later on by making over-writing on the same. The misdemeanor of the respondent no. 1 did not end only with the aforesaid position.

On 7.12.1991, the written statement was required to be filed, but no such written statement was prepared nor was it filed and even respondent no. 1 did not appear in the said proceedings on that date, for which the defence of the appellant was struck off. Even the said fact was not brought to the notice of the appellant by the respondent no.1. Even thereafter when the matter was listed for recording of evidence on 10.11.1993, the respondent no. 1 informed the court that no evidence was being produced on behalf of the appellant. That statement appears to have been made without any positive instructions of the appellant in that regard and without even informing the appellant about the said fact. Consequent upon the aforesaid representation made by the respondent no. 1, the evidence of the appellant was closed on 10.11.1993 and the case was fixed for arguments. On 2.12.1993 the order was passed by the Reference Court enhancing the compensation from Rs.16,200/- to Rs.1.25 crores. The said order was also not communicated by the respondent no. 1 to the appellant.

21. Counsel appearing for the respondent no. 1 however, during his course of arguments, submitted that he was not required to apply for any certified copy and send the same to the appellant in terms of his engagement. But the said fact is belied from the fact that in terms of his engagement and he being a retaining counsel, it is his obligation to provide all information regarding the development of the case and also to provide copies of the orders passed along with his opinion. It was necessary on his part and he was duty bound to take steps for recalling the order of striking off the defence. At least he should have sent such an advice. He had conducted the case at one stage against the appellant despite being a paid retainer of the appellant and also despite the fact that there was a conflict of interest. In fact, the respondent no. 1 was under an obligation to disclose his interest in the case and should have refused to accept the brief when offered to him. Nothing of the nature was done and rather he paved the way for getting enhancement of compensation for his sister. It is therefore

established that the respondent no. 1 stage managed the entire proceeding and set the course so that the higher claim of the newly substituted claimants are accepted.

22. In the case of *V.C. Rangadurai Vs. D. Gopalan and others* reported in (1979) 1 SCC 308, a three Judges Bench of this Court has stated and outlined the duties and responsibilities of a counsel. In paragraph 30 of the said judgment this Court has held that counsel's paramount duty is to the client and accordingly where he forms an opinion that a conflict of interest exists, his duty is to advise the client that he should engage some other lawyer. It was further held that it is unprofessional to represent conflicting interests, except by express consent given by all concerned after a full disclosure of the facts. The Court further went on to hold that the relation between a lawyer and his client is highly fiduciary in its nature and of a very delicate, exacting, and confidential character requiring a high degree of fidelity and good faith and that it is purely a personal relationship, involving the highest personal trust and confidence which cannot be delegated without consent. This Court also held that when a lawyer is entrusted with a brief, he is expected to follow the norms of professional ethics and try to protect the interests of his clients, in relation to whom he occupies a position of trust.

23. In the present case, it appears to us that the respondent no. 1 had not only not disclosed the conflicting interests that he had in the matter but had gone a step further by betraying the trust reposed on him by the complainant. The facts which are analyzed clearly prove the guilt of the respondent no. 1. He acted in a manner unbecoming of a lawyer, who was bound by ethical conduct and failed to protect the interest of his client.

24. Counsel appearing for the respondent no.1, however, submitted that a case of this nature must be proved beyond all reasonable doubts and not on preponderance of probabilities. There is no dispute of the aforesaid position as it is also held in the aforesaid case by this Court that findings in disciplinary

proceedings must be sustained by high degree of proof than that is required in civil suits, yet falling short of the proof required to sustain a conviction in a criminal prosecution.

25. Counsel appearing for the respondent no.1 also drew our attention to a two judges decision of this Court in *Pawan Kumar Sharma Vs. Gurdial Singh* reported in (1998) 7 SCC 24 wherein this Court has held that charge of professional misconduct is in the nature of quasi criminal charge and due to the same, it is required to be established not by preponderance of probabilities, but beyond a reasonable doubt. Even keeping in view the aforesaid standard of proof in mind, we find that by the sequence of events as mentioned in the case and proved through evidence led that the respondent no. 1 did not adhere to the professional ethics by which he was bound as stated hereinbefore.

26. The factual narration which has been given and the conduct of the respondent no.1 in conducting the case clearly proves and establishes his misdemeanor and misconduct and, therefore, we find the respondent no.1 guilty of professional misconduct.

27. We, therefore, order and direct that respondent no.1 be suspended as an Advocate from practice for a period of six months from today.

28. So far as the defence raised by the respondent nos. 2 and 3 is concerned, we have considered the same in the light of the records also. So far the allegations against the respondent no. 2 are concerned, he has appeared in the aforesaid reference case as a lawyer and he was not a claimant himself. It is true that he is sitting in the same chamber as that of respondent no.1, but from this mere fact, it cannot be held that he is also guilty of the same or similar misconduct as that of respondent no.1. Although his relatives have purchased the right to claim compensation and have substituted themselves as claimants, but he is only representing them in

the capacity of an Advocate and except for that no other fact has been proved by the appellant which would lead to and prove his guilt or could be said to be a misconduct. Similarly, so far as respondent no. 3 is concerned, he was representing his wife only in the reference case and was the chamber-mate of the respondent no.1. Although his wife was a claimant herself, there could be an unholy alliance between his wife and the respondent no.1, but there is not enough evidence on record to prove and establish that the respondent no. 3 has committed any misconduct.

29. Therefore, we uphold the order of the Disciplinary Committee holding that the respondent no. 2 and 3 are not guilty of the charges and allegations of misconduct made against them. So far as respondent no. 1 is concerned, we modify the order passed by the Disciplinary Committee of the Bar Council of India and direct that he shall be suspended as an Advocate from practice for a period of six months from today.

30. The appeal is disposed of in terms of the aforesaid order. There will be no order as to costs.

R.P. Appeal disposed of.

D. SAMPATH

v.

UNITED INDIA INSURANCE CO. LTD. & ANR.

(Civil Appeal No. 7824 of 2011)

SEPTEMBER 13, 2011

[G.S. SINGHVI AND H.L. DATTU, JJ.]

Motor Vehicles Act, 1988 – Compensation – Assessment of – Motor vehicle accident – According to the doctor, the pillion rider suffered 75% disability – Tribunal quantified the compensation payable by the Insurance Company at a sum of Rs. 3,50,000/- – High Court enhanced the compensation to Rs. 4,90,000/- , while arriving at the loss of earning capacity in a sum of Rs. 8,16,000/- and reducing the disability to 50% – On appeal, held: High Court erred in reducing the disability to 50% while calculating the loss of income – While making disability assessment, there is an element of guess work, but that guess work must have reasonable nexus to the available material/evidence and the quantification made – The Court has the discretion to accept either totally or partially or reject the Certificate so produced and marked in the trial but, that, can be done only by assigning cogent and acceptable reasons – Thus, disability suffered by the claimant is taken at 75% and keeping in view the loss of earning capacity of the claimant assessed by the High Court, the loss of earning capacity of the claimant is arrived at Rs. 6,12,000/- – Insurance Company directed to deposit the sum of Rs.6,12,000/- with 6% accrued interest.

A pillion rider of a motor cycle (insured with respondent-Insurance Company) along with the driver met with an accident due to oil spill on the road. The pillion rider and the driver sustained injuries and were treated in the hospital. The doctor assessed that the pillion rider suffered 75% disability. The pillion rider filed

a claim petition. The Tribunal quantified the compensation payable by the Insurance Company at a sum of Rs. 3,50,000/-. The High Court enhanced the compensation to Rs. 4,90,000/-. It arrived at the loss of earning capacity in a sum of Rs. 8,16,000/- while reduced the disability to 50%. Therefore, the appellant filed the instant appeal.

Partly allowing the appeal, the Court

HELD: 1 While making disability assessment, there is an element of guess work, but that guess work again must have reasonable nexus to the available material/ evidence and the quantification made. In the instant case, the claimant had not only examined himself to sustain the claim made in the petition but also PW-3-doctor, who stated that the claimant suffered 75% disability, by referring to the Disability Certificate issued by a competent doctor who had treated the claimant. Though the doctor was cross-examined at length by the advocate for the Insurance Company, but nothing adverse to the interest of the claimant is elicited. Therefore, the Tribunal rightly accepted the evidence of the doctor-PW-3. However, the High Court took 50% disability into account while calculating the loss of income and committed the said mistake. It is not said that under all circumstances, the court has to blindly accept the Disability Certificate produced by the claimant. The Court has the discretion to accept either totally or partially or reject the Certificate so produced and marked in the trial but that can be done only by assigning cogent and acceptable reasons. In this view of the matter, the disability suffered by the claimant is taken at 75% and the loss of income of the claimant is calculated keeping in view the loss of earning capacity of the claimant assessed by the High Court. The loss of earning capacity of the claimant is arrived at Rs. 6,12,000/ -. The Insurance Company is directed to deposit a sum

of Rs.6,12,000/- after deducting the amount already paid or deposited with accrued interest of 6% from the date of filing of the claim petition till its payment before the Tribunal within two months from today. [Paras 5 and 6] [423-G-H; 424-A-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7824 of 2011.

From the Judgment & Order dated 12.04.2010 of the High Court of Judicature at Madras in Civil Miscellaneous Appeal No. 2098 of 2002.

Vivek Sharma, P.B. Suresh. Temple Law Firm for the Appellant.

K.L. Nandwani for the Respondent.

The Judgment of the Court was delivered by

H.L. DATTU, J. 1. Leave granted.

2. This appeal is directed against the Judgment and Order passed by the High Court of Judicature at Madras in Civil Miscellaneous Appeal No. 2099 of 2002 dated 12.04.2010. By the impugned judgment, the Court has modified the compensation awarded by the Motor Accident Claims Tribunal, Chennai (for short, "the Tribunal") in MCOP No.1971 of 1998 dated 12.02.2002.

3. The facts are not in dispute. Claimant was a pillion rider of a motor cycle which was driven by one A. Sridhar. It met with an accident due to oil spill on the road on 14.01.1998 at about 7.10 P.M. The claimant and the driver of the vehicle sustained injuries. Both of them were treated in the hospital for the injuries sustained by them. The vehicle was insured with United India Insurance Company Ltd. – respondent No.1 by the owner of the vehicle – respondent No.2. The claimant filed claim petition before the Tribunal inter-alia requesting to award

compensation at a sum of `12,00,000/- (Rupees Twelve lakhs only) under various heads. Claimant had examined himself as PW-2 and other witnesses, including Dr. J.R.R. Thiagarajan – PW-3, who had assessed the disability sustained by the claimant at 75%. The Tribunal, after considering the various factors, including the medical evidence, had quantified the compensation payable by the Insurance Company at a sum of Rs.3,50,000/-. Being aggrieved by the compensation so awarded by the Tribunal, the claimant had preferred Civil Miscellaneous Appeal No.2099 of 2002, before the High Court of judicature at Madras. The Court, after re-considering the claim of the claimant and re-appreciating the evidence on record, has enhanced the compensation to Rs.4,90,000/- from Rs.3,50,000/- awarded by the Tribunal. It is this judgment and order which is called in question in this appeal.

4. We have heard learned counsel for the parties to the lis and perused the records.

5. We do not intend to disturb the judgment and order passed by the High Court except to a limited extent. The High Court, while assessing the compensation payable to the claimant, has arrived at the loss of earning capacity in a sum of Rs. 8,16,000/- and, thereafter, though the Doctor has assessed 75% disability, has taken into account 50% disability while calculating the loss of income without any rhyme or reason. In our view, this is a mistake committed by the High Court. It is no doubt true that, while making assessment, there is an element of guess work, but that guess work again must have reasonable nexus to the available material/evidence and the quantification made. In the instant case, the claimant had not only examined himself to sustain the claim made in the petition but also Dr. J.R.R. Thiagarajan, PW-3, who has stated that the claimant has suffered 75% disability, by referring to the Disability Certificate issued by a competent Doctor who had treated the claimant. Though the Doctor is cross-examined at length by learned Advocate for the Insurance Company, nothing

adverse to the interest of the claimant is elicited. Therefore, the Tribunal has rightly accepted the evidence of the Doctor-PW-3. However, the High Court has taken 50% disability into account while calculating the loss of income. This, in our view, is the mistake committed by the High Court. We hastened to add that we are not saying that under all circumstances, the Court has to blindly accept the Disability Certificate produced by the claimant. The Court has the discretion to accept either totally or partially or reject the Certificate so produced and marked in the trial but, that, can be done only by assigning cogent and acceptable reasons. In this view of the matter, we take the disability suffered by the claimant at 75% and calculate the loss of income of the claimant keeping in view the loss of earning capacity of the claimant assessed by the High Court. Accordingly, we arrive at the loss of earning capacity of the claimant at Rs. 6,12,000/-.

6. In the result, the appeal is partly allowed. We direct the Insurance Company to deposit a sum of Rs. 6,12,000/- after deducting the amount already paid or deposited with accrued interest of 6% from the date of filing of the claim petition till its payment before the Tribunal within two months from today. On such deposit, the Tribunal is directed to release the amount to the claimant. No order as to costs.

N.J. Appeal partly allowed.

ABDUL GHAFOOR & ANR.
v.
STATE OF BIHAR
(Criminal Appeal No. 1812 of 2011)

SEPTEMBER 16, 2011

[AFTAB ALAM AND RANJANA PRAKASH DESAI, JJ.]

Limitation – Condonation of delay – Conviction and sentence for commission of offence u/ss. 323, 447 and 452 IPC – Revision Petition – Appellant seeking condonation of delay of more than fifteen months – Revision petition dismissed by Patna High Court without going into the merits of the case as barred by limitation – On appeal held: High Court dismissed the appellant's revision quite mechanically applying the bar of limitation and without giving any allowance to the circumstances of the appellants – Under the Patna High Court Rules, a revision against conviction can be entertained only after the revision-petitioner surrenders before the court below – Thus, when revision filed by the appellants was taken up by the High Court they were already in jail – In case, the revision was dismissed after consideration on merits, the appellants would have continued to remain in jail to serve out their sentences – Had the revision been filed in time, they would have surrendered 15 months earlier and thus, would have completed their sentence 15 months earlier – As such due to the delayed filing of the revision the appellant would complete their sentence, in case of dismissal of the revision 15 months later – Thus, the High Court should have condoned the delay in filing the revision by the appellants and examined their case on merits – Revision petition is restored to its original file – Patna High Court Rules.

Administration of criminal justice – Cases of conviction and imposition of sentence of imprisonment – Application of law of limitation – Held: In such cases the court must show

far greater indulgence and flexibility in applying the law of limitation than in any other kind of case – A sentence of imprisonment relates to a person's right to personal liberty and, therefore, the court should be very reluctant to shut out a consideration of the case on merits on grounds of limitation or any other similar technicality.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1812 of 2011.

From the Judgment and Order dated 27.09.2010 of the High Court of Patna in CRLR No. 1383 of 2010.

Gaurav Agrawal for the appellants.

Ardhendumauli Kumar Prasad (for Gopal Singh) for the Respondent.

The following order of the Court was delivered

O R D E R

1. Heard Mr. Gaurav Aggarwal, learned counsel appearing for the petitioners, and Mr. Ardhendumauli Kumar Prasad, learned counsel appearing for the State of Bihar.

2. Leave granted.

3. The appellants were convicted by the trial Court (Judicial Magistrate –Ist Class, Kishanganj), under Sections 323, 447 and 452 of the Penal Code and sentenced to two years rigorous imprisonment under Section 452 of the Penal Code; the substantive sentences for the other two offences were of lesser periods and all the sentences were directed to run concurrently. The appeal preferred by the appellants against the judgment and order passed by the trial court was dismissed by the Sessions Judge. They approached the High Court in Criminal Revision No.1383/2010 but the revision was filed after

a delay of more than 15 months. The appellants sought condonation of delay in filing the revision taking plea that they were working in Delhi to earn their livelihood and it took them some time to go back to their home and take steps for filing the revision. The High Court did not accept the reason assigned by the appellants as a valid or sufficient reason for condoning the delay and, consequently, dismissed the revision, without going into the merits of the case, as barred by limitation.

4. We are unable to agree with the view taken by the High Court.

5. The law of limitation is indeed an important law on the statute book. It is in furtherance of the sound public policy to put a quietus to disputes or grievances of which resolution and redressal are not sought within the prescribed time. The law of limitation is intended to allow things to finally settle down after a reasonable time and not to let everyone live in a state of uncertainty. It does not permit any one to raise claims that are very old and stale and does not allow anyone to approach the higher tiers of the judicial system for correction of the lower court's orders or for redressal of grievances at ones own sweet will. The law of limitation indeed must get due respect and observance by all courts. We must, however, add that in cases of conviction and imposition of sentence of imprisonment, the court must show far greater indulgence and flexibility in applying the law of limitation than in any other kind of case. A sentence of imprisonment relates to a person's right to personal liberty which is one of the most important rights available to an individual and, therefore, the court should be very reluctant to shut out a consideration of the case on merits on grounds of limitation or any other similar technicality.

6. Coming to the case in hand, it is a well known fact that a large number of people come from Bihar to Delhi leaving their hearths and homes to earn a livelihood. A vast number of them work in unorganized sectors. Once caught in the vortex of earning the daily bread, all other important things in life such

as marriage in the family, medical treatment and even defending oneself in a criminal proceeding are relegated to the background. We feel that the High Court dismissed the appellant's revision quite mechanically applying the bar of limitation and without giving any allowance to the circumstances of the appellants.

7. Looking at the matter from another point of view, under the Patna High Court Rules, a revision against conviction can be entertained only after the revision-petitioner surrenders before the court below. Thankfully, this rule, unlike some other provisions of the High Court Rules, is still followed very strictly. Thus, as the revision filed by the appellants was taken up by the High Court they were already in jail. In case, the revision was dismissed after consideration on merits, the appellants would have continued to remain in jail to serve out their sentences. Had the revision been filed in time, they would have surrendered 15 months earlier and thus would have completed their sentence 15 months earlier. All that happened due to the delayed filing of the revision is that they would complete their sentence, in case of dismissal of the revision 15 months later.

8. In light of what is said above, we are clearly of the view that it was a fit case in which the High Court should have condoned the delay in filing the revision by the appellants and examined their case on merits.

9. We, accordingly, set aside the order of the High Court and restore the Criminal Revision Petition No.1383 of 2010 to its original file. The High Court is requested to take it up for hearing and decide it expeditiously. In the meanwhile, the appellants shall continue to remain on bail, as granted by this Court.

10. The appeal is disposed of with the above observations and directions.

N.J. Appeal disposed of.

SHIVLAL & ANR.
v.
STATE OF CHHATTISGARH
(Criminal Appeal No. 610 of 2007)

SEPTEMBER 19, 2011

[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]

PENAL CODE, 1860:

ss. 148, 302 and 302/149 – Fifteen persons accused of murdering a co-villager – Held-Trial court recorded a finding that the wife of the deceased, claiming herself to be the eye witness, roped in certain persons in the crime falsely and there were improvements in her statement in court – Disbelieving her statement, trial court acquitted six accused and High Court acquitted four more – The witness on whose information 'Dehati Nalish' (not a formal FIR) was recorded, turned hostile – Courts below have not given much credence to the statement of the witness on the basis of whose statement FIR was recorded and who claimed himself to be the eye-witness – There were discrepancies in the statements of IO and the Head Constable accompanying him – Further, proceedings at the investigation stage have been conducted without observing the provisions of Cr.P.C. – Besides, copy of FIR was not sent to the Illaqa Magistrate, and there were lapses/ suspicion in the investigation as regards recording of FIR, recovery of weapons and inconsistencies in the statements of the witnesses – The accused in their statements u/s s313 Cr.P.C. have stated that they were falsely implicated because of the village factional rivalry – In the circumstances, the accused are to acquitted on benefit of doubt – Code of Criminal Procedure, 1973 – ss. 154, 157(1) and 313 – Madhya Pradesh Police Regulations – Regulation 710 – Investigation.

INVESTIGATION:

FIR – Recording of – On the basis of information, a 'Dehati Nalish' (and not a formal FIR) registered – FIR lodged later, but it did not contain signature of the author – Contradictions in statements of IO and the Head Constable accompanying him, about recording of FIR in police station – Recoveries disbelieved by the High Court – Copy of FIR not sent to Illaqua Magistrate – Held: Investigation / proceedings have been conducted without observing the provisions of CrPC – Regulation 710 cannot override the requirement of s.157(1) CrPC – Code of Criminal Procedure, 1973 – s.157 – Madhya Pradesh Police Regulations – Regulation 710 .

The appellants, along with thirteen others, were prosecuted for causing the death of the husband of PW 9. According to the prosecution case, the accused armed with deadly weapons, with a common object of murdering the husband of PW 9, attacked him causing his death on 12.10.1997 when he was proceeding towards a tank along with his wife PW-9 and his grandson for taking bath. The incident occurred in the outskirts of the village. It is stated that PW-9 came back to the village and when she informed PW-1 about the incident, he told her that he himself had witnessed the incident and came back to the village after the incident was over. PW 7 went to the police station and gave oral information of the incident on which the police was said to have registered a complaint ('Dehati Nalish'). The Investigating Officer (PW12) reached the village where PW1 narrated the incident to him. It was on the basis of this information that Case Crime No. 236/97 was mentioned in the complaint (Dehati Nalish) mentioning offences punishable u/ss 147, 148, 149 and 302 IPC. The accused in their statements u/s 313 Cr.P.C., denied their involvement and submitted that they had been falsely

implicated because of the village factional rivalry. The trial court convicted and sentenced six of the accused persons of the offences charged and acquitted nine of all the charges giving them benefit of doubt. On appeal, the High Court acquitted four more accused more of all the charges. It convicted appellant no. 2 u/s 302 and appellant no. 1 u/s 302/149 IPC and sentenced both of them to imprisonment for life.

Allowing the appeal, the Court

HELD: 1.1 In the instant case, admittedly, proceedings/ investigation had been conducted without observing the provisions of the Cr.P.C. PW.9 is the sole eye-witness, however, she being illiterate and rustic village woman, does not have any idea/impression of time and distance. Two other persons, namely, PW.1 and PW.7 also claimed to be the eye-witnesses of the incident. PW.1 has been treated to be the author of the FIR, though no formal FIR has been lodged in respect of the incident. PW.7 turned hostile and it is he, who reached the police station and informed the police about the incident. It is on this information, the police recorded the "Dehati Nalish" and without lodging a formal FIR, proceeded to the place of incident. Admittedly, no copy of the FIR has been sent to the Ilaqa Magistrate, which is mandatory u/s 157 Cr.P.C. The Investigating Officer (PW.12), has explained that information about the incident was given by PW-7 in the police station, however, no FIR was lodged formally. He immediately rushed to the place of incident apprehending further incidents because of factional rivalry in the village. He has further deposed that on reaching the place of occurrence, PW.1 met him and it was on his statement that the FIR was lodged. However, he admitted that the said document did not contain signature of PW.1. [para 5] [438-C-H]

1.2 Head Constable (PW.13), had deposed just

contrary to what had been stated by the I.O. (PW.12) as he stated that the FIR was lodged in the police station itself and he went along with the IO in the police jeep. He did not know who was the driver of the jeep, as it was being driven by a private person. He further deposed that when they reached the place of occurrence, dead body of the victim was lying there and no one else was present there**. After reaching the place of occurrence, certain people were called from the village through Chowkidar. Such a factual situation is improbable. Dead body is not left unattended. [para 6] [438-H; 439-A-B]**

1.3 The trial court itself held that PW-9 had enroped certain persons in the crime falsely and disbelieving her statement to that extent, some accused had been acquitted by the trial court. Same remained the position in appeal as disbelieving her statement, four persons were acquitted by the High Court. The trial court found improvements in her statement in court as she had not stated in her statement u/s 161 Cr.P.C. that the two appellants had caused injuries to her husband with 'tabbal' and spear. [para 7] [439-C-E]

1.4 PW.1 claimed himself to be the eye-witness who instead of informing any other person, went to the village and when PW.9 met him and told about the incident, he told PW9 that he had also witnessed the incident. The courts below have not given much credence to his statement. [para 7] [439-E-F]

1.5 The trial court recorded a finding that there were material contradictions/ improvements in the statement of witnesses. It held that the information given by PW.7 to the police after reaching the police station was an FIR u/s 154 Cr.P.C. though, the High Court took a contrary view. There has been serious doubt about the recovery of weapons and the High Court has disbelieved the said recoveries. More so, there was no report of chemical

analysis that the weapons so recovered contained stains of human blood. [para 7] [439-F-G]

2. Copy of the FIR was not sent to the Magistrate at all as required u/s 157 (1) Cr.P.C. In such a case, the absence of any explanation furnished by the prosecution to that effect, would definitely cast shadow on its case. [Para 10] [442-A-B]

Bhajan Singh @ Harbhajan Singh & Ors. v. State of Haryana, **(2011) 7 SCC 421,** *Shiv Ram v. State of U.P.,* **1997 (4) Suppl. SCR 531 =AIR 1998 SC 49; and** *Arun Kumar Sharma v. State of Bihar*, **2009 (14) SCR 1023 = (2010) 1 SCC 108 – referred to**

3. The instant appeal has come from Chhattisgarh which has been carved out from the State of Madhya Pradesh. It has not been brought to the notice of the Court whether Regulation 710 of the Madhya Pradesh Police Regulations (whereunder copy of the FIR is required to be sent to the District Magistrate and not to the Illaqa Magistrate) is applicable in Chhattisgarh. Even otherwise, this Court has held* that the said Regulation 710 cannot override the statutory requirements u/s 157(1) Cr.P.C. which provide for sending the copy of the FIR to the Illaqa Magistrate. Thus, in such a fact-situation, this Court can simply hold that in spite of the fact that any lapses on the part of the I.O., would not confer any benefit on the accused, the case of the prosecution may be seen with certain suspicion when examined with other contemporaneous circumstances involved in the case. [para 10] [442-B-E]

State of Madhya Pradesh v. Kalyan Singh* **2011 (9) SCC 569 – referred to

4. In the facts and circumstances of the case, this Court is of the considered opinion that the appellants are

entitled to the benefit of doubt. The judgments and orders of the courts below are set aside and the appellants are acquitted. [para 12] [443-F]

State by Inspector of Police, Tamil Nadu v. N. Rajamanickam & Ors., **2008 (13) SCR 596 = (2008) 13 SCC 303 – relied on**

Case Law Reference:

(2011) 7 SCC 421	**relied on**	**para 9**
1997 (4) Suppl. SCR 531	**relied on**	**para 9**
2009 (14) SCR 1023	**relied on**	**para 9**
2011 (9) SCC 569	**relied on**	**para 10**
2008 (13) SCR 596	**relied on**	**para 12**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 610 of 2007.

From the Judgment & Order dated 25.08.2006 of the High Court of Chattisgarh at Bilaspur in Crl. A. No. 973 of 2000.

Tanuj Bagga (A.C.) for the Appellants.

Atul Jha, Dharmendra Kumar Singh for the Respondent.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. This appeal has been preferred against the judgment and order dated 25.8.2006 of the High Court of Chhattisgarh at Bilaspur in Criminal Appeal No.973 of 2000, wherein the High Court has confirmed the conviction and sentence, so far as the present appellants are concerned, awarded by the Additional Sessions Judge, Bemetara, Durg dated 31.3.2000 in Sessions Trial No.147 of 1999 by which the appellants stood convicted under Section 148 of the Indian Penal Code, 1860 (hereinafter called "IPC") and sentenced to undergo R.I. for two years and pay a fine of

Rs.200/-, in default of payment of fine to further undergo R.I. for one month. Sukhsagar, appellant no.2 stood convicted under Section 302 IPC and Shivlal, appellant no.1 stood convicted under Section 302 read with Section 149 IPC and both were sentenced to undergo imprisonment for life and pay a fine of Rs.500/- each, in default of payment of fine to further undergo R.I. for two months. All the sentences had been directed to run concurrently.

2. Facts and circumstances giving rise to this appeal are:

A. According to the prosecution, the appellants along with 13 other accused persons armed with deadly weapons, with a common object of murdering Shankar Satnami attacked him on 12.10.1997 at about afternoon near the house of Tijwa Sahu when Shankar Satnami, deceased, was proceeding towards a tank for taking bath along with his wife Sukhbai (PW.9) and his grandson Anil, as a result of which he sustained numerous injuries and died on the spot.

B. The incident had occurred in the outskirts of the village. Sukhbai (PW.9) came back to the village and when she informed Beer Singh (PW.1) about the incident, he told her that he himself witnessed the incident and came back to the village after the incident was over. Ramkhilawan (PW.7) went to the Police Station at a very far distance and gave oral information about the incident to the police. Instead of lodging a formal FIR on the basis of oral information by Ramkhilawan (PW.7), the police only registered a complaint (Dehati Nalish). Mr. J.S. Dhurve, I.O. (PW.12) proceeded for the village Dara. After reaching the place of occurrence, he met Beer Singh (PW.1) who narrated the incident to him. It was on the basis of this information Case Crime No. 236/97 was mentioned in the aforesaid complaint (Dehati Nalish) mentioning offences under Sections 147, 148, 149 and 302 IPC.

C. After reaching the place of occurrence, the I.O., Mr. J.S. Dhurve (PW.12) performed the inquest over the body of the

deceased vide Ex.P-6 in the presence of the witnesses and sent the body for autopsy to Govt. Hospital, Bemetara, where Dr. K.L. Dhruv (PW.14), conducted the post mortem and submitted the report Ex.P-15. Mr. J.S. Dhurve, S.I. (PW.12), prepared the Site plan Ex.P-6 and another Site plan Ex.P.13-A was prepared by the Halka Patwari, Tuganram Sahu. The accused were apprehended and at their disclosure statements, blood stained weapons were recovered. Plain soil and blood stained soil was taken into possession from the place of incident. Blood stained underwear, Lungi and pair of slippers and a knife were seized from the spot vide Ex.P-29.

D. The weapons used for commission of the offence seized from the accused persons were sent for examination, first to the Doctor who opined that the injuries to the deceased could be caused by the recovered weapons. The said weapons were subsequently sent for chemical examination along with plain and blood stained soils. The Forensic Science Laboratory vide its report Ex.P-9 confirmed the presence of blood over all those articles.

E. After completing investigation, chargesheet was filed against fifteen accused persons in the Court of Judicial Magistrate, First Class, Bemetara, who in turn committed the case to the Court of Sessions Judge, Durg. The Trial Court framed the charges under Sections 147, 148 and 302/149 IPC against all the accused persons who abjured their guilt.

F. The prosecution in order to establish the charges against the accused persons, examined 13 witnesses and after completion of their depositions, the court examined all the accused persons under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter called "Cr.P.C."), wherein they denied their involvement and submitted that they had falsely been implicated because of the village factional rivalry. The Trial Court vide judgment and order dated 31.3.2000 acquitted nine persons of all the charges giving them benefit of doubt, however, convicted and sentenced the remaining six accused persons

including the appellants.

G. The said six convicts preferred Criminal Appeal No.973 of 2000 in the High Court of Chhattisgarh at Bilaspur wherein the High Court vide impugned judgment and order acquitted four persons, however, upheld the conviction and sentence of the two appellants as awarded by the trial Court.

Hence, this appeal.

3. Ms. Tanuj Bagga, learned Amicus Curiae appearing for the appellants, has submitted that the dispute arose because of a factional rivalry in the village and unending dispute over the land meant for community use on which Shankar Satnami, deceased, had illegally encroached upon. In the oral complaint made by Ramkhilawan (PW.7), not even a single accused had been named. There had been no eye-witness except Sukhbai (PW.9) whose evidence itself is not worth reliance. The courts below erred in convicting the appellants on the basis of the evidence on which a large numbers of accused had been acquitted. There had been material irregularities in the trial itself as no report as required under Section 157(1) Cr.P.C., has been sent to the Ilaqa Magistrate which was mandatory. The High Court brushed aside all legal submissions advanced on behalf of the appellants. Once the High Court came to the conclusion that recovery of weapons itself was doubtful, the appellants were equally entitled for benefit of doubt. Both the appellants have served for more than 11 years and are still in jail. The appeal deserves to be allowed.

4. Mr. Atul Jha, learned counsel appearing for the State, has opposed the appeal contending that there are concurrent findings of fact by the two courts which do not require any interference by this Court. In case, the provisions of Section 157(1) Cr.P.C. had not been complied with, it may be treated as a lapse on the part of the Investigating Officer and should not adversely affect the prosecution case. The recovery of weapons had been made on the basis of disclosure statements

made by the appellants and sent for chemical analysis. The courts below have considered the issue elaborately and does not require further consideration by this Court. The appeal lacks merit and is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for both the parties and perused the record.

This is a unique case wherein, admittedly, proceedings/ investigation had been conducted without observing the provisions of the Cr.P.C. Sukhbai (PW.9) is the sole eye-witness, however, she being illiterate and rustic village woman, does not have any idea/impression of time and distance. In this case, two other persons, namely, Beer Singh (PW.1) and Ramkhilawan (PW.7) also claimed to be the eye-witnesses of the incident. However, Beer Singh (PW.1) has been treated to be the author of the FIR, though no formal FIR has been lodged in respect of the incident. Ramkhilawan (PW.7) turned hostile and it is he, who reached the police station and informed the police about the incident. It is on this information, the police recorded the "Dehati Nalish" and without lodging a formal FIR, proceeded to the place of incident. Admittedly, no copy of the FIR has been sent to the Ilaqa Magistrate, which is mandatory under Section 157 Cr.P.C. Mr. J.S. Dhurve, the Investigating Officer (PW.12), has explained that information about the incident was given by Ramkhilawan (PW.7) in the police station, however, no FIR was lodged formally. He immediately rushed to the place of incident apprehending further incidents because of factional rivalry in the village. The I.O. (PW.12) has further deposed that on reaching the place of occurrence, Beer Singh (PW.1) met him and it was on his statement, FIR was lodged. However, he admitted that the said document did not contain signature of Beer Singh (PW.1).

6. Harpal Singh, Head Constable (PW.13), had deposed just contrary to what had been stated by Mr. J.S. Dhurve (PW.12) as he stated that FIR was lodged in the police station itself and he went along with the Investigating Officer in the

police jeep. He did not know who was the driver of the jeep as it was being driven by a private person. He further deposed that when they reached the place of occurrence, dead body of Shankar Satnami, deceased was lying there and *no one else was present there.* After reaching the place of occurrence, certain people were called from the village through Chowkidar. Such a factual situation is improbable. Dead body is not left unattended.

7. The Trial Court itself held that Sukhbai (PW.9) had enroped certain persons in the crime falsely and disbelieving her statement to that extent, some accused had been acquitted by the Trial Court. Same remained the position in appeal as disbelieving her statement, four persons were acquitted by the High Court. The Trial Court found improvements in her statement in court as she had not stated in her statement under Section 161 Cr.P.C. that Sukhsagar and Shivlal, appellants, had caused injuries to her husband Shankar Satnami, deceased with 'tabbal' and spear. Beer Singh (PW.1) claimed himself to be the eye-witness who instead of informing any other person, went to the village and when Sukhbai (PW.9) met him and told about the incident, he told Sukhbai that he had also witnessed the incident. The courts below have not given much relevance to his statement. The Trial Court had recorded a finding that there had been material contradictions/ improvements in the statement of witnesses. The Trial Court held that information given by Ramkhilawan (PW.7) to the police after reaching the police station was an FIR under Section 154 Cr.P.C. though, the High Court had taken a contrary view. There has been serious doubt about the recovery of weapons and the High Court has disbelieved the said recoveries. More so, there was no report of chemical analysis that the weapons so recovered contained stains of human blood.

8. While dealing with the issues, the High Court observed as under:

I. "In the instant case, admittedly the prosecution has

failed to prove that information as mandated under Section 157(1) of the Cr.P.C. was sent to the concerned Magistrate. We have already noted above that from the evidence available on record four persons had immediately gone to the police station to lodge report but no FIR was registered on their report."

II. "Sukhbai (PW.9) has also stated that the incident was witnessed by Mulchand, Khilawan, Dhan Singh and Baburam. None of the independent witnesses has supported the case of the prosecution. However, in her statement before the Court she had added the name of Ganga. She had not made any specific allegations against appellants Hemkumar, Brijlal, Aasan and Ashwani."

III. "PW.1 Beer Singh, PW.2 Dharambai and PW.5 Ishwaribai are not the eyewitnesses according to the case of the prosecution. However, PW.1 and PW.2 have claimed themselves to be the eyewitnesses and therefore, the Court below has rightly disbelieved the account given by these two witnesses."

IV. "Thus the evidence on which the conviction is based is the memorandum of arrest of the accused persons and the recovery of weapons of offence on their statements. We find from the evidence on record that only one witness namely Sitaram, PW.10, the witness of memorandum and recovery has been examined and he has stated in his cross examination that he was summoned by the police near the tank and from there the dead body was taken to the school and *his signature was obtained on various papers for two days in the school at a time.* He has also admitted that he had encroached upon the Government land which was grazed by the

villagers and therefore, we are of the considered opinion *that the evidence of memorandum of the accused persons and recovery of the weapon of offence in pursuance of the said memorandum, does not inspire confidence."*

V. "Even otherwise, there is no evidence available on record to establish on record that the seized weapons contained human blood."

(Emphasis added)

9. This Court in *Bhajan Singh @ Harbhajan Singh & Ors. v. State of Haryana,* (2011) 7 SCC 421, has elaborately dealt with the issue of sending the copy of the FIR to the Illaqa Magistrate with delay and after placing reliance upon a large number of judgments including *Shiv Ram v. State of U.P.,* AIR 1998 SC 49; and *Arun Kumar Sharma v. State of Bihar,* (2010) 1 SCC 108 came to the conclusion that Cr.P.C. provides for internal and external checks: one of them being the receipt of a copy of the FIR by the Magistrate concerned. It serves the purpose that the FIR be not ante-timed or ante-dated. The Magistrate must be immediately informed of every serious offence so that he may be in a position to act under Section 159 Cr.P.C., if so required. The object of the statutory provision is to keep the Magistrate informed of the investigation so as to enable him to control investigation and, if necessary, to give appropriate direction. However, it is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or investigation is not fair and forthright. In a given case, there may be an explanation for delay. An unexplained inordinate delay in sending the copy of the FIR to Illaqa Magistrate may affect the prosecution case adversely. However, such an adverse inference may be drawn on the basis of attending circumstances involved in a case.

10. In the instant case, copy of the FIR was not sent to the Magistrate at all as required under Section 157 (1) Cr.P.C. In such a case, in absence of any explanation furnished by the prosecution to that effect, would definitely cast shadow on the case of the prosecution. This Court dealt with the issue in Criminal Appeal No. 1062 of 2003 in *State of Madhya Pradesh v. Kalyan Singh,* decided on 26.6.2008, wherein this Court was informed by the Standing counsel that in Madhya Pradesh, police is not required to send the copy of the FIR to the Illaqa Magistrate, but it is required to be sent to the District Magistrate. It was so required by the provisions contained in Regulation 710 of the Madhya Pradesh Police Regulations. This Court held that Regulation 710 cannot override the statutory requirements under Section 157(1) Cr.P.C. which provide for sending the copy of the FIR to the Illaqa Magistrate.

The instant appeal has come from Chhattisgarh which has been carved out from the State of Madhya Pradesh. Learned Standing counsel for the State, is not in a position to throw any light on this issue at all. Thus, in such a fact-situation, we can simply hold that in spite of the fact that any lapses on the part of the I.O., would not confer any benefit on the accused, the case of the prosecution may be seen with certain suspicion when examined with other contemporaneous circumstances involved in the case.

11. In *State by Inspector of Police, Tamil Nadu v. N. Rajamanickam & Ors.,* (2008) 13 SCC 303, this Court dealt with a similar case wherein a lot of lapses had been noted on the part of the prosecution. In the said case, originally 16 persons were named in the chargesheet out of which one had died, one had absconded and the rest 14 persons faced trial. The Trial Court convicted only six out of them. Those six persons preferred the criminal appeal and the High Court found that there were certain vital factors which rendered the prosecution version improbable. One of the factors noted was delay in dispatch and receipt of the FIR and connected documents in the court of Magistrate. The factional village rivalry was shown

to be the cause of concern therein also. The High Court found that evidence of some of the prosecution witnesses lacked credibility and credence and, thus, all the persons were acquitted. This Court dismissed the appeal of the State observing as under:

> "Delay in receipt of the FIR and the connected documents in all cases cannot be a factor corroding the credibility of the prosecution version. But that is not the only factor which weighed with the High Court. Added to that, the High Court has noted the artificiality of the evidence of PW 1 and the non-explanation of injuries on the accused persons which were very serious in nature. The combined effect of these factors certainly deserved consideration and, according to us, the High Court has rightly emphasised on them to hold that the prosecution has not been able to establish the accusations. *Singularly, the factors may not have an adverse effect on the prosecution version.* But when a combined effect of the factors noted by the High Court are taken into consideration, the inevitable conclusion is that these are cases where no interference is called for."
>
> (Emphasis added)

12. The case at hand is, by no means different from the case above referred to and in the facts and circumstances of the case, we are of the considered opinion that the appellants are entitled to the benefit of doubt. Appeal stands allowed. The judgments and orders of the courts below dated 31.3.2000 and 25.8.2006 are set aside and the appellants are acquitted. In case the appellants are not wanted in some other case, they be released forthwith.

Before parting with the case, we would like to record our appreciation for Ms. Tanuj Bagga, learned Amicus Curiae, for rendering valuable assistance to the Court in spite of not having the full documents/papers.

R.P. Appeal allowed

STATE OF M.P. & ORS.
v.
PREMLAL SHRIVAS
(Civil Appeal No. 2331 of 2004)

SEPTEMBER 19, 2011

[D.K. JAIN AND ASOK KUMAR GANGULY, JJ.]

Date of birth:

Correction of date of birth of a government servant entered in the service book at the time of entry into service – Jurisdiction of Tribunal and Court to direct the employer to make such correction – Held: Court or Tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth recorded in the service book – If a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is erroneous – No Court/ Tribunal can come to the aid of those who sleep over their rights – Delay/laches – Jurisdiction.

Correction of date of birth – Application for, filed by respondent 25 years after his induction into service – Rejected by employer – Tribunal upheld the decision of employer – High Court directed the employer to correct the date of birth – On appeal, held: It cannot be said that the decision of the Tribunal, rejecting respondent's plea that it was for the first time in the year 1990 when he was promoted as Head Constable, that he noticed the error in the service record, was vitiated – Respondent was aware ever since 1965 that his date of birth as recorded in the service book was 1st June, 1942 and not 30th June, 1945 – Delay of over two

decades in applying for the correction of date of birth was ex-facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed – There was also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty bound to correct the clerical error in recording of his date of birth in the service book – Rule 84 of the Code provides that the date of birth recorded in the service book at the time of entry into service is conclusive and binding on the government servant – However, an exception was carved out in the rule, permitting the public servant to request later for correcting his age provided that incorrect recording of age is on account of a clerical error or mistake caused due to negligence – Onus is on the employee concerned to prove such negligence – No evidence placed on record by the respondent to show that the date of birth recorded as 1st June, 1942 was due to the negligence of some other person – In this fact situation, High Court ought not to have directed the appellants to correct the date of birth of the respondent under Rule 84 – Delay/laches – Madhya Pradesh Financial Code – Rule 84.

The respondent was appointed to the post of a police constable in 1965. In the service book, prepared at the time of his entering the service, his date of birth was recorded as 1st June, 1942. His father's name was recorded as Gayadin. In 1990, he made a representation to the appellants seeking correction of his father's name and date of birth in the service record. The representation was rejected on the ground that the service record of the respondent was prepared on the instructions of his maternal grandfather accompanying the respondent at the time of enrolment, the same carries his finger and thumb impressions and duly attested by the then Superintendent of Police on 7.9.1976. Moreover at the

time of enrolment, the respondent was subjected to a medical examination on 27.9.1965, when the Examining Medical Authority had certified his age to be 23 years. The respondent filed an application before the Administrative Tribunal. The Tribunal dismissed the application. The respondent filed a writ petition before the High Court which was allowed.

The question which arose for consideration in the instant appeal was whether the High Court was justified in directing the appellant to change date of birth of the respondent in his service record on his request made after a lapse of over two decades of his joining the service.

Allowing the appeal, the Court

HELD: 1. In matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag-end of his career, the Court or the Tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless, the Court or the Tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the Court or the Tribunal should be loath to issue a direction for correction of the service book. If a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish

that the recorded date of birth is clearly erroneous. No Court or the Tribunal can come to the aid of those who sleep over their rights. [Para 9] [452-C-G]

Union of India vs. Harnam Singh **(1993) 2 SCC 162: 1993 (1) SCR 862 – relied on.**

Punjab and Haryana High Court at Chandigarh vs. Megh Raj Garg and Anr. **(2010) 6 SCC 482: 2010 (7) SCR 172 – referred to.**

2. The High Court committed a manifest error of law in ignoring the vital fact that the respondent had applied for correction of his date of birth in 1990, i.e., 25 years after his induction into service as a constable. It is evident from the record that the respondent was aware ever since 1965 that his date of birth as recorded in the service book was 1st June, 1942 and not 30th June, 1945. It had come on record of the Tribunal that at the time of respondent's medical examination, his age as on 27th September, 1965 was mentioned to be 23 years and his father's name was recorded as Gayadin; and in his descriptive roll, prepared by the Senior Superintendent of Police as well, his father's name was shown as Gayadin and his date of birth as 1st June, 1942 and this document was signed by the respondent and the form of agreement known as "Mamuli Sipahi Ka Ikrarnama" was filled up by the respondent himself with the very same particulars. Therefore, it cannot be said that the decision of the Tribunal rejecting respondent's plea that it was for the first time in the year 1990, when he was promoted as Head Constable, that he noticed the error in the service record was vitiated. The delay of over two decades in applying for the correction of date of birth is ex-facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is

trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There was also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty bound to correct the clerical error in recording of his date of birth in the service book. It is manifest from a bare reading of Rule 84 of the M.P. Financial Code that the date of birth recorded in the service book at the time of entry into service is conclusive and binding on the government servant. The said rule has been made in order to limit the scope of correction of date of birth in the service record. However, an exception has been carved out in the rule, permitting the public servant to request later for correcting his age provided that incorrect recording of age is on account of a clerical error or mistake. This is a salutary rule, which was, perhaps, inserted with a view to safeguard the interest of employees so that they do not suffer because of the mistakes committed by the official staff. Obviously, only that clerical error or mistake would fall within the ambit of the said rule which is caused due to the negligence or want of proper care on the part of some person other than the employee seeking correction. Onus is on the employee concerned to prove such negligence. In the instant case, no evidence was placed on record by the respondent to show that the date of birth recorded as 1st June, 1942 was due to the negligence of some other person. He failed to show that the date of birth was recorded incorrectly, due to want of care on the part of some other person, despite the fact that a correct date of birth had been shown on the documents presented or signed by him. In this fact

situation, the High Court ought not to have directed the appellants to correct the date of birth of the respondent under Rule 84 of the said rules. The decision of the High Court, holding that the respondent was entitled to get his date of birth corrected in the service record, cannot be sustained. [Paras 12, 14, 16] [454-G; 455-A-F; 456-D-F; 457-C-E]

Secretary And Commissioner, Home Department and Ors. vs. R. Kirubakaran **1994 Supp (1) SCC 155 1993 (2) Suppl. SCR 376;** *State of U.P. and Anr. vs. Shiv Narain Upadhyaya* **(2005) 6 SCC 49: 2005 (1) Suppl. SCR 847;** *Commissioner of Police, Bombay and Anr. vs. Bhagwan V. Lahane* **(1997) 1 SCC 247: 1996 (9) Suppl. SCR 199;** *Union of India vs. C. Rama Swamy and Ors.* **(1997) 4 SCC 647: 1997 (3) SCR 760 – relied on.**

Case Law Reference:

2010 (7) SCR 172	**Referred to**	**Para 7**
1993 (1) SCR 862	**Relied on**	**Para 9**
1993 (2) Suppl. SCR 376	**Relied on**	**Para 10**
2005 (1) Suppl. SCR 847	**Relied on**	**Para 11**
1996 (9) Suppl. SCR 199	**Relied on**	**Para 15**
1997 (3) SCR 760	**Relied on**	**Para 15**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2331 of 2004.

From the Judgment & Order dated 17.01.2002 of the High Court of Judicature at Jabalpur (M.P.) in Writ Petition No. 2561 of 2001.

Vibha Datta Makhija for the Appellants.

Mridula Ray Bharadwaj for the Respondent.

The Judgment of the Court was delivered by

D.K. JAIN, J. 1. This appeal is directed against the judgment and order dated 17th January, 2002 passed by the High Court of Madhya Pradesh, Jabalpur Bench, in Writ Petition No. 2561 of 2001. By the impugned judgment, the High Court has allowed the writ petition preferred by the respondent, directing the appellants to correct the service record of the respondent, incorporating his date of birth as 30th June, 1945 in place of 1st June, 1942, within a period of one month from the date of the impugned order.

2. To appreciate the controversy involved, a brief reference to the facts, as stated in the impugned judgment, would suffice. These are:

The respondent was appointed to the post of a Police Constable in the year 1965. In the service book, prepared at the time of his entering the service, his date of birth was recorded as 1st June, 1942. His father's name was recorded as Gayadin. This position continued till 1990, when he made a representation to the appellants seeking correction of his father's name and date of birth in the service record. The plea of the respondent was that at the time of joining the service, his date of birth as also the name of his father was wrongly recorded on the basis of the information furnished by his maternal grandfather, who was accompanying him at that point of time as he was living with him after the death of his father. According to the respondent, he came to know about the mistake when he was promoted as Head Constable. In support of his application, the respondent submitted his class IV marksheet, transfer certificate of class VIII and a certificate from a local MLA.

3. By order dated 8th March 1995, the representation came to be rejected, *inter-alia*, on the ground that the service record of the respondent was prepared on the instructions of his maternal grandfather, accompanying the respondent at the

time of enrolment, the same carries his finger and thumb impressions and was duly attested by the then Superintendent of Police on 7th September, 1976. Moreover, at the time of enrolment, the respondent had been subjected to a medical examination on 27th September 1965, when the Examining Medical Authority had certified his age to be 23 years.

4. Being dissatisfied, the respondent preferred an application before the M.P. Administrative Tribunal (hereinafter referred to as "the Tribunal"). Referring to several documents brought on record by the appellants, which included some documents which had been filled up by the respondent himself and showing the date of his birth as 1st June, 1942 and father's name as Gayadin, the Tribunal dismissed the application vide order dated 18th April, 2001.

5. Having failed before the Tribunal, the respondent filed a writ petition before the High Court which set aside the order of the Tribunal and allowed the writ petition. Being aggrieved, the State of Madhya Pradesh and two of its functionaries are before us in this appeal.

6. Despite service of notice, the respondent remains unrepresented. Accordingly, we have heard learned counsel for the appellants.

7. The learned counsel, appearing on behalf of the appellants, strenuously urged that the High Court ought not to have directed a change in date of birth of the respondent, on his request, made after a lapse of over two decades of his joining the service. It was asserted that some of the documents in which his father's name was shown as Gayadin, bore his signatures and, therefore, the plea of the respondent that he was not aware of the contents of his service record cannot be accepted. It was also submitted that as per Rule 84 of the M.P. Financial Code, the date of birth recorded in the service record is conclusive and only a bonafide clerical mistake in the said record can be corrected. To bolster his submission, learned

counsel commended us to a recent decision of this Court in *Punjab & Haryana High Court at Chandigarh Vs. Megh Raj Garg & Anr.*[1], wherein it has been held that the declaration of age made at the time of or for the purpose of entry into government service is conclusive and binding on the government servant.

8. Having considered the issue at hand in light of the afore-stated factual scenario, and the principles of law on the point, we are convinced that the High Court was not justified in directing change in date of birth of the respondent.

9. It needs to be emphasised that in matters involving correction of date of birth of a government servant, particularly on the eve of his superannuation or at the fag-end of his career, the Court or the Tribunal has to be circumspect, cautious and careful while issuing direction for correction of date of birth, recorded in the service book at the time of entry into any government service. Unless, the Court or the Tribunal is fully satisfied on the basis of the irrefutable proof relating to his date of birth and that such a claim is made in accordance with the procedure prescribed or as per the consistent procedure adopted by the department concerned, as the case may be, and a real injustice has been caused to the person concerned, the Court or the Tribunal should be loath to issue a direction for correction of the service book. Time and again this Court has expressed the view that if a government servant makes a request for correction of the recorded date of birth after lapse of a long time of his induction into the service, particularly beyond the time fixed by his employer, he cannot claim, as a matter of right, the correction of his date of birth, even if he has good evidence to establish that the recorded date of birth is clearly erroneous. No Court or the Tribunal can come to the aid of those who sleep over their rights (See: *Union of India Vs. Harnam Singh*[2]).

1. (2010) 6 SCC 482.
2. (1993) 2 SCC 162

10. In *Secretary And Commissioner, Home Department & Ors. Vs. R. Kirubakaran*[3], indicating the factors relevant in disposal of an application for correction of date of birth just before the superannuation and highlighting the scope of interference by the Courts or the Tribunals in such matters, this Court has observed thus :

> "An application for correction of the date of birth should not be dealt with by the tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotions for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. According to us , this is an important aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. *Before any such direction is issued, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be filed within the time, which can be held to be reasonable.* The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove the wrong recording of his date of birth, in his service book. In many cases it is a part of the strategy on the part of such public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their dates of birth in the service books. By this process, it has come to the notice of this Court that in many cases, even if ultimately their applications are dismissed, by virtue of interim orders, they continue for months, after the date of superannuation. The court or the tribunal must, therefore, be slow in granting an interim relief for continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior."
>
> (Emphasis supplied)

3. 1994 Supp (1) SCC 155.

11. In *State of U.P. & Anr. Vs. Shiv Narain Upadhyaya*[4], while reiterating the aforesaid position of law, this Court has castigated the practice of raising dispute by the public servants about incorrect recording of date of birth in their service book on the eve of their retirement.

12. Viewed in this perspective, we are of the opinion that the High Court committed a manifest error of law in ignoring the vital fact that the respondent had applied for correction of his date of birth in 1990, i.e., 25 years after his induction into service as a constable. It is evident from the record that the

4. (2005) 6 SCC 49.

respondent was aware ever since 1965 that his date of birth as recorded in the service book is 1st June, 1942 and not 30th June, 1945. It had come on record of the Tribunal that at the time of respondent's medical examination, his age as on 27th September, 1965 was mentioned to be 23 years and his father's name was recorded as Gayadin; and in his descriptive roll, prepared by the Senior Superintendent of Police as well, his father's name was shown as Gayadin and his date of birth as 1st June, 1942 and this document was signed by the respondent and the form of agreement known as "Mamuli Sipahi Ka Ikrarnama" was filled up by the respondent himself with the very same particulars. Therefore, it cannot be said that the decision of the Tribunal rejecting respondent's plea that it was for the first time in the year 1990, when he was promoted as Head Constable, that he noticed the error in the service record was vitiated. Be that as it may, in our opinion, the delay of over two decades in applying for the correction of date of birth is ex-facie fatal to the case of the respondent, notwithstanding the fact that there was no specific rule or order, framed or made, prescribing the period within which such application could be filed. It is trite that even in such a situation such an application should be filed which can be held to be reasonable. The application filed by the respondent 25 years after his induction into service, by no standards, can be held to be reasonable, more so when not a feeble attempt was made to explain the said delay. There is also no substance in the plea of the respondent that since Rule 84 of the M.P. Financial Code does not prescribe the time-limit within which an application is to be filed, the appellants were duty bound to correct the clerical error in recording of his date of birth in the service book.

13. Rule 84 of the M.P. Financial Code, heavily relied upon by the respondent reads as under :

> "Rule 84. Every person newly appointed to a service or a post under Government should at the time of the appointment declare the date of his birth by the Christian era with as far as possible confirmatory documentary evidence such as a matriculation certificate, municipal birth certificate and so on. If the exact date is not known, an approximate date may be given. The actual date or the assumed date determined under Rule 85 should be recorded in the history of service; Service book or any other record that may be kept in respect of the Government servant's service under Government. The date of birth, once recorded in this manner, must be deemed to be absolutely conclusive, and except in the case of a clerical error no revision of such a declaration shall be allowed to be made at a later period for any purpose whatever."

14. It is manifest from a bare reading of Rule 84 of the M.P. Financial Code that the date of birth recorded in the service book at the time of entry into service is conclusive and binding on the government servant. It is clear that the said rule has been made in order to limit the scope of correction of date of birth in the service record. However, an exception has been carved out in the rule, permitting the public servant to request later for correcting his age provided that incorrect recording of age is on account of a clerical error or mistake. This is a salutary rule, which was, perhaps, inserted with a view to safeguard the interest of employees so that they do not suffer because of the mistakes committed by the official staff. Obviously, only that clerical error or mistake would fall within the ambit of the said rule which is caused due to the negligence or want of proper care on the part of some person other than the employee seeking correction. Onus is on the employee concerned to prove such negligence.

15. In *Commissioner of Police, Bombay and Anr. Vs. Bhagwan V. Lahane*[5], this Court has held that for an employee seeking the correction of his date of birth, it is a condition precedent that he must show, that the incorrect recording of the

5. (1997) 1 SCC 247.

date of birth was made due to negligence of some other person, or that the same was an obvious clerical error failing which the relief should not be granted to him. Again, in *Union of India Vs. C. Rama Swamy & Ors.*[6], it has been observed that a bonafide error would normally be one where an officer has indicated a particular date of birth in his application form or any other document at the time of his employment but, by mistake or oversight a different date has been recorded.

16. As aforesaid, in the instant case, no evidence has been placed on record by the respondent to show that the date of birth recorded as 1st June, 1942 was due to the negligence of some other person. He had failed to show that the date of birth was recorded incorrectly, due to want of care on the part of some other person, despite the fact that a correct date of birth had been shown on the documents presented or signed by him. We hold that in this fact situation the High Court ought not to have directed the appellants to correct the date of birth of the respondent under Rule 84 of the said rules.

17. In view of the foregoing discussion, the decision of the High Court, holding that the respondent was entitled to get his date of birth corrected in the service record, cannot be sustained. Resultantly, the appeal is allowed and the impugned judgment is set aside, leaving the parties to bear their own costs throughout.

D.G. Appeal allowed.

6. (1997) 4 SCC 647.

D.M. NAGARAJA

v.

THE GOVERNMENT OF KARNATAKA & ORS.

(Criminal Appeal No. 1814 of 2011)

SEPTEMBER 19, 2011

[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]

KARNATAKA PREVENTION OF DANGEROUS ACTIVITIES OF BOOTLEGGERS, DRUG-OFFENDERS, GAMBLERS, GOONDAS, IMMORAL TRAFFIC OFFENDERS AND SLUM-GRABBERS ACT, 1985:

s. 3 – Order of detention– Upheld by High Court – Held: The detention order refers to the activities and involvement of the detenu in as many as 11 cases – It is the subjective satisfaction of the Detaining Authority that in spite of the continuous activities of the detenu causing threat to maintenance of public order, he was getting bail one after another and indulging in the same activities – On going through the factual details, various materials in the grounds of detention, in view of continuous activities of the detenu attracting the provisions of IPC, and habitually repeating the same type of offences and also of the fact that all the procedures and statutory safeguards have been fully complied with by the Detaining Authority, the Court concurs with the reasoning of the Detaining Authority as approved by the Government and upheld by the High Court – Preventive detention.

s. 3 read with Article 22 (5) of the Constitution of India – Detention order –Disposal of representation – Limitation – Held: There is no constitutional mandate under Clause (5) of Article 22, much less any statutory requirement to consider the representation before confirming the order of detention – The competent authority can consider the representation only

after the order of confirmation – However, no objection was raised on behalf of the detenu in this regard – Constitution of India, 1950 – Article 22 (5).

Preventive detention – Purpose of – Explained.

In the instant appeal filed by the detenu, the question for consideration before the Court was: whether the Detaining Authority was justified in passing the detention order dated 22.09.2010 and the High Court was right in confirming the same and dismissing the writ petition filed by the detenu?

Dismissing the appeal, the Court

HELD: 1.1 The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. [para 7] [466-C]

Haradhan Saha vs. *State of West Bengal & Ors*. **1975 (1) SCR 778 = (1975) 3 SCC 198 – relied on.**

1.2 Section 3 of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 (Karnataka Act 12 of 1985) empowers the State Government to detain certain persons with a view to prevent them from acting in any manner prejudicial to the maintenance of public order. If the Government/Detaining Authority is able to satisfy that a person either by himself or in association with other members habitually commits or attempts or abets such commission of offence punishable under the Indian Penal Code, 1860 and subject to satisfying s.3 of the Karnataka Act No. 12 of 1985, he can be detained in terms of the said Act. [para 6] [464-C-D; 466-B]

1.3 In the instant case, the detention order refers the

activities and involvement of the appellant-detenue in as many as 11 cases. It is not in dispute that in one case he has been convicted and sentenced to undergo rigorous imprisonment for a term of nine years. He had been acquitted in two cases; and four cases are pending against him wherein he has been granted bail by the courts. The cases registered against him pertain to murder, attempt to murder, dacoity, rioting, assault, damage to public property, provoking the public, extortion while settling land disputes, possessing illegal weapons etc. Though he was sentenced to undergo rigorous imprisonment for 9 years, that has not deterred him to put a stop to his criminal activities. In fact, from the year 1981 up to 2010, he has systematically committed these criminal activities. A perusal of the records and all the details furnished in the detention order clearly show that the appellant-detenu started his career in criminal field when he was 30 years old and is now about 60 years and has about 28 associates assisting him in his criminal activities and a number of cases are pending against them. The detenu has no regard for human life. [para 10-11 and 14] [467-H; 472-E; 470-G-F]

1.4 All the details which have been correctly stated in the detention order clearly show that the appellant is not amenable to ordinary course of law. It also shows that even after his release on bail from the prison on various occasions, he again started indulging in same type of offences, particularly, threatening the public life, damaging pubic property etc. All these aspects have been meticulously considered by the Detaining Authority and after finding that in order to maintain public order, since the activities of the appellant are prejudicial to the public, causing harm and danger, the Detaining Authority detained him as 'goonda' under the Karnataka Act No. 12 of 1985 for a period of 12 months and the same was

rightly approved by the Advisory Board and the State Government. It is the subjective satisfaction of the Detaining Authority that in spite of continuous activities of the appellant causing threat to maintenance of public order, he was getting bail one after another and indulging in the same activities. In such circumstances, based on the relevant materials and satisfying itself, namely, that it would not be possible to control the appellant's habituality in continuing the criminal activities by resorting to normal procedure, the Detaining Authority passed an order detaining him under Act No. 12 of 1985. Inasmuch as the Detaining Authority has taken note of all the relevant materials and strictly followed all the safeguards as provided in the Act ensuring the liberty of the detenu, this Court uphols the decision of the Detaining Authority as well as the impugned order of the High Court affirming the same. [para 12] [470-H; 471-A-D]

Rekha vs. *State of Tamil Nadu* **(2011) 5 SCC 244 – distinguished.**

2.As regards the delay in disposal of representation of the detenu, the detention order was passed on 22.09.2010 by the Commissioner of Police. The said order was approved by the Government on 30.09.2010 and the case was sent to Advisory Board on 08.10.2010 and the Board sat on 04.11.2010. The Government received the report of the Advisory Board on 10.11.2010. Confirmation order detaining the detenu for a period of 12 months was issued on 16.11.2010. Representation of the detenu through Central Prison was sent on 06.10.2010 i.e. before passing of the confirmation order by the Government. There is no constitutional mandate under Clause (5) of Article 22, much less any statutory requirement to consider the representation before confirming the order of detention. The competent authority can consider the representation only after the order of confirmation.

However, the counsel for the appellant did not raise any objection in this regard. [para 15] [473-A-F]

K.M. Abdulla Kunhi & B.L. Abdul Khader vs. *Union of India & Ors. and State of Karnataka & Ors.* **1991 (1) SCR 102 = (1991) 1 SCC 476 (CB) – relied on.**

Case Law Reference:

1975 (1) SCR 778	**relied on**	**para 7**
(2011) 5 SCC 244	**distinguished**	**para 8**
1991 (1) SCR 102	**relied on**	**para 15**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1814 of 2011.

From the Judgment & Order dated 28.03.2011 of the High Court of Karnataka in Writ Petition (Habeas Corpus) No. 220 of 2010.

C.B. Gururaj, Sabarish Subramaniam, Purshotam Sharma, Tripathi, Naveen Chandrashekar. Raj Kumar, Anil Kumar for the Appellant.

Anitha Shenoy for the Respondents.

The Jughment of the Court was delivered by

P.SATHASIVAM, J. 1. Leave granted.

2. The appellant has filed this appeal against the final judgment and order dated 28.03.2011 passed by the High Court of Karnataka at Bangalore in a writ of Habeas Corpus being Writ Petition No. 220 of 2010 whereby the High Court dismissed the writ petition filed against the order of detention dated 22.09.2010 passed by the Commissioner of Police, Bangalore City, vide CRM(4)/DTN/10/2010.

3. **Brief facts:**

(a) According to the Detaining Authority, the appellant-detenue, when he was 30 years old, started his career in criminal field by committing offences like murder, attempt to murder, dacoity, rioting, assault, damaging the public property, provoking the public, attempt to grab the property of the public, extortion while settling land disputes and possessing of illegal weapons etc.

(b) By the date of the detention order, i.e. on 22.09.2010, eleven cases had been filed against the detenue and out of them, four cases were pending trial before the respective Courts and records have been destroyed as time barred in four cases. In two cases, he has been acquitted. In pending cases, he was granted bail from the courts and in one case he has been convicted and sentenced to undergo rigorous imprisonment for a term of nine years by the Sessions Court, Bangalore. The detention order further shows that because of his habituality in committing crimes, violating public order by threatening the public, causing injuries to them and damaging their properties and he was not amenable and controllable by the normal procedure, detained him as 'goonda' under Section 2(g) of the Karnataka Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985 (hereinafter referred to as "the Karnataka Act") (Act No. 12 of 1985) for a period of 12 months.

(c) The appellant himself challenged the detention order before the High Court of Karanataka by filing a writ of Habeas Corpus. Before the High Court, the only contention put-forth by the appellant was that there was enormous delay in considering his representation made on 06.10.2010 to the Advisory Board for withdrawal of the detention order. While negating the said contention, the Division Bench of the High Court has gone into the validity or otherwise of the detention order and after finding that the Detaining Authority was fully justified in clamping the detention order, dismissed the writ petition filed by the

appellant-detenue vide order dated 28.03.2011. The said order is under challenge before us by way of special leave petition.

4. Heard Mr. C.B. Gururaj, learned counsel for the appellant-detenue and Ms. Anitha Shenoy, learned counsel for the State of Karanataka.

5. The point for consideration in this appeal is whether the Detaining Authority is justified in passing the detention order dated 22.09.2010 and the High Court is right in confirming the same and dismissing the writ petition filed by the appellant?

6. The Statement of Objects and Reasons of the Karnataka Act No. 12 of 1985 shows that the activities of certain anti-social elements like bootleggers, drug-offenders, gamblers, goondas, immoral traffic offenders and slum grabbers have from time to time caused a feeling of insecurity and alarm among the public and tempo of life especially in urban areas has frequently been disrupted because of such persons. In order to ensure that the maintenance of public order in the State of Karnataka is not adversely affected by the activities of these known anti-social elements, it is considered necessary to enact a special legislation. The following provisions of Karnataka Act 12 of 1985 are relevant :

"2. Definitions : - In this Act, unless the context otherwise requires, -

(a) "acting in any manner prejudicial to the maintenance of public order" means, -

(i) .....

(ii) .....

(iii) .....

(iv) In the case of a goonda when he is engaged, or is making preparations for engaging, in any of his

activities as a goonda which affect adversely or are likely to affect adversely the maintenance of public order;

(v) ……

(vi) ……

Explanation – For the purpose of this clause, public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any of the persons referred to in this clause directly or indirectly, is causing or is calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any section thereof or a grave or widespread danger to life or public health.

(b) ……

(c) "detention order" means an order made under Section 3;

(d) "detenue" means a person detained under a detention order;

(e) ……

(f) ……

(g) "goonda" means a person who either by himself or as a member of or leader of a gang, habitually commits or attempts to commit or abets the commission of offences punishable under Chapter VIII, Chapter XV, Chapter XVI, Chapter XVII or chapter XXII of the Indian Penal Code (Central Act XLV of 1860)"

Section 3 empowers the State Government to detain certain persons with a view to prevent them from acting in any manner prejudicial to the maintenance of public order. If the Government/Detaining Authority is able to satisfy that a person either by himself or in association with other members habitually commits or attempts or abets such commission of offence punishable under the Indian Penal Code, 1860 (in short 'IPC') and subject to satisfying Section 3 of the Karnataka Act No. 12 of 1985, he can be detained in terms of the said Act.

7. The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. Even, as early as in 1975, the Constitution Bench of this Court considered the procedures to be followed in view of Articles 19 and 21 of the Constitution. In *Haradhan Saha vs. State of West Bengal & Ors.* (1975) 3 SCC 198, the Constitution Bench of this Court, on going through the order of preventive detention under Maintenance of Internal Security Act, 1971 laid down various principles which are as follows:-

"…..First; merely because a detenue is liable to be tried in a criminal court for the commission of a criminal offence or to be proceeded against for preventing him from committing offences dealt with in Chapter VIII of the Code of Criminal Procedure would not by itself debar the Government from taking action for his detention under the Act.

Second; the fact that the Police arrests a person and later on enlarges him on bail and initiates steps to prosecute him under the Code of Criminal Procedure and even lodges a first information report may be no bar against the District Magistrate issuing an order under the preventive detention.

Third; where the concerned person is actually in jail custody at the time when an order of detention is passed against

him and is not likely to be released for a fair length of time, it may be possible to contend that there could be no satisfaction on the part of the detaining authority as to the likelihood of such a person indulging in activities which would jeopardize the security of the State or the public order.

Fourth; the mere circumstance that a detention order is passed during the pendency of the prosecution will not violate (sic) the order.

Fifth; the order of detention is a precautionary measure. It is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of the surrounding circumstances."

In the light of the above principles, let us test the validity of the detention order issued under Act No. 12 of 1985 and as affirmed by the High Court.

8. Mr. C.B. Gururaj, learned counsel for the appellant raised the only contention that inasmuch as action can be taken against the detenue under the ordinary laws, there is no need to detain him under Act No. 12 of 1985. In support of his contention, he very much relied on the recent decision of this Court in *Rekha vs. State of Tamil Nadu* (2011) 5 SCC 244. On the other hand, Ms. Anitha Shenoy, learned counsel for the State, after taking us through the entire materials, various continuous activities of the detenue and several orders, submitted that the Detaining Authority is fully justified in clamping the order of detention and she also pointed out that the decision of the High Court is perfectly in order and prayed for dismissal of the appeal.

9. We have carefully considered the rival contentions and perused the grounds of detention order and all the materials relied on by the Detaining Authority.

10. The detention order refers the activities and involvement of the appellant-detenue in as many as 11 cases.

The details of which are mentioned hereunder:

"1. *Sriramapura PS Cr. No. 55/81 under Sections 143, 147, 148, 149, 348, 307 IPC* : The file in this case has been destroyed as time barred.

2. *Rajajinagar PS Cr. No. 81/81 under Section 324 r/w Section 34 IPC* : The file of this case too has been destroyed as time barred.

3. *Sriramapura PS Cr. No. 484/83 under Section 302 read with Section 149 IPC* : In this case, the detenue is the prime accused. He along with his brother Kitti and other associates committed the offence punishable under Section 302 IPC. After trial the detenue was found guilty and was convicted to undergo rigorous imprisonment for 9 years. However, the records of this case have been destroyed as time barred and are not produced.

4. *Srirampuram PS Cr. No. 624/83 under Section 307 IPC* – This record also has been destroyed as time barred.

5. *Victoria Hospital PS Cr. No. 75/87 under Sections 350, 352 and 506(B) IPC* : After the detenue's conviction in Cr. No. 484/83, he was admitted in Prisoner's ward, Victoria Hospital, Bangalore, for treatment. On 19.12.1987 at about 11.30 a.m., the detenue tried to escape from the prisoner's ward but, he was restricted by the official deputed for his escort. The detenue got violent and threatened the escort saying that he would kill him in 3 days. Thereafter, after investigation, charge sheet was filed in CC No. 869/88. As the detenue was absconding, he was taken in judicial custody in UTP No. 2896. The case is under trial.

6 & 7. *Srirampura PS Cr. Nos. 215/87 under Section 302 read with Sections 149 IPC, under Sections 220/89, 143, 144, 148, 324, 302 read with 109 IPC* : Both these case files are destroyed as time barred. However, according to rowdy sheet a charge sheet has been filed in the 3rd

ACMM Court, Bangalore City on 10.06.1987 and the same was taken on file in CC No. 3738/87 for trial in Cr. No. 215/87.

8. *Sriramapura PS Cr. No. 198/03 under Section 384 IPC*: On 05.08.2003, at about 6.00 a.m. the detenue and his associate Ravi extorted Rs.200/- from one Venkatesh threatening him with dire consequences and boasting that they were rowdies of Rajajinagar and Srirampuram. They were arrested on 06.08.2003 and remanded to judicial custody. However, this case ended in acquittal as the witnesses out of fear did not depose properly in Court against them.

9. *High Grounds PS Cr. No. 341/04 under Section 302 IPC* : In this case due to prior rivalry with rowdy Rajendra @ Bekkina Kannu Rajendra, and also thinking that Rajendra was responsible for the death of his younger brother Krishna @ Kitti, chased him in public view and assaulted him with longs, dagger and other weapons and murdered him. He was arrested on 09.11.2004 and remanded to judicial custody. This case ended in acquittal since the witnesses did not depose properly against him out of fear.

10. *Yelahanka New Town PS Cr. No. 186/09 under Sections 143, 147, 148, 120(B), 307, 302 read with Section 149 IPC* : In this case also, enmity between Ravi @ Bullet Ravi, Seena, Vasu and the detenue is the cause. Nursing a grudge over past incidents, the detenue has done away with the life of Ravi Raj @ Bullet Raj, Seena and Vasu by assaulting them with sickles. Seena died at the spot, whereas Ravi and Vasu died in the hospital. The detenue was arrested on 28.08.2009 and remanded to judicial custody. He was released on bail on 18.11.2009. A case in S.C. No. 120/10 in this regard is pending trial.

11. *Subramanyanagar PS Cr. No. 32/10 under Sections 307, 353, 399, 402 IPC & 3 & 25 of the Arms Act* : On 06.02.1020 at 6.15 p.m., the detenue and his associates conspired to murder their rival rowdy Break Jagga and were waiting in a case armed with weapons. On receipt of this information Shri M.R. Mudvi, PI, CCB Bangalore City along with police Inspectors and staff conducted raid and tried to arrest them. However, some of them were able to escape. The detenue remained absconding and evaded arrest. Later he obtained bail on 24.03.2010 in the Court of 14th FTC, Bangalore. A charge sheet was filed against him on 17.04.2010 which was taken on file in CC No. 17160/10. The case is pending trial."

11. As rightly pointed out by Ms. Anitha Shenoy, learned counsel for the State, the perusal of the records and all the above details furnished in the detention order clearly show that the appellant-detenue started his career in criminal field when he was 30 years old and is now about 60 years. In the beginning, he was the follower of notorious rowdies Jairaj and Korangu Krishna. Later, he formed his own gang consisting of his own younger brother Krishna @ Kitti along with others. Krishna @ Kitti met his end in police encounter during 1996 in Rajajinagar P.S. Crime No. 125 of 1996 for the offences punishable under Sections 141, 143, 147, 148, 302 read with Section 149 IPC. The records also indicate that the detenue has about 28 associates assisting him in his criminal activities and a number of cases are pending against them. The detenue has no regard for human life. The cases registered against him pertain to murder, attempt to murder, dacoity, rioting, assault, damage to public property, provoking the public, extortion while settling land disputes, possessing illegal weapons etc. Though he was sentenced to undergo rigorous imprisonment for 9 years, that has not deterred him to put a stop to his criminal activities. In fact, from the year 1981 up to 2010, he has systematically committed these criminal activities.

12. All the abovementioned details which have been correctly stated in the detention order clearly show that the

appellant is not amenable to ordinary course of law. It also shows that even after his release on bail from the prison on various occasions, he again started indulging in same type of offences, particularly, threatening the public life, damaging pubic property etc. All these aspects have been meticulously considered by the Detaining Authority and after finding that in order to maintain public order, since his activities are prejudicial to the public, causing harm and danger, the Detaining Authority detained him as 'goonda' under the Karnataka Act No. 12 of 1985 for a period of 12 months and the same was rightly approved by the Advisory Board and the State Government. Inasmuch as the Detaining Authority has taken note of all the relevant materials and strictly followed all the safeguards as provided in the Act ensuring the liberty of the detenue, we are in entire agreement with the decision of the Detaining Authority as well as the impugned order of the High Court affirming the same.

13. Learned counsel for the appellant very much relied on a recent decision of this Court in *Rekha* (supra). In the above case, against the detention order dated 08.04.2010 imposed on Ramakrishnan under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum-Grabbers and Video Pirates Act, 1982 on the allegation that he was selling expired drugs after tampering with labels and printing fresh labels showing them as non-expired drugs, his wife filed a *habeas corpus* petition before the Madras High Court. The said writ petition came to be dismissed on 23.12.2010. Hence, wife of the detenue therein, approached this Court by way of special leave to appeal. In the same judgment, this Court has extracted the detention order and the grounds for detaining him under the Tamil Nadu Act, 1982. The grounds show that there is reference to one incident relating to selling expired drugs and the Detaining Authority by pointing out that necessary steps are being taken by his relatives to take him out on bail and since in similar cases, bails were granted

by the courts after lapse of some time and if he comes out on bail, he will indulge in further activities which will be prejudicial to the maintenance of public health and order and recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities, on the materials placed and after fully satisfying the Detaining Authority has passed an order under the Tamil Nadu Act, 1982. In para 7, the Bench has pointed out that in the grounds of detention, no details have been given about the alleged similar cases in which bail was allegedly granted by the court concerned. The grounds extracted therein also are bereft of any further details. In those circumstances, this Court taking note of various earlier decisions came to the conclusion that normal recourse to ordinary law would be sufficient and there is no need for invocation of the special Act.

14. In the case on hand, we have already extracted criminality, criminal activities starting from the age of 30 and details relating to eleven cases mentioned in the grounds of detention. It is not in dispute that in one case he has been convicted and sentenced to undergo rigorous imprisonment for a term of nine years. He had been acquitted in two cases and four cases are pending against him wherein he was granted bail by the courts. It is the subjective satisfaction of the Detaining Authority that in spite of his continuous activities causing threat to maintenance of public order, he was getting bail one after another and indulging in the same activities. In such circumstances, based on the relevant materials and satisfying itself, namely, that it would not be possible to control his habituality in continuing the criminal activities by resorting to normal procedure, the Detaining Authority passed an order detaining him under the Act No. 12 of 1985. In view of enormous materials which are available in the grounds of detention, such habituality has not been cited in the above referred *Rekha* (supra), we are satisfied that the said decision is distinguishable on facts with reference to the case on hand and contention based on the same is liable to be rejected.

15. Though learned counsel for the appellant has not raised the objection i.e. delay in disposal of his representation since that was the only contention before the High Court, we intend to deal with the same. We have already stated that the detention order was passed on 22.09.2010 by the Commissioner of Police, Bangalore City. The said order was approved by the Government on 30.09.2010 and the case was sent to Advisory Board on 08.10.2010 and the Board sat on 04.11.2010. The Government received the report of the Advisory Board on 10.11.2010. Confirmation detaining the detenu for a period of 12 months was issued on 16.11.2010. Representation of the detenu through Central Prison was sent on 06.10.2010 i.e. before passing of the confirmation order by the Government. This Court in K.M. Abdulla Kunhi & B.L. Abdul Khader vs. Union of India & Ors. and State of Karnataka & Ors. (1991) 1 SCC 476 (CB) has clearly held that the authority has no constitutional duty to consider the representation made by the detenu before the order of confirmation of the detention order. There is no constitutional mandate under Clause (5) of Article 22, much less any statutory requirement to consider the representation before confirming the order of detention. In other words, the competent authority can consider the representation only after the order of confirmation and as such the contentions raised by the appellant as if there was delay in consideration is baseless and liable to be rejected. As pointed out above, the counsel for the appellant did not raise any objection as regards to the same.

16. On going through the factual details, various materials in the grounds of detention in view of continuous activities of the detenu attracting the provisions of IPC, continuous and habituality in pursuing the same type of offences indulging in committing offences like attempt to murder, dacoity, rioting, assault, damaging public property, provoking the public, attempt to grab the property of members of the public, extortion while settling land dispute, possessing illegal weapons and also of the fact that all the procedures and statutory safeguards have

been fully complied with by the Detaining Authority, we agree with the reasoning of the Detaining Authority as approved by the Government and upheld by the High Court.

17. Under these circumstances, we find no merit in the appeal. Consequently, the same is dismissed.

R.P. Appeal dismissed.

PARASAMAYA KOLERINATHA MADAM, TIRUNELVELI
v.
P.NATESA ACHARI & ORS.
(Civil Appeal No.8439 of 2001)

SEPTEMBER 22, 2011

[R.V. RAVEENDRAN AND H.L. GOKHALE, JJ.]

TAMIL NADU HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS ACT, 1959:

ss.6(13) and 6(20) – 'Math' and 'temple' – Ingredients of – Explained – Suit property comprising statue and Padukas of founder of the Math – Subsequently, idol of Goddess Meenakshi and other idols installed in the premises – Held: The oral and documentary evidence led in the case clearly establish that the suit property belongs to the Math and it is being used to celebrate Guru Pooja in the honour of the founder of the Math and the Mathadhipathis regularly – The idol of Meenakshiamman was installed by the 32nd Mathadhipathi of the math in the suit property – There is nothing to show that the installation was with the object of dedicating the premises as a place of public religious worship – The suit property with the installed idols is declared to be the property of the plaintiff-Math – The possession and control of the suit property with the place of worship (Meenakshiamman temple) vests with the plaintiff Math – Directions given as regards management of the Math – Hindu Law.

The appellant Math filed a suit (C.S. No. 2/1983) against respondents 1 and 2 (defendants 1 and 2) and two others for declaration of title and delivery of possession of the suit property situate in Komaleeswararpet in Chennai which included the idols installed therein. It was the case of the plaintiff-Math that

it was established centuries ago at Tirunelveli by Swami Anavaratha Soundaraja Perumal; the Mathadhipathi used to be elected for life by the Viswakarma community; that the suit property was owned by the Math for centuries; that the suit property was being managed by a nominee of the Math; that the idol of goddess Meenakshi and the statue of the founder of the Math with his Padukas were installed by the Math in the suit property in the eighteenth century and were worshipped by the disciples of the Math and other devotees; that in the year 1981 it came to light that the persons earlier managing the property had handed over its management to defendants 1 and 2 who were attempting to claim the suit property with the Meenakshiamman idol as a temple independent of the Math, managed by the local Viswakarma community without the knowledge and consent of the Mathadhipathi. Defendants 1 and 2 resisted the suit contending that the suit property was the Meenakshiamman temple that was in existence for the benefit of and under the management of the members of Viswakarma community living in Komaleeswararpet in Chennai, and the plaintiff Math had no connection with the suit property. The Single Judge of the High Court decreed the suit holding that the suit property belonged to the plaintiff Math, but the Division Bench held the suit property to be a temple and, consequently, dismissed the suit. Aggrieved, the plaintiff-Math filed the appeal.

Allowing the appeal, the Court

HELD: 1.1 There are two necessary ingredients for a structure or place to be described as a temple under the Act: (i) its use as a place of public religious worship; and (ii) dedication of the structure or place to, or for the benefit of, or use as of right by, the Hindu community or a section thereof, as a place of public religious worship. The mere fact that members of the public are allowed to

worship at a place, will not make it a public temple. The Hindu sentiments and the tenets of Hinduism do not normally exclude worshippers from a place of worship, even when it is private or part of a Math. Therefore, the crucial test is not whether the members of the public are permitted to worship, but whether the worship by the members of the public is as of right by the Hindu community or any section thereof, or whether a place has been dedicated a place of public religious worship. [para 8] [488-H; 489-A-C]

Goswami Shri Mahalaxmi Vahuji vs. Shah Ranchhoddas Kalidas (Dead) & Ors. **- AIR 1970 SC 2025 and** *T.D. Gopalan vs. The Commissioner of Hindu Religions and Charitable Endowments, Madras* **- AIR 1972 SC 1716; Radhakanta Deb vs. The Commissioner of Hindu Religious Endowments, Orissa AIR 1981 SC 798 – relied on.**

Madras Hindu Religious Endowments Board vs. Deivanai Ammal **- 1953 (2) MLJ 688;** *Bodendraswami Mutt vs. The President of the Board of Commissioners for Hindu Religious Endowments*; **1955 (1) MLJ 60, and *The*** *Commissioner, Hindu Religious & Charitable Endowment (Admn.) Department vs. T.A.T. Srimath Gnaniar Madalayam* **- 2003 (1) MLJ 726 – approved.**

Mundacheri Koman vs. Atchuthan **- ILR 58 Mad. 91 (PC); and** *Thambu Chetti Subraya Chetti vs. A.T. Arundel* **- ILR 6 (1883) Mad. 287 – referred to.**

1.2 It is also well-settled that mere installation and consecration of idols in a place will not make it a place of public religious worship. Where the evidence shows that the property retained the identity as a Math and where Gurupoojas (functions celebrating/important days associated with the founder or head of the math) are performed regularly, it will not lose the characteristic of a Math and become a temple, merely because idols have

been installed and members of a section of Hindu community offer worship. In fact, this fact is now statutorily recognized in the definition of 'Math' in s. 6(13) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 which makes it clear that a Math includes *any place of religious worship* which is appurtenant to the institution of a Math. [para 9] [489-G-H; 490-A-B]

1.3 The plaintiff-Math specifically claims that the suit property belonged to it and produced several documents, the genuineness of which was not under question. Ext-P1 is the certified copy of the preliminary decree in the scheme suit(OS No. 58/1922). The suit property was one of the properties shown as belonging to the Math. After such preliminary decree, a draft scheme was filed and a scheme was framed on 2.5.1925. Ext. P2 is the final decree dated 10.9.1927 in the said suit. The final decree declared that 'RS' was the Mathadhipathi of the institution, in whom, according to the scheme settled in the preliminary decree, the properties described in the said final decree vested. The first schedule thereto enumerates the properties owned by the Math and it includes the property situated at Komaleeswararpet, Chennai described as "Srimath Parasamaya Kolerinatha Swami Madam - Sri Meenakshiamman temple and its assets". This document establishes beyond doubt that at an undisputed point of time, the said suit property was the property belonging to the plaintiff Math, vested in its Mathadhithipathi. [para 13] [492-F-G; 493-B-G]

1.4 As against the documents (Ext. P1 and P2) which trace the title to more than 55 years before filing of the instant suit, the defendants have not produced any title deeds. They have produced documents to show that the suit property and the temple therein are being managed by the members of the community at Komaleeswararpet

from around 1938 onwards. Obviously, therefore, the question of impleading either defendants 1 and 2 or their predecessors in 1924 or 1925 did not arise. The entrustment of management by the Math to the elders/ members of the Viswakarma Community under the guidance and supervision of the Math, would not divest the title of the Math to the property. [para 14] [493-H; 494-A-D]

1.5 There are undisputed documents which establish that the suit property where the idol of Meenakshiamman is installed is the property of the plaintiff Math. The most important of the documents, which would clinch the case in support of the plaintiff Math is Ext. P16 which is a certified copy of the petition dated 7.10.1978 u/s 64(1) of the Act (OA No.102/1978) filed by defendants 1 and 2 and other managing committee members of Meenakshiamman Temple before the Deputy Commissioner for Hindu Religious and Charitable Endowments (Administration), Madras, for framing a scheme for appointment of Trustees and management of the temple. It has been stated in the petition that *Sri Meenakshiamman temple is located in a Mutt belonging to Srimath Parasamaya Kolarinathaswami, who was the head of the members of the Viswakarma Community residing in Komaleeswaranpet, from time immemorial."* **Several other documents, namely, Exts. P-2, P-6, P-7, P-8, P-9, P-13, P-14, P-15, P-17 and P-18 produced by the plaintiff Math and issued by the defendants and their predecessors also establish that the suit property was always considered to be the property of the Math. [para 15 and 16] [494-E-H; 495-A-H; 496-A-H; 497-A-C]**

1.6 The defendants marked Ext. D1 to D 42. Most of the said documents related to the festivals conducted in connection with the Meenakshiamman temple or regarding the handing over of management of the temple

from one managing committee to another managing committee. But several of them relate to the undisputed period before the suit and clearly prove the case of the plaintiff Math. These documents irrefutably establish that the temple was a part of the Math; that the Math appointed a local elder of Viswakarma Community at Komaleeswaranpet to manage the suit property and the place of worship therein; that the local elder handed over management to successive elected managing committees (from the Viswakarma community at Komaleeswaranpet, Chennai) to be in day to day management; that the defendants and their predecessors who were the members of the Managing Committee of the temple, had always accepted and described the place of worship as being a part of Parasamaya Kolerinatha Guruswamigal Madam, that is plaintiff-Mutt. When some of the pamphlets exhibited by defendants describe the place of worship in the Math property as Meenakshiamman 'koil', the word was not used as referring to a 'temple' as defined in the Act, but as a place of worship always as part of and belonging to the plaintiff math. [para 17 and 18] [497-D-H; 498-A-F]

1.7 The oral evidence of the second defendant - DW1 also establishes that Meenakshiamman Koil was part of plaintiff Math. In the examination-in-chief, he states that the suit property is Meenakshiamman temple which has been administered by a group of trustees elected/ appointed by the Viswakarma community in Komaleeswararpet and the temple belongs to the Viswakarma community of Komaleeswararpet. However he also stated that Srimat Parasamaya Kolerinatha Swamigul, who lived several centuries ago in Tirunelveli, was the Guru of Viswakarma community and there is a statue of the said Swami in the temple; that a sect of Viswakarma community regularly conducts Guru Pooja in honour of the founder of the Math in the premises. The

extract of some of his answers establish the case of the plaintiff Math. [para 19] [498-G-H; 499-A-B]

1.8 The Single Judge has referred to oral and documentary evidence in detail and recorded a categorical finding that the property belonged to the plaintiff Math and that the claim of the defendants that the plaintiff Math had nothing to do with the suit property was false and untenable. On the other hand, the Division Bench failed to consider the significance of these relevant documents. It failed to notice that mere existence of idols in Math premises or worship thereof by the public would not convert a property belonging to the Math into a temple, and that installation of the idol Meenakshiamman and installation of the statue of Sri Swami Parasamaya Kolerinatha Guru and conducting the festivals and Gurupoojas were part of Math's activities being held and conducted in the name of the plaintiff Mutt or its Mathadhipathi. The Division Bench has proceeded on the erroneous impression that existence of an idol in a math property, when worshipped by the members of the community, would convert the math property into a temple. [para 12 and 20] [492-C-E; 501-D-G]

1.9 The oral and documentary evidence produced by the plaintiff and defendants clearly and categorically establish: (i) the suit property belonged to the plaintiff Math; (ii) the Meenakshiamman idol was installed by the 32nd Mathadhipathi of the Math in suit property, in the eighteenth century. There is nothing to show that installation was with the object of dedicating the premises as a place of public religious worship. On the other hand, the suit property was and has always been a property belonging to the plaintiff Math, where the members of Vishwakarma community were permitted to offer worship to the idol of Meenakshiamman; (iii) the suit property is used regularly to celebrate Guru pooja in

honour of the founder of the Math and the Mathadhipathis. The premises was used by the Mathadhipathi of the plaintiff Math and his disciples and followers for their stay at Chennai; (iv) the head of plaintiff Math had directed the Viswakarma community in Komaleeswararpettai, Chennai to manage the day to day affairs of the suit property including provision for worship of idols in the property by constituting a Managing Committee. The Managing Committee was managing the Math property and the temple therein, recognizing and accepting that they were part of plaintiff Math; (v) in the year 1978, the defendants and others in management attempted unsuccessfully to assert that the premises is exclusively a temple belonging to the members of Viswakarma community at Komaleeswararpet and not the plaintiff Math. [para 21] [501-H; 502-A-G]

1.10 As the management through a local committee has been in vogue for several decades, it would be appropriate if the same system is continued for the efficient management of the suit property and the place of worship. The Managing Committee should consist of a Chairman nominated by the Mathadhipathi of plaintiff-Math and six members (of whom three shall be nominated by plaintiff Math and the remaining three shall be elected by the Viswakarma community at Komaleeswararpet, Chennai). The said Managing Committee will be accountable to the plaintiff-Math and act under its directions. [para 22] [502-H; 503-A-B]

1.11 The judgment and decree of the division bench of the High Court is set aside and the judgment and decree of the Single Judge decreeing the suit is restored to the effect: (i) The suit property with the installed idols and other assets is declared to be the property of the plaintiff-Math. The possession and control of the suit property with the place of worship (Meenakshiamman

temple) vests with the plaintiff Math; (ii) neither the Viswakarma community of Komaleeswararpet nor the Committees of Management of the 'Meenakshiamman Temple' own the suit property or the place of worship therein. They were merely acting as the representatives of the plaintiff Math; and (iii) the defendants and their agents and representatives shall deliver the entire suit property with the place of worship with the installed idols and all movables, to the plaintiff. [para 23] [503-C-G]

Case Law Reference:

ILR 58 Mad. 91	**referred to**	**para 8**
1953 (2) MLJ 688	**approved**	**para 8**
1955 (1) MLJ 60	**approved**	**para 8**
2003 (1) MLJ 726	**approved**	**para 8**
AIR 1970 SC 2025	**relied on**	**para 9**
AIR 1972 SC 1716	**relied on**	**para 9**
AIR 1981 SC 798	**relied on**	**para 10**
ILR 6 (1883) Mad. 287	**referred to**	**para 11**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8439 of 2001.

From the Judgment and Order dated 29.04.1999 of the High Court of Judicature at Madras in O.S.A. No. 29 of 1994.

A.T.M. Sampth, P.N. Ramalingam and T.S. Shanthi for the Appellant.

V. Ramasubramanian and A. Lakshmi Narayanan for the Respondent.

The Judgment of the Court was delivered by

R.V.RAVEENDRAN, J. 1. The appellant Math was the plaintiff in a suit (C.S.No.2/1983) filed against the respondents 1 and 2 (defendants 1 and 2) and two others on the file of the Madras High Court. The appellant math situated in Tirunelveli, claims to be the owner of property bearing No.16, Chandrabanu Street, Komaleeswararpet also described as Komaleeswaranpettai, Chennai (described in the first schedule to the plaint) known as Parasamaya Kolerinatha Madam and several idols including those of Goddess Meenakshi, Lord Vigneshwara, Lord Murugan installed therein (described in the second schedule to the plaint), together referred to as the 'suit property'.

2. The plaint averments in brief are: The appellant is a Math established several centuries ago at Tirunelveli by Swami Anavaratha Soundaraja Perumal. The Mathadhipathi of the Math is elected for life by the Viswakarma community. In the year 1922, a suit (OS No.58/1922 as the file of the Sub-court, Tirunelveli) was filed for framing a scheme for regulating the succession and administration of the plaintiff Math and its properties. In the said suit, a scheme was framed by order dated 2.5.1925. The suit property was one of the properties shown as vested in the Math in the final decree in the said scheme suit. The suit property was owned by the plaintiff Math for several centuries and the Head of the Math would stay there during his visit to the city. His disciples were regularly using the premises and staying therein. The Math premises were being managed by a nominee of the Math. The idol of Goddess Meenakshi and the statue of the Head of the Math with his Padukas were installed by the Math in the suit property in the eighteenth century and were worshipped by the disciples of the Math and other devotees. As the Headquarters of the Math was situated at the far-away Tirunelveli, the Mathadhipathi had entrusted the management of the said Math property to nominated Agent/s who were the local elders of the Viswakarma community. When a new Mathadhipathi was installed on 17.8.1981, he sent his agent to routinely enquire

about the affairs of the Math property in Chennai and learnt that the persons earlier managing the property had handed over the management to defendants 1 and 2. When the Mathadhipathi visited Chennai in 1982 and stayed in the suit property. One R. Venugopal Achari who was appointed to look after the suit property in the year 1963, informed the Mathadhipathi that he had handed over management to Kanagasabapathy Achary who in turn handed over management to defendants. When the Mathadhipathi sent word to defendants to come and discuss the affairs of the Math, they did not turn up, but the community people spoke to the Mathadipathi and made several complaints about the irregular and ineffective management by defendants 1 and 2. Further inquiries revealed that defendants 1 and 2 were attempting to claim that the suit property with the Meenakshiamman idol as a temple independent of the Math, managed by the local Viswakarma community and had arranged for Kumbabishekam without the knowledge and consent of the Mathadhipathi. In view of the above, the plaintiff Math filed the said suit and sought a declaration of title to the suit property (with the idols and movables therein) and delivery thereof.

3. Defendants 1 and 2 resisted the suit. They contended that the suit property (describing it as the Meenakshiamman temple) was a denominational temple that has been in existence for the benefit of the members of the Viswakarma community living in Komaleeswararpet in Chennai. The suit property was a temple and the Math did not 'exist' in the suit property. The plaintiff Math had no connection with the suit property. Neither the final decree nor the scheme in the scheme suit (O.S.No.58 of 1922) relating to the plaintiff Mutt was binding on the members of the community living in Komaleeswararpet in Chennai as they were not parties to the scheme suit. Though the temple in Komaleeswararpet was dedicated to Goddess Meenakshiamman, as Parasamaya Kolerinatha Swami was a great saint and Guru of Viswakarma community, the said temple was also called by the name of the said Swami, but the

plaintiff Math has nothing to do with the suit property. The said denominational temple was under the management of the members of the Viswakarma community through their elected representatives. In the beginning of the twentieth century, one Arumuga Achary was managing the affairs of the temple. Later one C. V. Raju Achary was the trustee till 1938. From 1938, Adhimoola Achary functioned as a Trustee with the assistance of a committee of members. Kanagasabai Achari became the Trustee in 1963 and in 1969, first and second defendants along with one more person were elected as trustees and they were in management. The idols and statues in the temple were installed by the members of the Viswakarma community of Komaleeswararpet and not by the plaintiff Math. The community performed the Kumbhabhishekam of the temple on 21.1.1983. They filed a petition in the office of the Commissioner for Religious and Charitable Endowments for framing a scheme for the said temple by impleading the plaintiff math as a respondent. The property did not belong to the Math and that for more than a century, the property has been under the absolute control of the members of the Viswakarma community of Komaleeswararpet. As the suit property was a temple and not a Math as defined under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for short 'the Act') and as the plaintiff Math have nothing to do with the property, the suit was not maintainable and was liable to be dismissed.

4. The High Court framed four issues. The main issue was whether the plaintiff Math was entitled to the ownership of the suit property and if so whether it was entitled to recover possession. Both sides led oral and documentary evidence. After detailed consideration of the several documents exhibited by the parties and the oral evidence, the learned Single Judge who tried the suit, decreed the suit by judgment and decree dated 20.4.1993. He held that there was abundant evidence to show that the suit property belonged to the plaintiff Math and it was not the property of Viswakarma community residing at Komaleeswararpet, Chennai. He also accepted the case of the

plaintiff Math that the Thirty Second Head of the plaintiff Math had installed the idol of the Goddess Meenakshi more than two centuries ago. The learned Single Judge also referred to the series of documents produced by the defendants themselves which stated that Meenakshiamman temple was situated in Parasamaya Kolerinatha Swami Math. The learned Single Judge held that merely because idols were installed and worshipped in a Math premises, the property will not cease to be a Math nor will it become a place of public religious worship. Consequently the learned Single Judge decreed the suit granting declaration of title and directing delivery of possession of the suit property to the plaintiff Math.

5. Feeling aggrieved, defendants 1 and 2 filed an intra-court appeal. A Division Bench of the High Court allowed the said appeal (OSA No.29/1994) by the impugned judgment dated 29.4.1999. The division bench held that the oral and documentary evidence established the existence of Meenakshiamman temple in the suit property, possessing the characteristics of a temple. The Managing Committee elected from Viswakarma community was managing the said temple, attending to its repairs, paying municipal taxes and conducting festivals. It held that the characteristics of a Math were absent and the plaintiff Math had failed to prove that the affairs of the Math alone were carried on in the premises; and as the goddess Meenakshiamman was being worshipped by the public and temple festivals were being regularly conducted, the finding of the learned Single Judge that the installation of idol of Meenakshi did not extinguish the rights of the Math, was not sustainable. The division bench held the suit property to be a 'temple' and consequently dismissed the suit. The said judgment and decree is challenged in this appeal by special leave.

6. On the contentions urged three questions arise for consideration :

(i) Whether the suit property belongs to the Plaintiff Math?

(ii) Whether the Division Bench ignored the material documents exhibited by plaintiffs and defendants in holding that the suit property did not belong to the plaintiff Math?

(iii) Whether the property of the Math ceased to belong to the Math, as idols were installed therein are worshipped by the members of Viswakarma community, thereby converting it to a temple.

7. As all these questions are interconnected, we will consider them together. We may at first refer to the definitions of the words 'Math' and 'Temple' in the Act. Section 6(13) of the Act defines 'Math' thus :

> "Math means a Hindu religious institution with properties attached thereto and presided over by a person, the succession to whose office devolves in accordance with the direction of the founder of the institution or is regulated by usage and (i) whose duty it is to engage himself in imparting religious instruction or rendering spiritual service; or (ii) who exercises or claims to exercise spiritual headship over a body of disciples; and includes places of religious worship or instruction which are appurtenant to the institution. xxx xxx"

Section 6(20) of the said Act defines the term "temple" as

> "Temple means a place by whatever designation known used as a place of public religious worship, and dedicated to, or for the benefit of, or used as of right by, the Hindu community or of any section thereof, as a place of public religious worship. xxx xxx"

8. The distinction between maths and temples, stated in several judicial pronouncement has found statutory recognition in the aforesaid definitions. There are two necessary

ingredients for a structure or place to be described as a temple under the Act. First is its use as a place of public religious worship. Second is dedication of the structure or place to, or for the benefit of, or use as of right by, the Hindu community or a section thereof, as a place of public religious worship. The mere fact that members of the public are allowed to worship at a place, will not make it a public temple. The Hindu sentiments and the tenets of Hinduism do not normally exclude worshippers from a place of worship, even when it is private or part of a Math. Therefore, the crucial test is not whether the members of the public are permitted to worship, but whether the worship by the members of the public is as of right by the Hindu community or any section thereof, or whether a place has been dedicated a place of public religious worship. [See : the decision of the Privy Council in *Mundacheri Koman vs. Atchuthan* - ILR 58 Mad. 91, the decisions of the Madras High Court in *Madras Hindu Religious Endowments Board vs. Deivanai Ammal* - 1953 (2) MLJ 688; *Bodendraswami Mutt vs. The President of the Board of Commissioners for Hindu Religious Endowments* - 1955 (1) MLJ 60, and *The Commissioner, Hindu Religious & Charitable Endowment (Admn.) Department vs. T.A.T. Srimath Gnaniar Madalayam* - 2003 (1) MLJ 726].

9. In *Goswami Shri Mahalaxmi Vahuji vs. Shah Ranchhoddas Kalidas (Dead) & Ors.* - AIR 1970 SC 2025 and T.D. Gopalan vs. The Commissioner of Hindu Religions and Charitable Endowments, Madras - AIR 1972 SC 1716, this Court held that the origin of the temple, the manner in which the affairs are managed, the gifts received by it, the rights exercised by devotees in regard to worship therein and the consciousness of the devotees themselves as to the character of the temple, are the factors which go to show whether a temple is a public temple or a private temple. It is also well-settled that mere installation and consecration of idols in a place will not make it a place of public religious worship. Where the evidence shows that the disputed property retained the

identity as a Math and where Gurupoojas (functions celebrating/ important days associated with the founder or head of the math) are performed regularly, it will not lose the characteristic of a Math and become a temple, merely because idols have been installed and members of a section of Hindu community offer worship. In fact, this fact is now statutorily recognized in the definition of Math in section 6(13) of the Act which makes it clear that a Math includes any place of religious worship which is appurtenant to the institution of a Math.

10. This Court in *Radhakanta Deb vs. The Commissioner of Hindu Religious Endowments, Orissa* [AIR 1981 SC 798] on a conspectus of earlier authorities, laid down the following tests to provide sufficient guidelines to determine on the facts of each case, whether an endowment is of a private or a public nature :

> "Thus, on a conspectus of the authorities mentioned above, the following tests may be laid down as providing sufficient guidelines to determine on the facts of each case whether an endowment is of a private or of a public nature :
>
> (1) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by member of the public is as of right;
>
> (2) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance where the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;
>
> (3) *Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with the founder or his*

descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature;

(4) Where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment."

(emphasis supplied)

11. We may also in this context refer to one of the earliest judgments of the Madras High Court. In *Thambu Chetti Subraya Chetti vs. A.T. Arundel* - ILR 6 (1883) Mad. 287. The question considered therein was whether a building known as the Dharma Sivachari Mattam could be considered to be a place of public worship, as idols were installed in the said Math premises, so that exemption from payment of municipal tax could be availed. A Division Bench of the Madras High Court held :

"The original signification of the term Math or Matha is a building or set of buildings in which Hindu religious mendicants reside under a superior, who is called a Mahant. This spiritual superior is regarded with veneration by the members of the sect, and is installed with some ceremony, and not infrequently receives an honorific title. *Although a place of worship is not a necessary part of a Math, such a place is, as may be expected, often found in such institutions, and, though intended primarily for the use of the inmates, the public may be admitted to it, and so this part of the building may become a place of religious worship.* A Hindu Math somewhat resembles a Catholic Monastery. From the circumstance that a portion of it is not infrequently devoted to worship, and that the

public may be admitted to it, the term Math has acquired a secondary signification as a small temple.

Taking the whole of the facts mentioned in the judgment, we see reason to think that the institution was a Math in the original rather than the secondary sense of that term……when the Mattam is in part of in whole used for purposes other than those of public worship, it will be liable to taxation."

(emphasis supplied)

12. Therefore, the fact that there are some idols installed in a Math and members of the public offer worship to such idol will not make it a place of public religious worship, that is, a temple, if the other ingredients of a math exist or if it is established to be a premises belonging to a math and used by the math for its purposes. If the property in its origin was a math property, it cannot be treated as a temple merely because the math had installed idols and permitted worship by the members of the community and the premises is used for rendering charitable and religious services. The Division Bench has proceeded on the erroneous impression that existence of an idol in a math property, when worshipped by the members of the community, would convert the math property into a temple.

13. The plaintiff (*Parasamaya Kolerinatha Madam*) specifically claims that the suit property belonged to the plaintiff Mutt and produced several documents, the genuineness of which was not under question. We may examine the said evidence. Exhibit-P1 is the certified copy of the preliminary decree in the scheme suit (*Ponnaivasan Achari & Ors. v. Nelliappa Achari* - OS No.58 of 1922, dated 29.3.1924) with reference to Parasamaya Kolerinatha Madam situated at Tirunelveli and its properties. The said preliminary decree declares that Parasamaya Kolerinatha Madam situated at Tirunelveli is a public religious and charitable foundation for the

benefit of five sections of Vishwakarma community of the Tamil districts of Southern India as also Travancore, Cochin and Malabar, holding the properties mentioned in the plaint schedule; that the office of Mathadhipathi of the said Mutt was vacant; that it was necessary to frame the scheme for the appointment of a Mathadhipathi and regulate succession to the office of the Mathadhipathi and vest the Mutt and such property in such Mathadhipathi. The suit property was one of the properties shown as belonging to the math. After such preliminary decree, a draft scheme was filed and a scheme was framed on 2.5.1925. Ex. P2 is the final decree dated 10.9.1927 in the said suit (OS No.58/1922) which confirms that a scheme has been framed for the said Parasamaya Kolerinatha Madam, Tirunelveli on 2.5.1925; that the said scheme provided for appointment of Mathadhipathi and regulating the succession to the office of Mathadhipathi; that as per the directions of the court, the disciples of the plaintiff Mutt was convened on 5.9.1927 and Srimath Rajaratna Swami was unanimously elected as the Mathadhipathi. The final decree declared that the said Rajaratna Swamigal was the Mathadhipathi of the institution in whom, according to the scheme settled in the preliminary decree, the properties described in the said final decree vested. The first schedule thereto enumerates the properties owned by the Math situated at Tirunelveli and third schedule describes the agricultural lands owned by the Math. The fourth schedule describes the movables. The fifth schedule to the said decree describes the two properties situated outside Tirunelveli district - one property in Travancore area and the property situated at Komaleeswararpet, Chennai described as "Srimath Parasamaya Kolerinatha Swami Madam - Sri Meenakshiamman temple and its assets". This document establishes beyond doubt that at a undisputed point of time, the said suit property was the property belonging to the plaintiff Math, vested in its Madhathipathi.

14. As against the said documents (Ex P1 and P2) which

trace the title to more than 55 years before filing of the suit, the defendants have not produced any title deeds. The contention of the defendants that as neither they nor the trustees preceding them, were parties to the scheme suit of 1922, the decree in the said scheme suit was not binding on them, is not tenable. The defendants have produced documents to show that the suit property and the temple therein are being managed by the members of the community at Komaleeswararpet from around 1938 onwards. Obviously therefore the question of impleading either defendants 1 and 2 or their predecessors in 1924 or 1925 did not arise. In fact plaintiff Math does not deny the fact that idol of Meenakshiamman is installed in the suit property and that the day to day management of the suit property was entrusted to the Viswakarma community members in Komaleeswararpet Chennai, as the head quarters of the Math was situated at Tirunelveli. The entrustment of management by the Math to the elders/members of the Viswakarma Community under the guidance and supervision of the Math, would not divest the title of the Math to the property.

15. We may next refer to the undisputed documents which establish that the suit property where the idol of Meenakshiamman is installed is the property of the plaintiff Math. The most important of the documents, which would clinch the case in support of the plaintiff Math is Ex. P16 which is a certified copy of the petition dated 7.10.1978 under section 64(1) of the Act (OA No.102/1978) filed by defendants 1 and 2 and other managing committee members of Meenakshiamman Temple before the Deputy Commissioner for Hindu Religious and Charitable Endowments (Administration), Madras, for framing a scheme for appointment of Trustees and management of the temple. The subject-matter of the petition is described as *"In the matter of Sri Meenakshiamman temple situated in Srimad Parasamaya Kolarinatha Swamigal Mutt in 16, Chandra Banu Street, Komaleeswaranpettai, Madras"*. In para 2 of the said petition, defendants 1 and 2 and other petitioners therein

averred: *"There is a temple dedicated to Sri Meenakshiamman in Chandrabanu Street, Komaleeswaranpet, Madras-2. The institution in question is located in a Mutt belonging to Srimath Parasamaya Kolarinathaswami. The said Swami was the head of the members of the Viswakarma Community residing in Komaleeswaranpet, from time immemorial."* Having made such admission, they however claimed that "though the temple has been located in the Mutt, the Mutt is no longer in existence and that the institution in question has been considered as the property of the members of the Viswakarma Community…….. the institution in question has always been under the management of the members of the said community ever since its inception." The said petition was dismissed.

16. Several other documents produced by plaintiff Math issued by the defendants and their predecessors also establish that the suit property was always considered to be the property of the Math. They are :

(i) Ex.P2 dated 16.10.1963 is a pamphlet issued by R.Kanakasabhapathy Achari on behalf of Srimath Parasamaya Kolerinatha Swami Madam, Komaleeswararpet Chennai, inviting devotees to participate in the worship of Meenakshiammam during Navarathri celebrations.

(ii) Ex. P6 is the Navrathri Mahotsava invitation/ pamphlet issued by R. Kanagasabapathy Achari and others on 16.10.1963 describing the temple as "Srimath Parasamaya Kolerinatha Swamigal Madam - Vishwa Karma Samooha Aadheenam - Sri Meenakshi temple".

(iii) Ex. P7 is an invitation pamphlet dated 2.5.1970 in connection with Guru pooja offered to Nellai Parasamaya Kolerinatha Guru Swami and in that connection aradhana to Meenakshiammam and

poor feeding at the suit property.

(iv) Ex.P8 is a receipt dated 10.5.1972 issued by first defendant for a sum of Rs.3 towards Gurupooja and the receipt is issued in the name of "Sri Parasamaya Kolerinatha Math -- Sri Meenakshiamman Temple".

(v) Ex. P9 is a programme schedule dated 21.9.1981 issued by the first defendant in regard to the celebration of Navarathri festival at "Srimath Parasamaya Kolerinatha Swami Madam – Sri Meenakshiamman Navarathri celebrations."

(vi) Ex. P13 is a pamphlet relating to a musical festival to be held between 1.6.1960 to 5.6.1960 in connection with the Kumbabhishekham at "Chennai Komaleeswararpet, Chandrabanu Street, Nellai Srimath Parasamaya Kolerinatha Math -- Sri Meenakshi Sannidhi", issued by the Math Temple Festival Committee on the directions of Nellai Jagatguru Shrimath Parasamaya Kolerinathar Adeenam, 37th Jagatguru Swami Sivananda Muneeswara.

(vii) Ex. P14 is an invitation pamphlet dated 25.5.1960 issued by the Managing Committee of "Nellai Jagatguru Srimath Parasamaya Kolerinathar Adeenam" regarding Sri Meenakshiamman Idol Procession in Komaleeswararpet in the presence of Nellai Jagatguru Parasamaya Kolerinathar 37th Jagatguru Swami Sivananda Muneeswarar.

(viii) Ex. P15 is a pamphlet dated 6.7.1960 issued by the person-in-charge Parasamaya Kolerinatha Madam, No.11, Chandrabanu Street, Komaleeswaranpet, Chennai, in connection with the celebration of the coronation of the 37th Peetadhipathi Jagatguru Parasamaya Kolerinathar.

(ix) Ex.P17 is the pamphlet dated 21.3.1960 issued by the management of Parasamaya Kolerinatha Madam mutt, Kamaleeswaranpettai in connection with a festival in regard to Godess Meenakshiamman installed two centuries earlier by 32nd Jagatguru Srinath Swami Anavaradacharya.

(x) Ex. P18 dated 18.7.1960 is the invitation to the disciples and followers of Shrimath Parasamaya Kolerinatha Swami to have darshan of the Swami at Parasamaya Kelarinatha Swami Math, No.11, Chandrabanu Street, Komaleeswararpet, Chennai.

It is not necessary to refer to other documents exhibited by plaintiff math, most of which relate to a period subsequent to the filing of the suit.

17. The defendants marked Ex D1 to D 42. Most of the documents related to the festivals conducted in connection with the Meenakshiamman temple or regarding the handing over of management of the temple from one managing committee to another managing committee. Many relate to the period subsequent to the suit and not relevant. But several of them relate to the undisputed period before the suit and clearly prove the case of the plaintiff Math. We may refer to some of defendants' exhibits:

(i) Ex. D1 dated 7.4.1938 is the pamphlet issued by the person-in-charge of the suit property - Adhimoola Achari in regard to appointment of Committee for managing "Sri Meenakshi Temple situated in Chennai Komaleeswaranpettai Srimath Parasamaya Kolerinatha Swami Math".

(ii) Ex. D8 is a pamphlet dated 16.10.1941 by Adhimoola Achari, 'Dharmakartha' of the temple in regard to a festival at Sri Meenakshi Temple at Sri Parasamaya Kolerinatha Madam, Kamaleeswaranpet, Chennai.

(iii) Ex. D16 is a pamphlet about the appointment of Managing Committee of Sri Meenakshiamman temple at Srimath Parasamaya Kolerinatha Swami Madam for the term 17.6.1945 to 5.3.1950.

(iv) Ex. D24 is the Invitation Pamphlet dated 10.5.1972 in connection with Guru Pooja of the founder of the plaintiff Math at the suit property.

(v) Ex. D32 is a pamphlet dated 5.10.1966 issued by Kanagasabapathy Achari in regard to Navrathri festival in Meenakshi Temple at Srimath Parasamaya Kolerinatha Madam.

18. These documents irrefutably establish that the temple was a part of the Math; that the Math appointed a local elder of Viswakarma Community at Komaleeswaranpet to manage the suit property and the place of worship therein, that the local elder handed over management to successive elected managing committees (from the Viswakarma community at Komaleeswaranpet, Chennai) to be in day to day management; that the defendants and their predecessors who were the members of the Managing Committee of the temple, had always accepted and described the place of worship as being a part of Parasamaya Kolerinatha Guruswamigal Madam, that is plaintiff-Mutt. When some of the pamphlets exhibited by defendants describe the place of worship in the Math property as Meenakshiamman 'koil', the word was not used as referring to a 'temple' as defined in the Act, but as a place of worship always as part of and belonging to the plaintiff math.

19. The oral evidence the second defendant – T.R.Nataraj Achary (DW1) also establishes that Meenakshiamman Koil was part of plaintiff Math. In the examination-in-chief, he states that the suit property is Meenakshiamman temple which has been administered by a group of trustees elected/appointed by the Viswakarma community in Komaleeswararpet and the temple belongs to the Viswakarma community of

Komaleeswararpet. However he also stated that Srimat Parasamaya Kolerinatha Swamigul, who lived several centuries ago in Tirunelveli, was the Guru of Viswakarma community and there is a statue of the said Swami in the temple; that a sect of Viswakarma community regularly conducts Guru Pooja in honour of the founder of the Math in the premises. He extract below some of his answers which establish the case of the plaintiff Math:

"Q. Did the present Head of Mutt or the previous Head of Mutt stay in the Meenakshi temple ?

A. The present Head of the Mutt stayed only for one and a half hour and the previous Head of the Mutt might have come and stayed."

"Q: This notice (Ex.D.24 and Ex.P.7) was issued by 64 Thalaikettu Viswakarma Community people, is it so?

A: Yes. This pooja is being conducted by them.

Q: See Ex. D.24 and Ex.P.7, there is a song in the beginning of the matter.

A: Yes.

Q: The Guru referred to in both the notification in the song is Nellai Parasamaya Kolarinatha Swamigal, is it not?

A: Yes.

Q: 64 Thalaikattu Viswakarma Community are residing in Madras, is it so?

A: Yes. They are living in Madras.

Q: 64 Thalaikattu Viswakarma Community are celebrating (Guru) poojas in the suit property, is it not?

A: Yes.

Q: That Guru Pooja is in respect of Nellai Parasamaya

Kolarinatha Swamigal?

A: Yes.

Q: Ex.P.7 was issued after you claimed to have been a trustee of the suit property?

A: Yes.

Q: Do you know that the present suit has been filed by Nellai Parasamaya Kolarinatha Swamigal?

A: Yes. I am aware.

Q: There is a stone image of Nellai Parasamaya Kolarinatha in the suit property?

A: Yes.

Q: This image in the suit property is that of the man you are referring to?

A: Yes.

Q: The chappals ('Padukas') owned by him are in the suit property?

A: Yes.

Q: Ex.P.9 was a notice issued by you for Navarathiri Festival in the suit property in 1981. Your name is also there?

A: Yes. My name is also there.

Q: In this document the suit property is described as Parasamaya Kolarinatha Swamigal Madam?

A: Yes.

Q: So from 1938 to 1981 suit property is described as Parasamaya Kolarinatha Madam?

A: Yes. It is from the beginning known as Parasamaya

Kolarinatha Swamigal Madam.

Q: This document Ex.D.30 (Page No.9) is also filed by you?

A: Yes.

Q: There also (Page 8 of Ex.D.30) it is referred that Kolarinatha Swamigal installed the Meenakshi Amman Idol.

A: Yes."

20. The learned Single Judge has referred to oral and documentary evidence in detail and recorded a categorical finding that the property belonged to the plaintiff Mutt and that the claim of the defendants that the plaintiff Math had nothing to do with the suit property was false and untenable. On the other hand, the Division Bench failed to consider the significance of these relevant documents. It inferred that the suit property ceased to be a Math property and became a 'temple' as defined in section 6(20) of the Act, because the Meenakshiamman idol was installed in the Math property and the members of the community were offering worship and festivals were conducted and celebrated by the Managing Committee and Municipal taxes were being paid by the Managing Committee. But it failed to notice that mere existence of idols in Math premises or worship thereof by the public would not convert a property belonging to the Math into a temple. It failed to notice that installation of the idol Meenakshiamman and installation of the statue of Sri Swami Parasamaya Kolerinatha Guru and conducting the festivals and Gurupoojas were part of Math's activities being held and conducted in the name of the plaintiff Mutt or its Mathadhipathi.

21. The oral and documentary evidence produced by the plaintiff and defendants clearly and categorically establish the following factual positions factual positions :

(i) The suit property belonged to the plaintiff Math;

(ii) The Meenakshiamman idol was installed by the 32nd Mathadhipathi of the Math in suit property, in the eighteenth century. There is nothing to show that installation was with the object of dedicating the premises as a place of public religious worship. On the other hand the suit property was and always been a property belonging to the plaintiff Math, where the members of Vishwakarma community were permitted to offer worship to the idol of Meenakshiamman.

(iii) The suit property is used regularly to celebrate Guru pooja in honour of the founder of the Math and the Mathadhipathis. The premises was used by the Mathadhipathi of the plaintiff Math and his disciples and followers for their stay at Chennai.

(iv) The head of plaintiff Math had directed the Viswakarma community in Komaleeswararpettai, Chennai to manage the day to day affairs of the suit property including provision for worship of idols in the property by constituting a Managing Committee. The Managing Committee was managing the Math property and the temple therein, recognizing and accepting that they were part of plaintiff Math.

(v) In the year 1978, the defendants and others in management attempted unsuccessfully to assert that the premises is exclusively a temple belonging to the Viswakarma community members at Komaleeswararpet and not the plaintiff Math.

In view of the above findings, all the three questions raised are answered in favour of the appellant Math.

22. As the management through a local committee has been in vogue for several decades, it would be appropriate if the same system is continued for the efficient management of the suit property and the place of worship. The Managing

Committee should consist of a Chairman nominated by the Mathadhipathi of plaintiff Math and six members (of whom three shall be nominated by plaintiff Math and the remaining three shall be elected by the Viswakarma community at Komaleeswararpet, Chennai). The said Managing Committee will be accountable to the plaintiff Math and act under its directions.

23. In view of the above, the appeal is allowed, the judgment and decree of the division bench of the High Court is set aside and the judgment and decree of the learned Single Judge decreeing the suit is restored as under:

(i) The suit property with the installed idols and other assets is declared to be the property of the plaintiff Math. The possession and control of the suit property with the place of worship (Meenakshiamman temple) vests with the plaintiff Math.

(ii) Neither the Viswakarma community of Komaleeswararpet or the Committees of Management of the 'Meenakshiamman Temple' own the suit property or the place of worship therein. They were merely acting as the representatives of the plaintiff Math.

(iii) The defendants and their agents and representatives shall deliver the entire suit property with the place of worship with the installed idols and all movables, to the plaintiff Math forthwith.

(v) Parties to bear their respective costs.

R.P. Appeal allowed.

DINBANDHU

v.

STATE OF BIHAR & ANR.

(Criminal Appeal No. 1903 of 2011)

SEPTEMBER 23, 2011

[AFTAB ALAM AND RANJANA PRAKASH DESAI, JJ.]

Bail – Conditional anticipatory bail – Propriety of – Appellant and respondent No. 2 are brothers – In a partition suit between the parties pending in the civil court, it was case of respondent No. 2 that deed of partition produced by the appellant was subjected to alterations and interpolations – Criminal complaint u/ss. 192, 193, 196, 200, 420, 406, 467, 468 and 471 IPC against appellant by respondent No. 2 – Application by the appellant praying for anticipatory bail – Grant of, by the High Court subject to the condition that in the partition suit pending between the parties, neither of the parties would use the family arrangement-cum-partition deed as evidence – Petition by the appellant for relieving him from the said condition – Rejected by the High Court – On appeal, held: It is for the civil court dealing with the partition suit between the parties to examine and test the genuineness of the deed of partition produced by the appellant in support of his case – If the civil court found it to be actually fraudulent or subjected to interpolation or forgery, it would be open to it to institute proper proceedings against the appellant in terms of s. 340 Cr.P.C. – Genuineness and validity of the document can hardly be tested in the complaint case and certainly not at the stage of grant of bail to the accused – The condition put by the High Court amounts to pre-judging the issue – Thus, the condition attached by the High Court to the anticipatory bail granted to the appellant is quite bad and illegal and cannot be sustained – Appellant and the complainant not bound by that condition.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1903 of 2011.

From the Judgment and Order dated 21.07.2010 of the High Court of Patna in Criminal Misc. No. 24472 of 2010.

M.A. Chinnasamy (NP) for the appellant.

Chandan Kumar (for Gopal Singh) and Jay Kishore Singh for the respondents.

The following order of the Court was delivered

O R D E R

Leave granted.

Heard counsel for the parties.

The appellant, who is an accused in a complaint case under sections 192, 193, 196, 200, 420, 406, 467, 468 and 471 of the Penal Code, was granted anticipatory bail by the High Court by order dated May 06, 2010 in Crl.M.C. No. 12306 of 2010. The bail order was, however, subject to a rather curious condition. The order stipulated that in a partition suit that was pending between the parties, neither the accused nor the informant would use a certain document (a family arrangement-cum-partition deed) as evidence. The relevant portion of the High Court order reads as follows:

> "...It is made clear that for deciding the partition suit the alleged document, which is subject matter of dispute in the present case, shall not be used by the either party in support of their claim for partition"

The complainant-respondent No.2 and the appellant-the accused happen to be brothers. It appears that a partition suit, registered as Partition Suit No. 24 of 2004 is pending in the Court of Sub-Judge I, Lakhisarai in which both the complainant and the accused appellant are on rival sides. In that suit the appellant apparently relied upon a "Shartnama" (deed of partition). According to the complainant, the "Shartnama"

produced by the appellant was subjected to alterations and interpolations. He, therefore filed the complaint even before the civil court had an occasion to examine the piece of evidence and comment upon its correctness and genuineness or otherwise.

In the complaint it is stated (in paragraph 7):

> "That accused Dinbandhu has committed an offence of filing a false document on the record of Partition Suit No.24 of 2004 in the Court of Sub-Judge Ist, Lakhisarai, with the knowledge that the document filed by him is false, containing deletions and additions and therefore it is a sham document which has been filed to mislead the Court purporting it to be a genuine document and has, thereby, affected the suit."

It was in the case arising from the complaint that the High Court allowed the appellant's prayer for anticipatory bail but subject to the condition as seen above.

The appellant later on moved the High Court for relieving him from the condition but the High Court rejected the petition by order dated July 21, 2010 observing that it was on the basis of the order dated May 6, 2010 that on surrendering before Magistrate the appellant was able to get himself enlarged on bail and only after being released on bail the prayer was made to do away with the condition of the bail.

It is quite true that propriety demanded that the appellant should have moved the High Court for dispensing with the condition or should have moved this Court against the condition imposed by the High Court before obtaining bail on the basis of that order. But, here we are concerned more with the correctness and validity of the order passed by the High Court than the conduct of the appellant.

We are clearly of the view that the condition attached by

the High Court to the anticipatory bail granted to the appellant is quite bad and illegal and cannot be sustained. It is basic and elementary that the final judge of the genuineness, correctness and validity of a document used as evidence in a suit is the Civil Court. Hence, it is for the court dealing with the partition suit between the parties to examine and test the genuineness of the "Shartnama" produced by the appellant in support of his case. If the Civil Court found it to be actually fraudulent or subjected to interpolation or forgery, it would be open to it to institute proper proceedings against the appellant in terms of Section 340 of the Code of Criminal Procedure. The genuineness and validity of the document can hardly be tested in the complaint case and certainly not at the stage of grant of bail to the accused. Clearly thus, it was not open to the High Court to impose the condition that in the civil suit the parties would not rely upon the document and the condition put by the High Court amounts to pre-judging the issue.

In light of the discussion made above, we are satisfied that the condition imposed by the High Court for grant of anticipatory bail to the appellant is quite untenable and we direct that the appellant or for that matter the complainant shall not be bound by that condition.

In the result, the criminal appeal is allowed.

N.J. Appeal allowed.

M/S L.N. GADODIA & SONS & ANR.

v.

REGIONAL PROVIDENT FUND COMMISSIONER

(Special Leave Petition (Civil) No. 11230 of 2008)

SEPTEMBER 26, 2011

[J.M. PANCHAL AND H.L. GOKHALE, JJ.]

EMPLOYEES PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952:

s. 7-A of Provident Fund Act read with s. 2(9) of Delhi Shops and Establishments Act – Clubbing of two companies for the purposes of the Provident Fund Act – Two sister concerns with common directors of the same family, common Managing Director, Commercial Manager and Technical Manager, same registered address and common telephone numbers and a common gram number, employees of the two concerns being swapped – Held: The Provident Fund Commissioner was justified in drawing the inference of integrity of finance, management and workforce in the two concerns and taking a view that the said companies had to be clubbed together for the purposes of their coverage under the Act – The authority concerned will proceed for determination and recovery of the provident fund dues from the said companies – Delhi Shops and Establishments Act, 1954 –ss. 2(5) and 2(9).

DELHI SHOPS AND ESTABLISHMENTS ACT, 1954:

s. 2(9) read with s. 2(5) – 'Establishment' and 'commercial establishment' – Held: In the instant case, the two companies carrying on trade or business for private gain fall within the definition of 'commercial establishment' and consequently, under the definition of 'establishment' as defined in sub-ss. (5) and (9) of s. 2 respectively – Employees Provident Fund and Miscellaneous Provisions Act, 1952 – s.

7-A.

EVIDENCE ACT, 1872:

s. 106 – Burden of proof – HELD: When any fact is especially within the knowledge of any person, the burden of proving that fact lies on him – This rule expects such a party to produce the best evidence before the authority concerned, failing which the authority cannot be faulted for drawing the necessary inference.

INTERPRETATION OF STATUTES:

Purposive construction – Provident Funds Act – HELD: Is a welfare enactment and should be construed so as to advance the object with which it is passed and any construction which would facilitate evasion of the provisions of the Act should as far as possible be avoided.

The two petitioner-companies, being sister concerns, were issued letter dated 11.6.1990 calling upon them to comply with the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. They filed an application and disputed clubbing of the two concerns for the purposes of their coverage under the Act. The Regional Provident Fund Commissioner (Enforcement and Recovery) held that both the units belonged to one establishment and they would be clubbed together for the purposes of application of the Act. He, therefore, passed an order to proceed to determine the dues from the petitioners and directed that further proceedings in the enquiry be taken up by the Presiding Officer concerned. The petitioners' appeal was allowed by the Employees Provident Fund Appellate Tribunal. However, the Single Judge of the High Court set aside the order of the Appellate Tribunal and the Division Bench of the High Court dismissed the appeal of the petitioners.

Dismissing the special leave petition filed by the

companies, the Court

HELD: 1.1 The Provident Funds Act is a welfare enactment with provisions for the employees in the factories and the establishments after their retirement, and for the benefit of their dependents in case of early death of the employees. In the case of Sayaji Mills Ltd.***, this Court has held that the Act should be construed so as to advance the object with which it is passed and any construction which would facilitate evasion of the provisions of the Act should as far as possible be avoided. [para 9-10] [518-C; 519-A-D-E]**

Sayaji Mills Ltd. Vs. Regional Provident Fund Commissioner* **1985 SCR 516 = AIR 1985 SC 323 – relied on

1.2 On the question as to whether two units should be considered as one establishment or otherwise, there is no hard and fast rule. However, guidelines have been laid down in the judgments of this Court rendered way back in the years 1959-60 and they are followed from time to time. [para 11] [519-G-H]

The Associated Cement Companies Ltd., Chaibasa Cement Works, Jhinkpani Vs. Their Workmen **1960 SCR 703 = AIR 1960 SC 56;** *Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers' Union Delhi* **AIR 1960 SC 1213;** *Rajasthan Prem Krishan Goods Transport Co. Vs. Regional Provident Fund Commissioner*, **New Delhi 1996 (3) Suppl. SCR 1 =1996 (9) SCC 454; and** *Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and others* **1996 (3) Suppl. SCR 202 =1996 (5) SCC 522 – relied on.**

Regional Provident Fund Commissioner Vs. Dharamsi Morarji Chemical Co. Ltd. **1998 (2) SCC 446;** *Regional Provident Fund Commissioner Vs. Raj's Continental Export*

(P) Ltd. **2007 (3) SCR 636 = 2007 (4) SCC 239 – referred to.**

1.3 In the instant case, the Directors of the two petitioner companies belong to the same family. The Managing Director is common. The two senior officers i.e Commercial Manager and Technical Manager are common. At the time of inspection, the Enforcement Officer noticed that the employees of the two companies were being swapped. Both of them have same registered address and common telephone numbers and a common gram number. The audited accounts revealed that petitioner no. 2 company had given a loan of Rs. 5 lakhs to petitioner no. 1 in the year 1988. The two companies are family concerns of the same family. Therefore, in the facts of the case, it has to be held that there is an integrity of management, finance and the workforce in the two private limited companies. The two companies have seen to it that on record each of them engage less than twenty employees, although the number of employees engaged by them is more than twenty when taken together. The entire attempt of the petitioners is to show that they are separate units so that the Provident Funds Act does not get attracted. The material on record however, leads to only one pointer that the two entities are parts of the same establishment and in which case they get covered under the Provident Funds Act. [para 14] [522-E-H; 523-A-B]

2.1 As the preamble of the Provident Funds Act states, 'it is an act to provide for the institution of provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishments'. The term factory is defined u/s 2 (g) of the Act, however, there is no definition of an establishment or a commercial establishment in the statute. Inasmuch as the petitioners are entities situated in Delhi, the definition of 'establishment' and 'commercial

establishment' under the Delhi Shops and Establishments Act, 1954 can be applied. It cannot be denied that the two petitioners carry on a trade or business for private gain from the premises wherein the two companies are situated. They would, therefore, fall within the definition of 'commercial establishment' and consequently, under the definition of 'establishment'. [para 15] [523-B-D; 524-D]

2.2 The two petitioners may not be different departments of one establishment in the strict sense. However, when it is noticed that they are run by the same family under a common management with common workforce and with financial integrity, they are expected to be treated as branches of one establishment for the purposes of Provident Funds Act. The issue is with respect to the application of a welfare enactment and the approach has to be as indicated by this Court in *Sayaji Mills Ltd.* The test has to be the one as laid down in *Associated Cement Company* as explained in *Management of Pratap Press.* [para 16] [524-G-H; 525-A-B]

3.1 The Provident Fund Department had issued notice to the petitioners on 11.6.1990 on the basis of their inspection. It had relied upon the 1988 Audit Report of the petitioners. The petitioners had full opportunity to explain their position in the inquiry before the Provident Fund Commissioner conducted u/s 7A of the Act. The petitioners, however, confined themselves only to a facile explanation. If according to them, the management, workforce and financial affairs of the two companies were genuinely independent, they ought to have led the necessary evidence, since they would be in the best know of it. When any fact is especially within the knowledge of any person, the burden of proving that fact lies on him. This rule (which is also embodied in s. 106

of the Evidence Act) expects such a party to produce the best evidence before the authority concerned, failing which the authority cannot be faulted for drawing the necessary inference. [para 17] [525-C-E]

3.2 In the facts and circumstances of the case, the Provident Fund Commissioner was justified in drawing the inference of integrity of finance, management and workforce in the two petitioners on the basis of the material on record. He was, therefore, entirely justified in taking the view that on the facts and law, the two petitioners had to be clubbed together for the purposes of their coverage under the Act. The respondent will proceed for determination and recovery of the provident fund dues from the petitioners in accordance with law. [para 17-19] [525-E-G; 526-B]

Case Law Reference:

1985 SCR 516	**relied on**	**para 10**
1960 SCR 703	**relied on**	**para 11**
AIR 1960 SC 1213	**relied on**	**para 11**
1998 (2) SCC 446	**referred to**	**para 12**
2007 (3) SCR 636	**referred to**	**para 12**
1996 (3) Suppl. SCR 1	**relied on**	**para 13**
1996 (3) Suppl. SCR 202	**relied on**	**para 13**

CIVIL APPELLATE JURISDICTION : Petition for Special Leave (Civil) No. 11230 of 2008.

From the Judgment and Order dated 20.12.2007 of the High Court of Delhi at New Delhi in LPA No. 399 of 2007.

S.K. Dholakia, S.K. Chachra and Dr. Kailash Chand for the Petitioners.

Shrabani Chakrabarty and Avijit Battacharjee for the Respondent.

The Judgment of the Court was delivered by

H.L. GOKHALE J. 1. This Special Leave Petition raises the question as to whether the respondent herein had erred in clubbing the two appellant concerns for the purposes of applying the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Provident Funds Act).

Facts leading to this Special Leave Petition -

2. The facts leading to this petition are this wise. The petitioner no.1 herein and petitioner no.2 (M/s Delhi Farming and Construction Pvt. Ltd.) are sister concerns. The office of the respondent wrote to them vide their letter dated 11.6.1990 calling upon them to comply with the provisions of the Provident Funds Act, failing which legal action would be initiated against them. The petitioner filed an application, and disputed clubbing of the two concerns for the purposes of their coverage under the provisions of the said Act. The application was accordingly heard by the Regional Provident Fund Commissioner (Enforcement and Recovery) Delhi, under the provisions of section 7A of the Provident Funds Act. He heard the legal advisor of the petitioners as well as the enforcement officer representing the provident fund department. It was submitted on behalf of the petitioners that the second petitioner was incorporated in 1930 as the Delhi Cattle Farming Private Limited, and in the year 1983 it's name was changed to the present name i.e. Delhi Farming and Construction Private Limited ('Delhi Company' for short). The first petitioner was incorporated as another Private Limited Company in the year 1941, and there was no connection between the activities or business of the two companies. They were different and

separate legal entities, and should not be clubbed into one establishment. It was pointed out that the main business of the second petitioner i.e. the Delhi Company was to acquire lands and farms for the purpose of cultivation and to engage in other agricultural activities. After its land was acquired by Delhi Administration in 1959 and after receiving compensation, the second petitioner shifted its business to purchase of gas cylinders and giving them on hire, supplying security equipments to the Government of India, and supply of gray/processed fabrics to readymade garments exports though this was only a side business. It was pointed out that as far as the first petitioner is concerned, their business was only as a selling agent of Calico Mills and Tata Mills, Ahmedabad. It was also trading in whole-sale cloth business. It was not disputed that both the companies have their registered office at 1112, Kucha Natwan, Chandni Chowk, Delhi-6 but it was stated that the Delhi Company carries its business and commercial activities at 116, Hans Bhawan, Bahadur Shah Zafar Marg, New Delhi-110002. Shri R.G. Gadodia and Shri T.P. Gadodia were no longer the Directors in either of the two companies, and only Smt. Sudha Gadodia was Director in both the companies.

3. On the other hand, the enforcement officer pointed out that apart from the fact that the two companies had common registered office, Shri R.G. Gadodia and Shri T.P. Gadodia were the common Directors in both the units at the time of inspection and clubbing. Apart from Smt. Sudha Gadodia being admittedly a Director in both the units, Shri T.P. Gadodia was the Managing Director in both the units. It was further pointed out that as per the Audited Report of the Delhi Company dated 24.4.1988, it had given a loan of Rs.5 lakh to the first petitioner. Two officers viz. Shri G. Ventakeshwaran and Shri S.K. Shome were employed by both the units as Technical Manager and Commercial Manager respectively. The two companies had the same telephone nos. i.e. 2512890 and 2513009. Both the units were using the same gram number which was 'GadodiaSon'.

4. In rebuttal, the petitioners pointed out that the Delhi Company had its own separate staff. The above referred two telephone nos. were in the name of the first petitioner and the second petitioner had another telephone no. i.e. 3318668. As far as the loan aspect is concerned, it was pointed out that the loan of Rs.5 lakh was just one loan to the first petitioner, and the Delhi Company had given loans to the tune of about Rs. 27 lakhs to different entities. The enforcement officer however pointed out that at the time of inspection it was noticed that the employees were being swapped between the two companies. Although the first petitioner had its branches at Bombay, Amritsar, Ahmedabad and Kanpur, the number of employees in the Delhi office of this company and the second petitioner were kept below 20 to avoid coverage under the Provident Funds Act. Having considered all these facts and the submissions by both the parties, the Provident Fund Commissioner came to the conclusion that there was an integrity in the management, finance and the workforce of the two companies, and the entire business was being run by one family. The management and the supervision was in the hands of the same Managing Director, and the finances of one company were being used by the other. In view of this, he held that both the units belonged to one establishment, and they have to be clubbed together for the purposes of application of the Provident Funds Act. He therefore, passed an order to proceed to determine the dues from the petitioners, and directed that further proceedings in the enquiry be taken up by the concerned Presiding Officer.

5. This order was challenged by the petitioners before the Employees Provident Fund Appellate Tribunal by filing an appeal No.ATA-167(4)/2000 under Section 7D of the Provident Funds Act. The Tribunal accepted the submission of the petitioners that the two units were separate private limited companies, and since a company is a juristic person, merely because there is a common Managing Director, the two units cannot be considered to be one establishment. One company

taking a loan of Rs.5 lakh from another, does not make them financially integrated. He also observed that there was no evidence to show that the two officers were mentioned as employed at the same time in the two companies. He relied upon section 2A of the Act, and submitted that considering different departments or branches of an establishment as one establishment was one thing, and considering different establishments as one establishment was another. Merely because the departments or branches of an establishment are to be treated as a part of the establishment, two establishments cannot be taken to be one. He, therefore, allowed the appeal and held that clubbing was not possible in the facts of the case, and set-aside the order of the first respondent.

6. Being aggrieved by that order, the respondent filed a petition bearing No. W.P.(C) 5669/2001 in the High Court of Delhi. A Single Judge of Delhi High Court who heard the matter examined the material on record, and considered the authorities cited by both the parties governing the legal position. Having considered all these aspects, he held that the Tribunal was swayed by the fact that the two companies are separate legal entities. He noted that the law laid down by this Court on this aspect was clear. What is to be seen is the proximity of the two units and common management. There was no error in the order passed by the Provident Fund Commissioner. The Appellate Tribunal had no reason to interfere therein. In his view, the order of the Tribunal was perverse and contrary to law. He, therefore, set-aside the same and allowed the petition.

7. The petitioners filed an appeal against the decision of the Single Judge being LPA No.399/2007. After examining the submissions of both the parties, the Division Bench came to the same conclusion as the single Judge and dismissed the appeal by passing a detailed judgment and order dated 20.12.2007.

8. The present Special Leave Petition has been filed to

challenge this judgment and order dated 20.12.2007. We have heard Mr. S.K. Dholakia, Sr. Advocate for petitioners, and Ms. Shrabani Chakrabarty for the respondent. We have noted the submissions made by both the counsel, as well as the authorities relied upon by them.

Consideration of the rival submissions -

9. As noted earlier, the main question in this appeal is whether the two units are to be regarded as one establishment for the purposes of the Provident Funds Act. Welfare economics, enlightened self interest and pressure of trade unions led the larger factories and establishments to introduce the schemes of provident fund for the benefit of their employees. But the employees of small factories and establishments remained away from these benefits. With the increase in the number of smaller factories and establishments, there was a need of a beneficial enactment for the employees engaged therein. The Provident Funds Act, is a welfare enactment brought into force for that purpose. The Parliament was concerned with the issue of making an appropriate provision for the employees in the factories and the establishments after their retirement, and for the benefit of their dependents in case of early death of the employees. That is how the Provident Funds Act came to be enacted in the year 1952, which requires a compulsory contribution to the fund and which is independently managed by the Provident Fund Commissioner. The employer and employees covered thereunder, both contribute towards this fund. As per the present provision of section 6 of the Provident Funds Act, both of them have to contribute to the fund an amount equivalent to 10% of the basic wage and dearness allowance (and retaining allowance, if any) per month. The Central Government has the power to raise this contribution to 12% after making an appropriate enquiry. The contribution to fund earns an appropriate interest thereon. As stated above, after the retirement of the employee or in the event of need of finance for specified reasons, or in the event of his death prior thereto, the amount becomes available.

10. In para 5 of *Sayaji Mills Ltd. Vs. Regional Provident Fund Commissioner* reported in [AIR 1985 SC 323] this Court has explained as to what should be the approach towards this legislation in the following words :-

> "5. At the outset it has to be stated that the Act has been brought into force in order to provide for the institution of provident funds for the benefit of the employees in factories and establishments. Article 43 of the Constitution requires the State to endeavour to secure by suitable legislation or economic organisation or in any other way to all workers, agricultural, industrial or otherwise among others conditions of work ensuring a decent standard of life and full enjoyment of leisure. The provision of the provident fund scheme is intended to encourage the habit of thrift amongst the employees and to make available to them either at the time of their retirement or earlier, if necessary, substantial amounts for their use from out of the provident fund amount standing to their credit which is made up of the contributions made by the employers as well as the employees concerned. Therefore, *the Act should be construed so as to advance the object with which it is passed. Any construction which would facilitate evasion of the provisions of the Act should as far as possible be avoided……."*
>
> (emphasis supplied)

The present controversy with respect to the applicability of the Provident Funds Act has to be approached with this perspective.

11. Now, on the question as to whether such two units should be considered as one establishment or otherwise, there is no hard and fast rule. However, guidelines have been laid down in two judgments of this Court rendered way back in the years 1959-60 and they are followed from time to time. Thus, in *The Associated Cement Companies Ltd., Chaibasa*

Cement Works, Jhinkpani Vs. Their Workmen reported in [AIR 1960 SC 56], a bench of three judges was considering the question as to whether the factory and the limestone quarry belonging to the appellant company should be considered as one establishment for the purpose of Industrial Disputes Act, 1947. This Court observed therein as follows:-

> "11. …….. What then is 'one establishment' in the ordinary industrial or business sense? ……. It is, perhaps, impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches, units etc. If in their true relation they constitute one integrated whole, the establishment is one; if on the contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the statute which gives the right of unemployment compensation and also prescribes a disqualification therefor. Thus, in one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test; and in still another case, the important test may be the unity of employment. Indeed, in a large number of cases several tests may fall for consideration at the same. The difficulty of applying these tests arises because of the complexities of modern industrial organization; many enterprises may have functional integrality between factories which are separately owned; some may be integrated in part with units or factories having the same ownership and in part with factories or plants which are independently owned."

Later in paragraph 5 of *Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers' Union Delhi* reported in [AIR 1960 SC 1213], another bench of three judges explained the above proposition in *Associated Cement Company* (supra) in the following words:-

" ……While pointing out that it was impossible to lay down any one test as an absolute and invariable test for all cases it observed that the real purpose of these tests would be to find out the true relation between the parts, branches, units etc. This court however mentioned certain tests which might be useful in deciding whether two units form part of the same establishment. Unity of ownership, unity of management and control, unity of finance and unity of labour, unity of employment and unity of functional "integrality" were the tests which the Court applied in that case…….

12. Accordingly, depending upon the facts of the particular case, in some cases the concerned units were held to the part of one establishment whereas, in some other cases they were held not to be so. *Regional Provident Fund Commissioner Vs. Dharamsi Morarji Chemical Co. Ltd.* reported in [1998 (2) SCC 446] and *Regional Provident Fund Commissioner Vs. Raj's Continental Export (P) Ltd.* reported in [2007 (4) SCC 239] are cases where the two units were held to be independent. In *Dharamsi Morarji* (supra), the appellant company was running a factory manufacturing fertilizers at Ambarnath in Distt. Thane, Maharashtra since 1921. The appellant established another factory at Roha in the adjoining district in the year 1977 to manufacture organic chemicals with separate set of workers, separate profit and loss account, separate works manager, plant superintendents and separate registration under the Factories Act. The two were held to be separate for the purposes of coverage under the Provident Funds Act. In *Raj's Continental Export* (supra), Dharamsi Morarji was followed since the two entities had separate registration under the Factories Act, Central Sales Tax Act, 1956, Income Tax Act, 1961, Employee State Insurance Act, separate balance sheets and audited statements and separate employees working under them.

13. As against that in Rajasthan Prem Krishan Goods Transport Co. Vs. Regional Provident Fund Commissioner,

New Delhi reported in [1996 (9) SCC 454] and *Regional Provident Fund Commissioner, Jaipur Vs. Naraini Udyog and others* reported in [1996 (5) SCC 522] the concerned units were held to be the units of the same establishment. In Rajasthan Prem Kishan Goods Transport Co. (supra) the trucks piled by the two entities were owned by their partners, ten out of thirteen partners were common, the place of business was common, the management was common, the letter-heads bore the same telephone numbers. In *Naraini Udyog* (supra) the two entities were located within a distance of three kilometers as separate small-scale industries but were represented by the members of the same Hindu undivided family. They had a common head office at New Delhi, common branch at Bombay and common telephone at Kota. The accounts of the two entities were maintained by the same set of clerks. Separate registration under the Factories Act, The Sales Tax Act and The ESIC Act were held to be of no relevance and the two units were held to be one establishment for the purpose of Provident Funds Act.

14. In the present case the Directors of the two petitioner companies belong to the same family. The Managing Director is common. The two senior officers i.e Commercial Manager and Technical Manager are common. At the time of inspection, the Enforcement Officer noticed that the employees of the two companies were being swapped. Both of them have same registered address and common telephone numbers and a common gram number. The audited accounts revealed that the second petitioner company had given a loan of Rs. 5 lakhs to the first petitioner in the year 1988. The two companies are family concerns of the Gadodia family. Hence, in the facts of the present case we have to hold that there is an integrity of management, finance and the workforce in the two private limited companies. The two companies have seen to it that on record each of the two entities engage less than twenty employees, although the number of employees engaged by them is more than twenty when taken together. The entire

attempt of the petitioners is to show that the two entities are separate units so that the Provident Funds Act does not get attracted. The material on record however, leads to only one pointer that the two entities are parts of the same establishment and in which case they get covered under the Provident Funds Act.

15. As the preamble of the Provident Funds Act states, 'it is an act to provide for the institution of provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishments'. The term factory is defined under section 2 (g) of the Act, however, there is no definition of an establishment or a commercial establishment in the statute. Inasmuch as the petitioners are entities situated in Delhi, we may profitably rely upon the definition of 'establishment' and 'commercial establishment' under the Delhi Shops and Establishments Act, 1954. The definition of establishment is available in section 2 (9) and that of commercial establishment in section 2 (5) thereof. These two definitions read as follows:-

"Section 2(9) Establishment-

"establishment" means a shop, a commercial establishment, residential hotel, restaurant, eating house, theatre or other places of public amusement or entertainment to which this Act applies and includes such other establishments as Government may, by notification in the Official Gazette, declare to be an establishment for the purposes of this Act;

Section 2(5) Commercial establishment

2(5) "commercial establishment" means any premises wherein any trade, business or profession or any work in connection with, or incidental or ancillary thereto, is carried on and includes a society registered under the Societies Registration Act 1860 (XXI of 1860) and

charitable or other trust, whether registered or not, which carries on any business, trade or profession or work in connection with or incidental or ancillary thereto, journalistic and printing establishments, contractors and auditors establishments quarries, and mines not governed by the Mines Act, 1952 (XXXV of 1952), educational or other institution run for private gain and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on, but does not include a shop or a factory registered under the Factories Act, 1948 (LXIII of 1948), or theatres, cinemas, restaurants, eating houses, residential hotels, clubs or other places of public amusement or entertainment;"

It cannot be denied that the two petitioners carry on a trade or business for private gain from the premises wherein the two companies are situated. They would therefore, fall within the definition of 'commercial establishment' and consequently, under the definition of 'establishment'. The only question is whether they are to be treated as two separate establishments or one establishment for the purposes of this act.

16. The petitioners have contended that the two entities are two separate establishments. They have tried to draw support from section 2(A) of the Act which declares that where an establishment consists of different departments or has branches whether situated in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment. It was submitted that only different departments or branches of an establishment can be clubbed together, but not different establishments altogether. In this connection, what is to be noted is that, this is an enabling provision in a welfare enactment. The two petitioners may not be different departments of one establishment in the strict sense. However, when we notice that they are run by the same family under a common management with common workforce and with financial integrity, they are expected to be treated as

branches of one establishment for the purposes of Provident Funds Act. The issue is with respect to the application of a welfare enactment and the approach has to be as indicated by this Court in *Sayaji Mills Ltd.* (supra). The test has to be the one as laid down in *Associated Cement Company* (supra) which has been explained in *Management of Pratap Press* (supra).

17. The Provident Fund Department had issued notice to the petitioners on 11.6.1990 on the basis of their inspection. It had relied upon the 1988 Audit Report of the petitioners. The petitioners had full opportunity to explain their position in the inquiry before the Provident Fund Commissioner conducted under Section 7A of the Provident Funds Act. The petitioners, however, confined themselves only to a facile explanation. If according to them, the management, workforce and financial affairs of the two companies were genuinely independent, they ought to have led the necessary evidence, since they would be in the best know of it. When any fact is especially within the knowledge of any person, the burden of proving that fact lies on him. This rule (which is also embodied in section 106 of the Evidence Act) expects such a party to produce the best evidence before the authority concerned, failing which the authority cannot be faulted for drawing the necessary inference. In the facts and circumstances of the present case, the Provident Fund Commissioner was therefore justified in drawing the inference of integrity of finance, management and workforce in the two petitioners on the basis of the material on record.

18. The Regional Provident Funds Commissioner was therefore, entirely justified in taking the view that on the facts and law, the two petitioners had to be clubbed together for the purposes of their coverage under the Provident Funds Act. The Appellate Tribunal clearly erred in re-appreciating the facts on record and applying wrong propositions of law thereto. The learned Single Judge was therefore required to set-aside the

order of the Appellate Tribunal in view of his conclusion that the order was contrary to the facts and the law, and was perverse. The Division Bench has rightly confirmed the order passed by the learned Single Judge.

19. In the circumstances, this petition is dismissed. The concerned officer of respondent will now proceed for the determination and recovery of the provident fund dues from the petitioners in accordance with law. There will be no order as to the costs.

R.P. Special Leave Petition dismissed.

STATE OF HIMACHAL PRADESH
v.
UNION OF INDIA & ORS.
(Original Suit No. 2 of 1996)

SEPTEMBER 27, 2011

[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

CONSTITUTION OF INDIA, 1950:

Articles 131(b) and 363 – Suit – Plaintiff (State of Himachal Pradesh) claiming its share in the power generated in Bhakra-Nangal and Beas Projects – Relief claimed against Union of India (D-1), State of Punjab (D-2), State of Haryana (D-3), State of Rajasthan (D-4) and Union Territory of Chandigarh (D-5) – Held: As regards submergence of large area in construction of the projects, plaintiff cannot make any claim on the basis of the rights of Raja of Bilaspur prior to the merger of the Bilaspur State with the Dominion of India – Further, when agreements between the States of Punjab and Rajasthan were made for construction of the Projects, the predecessor of the plaintiff was a Union Territory and it was the Union of India which had the right over the water and land therein and, therefore, the plaintiff can have no cause of action to make a claim to power from the said Projects on the basis of submergence of large areas in construction of the projects –However, the plaintiff as a successor State of the composite State of Punjab, has the statutory right u/s 78 of the Punjab Reorganisation Act, 1966 to the utilization of power and also the constitutional right to equal treatment vis-a-vis the other successor States and, as such, has cause of action to file and maintain the suit as against D-2, D-3 and D-5 – More over, as u/s 78 (1) the Central Government failed to determine the rights of the plaintiff, it has cause of action to file the suit against D-1 also – However, as D-4 was never a

part of composite State of Punjab, its rights are not affected by the 1966 Act and, thus, plaintiff has no cause of action to file the suit against D-4 – Supreme Court Rules, 1966 – O. 23, r. 6(a)—Punjab Reorganization Act, 1966 – s. 78.

Articles 131(b) and 363 – Suit – Plaintiff-State claiming its share in the power generated in Bhakra-Nangal Project, on the basis of submergence of territories of erstwhile State of Bilaspur, which was one of the constituents of the plaintiff-State – Held: Bilaspur Merger Agreement dated 15.8.1948 does not contain any provisions which have any relevance to the claim of the plaintiff to its share to the power generated in the Bhakra-Nangal Project — However, the claim of the plaintiff is also based on the Punjab Reorganization Act, 1966 and the provisions of the Constitution and such a claim is not barred under Article 363.

Articles 131(b) and 262 (2) – Suit – Plaintiff-State claiming its share in power generated in Bhakra-Nangal and Beas Projects –Maintainability of — Held: The relief claimed does not relate to inter-State river water or use thereof but pertains to sharing of power generated in the said projects and such a dispute was not barred under Article 262 (2) of the Constitution r/w s. 11 of Inter-State Water Disputes Act, 1956.

Article 131(b) – Suit –Limitation — Plaintiff-State claiming its share in power generated in Bhakra-Nangal and Beas Projects – Suit filed in 1996 – Resisted as barred by limitation – Held: Suit was not barred by limitation, delay or laches, as the Article does not prescribe any period of limitation to file such a claim – Moreover, there has been no final allocation of power from the said projects to the plaintiff as yet and the arrangements were only interim or ad hoc — Until a final decision was taken the claim of plaintiff for appropriate allocation of power from the two Projects was alive and cannot be held to be stale or belated – Limitation – Delay/ laches.

PUNJAB REORGANIZATION ACT, 1966:

s. 78 – Rights and liabilities in regard to Bhakra-Nangal and Beas Projects – Suit under Article 131 of the Constitution – Plaintiff-State claiming its share in the power generated in the two Projects – Maintainability of – Held: s. 78(1) confers a legal right on the plaintiff as a successor State to receive and utilize the power generated in Bhakra-Nangal and Beas Projects – As there is only a 'tentative, ad hoc or interim arrangement' arrived at in the meeting held on 17.4.1967 and there is no final agreement between the successor States of the composite State of Punjab, Supreme Court, therefore, has the jurisdiction to decide the extent to which the plaintiff-State would be entitled to receive and utilize the power generated in the two Projects and, as such, the suit is not barred by the scheme of ss. 78 to 80 – Constitution of India, 1950 – Article 131.

CIRCULARS/GOVERNMENT ORDERS/ NOTIFICATIONS

Government of India, Ministry of Irrigation & Power letter dated 27.7.1985 – Allocation of 12% of power generated, to 'mother-State" free of cost – Held: Is applicable to Joint ventures between the Union and one or more State Governments – In the instant case, the letter is not applicable.

***Relief** – Entitlement of plaintiff-State to receive power generated in Bhakra-Nangal and Beas Projects – Held: The purpose of the two Projects was to benefit the entire composite State of Punjab including the transferred territories which became part of plaintiff-State – If the ratio of the population of the transferred territories vis-à-vis the composite State of Punjab was 7.19%, equal treatment warranted that allocation of 7.19% of the share of the composite State of Punjab generated in the two Projects would be only fair and equitable – It is, therefore, declared that plaintiff-State is entitled to 7.19% of the share of the composite State of Punjab from Bhakra-Nangal Project w.e.f. 1.11.1966 and from Beas Project with effect from the dates of production in Unit I and Unit II — From this entitlement, what has been received by the plaintiff has to be deducted for the purpose of finding out the amount due to the plaintiff-State from defendants 2 and 3 up to October, 2011— With effect from November 2011, the plaintiff-State would be given its share of 7.19% as decreed in the judgment— Since defendants 2 and 3 have utilized power in excess of what was due to them under law, it is held that the plaintiff-State will be entitled to the interest at the rate of 6% on the amounts determined by the Union of India to be due from them– Interest.*

The State of Himachal Pradesh, comprising erstwhile State of Bilaspur, erstwhile State of Himachal Pradesh and the transferred territories of the composite State of Punjab, filed the instant suit claiming its share in the power generated from Bhakhra Nangal Project and Beas Project (Unit I and Unit II), and compensation as a result of submergence of its lands and properties in the construction of the said Projects. The plaintiff based its claim on a draft agreement, which was to be executed on behalf of Raja of Bilaspur and the Province of Punjab for the construction of Bhakra Dam, and the scheme of apportionment of assets and liabilities, between the successor States/Union Territories under the Punjab Reorganization Act 1966, according to which the assets and liabilities were to be transferred to the successor states in proportion to the population ratio distributed amongst the successor States/Union Territories and as 7.19% of the total population of the composite State of Punjab was transferred along with the territories transferred to the plaintiff -State, it was entitled to 7.19% of the total power generated in the Bhakra-Nangal and Beas Projects. In view of s. 78(1) of the Punjab Re-oganisation Act, 1966, the plaintiff was entitled to its share in the power generated in Bhakra Nangal and Beas Projects. As no agreement was entered into within two

years of the appointed day, the plaintiff filed its claim by letter dated 22.10.1969 before the Central Government and kept on making successive representations, but no progress was made in the matter. The cause of action arose when, ultimately, the Central Government failed to determine the claim and, accordingly, intimated the plaintiff by letter dated 11.4.1994 and, in a joint meeting held on 30.8.1995, the parties failed to arrive at any agreement. On the failure of the Central Government to determine the share of the plaintiff in the power generated in Bhakra Dam and Beas Projects, the plaintiff claimed compensation from the Central Government also. The defendants contested the suit.

On the pleadings of the parties ultimately the following were the issues for decision before the Court :

1. **"Whether the suit is not maintainable being barred by limitation, delay and laches?"**

2. **"Whether after the merger of the State of Bilaspur with the Dominion of India, plaintiff could still have any cause of action to file the present suit?"**

3. **"Whether the suit is barred by reasons of Article 363 of the Constitution?"**

4. **"Whether the suit was not maintainable under Article 131 of the Constitution?"**

5. **"Whether the suit does not disclose any cause of action against the defendant Nos. 3 & 4 and therefore liable to be rejected under Order XXIII Rule 6(a) of the Supreme Court rules, 1966?"**

6. **"Whether the suit is not maintainable by virtue of the scheme of the Punjab Reorganisation Act, 1966 in general and provisions of Sections 78 to 80 of the said Act in particular."**

7. **"Whether in the discussions held on 17th April, 1967, any agreement was reached between the party States as regards their share in power generated (rights to receive and utilize the power generated in the Bhakra Project?"**

8. **"Whether the Plaintiff-State is entitled to 12% of the net power generated in Bhakra –Nangal & Beas Projects free of cost from the date of commissioning of the projects?"**

9. **Whether the plaintiff is entitled to an allocation of 7.19% in addition to 12% free power of the total power generated in Bhakra Nangal & Beas Projects from the date of commissioning of Projects or the appointed date (01.11.1966).**

10. **Whether the plaintiff is entitled to a decree for a sum of Rs. 2199.7 crores against the defendants jointly and severally, as compensation/ reimbursement for their failure to supply to the plaintiff 12% and 7.19% shares in the power generated in the projects up the date of the filing of the suit and such further sums as may be determined, as entitlement of the plaintiff for the period subsequent to the filing of the suit.?**

11. **"Whether the plaintiff State is entitled to the award of any interest on, the amounts determined as its entitlement?"**

Decreeing the suit in part against defendant Nos. 2 and 3 (States of Punjab and Haryana), the Court.

HELD:

Issue No. 1:

1. The suit was not barred by limitation, delay or laches. Article 131 of the Constitution does not prescribe any period of limitation within which a State or the Union of India has to file a dispute in this Court. Moreover, there has been no final allocation of power from Bhakra-Nangal and Beas Projects to the plaintiff-State as yet and whatever allocations of power from the two Projects to it have been made are only *ad hoc* or interim. Until a final decision was taken with regard to allocation of power to the plaintiff-State from the two projects, its claim to appropriate allocation of power from the two projects was live and cannot be held to be stale or belated. [para 42] [562-B-D]

U.P. Jal Nigam & Anr. v. *Jaswant Singh & Anr*. **2006 (8) Suppl. SCR 916 = (2006) 11 SCC 464 - cited**

Issue No. 2:

2.1 By the Bilaspur Merger Agreement dated 15.08.1948 the Raja of Bilaspur ceded to the Dominion Government full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State and agreed to transfer the administration of the State to the Dominion Government on 12.10.1948. Thereafter, the Government of India, Ministry of Law, issued a notification dated 20.07.1949 (Ext. D-4/2-A) in exercise of its powers u/s 290-A of the Government of India Act, 1935 making the States Merger (Chief Commissioners Provinces) Order, 1949, whereunder Bilaspur was to be administered in all respects as if it was a Chief Commissioner's Province. Under Article 294 (b) all rights, liabilities and obligations of the Government of the Dominion of India, whether arising out of any contract or

otherwise, became the rights, liabilities and obligations of the Government of India. Thus, all rights of the Raja of Bilaspur vested in the Government of India. [para 43] [563-B-G]

2.2 This Court, therefore, holds that the plaintiff will not have any cause of action to make any claim on the basis of any right of the Raja of Bilaspur prior to the merger of Bilaspur State with the Dominion of India. [para 44] [563-G-H; 564-A-B]

2.3 However, the pleadings in the plaint and the reliefs claimed therein, show that the plaintiff's claim to the share of power generated in Bhakra-Nangal and Beas Projects is also based on s.78 of the Punjab Reorganisation Act, 1966 and its rights under the Constitution. The claim of the plaintiff-State to share of power from Bhakra-Nangal and Beas Projects in the suit insofar as it is based on provisions of the 1966 Act, and the provisions of the Constitution, is not affected by the merger of the State of Bilaspur with the Dominion of India. [para 44] [563-H; 564-A-C]

State of Seraikella and Others v. Union of India and Another **1951 SCR 474 = 1951 SCR 474 = AIR 1951 SC 253;** *State of Orissa v. State of A.P.* **(2006) 9 SCC 591 – relied on.**

Issue No. 3

3. It is true that in view of the provisions of Articles 131 and 363 of the Constitution, this Court will have no jurisdiction under Article 131 to decide any dispute arising out of any agreement or covenant between the Raja of Bilaspur and the Government of the Dominion of India. However, the only agreement proved to have been executed by the Raja of Bilaspur and the Government of the Dominion of India before the commencement of the

Constitution is the Bilaspur Merger Agreement dated 15.8.1948 (Ext. D-4/1A) and a close examination of its provisions makes it clear that there are no provisions therein which have any relevance to the claim of the plaintiff to its share to the power generated in Bhakra-Nangal and Beas Projects. Further, the draft agreement dated 07.07.1948, which had provisions in clause 13 for allocation of power to the Bilaspur State, is not proved to have been executed on behalf of the parties thereto and cannot constitute a basis for allocation of power to the plaintiff-State. Since the claim of the plaintiff-State is based also on the Punjab Reorganisation Act, 1966 and the provisions of the Constitution, such a claim is not barred under Article 363 of the Constitution. [para 47] [566-G-H; 567-A-C]

Issue No. 4:

4. It is true that in view of Clause (2) of Article 262 of the Constitution and s.11 of the Inter-State Water Disputes Act, 1956, neither the Supreme Court nor any other court shall have jurisdiction or exercise jurisdiction in respect of any water dispute which may be referred to a Tribunal under the Act. However, in the instant case, a reading of the assertions made in the plaint as well as the reliefs claimed therein by the plaintiff, makes it evident that the dispute does not relate to inter State river water or the use thereof, and actually relates to sharing of power generated in Bhakra-Nangal and Beas Projects and such a dispute was not barred under clause (2) of Article 262 of the Constitution read with s.11 of the Inter-State Water Disputes Act, 1956. [para 49] [568-A-D]

State of Karnataka v. State of A.P. and Others **2000 (3) SCR 301 = (2000) 9 SCC 572;** *State of Haryana v. State of Punjab and Another* **2002 (1) SCR 227 = (2002) 2 SCC 507 – relied on.**

Re: Cauvery Water Disputes Tribunal **1991 (2) Suppl. SCR 497 = 993 Supp (1) SCC 96(II); and** *State of Orissa v. Government of India and Another* **2009 (1) SCR 992 = (2009) 5 SCC 492 – cited.**

Issue No. 5 :

5.1 As regards the cause of action, when oral and documentary evidence have already been led by the parties and arguments have been made, and when the suit is finally being decided, it is not necessary for this Court to consider whether the plaint discloses a cause of action and whether the suit is liable to be rejected under Order 23 Rule 6(a) of the Supreme Court Rules, 1966. [para 51] [569-F-G]

5.2 So far as the plaintiff-State's legal right to the utilization of power from Bhakra-Nangal and Beas Projects is concerned, in 1959, when the agreement was made between the States of Punjab and Rajasthan to construct Bhakra-Nangal Project, as also in 1960-1961 when these two States decided to collaborate and undertake the execution of Beas Project, Himachal Pradesh was a Union Territory and not a State; and the executive and the legislative power over its water and land in Entries 17 and 18 of List-II of the Seventh Schedule to the Constitution vested in the Union of India. The submergence of the large areas of Himachal Pradesh because of the construction of these Projects took place due to decisions to which the Government of India was a party and had executive and legislative power over water and land in Himachal Pradesh by virtue of the provisions in Article 73(1) and Article 246(4) of the Constitution. The Plaintiff-State, therefore, cannot have any cause of action to make a claim to power from Bhakra-Nangal and Beas Projects on the basis of submergence of large areas of Himachal Pradesh. [para 53] [572-C-G]

Babulal Parate v. *State of Bombay and another* **1960 SCR 605 = AIR 1960 SC 51 – relied on**

5.3 However, in the considered opinion of this Court, the plaintiff had the statutory right u/s 78 of the Punjab Reorganization Act, 1966 to the utilization of power and also the constitutional right to equal treatment *vis-à-vis* the other successor States of the composite State of Punjab and, as such, has cause of action to file and maintain the suit as against defendant Nos. 2, 3 and 5. Moreover, as u/s 78(1) of the Punjab Reorganisation Act, 1966 the Central Government was required to determine by an order the rights of the plaintiff to utilization of power from Bhakra-Nangal and Beas Projects and it has not done so, the plaintiff-State also has cause of action to file the suit against defendant No.1. [para 54] [572-H; 573-E-H]

State of Haryana v. State of Punjab and Another **2004 (2) Suppl. SCR 849 = (2004) 12 SCC 673 – cited.**

5.4 Since defendant No.4 (State of Rajasthan) was never a part of composite State of Punjab and its rights and liabilities including its rights to utilization of power in Bhakra-Nangal and Beas Projects are not affected by the Punjab Reorganisation Act, 1966, the plaintiff-State has no legal right to claim a share of power from Bhakra-Nangal and Beas Projects from out of the share of power of the State of Rajasthan and, thus, had no cause of action to file the suit against (defendant No.4). [para 54] [573-C-F]

Issue No. 6

6.1 It is not correct to say that this Court has no jurisdiction under Article 131 of the Constitution to determine the share of the plaintiff to the power generated in Bhakra-Nangal and Beas Projects. It is true that s. 78(1)

of the Punjab Reorganisation Act, 1966, provides that the rights and liabilities of the successor States of the composite State of Punjab will be fixed according to an agreement between the successor States. But, in the instant case, there is no such final agreement between the successor States with regard to the share of power generated in Bhakra-Nangal and Beas Projects and there is only a 'tentative, *ad hoc* or interim arrangement' arrived at in the meeting held on 17.04.1967. Further, in spite of the order dated 29.4.2010 passed by this Court directing the Union of India to make a final effort to bring all the parties to the dispute to the negotiation table, no agreement could be arrived at. It is in these circumstances only that the Court has proceeded to hear and decide the suit. [para 57] [577-D-H; 578-A-B]

6.2 Section 78(1) by its plain language states that all rights and liabilities of the existing State of Punjab in relation to Bhakra-Nangal and Beas Projects shall, on the appointed day, be the rights and liabilities of the successor States. It, thus, confers a legal right on Himachal Pradesh as a successor State in relation to Bhakra-Nangal and Beas Projects. Clause (b) of sub-s. (3) of s.78 further confirms that the rights of the successor State such as the State of Himachal Pradesh includes the right to receive and utilize the power generated as a result of Bhakra-Nangal and Beas Projects. Therefore, the plaintiff had a legal right as a successor State of the composite State of Punjab to receive and utilize the power generated in Bhakra-Nangal and Beas Projects and this right was capable of being enforced. [para 58] [578-C-F]

United Provinces v. Governor-General in Council **AIR 1939 Federal Court 58 – referred to.**

6.3. Article 131 of the Constitution provides that this Court has original jurisdiction in any dispute between the parties mentioned therein if and in so far as the dispute

involves any question (whether of law or fact) on which the existence or extent of a legal right depends. Thus, this Court has jurisdiction not only to decide any question on which the existence of a legal right depends but also to decide any dispute involving any question on which the extent of a legal right depends. This Court, therefore, has the jurisdiction to decide the extent to which plaintiff-State would be entitled to receive and utilize the power generated in Bhakra-Nangal and Beas Projects. In this view of the matter, the suit of the plaintiff is not barred by the scheme of ss. 78 to 80 of the Punjab Reorganisation Act, 1966. [para 59] [579-C-E]

Issue No. 7:

7. It is evident from the record that allocation of rights and liabilities to the constituents of the composite State of Punjab which took place at the meeting held on 17.04.1967 was purely 'tentative' and not final. The documentary evidence before the Court clearly establishes that the allocation of power to Himachal Pradesh to the extent of 2.45% of the share of the power of the composite State of Punjab from both Bhakra-Nangal and Beas Projects was 'tentative and *ad hoc'* and not final. There is no final agreement between the successor States of the composite State of Punjab with regard to the rights and liabilities of the successor States including the right to the power generated in Bhakra-Nangal and Beas Projects in terms of s.78(1) of the Punjab Reorganisation Act, 1966. [para 62] [582-B-D; 583-B-C]

Issue No. 8:

8.1 The claim of the plaintiff to 12% free power is not based on any of its legal right, constitutional or statutory, but only on the decision referred to in the letter dated 22.07.1985 of the Government of India, Ministry of

Irrigation & Power, (Department of Power) to the Chairman, H.P. State Electricity Board (Ext. P-55), which is applicable to Central Sector Hydro-Electric Projects and with effect from 12.02.1985 the Union Cabinet has made this applicable to Joint Ventures between the Union and one or more State Governments for implementation of Hydro-Electric Projects. This is purely a policy-decision taken by the Government of India much after Bhakra-Nangal and Beas Projects were executed and in any case does not find place in any provision of law so as to confer a legal right on the plaintiff to claim the same. Thus, the plaintiff-State is not entitled to 12% power generated from Bhakra-Nangal and Beas Projects free of cost from the date of commissioning of the Projects. [para 68-69] [587-C; 589-B-D]

Kuldip Nayar& Ors. v. Union of India & Ors. **(2006) 7 SCC 1— cited**

Issue No. 9:

9.1. The claim of the plaintiff to allocation of 7.19% of the total power generated in Bhakra-Nangal and Beas Project from 01.01.1996 is based on the Punjab Reorganisation Act, 1966 and the State of Himachal Pradesh Act, 1970. The language of s.78(1) of the 1966 Act shows that the right of the successor States in relation to Bhakra-Nangal and Beas Projects are rights on account of their succession to the composite State of Punjab on its reorganization. If the ratio of the population of this transferred territory *vis-à-vis* the composite State of Punjab was 7.19%, and the transferred territory as detailed in s. 5 of the Punjab Reorganisation Act, 1966 was not small, allocation of 7.19% of the share of power of the composite State of Punjab generated in Bhakra-Nangal and Beas Projects was only fair and equitable. [para 74 and 76] [593-F-H; 594-F-H]

9.2 The allocation of only 2.5% of the total share of the power of the composite State of Punjab generated in the two Projects to Himachal Pradesh has been made on the basis of actual consumption of power by the people in the transferred territory and the location of the sub-stations in the transferred territory. The summary of discussion on 17.04.1967 (Ext. D-1/6) shows that the allocation of power to Punjab is 54.5% of the total power whereas the allocation of power to Haryana is 39.5% of the total power available to the composite State of Punjab. These allocations appear to have been done on the basis of the population ratio of the States of Punjab and Haryana in the composite State, which were 54.84% and 37.38% respectively. Thus, while the States of Punjab and Haryana have been allocated power on the basis of their population ratio, Himachal Pradesh has been allocated power on "as is where is basis". [para 76] [594-H; 595-A-C]

9.3 Equal treatment warranted that the plaintiff-State was allocated 7.19% of the total power generated in Bhakra-Nangal and Beas Projects (after excluding the power allocated to Defendant No.4 (State of Rajasthan) from the appointed day as defined in the Punjab Reorganisation Act, 1966, i.e. 01.11.1966. Considering the fact that Chandigarh is the Capital of both the States of Punjab and Haryana, these two States should meet the power requirements of the Union Territory of Chandigarh out of their share. [para 77] [595-D-E]

9.4. This Court, accordingly, orders that the entitlement of power of the constituents of the composite State of Punjab from Bhakra-Nangal and Beas Projects will be: Himachal Pradesh - 7.19%; UT of Chandigarh-3.5%; Punjab - 51.8%; Haryana - 37.51%. Therefore, the entitlement of the plaintiff out of the total production will be:

Project	Entitlement in total production	With effect from
(i) Bhakra-Nangal (7.19% of 84.78%)	6.095%	01.11.1966 (date of re-organisation)
(ii) Beas I (7.19% of 80%)	5.752%	From the date of commencement of Production
(iii) Beas II (7.19% of 41.5%)	2.984%	From the date of commencement of Production

From this entitlement, what has been received by the plaintiff in regard to Bhakra-Nangal and Beas Projects, has to be deducted for the purpose of finding out the amount due to the plaintiff-State from the States of Punjab and Haryana upto October, 2011. With effect from November 2011, the plaintiff-State would be given its share of 7.19% as decreed in the judgment. [para 77 and 80] [595-D-H; 596-A-E; 597-H]

Issue No. 10:

10.1 The plaintiff has filed Statements I and III on the basis of its entitlement to 7.19% of the total power generated in Bhakra-Nangal and Beas Projects. These statements, however, are disputed by the defendants in their written statements. Defendant No.1-Union of India will work out the details of the claim of the plaintiff-State, on the basis of the entitlements of the plaintiff, defendant No. 2 and defendant No.3 in the tables in Paragraph 77 of the judgment as well as all other rights and liabilities of the plaintiff-State, defendant No. 2 and defendant no. 3 in accordance with the provisions of the Punjab Re-organisation Act, 1966 and file a statement in this Court

stating the amount due to the plaintiff from defendant Nos.2 and 3 up to October, 2011. [para 78and 80] [596-F-H; 597-A-E-F]

Issue No. 11:

11. Since defendant Nos. 2 and 3 have utilized power in excess of what was due to them under law, this Court holds that the plaintiff-State will be entitled to interest at the rate of 6% on the amounts determined by the Union of India to be due from defendant Nos.2 and 3. [para 79] [597-B]

Case Law Reference:

2006 (8) Suppl. SCR 916	**cited**	**para 41**
1951 SCR 474	**relied on**	**para 45**
2006) 9 SCC 591	**relied on**	**para 45**
1991 (2) Suppl. SCR 497	**cited**	**para 48**
2000 (3) SCR 301	**cited**	**para 48**
2002 (1) SCR 227	**relied on**	**para 48**
2009 (1) SCR 992	**cited**	**para 48**
1960 SCR 605	**relied on**	**para 52**
AIR 1939 Federal Court 58	**referred to**	**para 56**
(2006) 7 SCC 1	**cited**	**para 64**

ORIGINAL JURISDICTION : Original Suit No. 2 of 1996.

Under Article 131 of the Constitution of India.

Mohan Jain, ASG, A.K. Ganguly, J.S. Attri, C.S. Vaidyanathan, Shyam Divan, R.S. Suri, L. Nageshwar Rao, Shambhu Prasad Singh, Naresh K. Sharma, Vivek Singh Attri, Deepak Jain, D.K. Thakur, S. Wasim A. Qadri, Yogita Yadav, Mudrika Bansal, Kartik Ashok, Vibhav Misra, Subhash Kaushik,

Saima Bakshi, A.K. Sharma, Aruneswar Gupta, Manish Raghav, Nikhil Singh, Kripa Shankar Prasad, V. Khandelwal, Anil Hooda, Kamini Jaiswal, Ashok Kumar Singh, Sapan Biswajit Meitei, Santosh Krishna, Divya Jyoti and Jyoti Mendiratta for the appearing parties.

The Judgment of the Court was delivered by

A. K. PATNAIK, J. 1. This dispute between the State of Himachal Pradesh (Plaintiff), on the one hand, and the Union of India (defendant No.1), State of Punjab (defendant No.2), State of Haryana (defendant No.3), State of Rajasthan (defendant No.4) and Union Territory of Chandigarh (defendant No.5), on the other hand, under Article 131 of the Constitution of India relates to the power generated in the Bhakra-Nangal and Beas Projects.

The Case of the Plaintiff (State of Himachal Pradesh) in the plaint

2. The Bhakra dam across the river Satluj was proposed in the year 1944 in the Bilaspur State. The construction of Bhakra dam was to result in submergence of a large territory of the Bilaspur State but would benefit the Province of Punjab. Hence, the Raja of Bilaspur agreed to the proposal for construction of the Bhakra dam only on certain terms and conditions detailed in a draft agreement which was to be executed on behalf of the Raja of Bilaspur and the Province of Punjab. These terms and conditions included payment of royalties for generation of power from the water of the reservoir of the Bhakra dam. The formal agreement between the Raja of Bilaspur and the province of Punjab, however, could not be executed as the Bilaspur State ceded to the Dominion of India in 1948. When the Constitution of India was adopted in the year 1950, Bilaspur and Himachal Pradesh were specified as Part-C States in the First Schedule to the Constitution. In 1954, Bilaspur and Himachal Pradesh were united to form a new State of Himachal Pradesh under the Himachal Pradesh and

Bilaspur (New States) Act, 1954. The new State of Himachal Pradesh, however, continued to be a Part-C State until it became a Union Territory by the Constitution (7th Amendment) Act, 1956. In 1966, Parliament enacted the Punjab Reorganisation Act, 1966 which bifurcated the erstwhile State of Punjab to two States, Punjab and Haryana, and transferred some of the territories of the erstwhile State of Punjab to the Union Territory of Himachal Pradesh. With effect from 25.01.1971, this Union Territory of Himachal Pradesh became a full fledged State by the State of Himachal Pradesh Act, 1970. The new State of Himachal Pradesh thus constitutes (i) the erstwhile Part-C State of Bilaspur; (ii) the erstwhile Part-C State of Himachal Pradesh and (iii) the transferred territories of State of Punjab.

3. The construction of Bhakra dam has brought about lot of benefits to the country and in particular the defendants Nos. 2, 3, 4 and 5, but it has resulted in submergence of 27869 (twenty seven thousand eight hundred and sixty nine) acres of land in the erstwhile Bilaspur State out of the total 41600 (forty one thousand six hundred) acres. 3/4th of the reservoir of the Bhakra Dam is located in the erstwhile Part-C State of Bilaspur, now part of the State of Himachal Pradesh. Such submergence and reservoir of water over large areas of land in the State of Himachal Pradesh have meant loss of cultivated and uncultivated land to a total extent of 103425 acres, trees and forests, towns, Government buildings, community buildings, wells, springs and paths, gardens, parks, road, bridges, telegraph lines, ferries and these in their turn have resulted in unemployment, loss of agricultural and trading activity, loss of revenue, etc. These losses must be compensated by the defendants Nos. 2, 3, 4 and 5.

4. The river Beas originates in District Kullu of Himachal Pradesh and the Beas Project is a multi-purpose scheme comprising two units: Unit-I and Unit-II. Unit-I was commenced in 1960's when Himachal Pradesh was a Union Territory and

was being administered by the Government of India and this project involved diversion of water from river Beas at Pandoh in District Mandi of Himachal Pradesh to river Satluj at Dehar. As a result of the diversion of water from river Beas at Pandoh, a reservoir comprising an area of 323 (three hundred & twenty three) acres and a storage capacity of 33240 (thirty three thousand two hundred and forty) acre feet have been created. Unit-II of the project involved the construction of Pong Dam across river Beas at Pong and the construction of the Pong Dam has caused submergence of more than 65050 (sixty five thousand & fifty) acres of land in Kangra District including prime and fertile agricultural land. Consequently, a large number of families have been uprooted from their homes and fertile agricultural land which they were cultivating and these families need to be rehabilitated. Although Units-I and II of Beas Project are located in the State of Himachal Pradesh, benefits of the two units have accrued to defendants Nos. 2, 3, 4 and 5.

5. The plaintiff is therefore entitled to its due share of power generated in the Bhakra-Nangal and Beas Projects. Under the scheme for apportionment of assets and liabilities between the successor States in the Punjab Reorganisation Act, 1966 the assets and liabilities are to be transferred to the successor States in proportion to the population ratio distributed between the successor States/Union Territories. As 7.19% of the total population of the composite State of Punjab was transferred along with the territories transferred to the plaintiff under the Punjab Reorganisation Act, 1966, the plaintiff was entitled to 7.19% of the total power generated in the Bhakra-Nangal and Beas Projects. This was also the recommendation of Shri K.S. Subrahmanyam, former Chairman of the Central Electrical Authority in his report dated 29.06.1979. Moreover, the Union of India has agreed in principle that the "mother State" which houses a hydro-electric power project by bearing the reservoir of water required for generation of hydro-electric power shall be entitled to at least 12% of total power generated from such project free of cost. Since plaintiff is the mother State in which

the reservoirs of the two hydro-electric power projects, Bhakra-Nangal and Beas Projects were located, plaintiff was entitled to supply of 12% of the total power generated in the two projects free of cost.

6. The legal right of the plaintiff to its share of power generated in the Bhakra-Nangal and Beas Projects has been acknowledged by Section 78 of the Punjab Reorganisation Act, 1966 titled "Rights and Liabilities in regard to Bhakra-Nangal and Beas Projects". Sub-section 1 of Section 78 states that notwithstanding anything contained in the Punjab Reorganisation Act, 1966 but subject to Sections 79 and 80 thereof, all rights and liabilities of the existing State of Punjab in relation to Bhakra-Nangal and Beas Projects shall on the appointed day (01.11.1966) be the rights and liabilities of the successor States in such proportion as may be fixed and subject to such adjustments as may be made by agreement entered into by the successor States after consultation with the Central Government or, if no such agreement is entered into within two years of the appointed day, as the Central Government may by order determine having regard to the purposes of the project. Accordingly, the plaintiff filed its claims with respect to the Bhakra-Nangal and Beas Projects by letter dated 22.10.1969 before the Central Government and made several subsequent representations thereafter to the Central Government from time to time but the Central Government for one reason or the other did not take steps to determine finally the rights of the plaintiff in respect of the Bhakra-Nangal and Beas Projects.

7. In the absence of the any such final determination by the Central Government, the power generated in the Bhakra-Nangal and Beas Projects presently is being shared by an ad hoc arrangement. After deducting the power consumed for auxiliary purposes and the transmission losses, the balance of the power generated in the two projects is presently apportioned on ad hoc basis is given as under:

Bhakra-Nangal		Beas	
Name of the State/U.T		Unit I (Dehar)	Unit II (Pong)
Rajasthan	15.22%	20%	58.50%
The remaining 84.78% is shared as under:		80%	41.50%
Punjab	54.50%	60%	60%
Haryana	39.50%	40%	40%
H.P.	2.5%	15 MW	Nil
U.T. Chandigarh	3.5%	Nil	Nil

8. The cause of action for filing the suit arose when the Central Government ultimately failed to determine the lawful claim of the plaintiff and intimated its decision in this regard by letter dated 11.04.1994 and when a joint meeting of all the parties under the aegis of the Principal Secretary of the Prime Minister held on 30.08.1995 failed to arrive at any agreement with tangible results. For failure on the part of the Central Government to determine the share of the plaintiff in the power generated in the two projects, the plaintiff has claimed compensation from the Central Government also.

9. The plaintiff has accordingly claimed the following reliefs:

(a) A decree declaring that the plaintiff State is entitled to a share of 12% of the net power generated (total power available after deduction of auxiliary consumption and transmission losses) in Bhakra-Nangal and Beas Projects free of cost from the date of commissioning of the projects and further a decree declaring that the defendants are jointly and severally liable to compensate and reimburse the money value of the power to the plaintiff State as per statements II and IV annexed to the plaint;

(b) A decree declaring that the plaintiff State is entitled to 7.19% of the power generated in the Bhakra-Nangal and Beas Projects from the appointed day (01.11.1966) or

from the date of commissioning of the projects, whichever is later, out of the share of the then composite State of Punjab on account of the transfer of population to the plaintiff State under the Punjab Reorganisation Act, 1966 and a further decree declaring that the defendants are jointly and severally liable to compensate or reimburse the plaintiff State for the difference between 7.19% of its share out of the share of the then composite State of Punjab and the power received by the plaintiff State under the ad hoc and interim arrangement from the two projects with effect from the appointed day or the commissioning of the projects, whichever is later as per statements I and III annexed to the plaint;

(c) A decree for a sum of Rs.2199.77 (two thousand one hundred ninety nine decimal seven) crores in favour of the plaintiff and against the defendants jointly and severally as compensation/reimbursement for their failure of supply to the plaintiff 12% and 7.19% share of the power generated in the two projects, being the total of the statements I and IV;

(d) A decree for interest, pendente lite and future at the prevailing bank rates till the realization of amount in full;

(e) Costs of the suit;

(f) Other further reliefs as may be deemed fit and proper in the circumstances of the case.

Written Statement of Defendant No.1 (Union of India)

10. The Bhakra-Nangal Project was completed in 1963 and the Beas Project was completed in 1977 and the suit filed by the plaintiff in 1996 claiming damages from defendant No.1 was hopelessly barred by limitation.

11. By an agreement executed on 13.01.1959, the composite State of Punjab and the State of Rajasthan agreed for the construction of the Bhakra dam across the river Satluj

as well as other ancillary works and the object of this Bhakra-Nangal Project was to generate hydro-electric power and to improve irrigation facilities for their respective States and also agreed to fund and derive benefits from the Bhakra-Nangal Project in the ratio of 84.78% and 15.22% respectively. Accordingly, the share of the power generated in the Bhakra-Nangal Project of the State of Rajasthan was 15.22% and the share of the power of composite State of Punjab was 84.78%. After the reorganisation of Punjab in 1966, the representatives of the successor States/Union Territories, namely Punjab, Haryana, Chandigarh and Himachal Pradesh agreed at a meeting held on 17.04.1967 in presence of the Secretary, Ministry of Irrigation and Power, Government of India that the share of power of the four successor States/Union Territories out of the share of power of the composite State of Punjab from the two projects would be as follows:

Punjab	-	54.5%
Haryana	-	39.5%
Chandigarh	-	3.5%
Himachal Pradesh	-	2.5%

This agreement was incorporated in the minutes of the meeting held on 17.04.1967 which were circulated by the letter dated 27.04.1967 of the defendant No.1 to all concerned. This agreement between the successor States/Union Territories dated 17.04.1967 constitutes a statutory agreement in terms of Section 78(1) of the Punjab Reorganisation Act, 1966 and will hold the field unless replaced by a consensual agreement between the successor States/Union Territories.

12. The Beas Project was also funded by the composite State of Punjab and the State of Rajasthan as would be clear from the notification dated 17.06.1970 of the Ministry of Irrigation and Power, Government of India and the benefits of power from the Beas Project were allocated between the composite State of Punjab and State of Rajasthan in proportion

to the ratio of the costs borne by the two States. After the reorganisation of composite State of Punjab, the Government of India, Ministry of Energy, Department of Power by D.O. Letter dated 30.03.1978 has allowed supply of 15MW power to Himachal Pradesh from the Dehar Power Plant of the Beas Project on ad hoc basis.

13. The plaintiff lodged its claim to 7.19% share of the total power generated from the Bhakra-Nangal and Beas Projects in its letter dated 22.10.1969 but by letter dated 22.03.1972, Ministry of Irrigation and Power, Government of India informed the plaintiff that the allocation of power made at the meeting on 17.04.1967 of the representatives of the successor States/ Union Territories of the composite State of Punjab will not be modified. The Subrahmanyam Report recommending 7.19% of the total share of power generated from Beas Project for the plaintiff has not been accepted by the defendant No.1 and was not binding on defendant No.1 and the other defendants.

14. The formula of 12% free power to the mother State bearing hydro-electric power project is applicable only in respect of Central Sector Hydro Projects and is not applicable to the Bhakra-Nangal and Beas Projects and this has been clarified in the D.O. Letter dated 11.04.1994 of the Ministry of Power, Government of India to the Chief Minister of the plaintiff State and has also been reiterated in the D.O. Letter dated 28.06.1995 of the Ministry.

15. Under Section 78 of the Punjab Reorganisation Act, 1966, the claims of the successor States/Union Territories to the power generated in the Bhakra-Nangal and Beas Projects can be settled either by agreement between the successor States/Union Territories or by the decision of the Central Government and not by the court. The dispute raised by the plaintiff regarding distribution of electricity from hydro projects between the plaintiff and defendants No. 2, 3, 4 and 5 is an extremely sensitive issue and experience of controversy surrounding the Cauvery dispute between Tamil Nadu,

Karnataka, Pondicherry and Kerala clearly demonstrates that there are grave risks which may give rise to agitation and eventual politicization with regard to river water system, irrigation and electricity and this is an important aspect which has to be borne in the background while dealing with the present dispute. The suit is not maintainable under Article 131 of the Constitution.

Written statement by Defendant No. 2 (State of Punjab)

16. The suit as filed by the plaintiff is not maintainable under Article 131 of the Constitution and the plaintiff has no cause of action to file the suit. In terms of Section 78(1) of the Punjab Reorganisation Act, 1966, the representatives of the successor States/Union Territories of the composite State of Punjab have at a meeting held on 17.04.1967 agreed to share the power of the composite State of Punjab from the two projects at the following percentages:

Punjab	-	54.5%
Haryana	-	39.5%
Chandigarh	-	3.5%
Himachal Pradesh	-	2.5%

This agreement dated 17.04.1967 has been entered into within the two years period specified in Section 78(1) of the Act and, therefore, the Central Government has no power to intervene in the matter.

17. The financial liabilities of Bhakra and Beas Projects are being shared by the States of Punjab and Haryana. The Central Government had taken a decision under Section 54(3) of the Punjab Reorganisation Act, 1966 that all liabilities towards the loans incurred prior to the Punjab Reorganisation Act, 1966 on the two projects are to be borne by the States of Punjab and Haryana. The decision of the Central Government in this regard has been conveyed to the concerned State Governments in the letter dated 12.03.1967 of the Government of India, Ministry of Finance, Department of Economic Affairs,

New Delhi.

18. On 27.06.1961, the Lt. Governor, Himachal Pradesh, had written to the Chief Minister of Punjab that Himachal Pradesh should be given guaranteed preference in the allotment of power generated from the Power House to be set up at Salappar (Dehar) – Unit No.1 of Beas Project. After finding out the anticipated firm demand of power from the Salappar (Dehar) Power House, the State of Punjab in its communication dated 10.08.1962 agreed to allot 15 M.W. power to Himachal Pradesh within one year of the commissioning of the two units of these projects.

19. The decision of the Union Cabinet taken on 12.02.1985 that 12% of power generated at Bhakra and Beas Projects will be supplied to the "Home State" is applicable to only Central Sector Hydro-Electric Power Projects financed by the State Government and is not applicable to Bhakra and Beas Projects, which are not Central Projects financed by the Central Government. Moreover, the Central Government's decision dated 12.02.1985 does not apply to the Central Sector Hydro-Electric Power Projects in respect of which sanction for investment had been granted prior to 12.02.1985 and sanction for investment in Bhakra and Beas Projects was much prior to 12.02.1985.

20. Population alone cannot be considered as the basis for sharing of power because the connected supply to the consumers in the successors States/Union Territories of the composite State of Punjab has to be maintained. Any increase, therefore, in the quota of power to Himachal Pradesh at the cost of the State of Punjab would mean further hardship to the consumers in the State of Punjab, which is already facing a serious power crisis.

21. Punjab being a down-stream riparian State of the rivers Satluj and Beas is entitled to utilize the water flowing from the two rivers and the plaintiff was free to utilize the up-stream water in the two rivers in the manner it liked. But since it did not have

the resources to do so, the States of Punjab, Haryana and Rajasthan have invested in the construction of the two projects. By the two projects, Himachal Pradesh has not lost anything in the process, except that the land located in the Himachal Pradesh has been acquired for the projects and more than adequate compensation has been paid to the owners of the land and reasonable arrangements have also been made for their resettlement. Moreover, the creation of big reservoir has provided Himachal Pradesh the facilities of fish, farming and increase in tourism potential.

Written statement by Defendant No. 3 (State of Haryana)

22. The suit is barred because of the provisions of Section 78 of the Punjab Reorganisation Act, 1966, under which the right to receive and utilize power from the Bhakra-Nangal and Beas Projects can only be determined by the Central Government in case the successor States/Union Territories of the composite State of Punjab are unable to reach an agreement.

23. An agreement has in fact been arrived at by the successor States/Union Territories of the composite State of Punjab on 17.04.1967 at a meeting taken by the Secretary, Ministry of Irrigation and Power, Government of India, to share the power generated by the Bhakra-Nangal and Beas Projects at the following percentages and of the share of power of the composite Punjab State:

Punjab	-	54.5%
Haryana	-	39.5%
Chandigarh	-	3.5%
Himachal Pradesh	-	2.5%

Accordingly, only 2.5% of the total power generated in the two projects out of the share of the composite State of Punjab, has been made available to the successor State of Himachal Pradesh right from May, 1967. Since the agreement dated

17.04.1967 has been arrived at within two years of the appointed date mentioned in the Punjab Reorganisation Act, 1966, the Central Government ceased to have any power under Section 78 of the Punjab Reorganisation Act, 1966 to determine the dispute.

24. The concept of 12% free power from Hydro stations to the "Mother State" or "Home State" is applicable to only Central Sector Projects commissioned after 07.09.1990 subject to the condition mentioned in the letter dated 01.11.1990 of Department of Power, Government of India and is not applicable to jointly owned State Sector Projects such as Bhakra-Nangal and Beas Projects, commissioned much earlier than 07.09.1990.

25. The Bhakra Dam was conceived with the consent of the Raja of Bilaspur and all obligations towards the erstwhile State of Bilaspur were fulfilled by the project authorities. No legal agreement between the Raja of Bilaspur and the Province of Punjab in respect of Bhakra-Nangal Project for royalty/free power exists.

26. There is no provision in the Punjab Reorganisation Act, 1966 providing for sharing of power generated in the Bhakra-Nangal and Beas Projects on the basis of the transferred population ratio and therefore the claim of the plaintiff to 7.19% of the total power generated in the two projects is not legally tenable. The Bhakra-Nangal and Beas Projects were constructed pursuant to an agreement between the State of Punjab and the State of Rajasthan and the State of Himachal Pradesh which came to existence much later was entitled to power as per the provisions incorporated in the Punjab Reorganisation Act, 1966.

27. The Department of Power, Government of India, in its D.O. Letter dated 30.03.1978 to the Chairman, B.B.M.B. conveyed the decision of Government of India that the plaintiff be supplied 15 M.W. of power generated from Beas Power Plant and this supply was to be on ad hoc basis, at Bus Bar

rates, pending final decision about its share of power which was to be examined separately. Subsequently, by letter dated 16.08.1983 of the Department of Power, Government of India, the Chairman, B.B.M.B. has been informed that the quantum of benefits from Bhakra-Nangal and Beas Projects presently allocated to Himachal Pradesh will remain unaltered until a final decision is taken.

Written statement of the Defendant No.4 (State of Rajasthan)

28. Under an agreement made on 15.08.1948 between the then Governor General of India and the Raja of Bilaspur, the administration of Bilaspur State was transferred to the Dominion Government of India and in lieu thereof the Raja of Bilaspur received a compensation of Rs.70,000/- annually as privy purse free of tax. By a notification dated 20.07.1949 the Governor General of India ordered that on and from 01.08.1949 the territory of State of Bilaspur, which had merged in the Dominion of India, would be administered as if it was Chief Commissioner's Province. On the commencement of the Constitution of India, the territory of Chief Commissioner's Province became a Part-C State and continued to be administered through the Chief Commissioner by the Government of India. Hence, it is absolutely irrelevant that about 3/4th of the total area of the reservoir of Bhakra Dam fell within the State of Bilaspur. With the construction of the Bhakra-Nangal Project, overall development took place in the area and as a result new infrastructural facilities were built in the project area such as new roads, new bridges, new township, new schools and colleges, fisheries, tourism, etc. and all these benefited the local populace of the then Part-C State of Bilaspur. It is, therefore, not correct that the then Part-C State of Bilaspur, which now formed as a part of Plaintiff-State, has only suffered on account of the submergence caused by the construction of the Bhakra Dam.

29. There was no agreement as such between the then

State of Punjab and the Raja of Bilaspur with regard to the construction of the Dam and unless the draft agreement was finally approved, settled and signed by the parties, no rights could be claimed by the State of Bilaspur under the alleged draft agreement.

30. During the construction of the Bhakra-Nangal Project, the predecessor State or Union Territory of the Plaintiff never raised the grievances now put forth by the Plaintiff and the grievances now put forth in the plaint are only an after-thought and are imaginary. In fact, all persons affected by the construction of the Bhakra-Nangal Project have been compensated, a new township of Bilaspur has been constructed, proper compensation has been paid for acquisition of land and the beneficiary States have even provided for the rehabilitation of the oustees of the Bhakra-Nangal Project in Sirsa and Hissar Districts and rehabilitation of oustees of the Beas Project in Indira Gandhi Pariyojana.

31. The share of the State of Rajasthan in the power generated in the Bhakra-Nangal Project is 15.22% and Unit-I of Beas Project is 20% and Unit-II of Beas Project is 58.50% and these allocations of share are not interim or ad hoc but are final. The one-man Committee headed by Shri K. S. Subrahmanyam was not constituted after consultation with the State of Rajasthan and hence the recommendation of this Committee has no relevance so far as the State of Rajasthan is concerned. In any case, the report of Shri K. S. Subrahmanyam is not a legally admissible document. The claim of 12% of the total power generated in Bhakra-Nangal and Beas Projects on the basis of the Plaintiff being the "Mother State" is baseless. Both the projects, Bhakra-Nangal and Beas Projects, are the State Projects conceived planned, constructed, developed and operated and are being maintained by the participating States, namely the State of Rajasthan and the composite State of Punjab, and these two States as partners of the projects have been sharing power from the two projects on the basis of agreements executed

between them.

32. The dispute raised in the suit relates to the share of water and generation of power from the use of water in inter-state rivers and this Court has no jurisdiction under Article 131 of the Constitution to decide the dispute.

33. This Court has no jurisdiction over the dispute which arises out of an agreement entered into or executed before the commencement of the Constitution by a Ruler of an Indian State by virtue of the bar under Article 363 of the Constitution.

Written statement of the Defendant No.5 (Union Territory of Chandigarh)

34. The suit is hopelessly barred by time inasmuch as the Bhakra-Nangal Project was completed in 1963 and the Beas Project was completed in 1977 and the suit has been filed in the year 1996.

35. Under Section 78(1) of the Punjab Reorganisation Act, 1966, the rights and liabilities of the successor States/Union Territories of the composite State of Punjab in relation to the Bhakra-Nangal and Beas Projects are to be fixed by an agreement entered into by the successor States/Union Territories after consultation with the Central Government or, if no such agreement is entered into within two years of the appointed day, by an order of the Central Government having regard to the purposes of the project. Hence this suit filed by the plaintiff claiming rights in the power generated in the Bhakra-Nangal and Beas Projects is not maintainable under the provisions of the Punjab Reorganisation Act, 1966.

36. An agreement has in fact been arrived at in relation to Bhakra-Nangal Project by the representatives of the successor States/Union Territories of the composite State of Punjab at a meeting held on 17.04.1967 under the Chairmanship of the Secretary, Ministry of Irrigation and Power, Government of India, and as per this agreement the share of power of Himachal Pradesh from the Bhakra-Nangal and Beas Projects is 2.5%

of the total share of the composite State of Punjab and this agreement is binding on all parties including the plaintiff and the plaintiff is estopped from seeking any relief including damages dehors the agreement.

37. In relation to the Beas Project, the Central Government has also allowed a supply of 15 MW power to Himachal Pradesh from Dehar Power Plant on ad hoc basis by letter dated 30.03.1978 of the Ministry of Energy, Department of Power, Government of India and this arrangement has been ratified by the Bhakra Beas Management Board at its 76th meeting held on 28.09.1978.

38. If there is no agreement between the successor States/ Union Territories of the composite State of Punjab and if there is no final order of the Central Government determining the rights and liabilities of the successor States/Union Territories of the composite State of Punjab, the only legal proceeding which can be initiated is for directing the Central Government to pass a statutory order under Section 78(1) of the Punjab Reorganisation Act, 1966 and there is no scope for any legal proceedings for recovery of damages towards the share of electricity of the Plaintiff.

Issues:

39. After considering the pleadings of the parties, on 08.03.1999 this Court framed a large number of issues. Thereafter, the plaintiff examined three witnesses, namely, Shri A.K. Goswami, the Chief Secretary of the State of Himachal Pradesh, Dr. Y.K. Murthy, Ex-Chief Engineer-cum-Secretary (MPP & Power) to the Government of Himachal Pradesh, and Shri Prabodh Saxena, Deputy Commissioner to the Government of Himachal Pradesh. The Defendant No.2 examined one witness, namely, Shri Romesh Chandra Bansal, Consultant of Punjab State Electricity Board on Inter State Disputes) and Defendant No.3 examined one witness, namely, Shri Jia Lal Jain, Chief Accounts Officer in Haryana State Electricity Board. The parties have also produced a large

number of documents, which have been marked as Exhibits.

40. At the hearing of the suit, the learned counsel for the parties did not press all the issues framed by this Court on 08.03.1999 and confined their arguments to some of the issues. These issues are rearranged and renumbered as follows:

"01. Whether the suit is not maintainable being barred by limitation, delay and laches? (Defendant Nos. 1 & 2)

02. Whether after the merger of the State of Bilaspur with the Dominion of India, plaintiff could still have any cause of action to file the present suit? (Defendant No. 4)

03. Whether the suit barred by reasons of Article 363 of the Constitution? (Defendant No. 4)

04. Whether the suit is not maintainable under Article 131 of the Constitution? (Defendant No.4)

05. Whether the suit does not disclose any cause of action against the Defendant Nos. 3 and 4 and therefore liable to be rejected under Order XXIII Rule 6(a) of the Supreme Court Rules, 1966. (Defendant Nos. 3 and 4).

06. Whether the suit is not maintainable by virtue of the scheme of the Punjab Reorganisation Act, 1966 in general and provisions of Sections 78 to 80 of the said Act in particular? (Defendant Nos. 1 & 2)

07. Whether in the discussions held on 17th April, 1967, any agreement was reached between the party States as regards their share in power generated (rights to receive and to utilize the power generated) in the Bhakra Project? (Defendant Nos. 1, 2 & 3)

08. Whether the Plaintiff-State is entitled to 12% of the net power generated in Bhakra-Nangal & Beas Projects free of cost from the date of commissioning of the projects? (Plaintiff)

09. Whether the State of Himachal Pradesh is entitled to an allocation of 7.19% in addition to 12% free power as claimed above, of the total power generated in Bhakra-Nangal & Beas Projects from the date of commissioning of the Projects or the appointed date (01.11.1966)? (Plaintiff)

10. Whether the plaintiff is entitled to a decree for a sum of Rs.2199.77 crores against the defendants jointly and severally, as compensation/reimbursement for their failure to supply to the plaintiff 12% and 7.19% shares (on account of distress caused/surrender of rights to generate power and on account of transfer of population to the plaintiff State respectively in the power generated in these projects upto the date of the filing of the present suit and such further sums as may be determined, as entitlement of the plaintiff for the period subsequent to the filing of the suit? (Plaintiff)

11. Whether the Plaintiff-State is entitled to the award of any interest on the amounts determined as its entitlement? (Plaintiff)"

We may now deal with each of these issues separately.

Issue No.1

41. Mr. Mohan Jain, learned Additional Solicitor General appearing for Defendant Nos. 1 and 5, submitted that the Bhakra-Nangal Project was completed in 1963 and the Beas Project was completed in 1977, whereas the suit has been filed in the year 1996 and, therefore, the suit is belated and barred by limitation. Mr. C.S. Vaidyanathan, learned senior counsel appearing for Defendant No.4, cited the decision in *U.P. Jal Nigam & Anr. v. Jaswant Singh & Anr.* [(2006) 11 SCC 464] in which this Court has held that a party would not be entitled to relief if he has not been vigilant in invoking the protection of his rights and has acquiesced with the changed situation. He submitted that in the present case, the Plaintiff-State has acquiesced in the Bhakra-Nangal and Beas Projects and the

sharing of power from the two projects by Plaintiff and the Defendant Nos. 2 and 5 in certain proportions since several decades and has filed the suit only in the year 1996.

42. We are unable to accept the contention that the suit is barred by limitation. Article 131 of the Constitution does not prescribe any period of limitation within which a State or the Union of India has to file a dispute in this Court. No other provision of law has been brought to our notice prescribing the period within which a dispute under Article 131 of the Constitution can be instituted by a State against any other State or the Union of India. Moreover, as we will indicate hereinafter in this judgment, there has been no final allocation of share of power from the Bhakra-Nangal Project and the Beas Project to the Plaintiff-State as yet and whatever allocations of power from the two projects to the Plaintiff-State have been made are only *adhoc* or interim. Until a final decision was taken with regard to allocation of power to the Plaintiff-State from the two projects, the claim of the Plaintiff-State to appropriate allocation of power from the two projects was live and cannot be held to be stale or belated. Our answer to Issue No.1, therefore, is that the suit was not barred by limitation, delay and laches.

Issue No. 2

43. The second Issue is whether after the merger of the State of Bilaspur with the Dominion of India, the Plaintiff could still have any cause of action to file the present suit. A copy of the Bilaspur Merger Agreement dated 15.08.1948 has been produced on behalf of Defendant No.4 and marked as Ext. D-4/1-A. Article 1 of the Bilaspur Merger Agreement dated 15.08.1948 reads as follows:

> "The Raja of Bilaspur hereby cedes to the Dominion Government full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State and agrees to transfer the administration of the State to the Dominion Government on twelfth day of October, 1948 (hereinafter referred to as 'the said day').

> As from the said day the Dominion Government will be competent to exercise the said powers, authority and jurisdiction in such manner and through such agency as it may think fit."

It is thus clear that by the Bilaspur Merger Agreement dated 15.08.1948 the Raja of Bilaspur ceded to the Dominion Government full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State and agreed to transfer the administration of the State to the Dominion Government on 12.10.1948. Thereafter, the Government of India, Ministry of Law, issued a notification dated 20.07.1949 (Ext. D-4/2-A) in exercise of its powers under Section 290-A of the Government of India Act, 1935 making the States Merger (Chief Commissioners Provinces) Order, 1949, which came into force from 01.08.1949. Under this States Merger (Chief Commissioners Provinces) Order, 1949, Bilaspur was to be administered in all respects as if it was a Chief Commissioner's Province. Under the Constitution of India also initially Bilaspur continued to be administered as the Chief Commissioner's Province and was included in the First Schedule of the Constitution as a Part-C State. Under Article 294 (b) all rights, liabilities and obligations of the Government of the Dominion of India, whether arising out of any contract or otherwise, became the rights, liabilities and obligations of the Government of India. These provisions of the Bilaspur Merger Agreement dated 15.08.1948 (Ext.D-4/1-A), the States Merger (Chief Commissioners Provinces) Order, 1949, the First Schedule of the Constitution and Article 294 (b) of the Constitution make it clear that Bilaspur became the part of the Dominion of India and thereafter was administered as a Chief Commissioner's Province by the Government of India and all rights of the Raja of Bilaspur vested in the Government of India.

44. We, therefore, hold that the Plaintiff will not have any cause of action to make any claim on the basis of any right of Raja of Bilaspur prior to the merger of Bilaspur State with the Dominion of India. The pleadings in the plaint and the reliefs

claimed therein, however, show that the Plaintiff's case is not founded only on the rights of Raja of Bilaspur prior to its merger with the Dominion of India. The Plaintiff's claim to the share of power generated in the Bhakra-Nangal and Beas Projects is also based on Section 78 of the Punjab Reorganisation Act, 1966 and the rights of the State of Himachal Pradesh under the Constitution. The claim of the Plaintiff-State to share of power from the Bhakra-Nangal and Beas Projects in the suit insofar as it is based on provisions of the Punjab Reorganisation Act, 1966 and the provisions of the Constitution are not affected by the merger of the State of Bilaspur with the Dominion of India. Issue No. 2 is answered accordingly.

Issue No. 3

45. Issue No. 3 relates to the bar of the suit under Article 363 of the Constitution. Mr. Vaidyanathan, learned counsel for the Defendant No.4 submitted that the suit was barred under the proviso to Article 131 of the Constitution and Article 363 of the Constitution. In support of this contention, he relied on *State of Seraikella and Others v. Union of India and Another* [AIR 1951 SC 253]. Mr. Nageshwar Rao, learned counsel for Defendant No.3 also raised this contention and relied on *State of Orissa v. State of A.P.* [(2006) 9 SCC 591].

46. Articles 131 and 363 of the Constitution are quoted hereinbelow:

> **"131. Original Jurisdiction of the Supreme Court -** Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—
>
> (a) between the Government of India and one or more States; or
>
> (b) between the Government of India and any State or States on one side and one or more other States on the other; or
>
> (c) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

[Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.]

363. Bar to interference by courts in disputes arising out of certain treaties, agreements, etc. -

(1) Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, *sanad* or other similar instrument.

(2) In this article—

(a) "Indian State" means any territory recognized before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being such a State; and

(b) "Ruler" includes the Prince, Chief or other person recognised before such commencement by His Majesty or

the Government of the Dominion of India as the Ruler of any Indian State."

47. The language of the proviso to Article 131 of the Constitution makes it clear that the jurisdiction of this Court under Article 131 shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which, having been entered into or executed before the commencement of the Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute. Hence, there is a clear bar for this Court to exercise jurisdiction under Article 131 of the Constitution to decide a dispute arising out of any treaty, agreement, covenant, engagement, *sanad* or other similar instrument which, having been entered into or executed before the commencement of the Constitution, continues in operation after such commencement. Clause (1) of Article 363 of the Constitution quoted above also states that notwithstanding anything in the Constitution, the Supreme Court shall have no jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which were entered into or executed before the commencement of the Constitution by any Ruler of an Indian State or to which the Government of the Dominion of India or any of its predecessor Governments was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, *sanad* or other similar instrument. These being the clear constitutional provisions, obviously this Court will have no jurisdiction under Article 131 of the Constitution to decide any dispute arising out of any agreement or covenant between the Raja of Bilaspur and the Government of the Dominion of India. The only agreement proved to have been executed by the Raja of Bilaspur and the Government of the Dominion of India before the

commencement of the Constitution is the Bilaspur Merger Agreement (Ext. D-4/1A) and on a close examination of the provisions of the Bilaspur Merger Agreement dated 15.08.1948, we find that there are no provisions therein which have any relevance to the claim of the Plaintiff to the share of the Plaintiff to the power generated in the Bhakra-Nangal and Beas Projects. The draft agreement dated 07.07.1948, however, has provisions in clause 13 for allocation of power to the Bilaspur State, but this draft agreement is not proved to have been executed on behalf of the parties thereto and cannot constitute a basis for allocation of power to the Plaintiff-State. However, we have already held that the claim of the Plaintiff-State is based also on the Punjab Reorganisation Act, 1966 and the provisions of the Constitution and such claim is not barred under Article 363 of the Constitution. This issue is answered accordingly.

Issue No. 4

48. Issue No. 4 has been raised by the Defendant No.4 (State of Rajasthan) and its case is that the suit is actually a dispute with regard to use of water in inter state rivers, namely, Satluj and Beas, and is barred under Article 262 (2) of the Constitution. Mr. Vaidyanathan, learned counsel appearing for the Defendant No.4, submitted that the case of the Plaintiff is that on account of the use of water of the two inter state rivers for generation of hydro-electric power in the Bhakra-Nangal and Beas Projects, the Plaintiff has lost its entitlement to beneficial use of the water. He cited decisions of this Court in *Re: Cauvery Water Disputes Tribunal* [1993 Supp (1) SCC 96(II), *State of Karnataka v. State of A.P. and Others* [(2000) 9 SCC 572], *State of Haryana v. State of Punjab and Another* [(2002) 2 SCC 507] and *State of Orissa v. Government of India and Another* [(2009) 5 SCC 492] in support of his submissions that a suit which is really a dispute relating to the use of water of an inter-state river is barred under clause (2) of Article 262 of the Constitution read with Section 11 of the Inter-State Water Disputes Act, 1956.

49. Clause (2) of Article 262 of the Constitution provides that notwithstanding anything in the Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint relating to waters of inter state rivers or river valleys. Parliament has in fact made the Inter-State Water Disputes Act, 1956 and has also provided in Section 11 of this Act that neither the Supreme Court nor any other court shall have jurisdiction or exercise jurisdiction in respect of any water dispute which may be referred to a Tribunal under the Act. In *State of Karnataka v. State of A.P. and Others* (supra) a Constitution Bench of this Court held in Para 24 at pages 604, 605 and 606 that when a contention is raised that a suit filed under Article 131 of the Constitution is barred under Article 262(2) of the Constitution read with Section 11 of the Inter-State Water Disputes Act, 1956, what is necessary to be found out is whether the assertions made in the plaint and the relief sought for, by any stretch of imagination, can be held to be a water dispute so as to oust the jurisdiction of this Court under Article 131 of the Constitution and on examining the assertions made in the plaint and the relief sought for by the Plaintiff-State, the Constitution Bench took the view that the suit in that case could not be held to be barred under Article 262 of the Constitution read with Section 11 of the Inter-State Water Disputes Act, 1956. This decision in *State of Karnataka v. State of Andhra Pradesh* was followed by this Court in *State of Haryana v. State of Punjab and Another* (supra) and it was held that the question of maintainability of the suit has to be decided upon the assertions made by the Plaintiffs and the relief sought for, and taking the totality of the same and not by spinning up one paragraph of the plaint and then deciding the matter. Applying this test to the present case, we find on a reading of the assertions made in the entire plaint as well as the reliefs claimed therein by the Plaintiff that the dispute does not relate to a dispute in relation to inter state river water or the use thereof, and actually relates to sharing of power generated in the Bhakra-Nangal and the Beas Projects and

such a dispute was not barred under clause (2) of Article 262 of the Constitution read with Section 11 of the Inter-State Water Disputes Act, 1956.

Issue No. 5

50. Mr. Nageshwar Rao, learned counsel for Defendant No.3 and Mr. Vaidyanathan, learned counsel for Defendant No.4 submitted that Article 131 of the Constitution is clear that this Court will have the original jurisdiction in a dispute between the parties mentioned therein "if and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends". They argued that unless the Plaintiff-State establishes its legal right to the share of power from the Bhakra-Nangal and Beas Projects, the suit of the Plaintiff is not maintainable under Article 131 of the Constitution. They submitted that Order XXIII Rule 6(a) of the Supreme Court Rules, 1966 states that a plaint shall be rejected where it does not disclose any cause of action and in this case since the plaint does not disclose a legal right in favour of the Plaintiff-State to its share of power from the Bhakra-Nangal and Beas Projects, the plaint is liable to be rejected. In support of this contention, Mr. Rao and Mr. Vaidyanathan relied on the decision of this Court in *State of Haryana v. State of Punjab and Another* [(2004) 12 SCC 673].

51. At this stage, when oral and documentary evidence have already been led by the parties and arguments have been made by the learned counsel for the parties and when we are going to finally decide the suit, it is not necessary for us to consider whether the plaint discloses a cause of action and is liable to be rejected under Order XXIII Rule 6(a) of the Supreme Court Rules, 1966. We have to however consider whether on the pleadings of the parties and on the evidence adduced by the parties, the Plaintiff-State has established a legal right to the utilization of power from the Bhakra-Nangal and Beas Projects. After examining the pleadings of the parties and the evidence adduced on behalf of the parties, we find that under

the Bilaspur Merger Agreement dated 15.08.1948, the State of Bilaspur merged with the Dominion of India and was administered as the Chief Commissioner's Province and was included as a Part-C State is the First Schedule of the Constitution. In 1954 Bilaspur and Himachal Pradesh however, were united to form a new State of Himachal Pradesh under the Himachal Pradesh and Bilaspur (New States) Act, 1954. This new State of Himachal Pradesh continued to be a Part-C State until it became a Union Territory by the Constitution (7th Amendment) Act, 1956. It is when Himachal Pradesh was a Union Territory that the State of Punjab and the State of Rajasthan entered into an agreement on 13.01.1959 (Ext.D-1/3) to collaborate in the construction of a Dam across the river Sutlej at Bhakra and other ancillary works executed under the Bhakra-Nangal Project for the improvement of irrigation and generation of Hydro-electric power and as per the terms and conditions of this agreement, the power generated in Bhakra-Nangal Project was to be shared between Punjab and Rajasthan in the ratio of 84.78% and 15.22% respectively. The plaintiff's case in the plaint is that the construction of the Bhakra Dam across the river Satluj has resulted in submergence of large areas of Himachal Pradesh and its rights have been affected by the construction of the Bhakra Dam. According to Mr. Ganguli, learned counsel appearing for the Plaintiff, the legal rights of the plaintiff which have been affected by the construction of the Bhakra-Nangal Project are the (a) natural right to the beneficial use of the water; (b) rights under the agreement executed with the Raja of Bilaspur and (c) constitutional rights of Himachal Pradesh over its water and land under Entries 17 and 18 of List-II of the Seventh Schedule to the Constitution; (d) the statutory rights under Section 78 of the Punjab Reorganisation Act, 1966 and (e) the right to equal treatment in matter of utilization of power from the Bhakra-Nangal and Beas Projects.

52. We have already held while answering Issue No.2 that after Bilaspur became part of the Dominion of India, the Plaintiff

cannot make any claim to power on the basis of the rights of the Raja of Bilaspur prior to the merger of the Bilaspur State with the Dominion of India. So far as the rights of a State or Union Territory over its water and land are concerned, none of the constituent units of the Indian Union were sovereign and independent entities before the Constitution and after the commencement of the Constitution the constituent units have only such rights as are conferred on them by the provisions of the Constitution. As has been held by this Court in *Babulal Parate v. State of Bombay and another* (AIR 1960 SC 51) cited by Mr. Shyam Diwan, learned counsel for the Defendant No.2:

> "None of the constituent units of the Indian Union was sovereign and independent in the sense the American colonies or the Swiss Cantons were before they formed their federal unions. The Constituent Assembly of India, deriving its power from the sovereign people, was unfettered by any previous commitment in evolving a constitutional pattern suitable to the genius and requirements of the Indian people as a whole." (At Page 55 of AIR 1960)

In 1959, as we have noticed, Himachal Pradesh which included the erstwhile State of Bilaspur was a Union Territory and not a State. The executive and the legislative power over water and land in Entries 17 and 18 of List-II of the Seventh Schedule to the Constitution vested in 1959 in the Union of India (Defendant No.1). This will be clear from Article 73(1) of the Constitution, which provides that subject to the provisions of the Constitution, the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws and from Article 246(4) of the Constitution which states that Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List. In other words, in 1959 when the agreement was made between the States of Punjab and Rajasthan to construct the Bhakra

Dam across the river Satluj which would have the effect of submerging large areas within Himachal Pradesh, it is the Union of India which had the right over the water and land in Himachal Pradesh and if the Union of India has, in exercise of its constitutional powers acquiesced in the construction of the Dam at Bhakra over river Satluj, the Plaintiff-State can have no cause of action to make a claim to power from the Bhakra-Nangal Project on the basis of submergence of large areas of Himachal Pradesh on account of the construction of the Bhakra Dam.

53. We further find that in 1960-1961 when Himachal Pradesh was a Union Territory, the State of Punjab and the State of Rajasthan decided to collaborate and undertake the execution of Beas Project including all connected works in Punjab, Rajasthan and Himachal Pradesh. The Government of India, Ministry of Irrigation and Power, also adopted a resolution on 10.02.1961 (Ext.D-1/7) constituting the Beas Control Board for ensuring efficient, economical and early execution of the Beas Project (comprising Unit-I - Beas Satluj Link and Unit-II the Dam at Pong) and there were the representatives of the States of Punjab, Rajasthan and the Himachal Pradesh Administration and the Government of India in the Beas Control Board. Thus, the submergence of the large areas of Himachal Pradesh because of the construction of the Beas Project took place due to decisions to which the Government of India was a party and when Himachal Pradesh was a Union Territory and the Union of India had executive and legislative power over water and land in Himachal Pradesh by virtue of the constitutional provisions in Article 73(1) and Article 246(4) of the Constitution. The Plaintiff-State therefore cannot have any cause of action to make a claim to power from the Beas Project on the basis of submergence of large areas of Himachal Pradesh.

54. In our considered opinion, however, the Plaintiff had the statutory right under Section 78 of the Punjab Reorganisation Act, 1966 to the utilization of power and also the constitutional

right to equal treatment vis-à-vis the other successor States of the composite State of Punjab and the Plaintiff has cause of action in the suit to make a claim to the utilization of power from the Bhakra-Nangal and Beas Projects on the basis of such statutory right and constitutional right and we shall advert to the statutory right and the constitutional right of the plaintiff when we deal with the remaining issues. On a perusal of the Punjab Reorganisation Act, 1966, however, we find that the provisions of this Act deal with the rights of the successor States of the composite State of Punjab and it is by reference to the provisions of the Punjab Reorganisation Act, 1966 that the Plaintiff-State has claimed equal rights to power from the Bhakra-Nangal and Beas Projects. The Defendant No.4 (State of Rajasthan) was never a part of composite State of Punjab and its rights and liabilities including its rights to utilization of power in the Bhakra-Nangal and Beas Projects are not affected by the Punjab Reorganisation Act, 1966. Hence, on the basis of the statutory right and the constitutional right of the plaintiff to utilization of power from the Bhakra-Nangal and Beas Projects from out of the share of composite State of Punjab prior to the Punjab Reorganisation Act, 1966, the Plaintiff-State has no cause of action to file a suit against the State of Rajasthan. In other words, since the Plaintiff-State has no legal right to claim a share of power from the Bhakra-Nangal and Beas Projects from out of the share of power of the State of Rajasthan, the Plaintiff had no cause of action to file the suit against the State of Rajasthan (Defendant No.4), but since the Plaintiff-State has a legal right to utilization of power out of the total share of power of the composite State of Punjab from the Bhakra-Nangal and Beas Projects as a successor State, the Plaintiff has cause of action to file the suit and to maintain the suit as against Defendant Nos. 2, 3 and 5. Moreover, as under Section 78(1) of the Punjab Reorganisation Act, 1966 the Central Government was required to determine by an order the rights of the plaintiff to utilization of power from the Bhakra-Nangal and Beas Projects and the Central Government has not done so, the Plaintiff-State has cause of action to file the suit

against the Defendant No.1. Issue No.5 is answered accordingly.

Issue Nos. 6

55. For deciding issue No. 6, a reference to Section 78 of the Punjab Reorganisation Act, 1966 is necessary.

> "78. **Rights and liabilities in regard to Bhakra-Nangal and Beas Projects** (1) Notwithstand-ing anything contained in this Act but subject to the provisions of sections 79 and 80, all rights and liabilities of the existing State of Punjab in relation to Bhakra-Nangal Project and Beas Project shall, on the appointed day, be the rights and liabilities of the successor States in such proportion as may be fixed, and subject to such adjustments as may be made, by agreement entered into by the said States after consultation with the Central Government or, if no such agreement is entered into within two years of the appointed day, as the Central Government may by order determine having regard to the purposes of the Projects :
>
> Provided that the order so made by the Central Government may be varied by any subsequent agreement entered into by the successor States after consultation with the Central Government.
>
> (2) An agreement or order referred to in sub-section (1) shall, if there has been an extension or further development of either of the projects referred to in that sub-section after the appointed day, provide also for the rights and liabilities of the successor States in relation to such extension or further development.
>
> (3) The rights and liabilities referred to in sub-sections (1) and (2) shall include-
>
> (a) the rights to receive and to utilise the water available for distribution as a result of the projects, and

(b) the rights to receive and to utilise the power generated as a result of the projects, but shall not include the rights and liabilities under any contract entered into before the appointed day by the Government of the existing State of Punjab with any person or authority other than Government.

(4) In this section and in sections 79 and 80-

(A) "Beas Project" means the works which are either under construction or are to be constructed as components of the Beas-Sutlej Link Project (Unit I) and Pong Dam Project on the Beas river (Unit II) including-

(i) Beas-Sutlej Link Project (Unit I) comprising-

(a)Pandoh Dam and works appurtenant thereto.

(b) Pandoh-Baggi Tunnel,

(c) Sundernagar-Hydel Channel,

(d) Sundernagar-Sutlej Tunnel,

(e) By-pass Tunnel,

(f) four generating units each of 165 M.W. capacity at Dehar Power House on the right side of Sutlej river,

(g) fifth generating unit of 120 M.W. capacity at Bhakra Right Bank Power House,

(h) transmission lines,

(i) Balancing Reservoir;

(ii) Pong Dam Project (Unit II) comprising-

(a) Pong Dam and works appurtenant thereto,

(b) Outlet Works,

(c) Penstock Tunnels,

(d) Power plant with four generating units of 60 M.W. each;

(iii) such other works as are ancillary to the works aforesaid and are of common interest to more than one State;

(B) "Bhakra-Nangal Project" means-

(i) Bhakra Dam, Reservoir and works appurtenant thereto;

(ii) Nangal Dam and Nangal-Hydel Channel;

(iii) Bhakra Main Line and canal system;

(iv) Bhakra Left Bank Power House, Ganguwal Power House and Kotla Power House, switchyards, sub-stations and transmission lines;

(v) Bhakra Right Bank Power House with four units of 120 M.W. each."

56. Mr. Shyam Diwan, leaned counsel appearing for the Defendant No.2, submitted that Section 78(1) of the Punjab Reorganisation Act, 1966 starts with the non-obstante clause "Notwithstanding anything contained in this Act". He argued that considering these opening words in Section 78 of the Punjab Reorganisation Act, 1966, no other provisions of the Act should be looked into by the Court and the rights and liabilities of the successor State of the composite State of Punjab in regard to Bhakra-Nangal and Beas Projects have to be decided with reference to the provisions of Section 78 only. He submitted that Section 204(u) of the Government of India Act, 1935 was the provision corresponding to Article 131 of the Constitution and interpreting the said Section 204(u) of the Government of India Act, 1935 the Federal Court has held in *United Provinces v. Governor-General in Council* [AIR 1939 Federal Court 58] that the term 'legal right' used in Section 204 means a right recognized by law and capable of being enforced by the power of a State. He submitted that under Section 78 (1) of the Punjab

Reorganisation Act, 1966, there is no right of the Plaintiff-State to the power generated in the Bhakra-Nangal and Beas Projects except what is agreed upon by the successor States or determined by the Central Government and hence the right of the Plaintiff, if any, is not enforceable in Court. He finally submitted that even if this Court holds that the Plaintiff has a legal right to a share of power generated in the Bhakra-Nangal and Beas Projects, this Court can only direct the Central Government to determine the share of Himachal Pradesh and cannot itself determine the share of Himachal Pradesh. Mr. Mohan Jain, learned Additional Solicitor General, learned counsel appearing for Defendant No.1, also made similar submissions.

57. We are not in a position to accept the submissions of learned counsel appearing on behalf of the Defendant Nos. 1 and 2 that this Court has no jurisdiction under Article 131 of the Constitution to determine the share of the Plaintiff to the power generated in the Bhakra-Nangal and Beas Projects. Section 78(1) of the Punjab Reorganisation Act, 1966, it is true, provides that the rights and liabilities of the successor States of the composite State of Punjab will be fixed according to an agreement between the successor States. But, as we will discuss under Issue No.7, there is no such final agreement between the successor States with regard to the share of power generated in the Bhakra-Nangal and Beas Projects and there is only a 'tentative, ad hoc or interim arrangement' arrived at in the meeting held on 17.04.1967. We may add here that even when this suit was pending before this Court, an order was passed by this Court on 29.04.2010 directing the Union of India to make a final effort to bring all the parties to the dispute to the negotiating table and by acting as a meaningful mediator attempt to find a solution which is mutually acceptable to all the parties and the case was adjourned for three months to enable the parties to arrive at a mutually acceptable solution with the guidance of the Union Government, but an affidavit was filed in the Court on behalf of the Central Government stating that a

Secretary level meeting was held with the stakeholder States but a settlement could not be arrived at, as the stakeholder States stuck to their respective claims. It is in these circumstances only that the Court has proceeded to hear and decide the suit.

58. We have also perused the decision of the Federal Court in *United Provinces v. Governor-General in Council* (supra) cited by Mr. Diwan and we find that Sulaiman and Varadachariar, JJ. have taken a view that the term 'legal right' used in Section 204 of the Government of India Act, 1935 means a right recognized by law and capable of being enforced by the power of a State, but not necessarily in a Court of Law. Section 78(1) by its plain language states that all rights and liabilities of the existing State of Punjab in relation to Bhakra-Nangal Project and Beas Project shall, on the appointed day, be the rights and liabilities of the successor States. This provision in Section 78 is enough to confer a legal right on Himachal Pradesh as a successor State in relation to Bhakra-Nangal and Beas Projects. Clause (b) of Sub-section (3) of Section 78 further provides that the rights and liabilities referred to in sub-section (1) shall include the rights to receive and utilize the power generated as a result of the projects. This provision in Section 78 further confirms that the rights of the successor State such as the State of Himachal Pradesh includes the right to receive and utilize the power generated as a result of the Bhakra-Nangal and Beas Projects. The fact that the rights and liabilities of the successor States were to be fixed by an agreement to be entered into by the successor States after consultation with the Central Government does not affect the legal right of the State of Himachal Pradesh to receive and utilize the power generated as a result of Bhakra-Nangal and Beas Projects. Similarly, the fact that in the absence of any agreement within two years as stipulated in sub-section (1) of Section 78 the Central Government was empowered to determine by an order the right and liabilities of the successor States does not affect the legal right of the State of Himachal

Pradesh to receive and utilize the power generated as a result of the Bhakra-Nangal and Beas Projects. We have, therefore, no doubt in our mind that the Plaintiff had a legal right as a successor State of the composite State of Punjab to receive and utilize the power generated in the Bhakra-Nangal and Beas Projects and this right was recognized by law and capable of being enforced by the power of the State.

59. Article 131 of the Constitution provides that this Court has original jurisdiction in any dispute between the parties mentioned therein if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends. Hence, this Court has jurisdiction not only to decide any question on which the existence of a legal right depends but also to decide any dispute involving any question on which the extent of a legal right depends. We, therefore, have the jurisdiction to decide the extent to which Plaintiff-State would be entitled to receive and utilize the power generated in the Bhakra-Nangal and Beas Projects. In other words, the suit of the Plaintiff is not barred by the scheme of Sections 78 to 80 of the Punjab Reorganisation Act, 1966. Issue No.6 is answered accordingly.

Issue No.7

60. Mr. Mohan Jain, the Additional Solicitor General appearing for Defendant No.1 and Mr. Shyam Diwan, learned counsel for Defendant No.2, submitted that Section 78 of the Punjab Reorganisation Act, 1966, provides that the rights and liabilities in regard to Bhakra-Nangal and Beas Projects of the successor States of the composite State of Punjab shall be in such proportion as may be fixed by an agreement entered into by the successor States after consultation with the Central Government or, if no such agreement is entered into within two years of the appointed day, as the Central Government may by order determine having regard to the purposes of the Projects. They submitted that the rights and liabilities of the successor States in regard to Bhakra-Nangal Project have already been fixed by the agreement dated 17.04.1967.

61. Mr. A.K. Ganguli, learned counsel for the Plaintiff, on the other hand, submitted that no agreement whatsoever in terms of Section 78(1) of the Punjab Reorganisation Act, 1966 has been arrived at between the parties and the agreement dated 17.04.1967 is only 'tentative, ad hoc or provisional arrangement' pending final determination of rights and liabilities of the successor States of the composite State of Punjab. He submitted that the Plaintiff did not accept the tentative, adhoc or provisional arrangement made on 17.04.1967 and lodged its claim with the Central Government in its letter dated 27.10.1969 marked as Ext. P-12 claiming share to the extent of 7.19% of the total benefits from Bhakra-Nangal and Beas Projects, but the Central Government did not decide the claim of the Plaintiff-State and hence the Plaintiff had no option but to file the suit under Article 131 before this Court.

62. We have gone through the evidence and we find that by a letter dated 12.03.1967 of the Government of India, Ministry of Finance, Department of Economic Affairs, addressed to the Secretaries, Finance Department of the Government of Punjab and Haryana, marked as Ex.P-4, liability for the loan taken by the composite State of Punjab from the Central Government for Bhakra-Nangal and Beas Projects have been allocated 'provisionally' among the successor States of Punjab and Haryana in the ratio of 53:47 (for Bhakra Loans) and 60:40 (for Beas Project) for the purpose of repayment of principal and payment of interest. In the said letter (Ex.P-4) it is clearly stated that the allocation is a 'purely an ad hoc and temporary arrangement' and will be subject to re-adjustment later when the final allocation of the debt is made in terms of the provisions of Section 54(3) of the Punjab Reorganisation Act, 1966. The summary of discussions held in the room of the Secretary, Ministry of Irrigation and Power on 17.04.1967 regarding the formation of two separate Electricity Boards for Haryana and Punjab and related matters have been circulated by a memorandum dated 27.04.1967 of the Government of India, Ministry of Irrigation and Power, marked as Ex.D-1/6.

Para 3 of the summary discussions which records the alleged agreement between the successor States with regard to allocation of assets and liabilities in relation to the Bhakra-Nangal Project and the Beas Project is extracted hereinbelow:

> "Shri Nawab Singh stated that a decision on the tentative allocation of assets and liabilities of Punjab and Haryana had been taken earlier on the basis of 58% : 42%. Now the shares of the Union Territories of Himachal Pradesh and Chandigarh had to be decided. He further stated that at a meeting held in this regard recently an agreement had been reached on the allocation of a share of 3.5% to Chandigarh and 2.5% to Himachal Pradesh and the remaining, ratio of 58:42. On this basis, the shares of the four constituents would become as under:
>
> | | | |
> |---|---|---|
> | Punjab | - | 54.5% |
> | Haryana | - | 39.5% |
> | Chandigarh | - | 3.5% |
> | Himachal Pradesh | - | 2.5% |
>
> The above percentages were agreed to the Power Houses, sub-stations, Transmission Lines will, of course, be owned on the basis of location etc. as per distribution shown in Annexure-I. It was further decided that the depreciation accrued and loans raised for any particular fixed asset would be allocated along with the asset itself as per Annexure-I and that the distribution systems and other small lengths of transmission lines, sub-stations etc. not included in the list will go to the successor States on location basis."

It will be clear that the decision on the 'tentative' allocation of asset and liabilities of Punjab and Haryana had been taken first and this was 58% for Punjab and 42% for Haryana and the shares of Chandigarh and Himachal Pradesh were determined at the meeting held on 17.04.1967 and the resultant allocation was 54% for Punjab, 39% for Haryana, 3.5% for Chandigarh

and 2.5% for Himachal Pradesh. The record of the discussions for allocation of shares of the 4 constituent of the composite State of Punjab shows that the basis for distribution was location of the power houses, sub-stations, transmission lines etc. Along with the record of discussion, the list of fixed assets 'tentatively' allocated to the Haryana Electricity Board, Punjab Electricity Board, Union Territory of Himachal Pradesh and Union Territory of Chandigarh were annexed. Similarly, the list showing 'tentative' apportionment of financial assets and liabilities as agreed in the meeting held on 17.04.1967 was also annexed. It thus appears that allocation of rights and liabilities to the constituents of the composite State of Punjab which took place at the meeting held on 17.04.1967 was purely 'tentative' and not final. This is confirmed in the letter dated 29.05.1967 of the Government of India, Ministry of Irrigation and Power, marked as Ex.P-7, addressed to the Secretaries to the Government of Punjab, Haryana and Rajasthan on the subject 'Financial Arrangements for Bhakra and Beas Projects', in which it is reiterated that the allocation was purely on ad hoc and tentative basis and was to be without prejudice to the rights of Governments of Punjab and Haryana and was subject to re-adjustment later when final allocation of debt liability is made and the ratio in which capital and reserve expenditure in respect of the project is decided in terms of the provisions of Section 54(3) of Punjab Reorganisation Act, 1966. We also find from the evidence that by a letter dated 20.03.1978 addressed by the Ministry of Energy, Government of India to Shri Shanta Kumar, Chief Minister of Himachal Pradesh, 15 MW of power has been allotted on 'ad hoc basis' to Himachal Pradesh pending a final decision of the concerned States if Himachal Pradesh was agreeable to the proportionate cost of the project. In an another subsequent letter dated 16.08.1983 of the Government of India, Ministry of Energy (Department of Power) to the Chairman, Bhakra Beas Management Board, marked as Ex.P-48, it is expressly stated:

> "The quantum of benefits from Bhakra and Beas projects

presently allocated to these two areas on an ad hoc basis will remain unaltered until a final decision is taken on the sharing of the rights and liabilities of all the successor states in the two projects."

The documentary evidence before the Court, therefore, clearly establishes that the allocation of power to Himachal Pradesh to the extent of 2.45% of the share of the power of the composite State of Punjab from both Bhakra and Beas Projects was 'tentative and *ad hoc*' and not final. There is, in other words, no final agreement between the successor States of the composite State of Punjab with regard to the rights and liabilities of the successor States including the right to the power generated in the Bhakra and Beas Projects in terms of Section 78(1) of the Punjab Reorganisation Act, 1966. Issue No.7 is answered accordingly.

Issue No.8

63. Mr. Ganguli, learned counsel for the Plaintiff, submitted that the territorial integrity of Bilaspur State could not be affected by submergence on account of construction of Bhakra Dam without the consent of the Bilaspur State and the Raja of Bilaspur while giving such consent, incorporated in the draft agreement various conditions such as payment of royalty and transfer of power to Bilaspur as a consideration for construction of the Bhakra Dam. He submitted that as the Bilaspur State became part of Himachal Pradesh and the State of Himachal Pradesh as the Mother State bears the reservoir of Bhakra-Nangal Project, Himachal Pradesh is the Mother State vis-à-vis the Bhakra-Nangal Project. He submitted that similarly as Himachal Pradesh bears the reservoir of the Beas Project, Himachal Pradesh is also the "Mother State" vis-à-vis the Beas Project. He submitted that the Union Government has taken a decision that the Mother State or the Home State where a hydro-electric power project is located, will be supplied 12% of the power generated by the power station free of cost and this will be evident from the letter dated 22.07.1985 of the

Government of India, Ministry of Irrigation & Power (Department of Power) to the Chairman, H. P. State Electricity Board, which has been produced and marked as Ext. P-55. He submitted that the Himachal Pradesh Assembly accordingly adopted a resolution on 13.03.1984 making a demand to the Union of India to give to Himachal Pradesh 12% free power from Bhakra, Dehar and Pong power projects in lieu of use of water and land of Himachal Pradesh for generation of electricity and accordingly the Chief Minister of Himachal Pradesh addressed a letter on 18.06.1984 forwarding a copy of the resolution of the Himachal Pradesh Assembly claiming 12% free supply of power to Himachal Pradesh from Bhakra, Dehar and Pong power projects, but this claim of Himachal Pradesh has not been accepted by the Central Government. Mr. Ganguli referred to the letter dated 19.02.1968 of Shri Y. S. Parmar to Dr. K. L. Rao, Union Minister of Irrigation & Power, marked as Ext. P-8, to show how in the case of other projects, namely, the Periyar Project in the Madras State and the Muchkund Project in Orissa State benefits have been given to the State whose resources are affected on account of the construction of hydro-electric project. He also referred to the views of the Vice-Chairman of the Central Water and Power Commission in his communication dated 02.05.1968, marked as Ext. P-10, suggesting that the Himachal Pradesh should be made an active partner of the Hydro-Electric Project borne by it by paying to Himachal Pradesh the annual royalties based on actual utilization of the water, power rights. He argued that all these materials clearly show that Himachal Pradesh is entitled to 12% free power from the Bhakra-Nangal and Beas Projects by virtue of it being the Mother State or the Home State and by virtue of loss of its land and water on account of the Bhakra and Beas Projects.

64. Mr. Shyam Diwan, learned counsel for the Defendant No.2, submitted that this claim of the Plaintiff to 12% free power is based upon a notion that Himachal Pradesh has some pre-existing or natural rights over its land and water. He submitted

that under Article 3 of the Constitution Parliament has power to form a new State, increase the area of any State, diminish the area of any State, alter the boundaries of any State and alter the name of any State and, therefore, States in India are not indestructible and the territorial integrity of the States can be destroyed by Parliament by law. He argued that the whole notion of Himachal Pradesh having any rights over its land and water apart from what is given by Parliament by law is thus alien to the Indian Constitution. He submitted that the State of Himachal Pradesh cannot have any right dehors the Punjab Reoganisation Act, 1966 made under Article 3 of the Constitution. In support of this submission, he relied on the decisions of this Court in *Babulal Parate v. State of Bombay and another (supra) and Kuldip Nayar& Ors. v. Union of India & Ors.* [(2006) 7 SCC 1).

65. We find that under the provisions of Article 3 of the Constitution, Parliament has the power to form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State, increase the area of any State, diminish the area of any State, alter the boundaries of any State and alter the name of any State, but under Article 3, Parliament cannot take away the powers of the State Executive or the State Legislature in respect of matters enumerated in List-II of the Seventh Schedule to the Constitution. This has been made clear in the speech of Dr. B.R. Ambedkar in the Constituent Assembly quoted in Para 52 of the decision of this Court in *Kuldip Nayar v. Union of India & Ors.* (supra). Relevant portion from the speech of Dr. B.R. Ambedkar is quoted hereinbelow:-

> "…. The basic principle of federalism is that the legislative and executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the Constitution itself. This is what Constitution does. The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority. The Centre and the States are coequal in this matter….."

66. We have however held, while answering Issue No.2, that pursuant to the Bilaspur Merger Agreement, the States Merger (Chief Commissioners Provinces) Order, 1949, inclusion of the Bilaspur State as a Part-C State in the First Schedule of the Constitution and Article 294(b) of the Constitution, the Raja of Bilaspur lost all rights first to the Dominion of India and thereafter to the Government of India and that the Plaintiff, therefore, could not have any cause of action to make any claim on the basis of any right of Raja of Bilaspur prior to the merger of the Bilaspur State with the Dominion of India. The Plaintiff, therefore, cannot claim any free power because of loss of land and water by the Raja of Bilaspur. We have also held while answering Issue No.5 that in 1959 when the States of Punjab and Rajasthan agreed to construct the Bhakra Dam, Himachal Pradesh was a Union Territory and the executive and legislative power over water and land under Entries 17 and 18 of List-II of the Seventh Schedule to the Constitution vested in the Union of India and the Union of India in exercise of its constitutional powers acquiesced in the construction of the Dam at Bhakra over river Satluj. We have also held while answering to Issue No.5 that in 1960-1961 when the Himachal Pradesh was a Union Territory, the States of Punjab and Rajasthan also decided to collaborate and undertake the execution of the Beas Project and the Government of India, Ministry of Irrigation & Power, in fact, adopted a resolution on 10.02.1961 constituting the Beas Control Board for early execution of the Beas Project. Thus, at the time of the Bhakra-Nangal Project and the Beas Project were executed, Himachal Pradesh was not a full fledged State having the rights and powers under Articles 162 and 246 (3) of the Constitution over its land and water under Entries 17 and 18 of List-II of the Seventh Schedule to the Constitution and it was the Union of India which had such rights and powers over the land and water in Himachal Pradesh by virtue of the provisions of Article 73 and Article 246(4) of the Constitution.

67. The State Reorganisation Act, 1966 and, in particular

Section 78 thereof, does not also provide for grant of 12% free power to the State of Himachal Pradesh. It only provides for the rights and liabilities of Himachal Pradesh as a successor State of the Composite State of Punjab and what would be such rights and liabilities of Himachal Pradesh as a successor State of the Composite State of Punjab will be discussed while answering the Issue No.9.

68. The claim of the Plaintiff to 12% free power therefore is not based on any legal right of the Plaintiff, constitutional or statutory, but only on the decision of the Government of India referred to in the letter dated 22.07.1985 of the Government of India, Ministry of Irrigation & Power, (Department of Power) to the Chairman, H.P. State Electricity Board (Ext. P-55) which is extracted hereinbelow in extenso:-

"K. Padmabhaiah
Jt. Secretary

Government of India
Ministry of Irrigation & Power
(Department of Power)
(Sanchai aur Vidyut Mantralaya
New Delhi the 22nd July 1985

D.O.No. 53/3/79-DDH

Dear Shri Mahajan,

I am glad to inform you that the formula for sharing of power and benefits from Central Sector Hydro Electric Projects has been modified by the Cabinet on 12.02.1985. The revised formula is reproduced below for your information:-

(a) 15% of the generation capacity should be kept as unallocated at the disposal of the Central Govt. to be distributed within the Region or outside, depending upon overall requirements.

(b) The "Home State", i.e. where the project is located will

be supplied 12% of power from the energy generated by the power station, free of cost. The "energy generated" figures for the purpose will be calculated at the bus bar level, i.e. after discounting the auxiliary consumption but without taking into account the transmission line losses and

(c) The remaining power (73%) would be distributed between the States of region (including the Home State) on the basis of Central Assistance given to various States in the region during the last five years and on the basis of consumption of electricity in the States in the region in the last five years, the two factors being given equal weightage.

2. This revised formula would be applicable in respect of those Central Sector Hydro Electric Projects in whose case sanction for investment decision is issued after 12.02.1985.

3. The Cabinet has also approved the concept of Joint ventures between the Union and one or more State Government for implementation of hydro-electric projects in such projects, the partner State/States would be entitled to the supply of quantity of power proportionate to their investment, at bus bar rates, after supply of 12% free power to the Home State. The Centre's share of power would be distributed from such projects as per the formula for Central Sector Hydro Electric Projects, i.e. 15% to be reserved with the Centre as unallocated share and the balance to be distributed between the States of the region on the basis of two factors enumerated in (c) of para (1) above.

With regards,

Yours faithfully,

Sd/-

(K. Padmanabhaiah)

Shri Kailash Chand Mahajan,

Chairman,

H. P. State Electricity Board,

Vidyut Bhawan"

69. It will be crystal clear from the aforesaid letter dated 22.07.1985 that the formula of supply of 12% free power from the energy generated by a power station to the Home State is applicable to Central Sector Hydro-Electric Projects and with effect from 12.02.1985 the Union Cabinet has made this applicable to Joint Ventures between the Union and one or more State Governments for implementation of Hydro-Electric Projects and as per this formula after supply of 12% free power to the Home State, the remaining power is to be distributed to the partner States proportionate to their investment. This formula of making 12% free power from the energy generated by a power station is purely a policy-decision taken by the Government of India much after the Bhakra-Nangal Project and Beas Project were executed and in any case does not find place in any provision of law so as to confer a legal right on the Plaintiff to claim the same. Our answer to Issue No.8 is that the Plaintiff-State is not entitled to 12% power generated from the Bhakra-Nangal and Beas Projects free of cost from the date of commissioning of the Projects.

Issue No.9

70. The claim of the Plaintiff to allocation of 7.19% of the total power generated in Bhakra-Nangal and Beas Project from 01.01.1996 is based on the Punjab Reorganisation Act, 1966 and the State of Himachal Pradesh Act, 1970. We have already extracted Section 78 of the Punjab Reorganisation Act, 1966, while answering Issue No. 6. The other provisions of the Punjab Reorganisation Act, 1966, which are relevant for deciding this issue, are extracted herein below:

"Section 2(b) "appointed day" means the 1st day of November, 1966;

…….

…….

(f) "existing State of Punjab" means the State of Punjab as existing immediately before the appointed day;

(i) "population ratio", in relation to the States of Haryana and Punjab and the union, means the ration of 37.38 to 54.84 to 7.78;

(m) "successor state", in relation to the existing State of Punjab means the State of Punjab or Haryana, and includes also the Union in relation to the Union rerritory of Chandigarh and the transferred territory;

(n) "transferred territory" means the territory which on the appointed day is transferred from the existing State of Punjab to the Union territory of Himachal Pradesh;

Section 5. Transfer of territory from Punjab to Himachal Pradesh. - (1) On and from the appointed day, there shall be added to the Union territory of Himachal Pradesh the territories in the existing State of Punjab comprised in-

(a) Simla, Kangra, Kulu and lahul and Spiti districts;

(b) Nalagarh tehsil of Ambala district;

(c) Lohara, Amb and Una kanungo circles of Una tehsil of Hoshiarpur district;

(d) the territories in Santokhgarh kanungo circle of Una tehsil of Hoshiarpur district specified in Part I of the Third Schedule;

(e) the territories in Una tehsil of Hoshiarpur district specified in part II of the Third Schedule; and

(f) the territories of Dhar Kalan Kanungo circle of Pathankot tehsil of Gurdaspur district specified in Part III of the Third Schedule,

and thereupon the said territories shall cease to form part of the existing State of Punjab.

(2) The territories referred to in clause (b) of sub section (1) shall be included in, and form part of Simla district.

(3) The territories referred to in clauses (c), and (d) and (e) of sub-section (1) shall be included in and form part of Kangra district, and

(i) the territories referred to in clauses (c) and (d) shall form a separate tehsil known as Una tehsil in that district and in that tehsil the territories referred to in clause (d) shall form a seperate kanungo circle known as the Santokhgarh kanungo circle; and

(ii) the territories referred to in clause (e) shall form part of the Hamirpur tehsil in the said district.

(4) The territories referred to in clause (f) of sub-section (1) shall be included in, and form part of the Bhattiyat tehsil of Chamba district in the Union territory of Himachal Pradesh and in that tehsil, the villages Dalhousie and Balun shall be included in, and form part of Banikhet kanungo circle and the village Bakloh shall form part of Chowari kanungo circle."

71. The State of Himachal Pradesh Act, 1970 thereafter established the New State of Himachal Pradesh comprising the territories which were comprised in the existing Union Territory of Himachal Pradesh. In exercise of the powers conferred on the Central Government under Section 38 of the State of Himachal Pradesh Act, 1970, the Central Government has passed an order dated 07.07.1972 called 'the State of Himachal Pradesh (Transfer of Assets and Liabilities) Order, 1972'. Para 7 of this Order, which is relevant and is extracted

hereinbelow:

"For the purposes of paragraphs 5 and 6 of this order the provisions of Section 2 of the Punjab Reorganisation Act, 1966 (31 of 1966), shall have effect as if: (i) for clause (i), the following clauses had been substituted namely:

(i) "Population ratio" in relation to the States of Haryana, Punjab and Himachal Pradesh and the Union means the ratio of 37.38 to 54.84 to 7.10 to 0.59%".

(ii) For clause (m), the following clause had been substituted namely:

(m) "Successor State" in relation to the existing State Punjab means the State of Punjab or the State of Haryana or the State of Himachal Pradesh and includes also the Union, in relation to the Union Territory of Chandigarh."

72. Mr. Ganguli, learned counsel for the Plaintiff, submitted that it will be clear from clause (i) of para 7 of the State of Himachal Pradesh (Transfer of Assets and Liabilities) Order, 1972 that the population ratio in relation to the States of Haryana, Punjab and Himachal Pradesh and the Union Territory of Chandigarh is Haryana: 37.38%, Punjab: 54.84, Himachal Pradesh: 7.19% and Chandigarh: 0.59%. He argued that on the basis of such population ratio, the Plaintiff is, therefore, entitled to 7.19% of the total power generated in the Bhakra-Nangal and Beas Projects as a successor State of the composite State of Punjab. He submitted that the allocation of only 2.5% of the power from Bhakra-Nangal and Beas Projects to the State of Himachal Pradesh as compared to the allocation of 54.5% to Punjab and 39.5% to Haryana and 3.5% to Chandigarh, is in violation of the right of the Plaintiff-State to equal treatment. He submitted that the Plaintiff has, therefore, sent by the letter dated 22.10.1969, produced and marked as Ext. P-12, to the Joint Secretary, Government of India, Ministry of Home Affairs, New Delhi, claiming a share to the extent of 7.19% of the total benefits from the Bhakra-Nangal and Beas

Projects on the basis of transfer of 7.19% of the population of the composite Punjab State to Himachal Pradesh along with the transferred territory, but the Central Government has not passed any order as yet granting the Plaintiff its share of 7.19% of the power generated from the Bhakra-Nangal and Beas Projects on the basis of the ratio of population transferred to the Plaintiff-State along with the transferred territory.

73. Mr. Mohan Jain, learned ASG appearing for the Defendant No.1 and Mr. Shyam Diwan appearing for Defendant No.2, on the other hand, submitted that since there was an agreement between the successor States arrived at in the meeting held on 17.04.1967 and this agreement was entered into within two years stipulated in Section 78(1) of the Punjab Reorgansiation Act, 1966 and was binding on the parties, the Plaintiff-State is not entitled to 7.19% of the share of power generated in Bhakra-Nangal and Beas Projects. They further submitted that Section 78(1) of the Punjab Reorgansiation Act, 1966 is clear that the rights and liabilities of the successor State of the composite Punjab State in relation to Bhakra-Nangal and Beas Projects are to be settled by agreement within two years or by an order passed by the Central Government if no such agreement is entered into within two years and, therefore, this Court cannot consider the claim of the Plaintiff to a share of 7.19% of the power generated in the two Projects.

74. The language of Section 78(1) shows that the right of the successor States in relation to Bhakra-Nangal and Beas Projects are rights on account of their succession to the composite State of Punjab on the reorganization of the composite State of Punjab. The language of Section 78 further makes it clear that if no agreement is entered into between the States within two years of the appointed day, the Central Government was required to determine the rights and liabilities of the successor States "having regard to the purposes of the Projects". Hence, the purposes of the Bhakra-Nangal and Beas Projects will have to be kept in mind while deciding the share of the successor States.

75. The purposes of the Bhakra-Nangal Project, as evident from the agreement dated 13.01.1959 between the State of Punjab and the State of Rajasthan, were "improvement or irrigation and generation of Hydro-electric power". Clause 9(2) of the agreement dated 13.01.1959 (Ext. D-1/3) provides that the shares of the Punjab and Rajasthan in the stored water supplies was to be 84.78% and 15.22% respectively and clause 32 of this agreement provides that each party shall contribute to the capital cost of the electrical portion of the project in proportion to the share of either party in the stored water supply. Thus, the capital cost contributed by the composite State of Punjab for construction of the Hydro-electric project of Bhakra-Nangal was 84.78% and this capital cost was borne by the composite State of Punjab as a whole including the transferred territory which formed part of the State of Himachal Pradesh. Similarly, we find on a reading of the record of decisions arrived at the inter-State Conference on development and utilization of the waters of the rivers Ravi and Beas held on 25.01.1955 marked as Ext. D-4/10 as well as the minutes of the 6th meeting of the Beas Central Board held on 13.12.1963 marked as Ex. D-4/15 that 85% of the capital cost of Unit-I and 32% of the capital cost of Unit-II of Beas Project were to be met by the composite State of Punjab as a whole including the transferred territory which formed part of the State of Himachal Pradesh.

76. The purposes of the Bhakra-Nangal and the Beas Projects, therefore, were to benefit the entire composite State of Punjab including the transferred territory which became part of Himachal Pradesh. If the ratio of the population of this transferred territory vis-à-vis the composite State of Punjab was 7.19% and the transferred territory as detailed in Section 5 of the Punjab Reorganisation Act, 1966 extracted above was not small, allocation of only 7.19% of the share of power of the composite State of Punjab generated in the Bhakra-Nangal and Beas Projects was only fair and equitable. The allocation of only 2.5% of the total share of the power of the composite State of Punjab generated in the two Projects to Himachal Pradesh

has been made on the basis of actual consumption of power by the people in the transferred territory and the location of the sub-stations in the transferred territory. The summary of discussion held in the room of the Secretary, Ministry of Irrigation and Power, on 17.04.1967 (Ext. D-1/6) shows that the allocation of power to Punjab is 54.5% of the total power whereas the allocation of power to Haryana is 39.5% of the total power available to the composite State of Punjab. These allocations appear to have been done on the basis of the population ratio of Punjab and Haryana in the composite State, which were 54.84% and 37.38% respectively. Thus, while States of Punjab and Haryana have been allocated power on the basis of their population ratio, Himachal Pradesh has been allocated power on "as is where is basis".

77. Equal treatment warranted that the Plaintiff-State was allocated 7.19% of the total power generated in the Bhakra-Nangal and Beas Projects (after excluding the power allocated to the Defendant No.4 - State of Rajasthan) from the appointed day as defined in the Punjab Reorganisation Act, 1966, i.e. 01.11.1966. Considering the fact that Chandigarh is the Capital of both Punjab and Haryana, these two States should meet the power requirements of the Union Territory of Chandigarh out of their share. We accordingly order that the entitlement of power of the constituents of the composite State of Punjab from the Bhakra-Nangal and Beas Projects will be at the following percentages:

Himachal Pradesh	:	7.19%
UT of Chandigarh	:	3.5%
Punjab	:	51.8%
Haryana	:	37.51%

Therefore, the entitlement of the Plaintiff out of the total production will be as under:

Project	Entitlement in total production	With effect from
(i) Bhakra-Nangal (7.19% of 84.78%)	6.095%	01.11.1966 (date of re-organisation)
(ii) Beas I (7.19% of 80%)	5.752%	From the date of commencement of Production
(iii) Beas II (7.19% of 41.5%)	2.984%	From the date of commencement of Production

From the above entitlement, what has been received by the Plaintiff in regard to Bhakra-Nangal and Beas I have to be deducted for the purpose of finding out the amount due to the Plaintiff-State from the States of Punjab and Haryana upto October, 2011.

Issue No. 10

78. On the basis of its entitlement to 7.19% of the total power generated in the Bhakra-Nangal and Beas Projects, the Plaintiff has filed Statements I and III. These statements, however, are disputed by the Defendants in their written statements. The Defendant No.1-Union of India will have to work out the details of the claim of the Plaintiff-State on the basis of the entitlements of the Plaintiff, Defendant No.2 and Defendant No.3 in the tables in Paragraph 77 above as well as all other rights and liabilities of the Plaintiff-State, the Defendant Nos. 2 and 3 in accordance with the provisions of the Punjab Reorganisation Act, 1966 and file a statement in this Court stating the amount due to the Plaintiff from Defendant Nos.2 and 3 upto October, 2011.

Issue No. 11

79. Since the Defendant Nos. 2 and 3 have utilized power in excess of what was due to them under law, we also hold that the Plaintiff-State will be entitled to interest at the rate of 6% on the amounts determined by the Union of India to be due from Defendant Nos.2 and 3.

80. **Reliefs:**

(i) The suit is decreed in part against Defendant Nos. 2 and 3 and dismissed against Defendant Nos. 1, 4 and 5.

(ii) It is hereby declared that the Plaintiff-State is entitled to 7.19% of the power of the composite State of Punjab from the Bhakra-Nangal Project with effect from 01.11.1966 and from Beas Project with effect from the dates of production in Unit I and Unit II.

(iii) It is ordered that Defendant No.1 will work out the details of the claim of the Plaintiff-State on the basis of such entitlements of the Plaintiff, Defendant No.2 and Defendant No.3 in the tables in Paragraph 77 of this judgment as well as all other rights and liabilities of the Plaintiff-State, Defendant No.2 and Defendant No.3 in accordance with the provisions of the Punjab Reorganisation Act, 1966 and file a statement in this Court within six months from today stating the amounts due to the Plaintiff-State from Defendant Nos. 3 and 4.

(iv) On the amount found to be due to the Plaintiff-State for the period from 01.11.1966 in the case of Bhakra-Nangal Project and the amount found due to the Plaintiff-State for the period from the dates of production in the case of Beas Project, the Plaintiff-State would be entitled to 6% interest from Defendant Nos. 2 and 3 till date of payment.

(v) With effect from November 2011, the Plaintiff-State would be given its share of 7.19% as decreed in this judgment.

(vi) The Plaintiff-State will be entitled to a cost of Rs. 5

lakhs from Defendant No.2 and a cost of Rs.5 lakhs from Defendant No.3.

The matter will be listed after six months along with the statements to be prepared and filed by the Defendant No.1 as ordered for verification of the statements and for making the final decree.

R.P. Matter adjourned.

##NEXT FILE

SMT. HAR DEVI ASNANI

v.

STATE OF RAJASTHAN & OTHERS

(Civil Appeal No. 8325 of 2011**)**

SEPTEMBER 27, 2011.

[R. V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

RAJASTHAN STAMP ACT, 1998:

s. 65(1), proviso –Revision of order determining the stamp duty – Requirement of deposit of 50% of recoverable amount – HELD: Proviso to s.65(1) is constitutionally valid — The right of appeal or revision is not an absolute right, but is a statutory right which can be circumscribed by the conditions in the grant made by the statute —Revision.

CONSTITUTION OF INDIA, 1950:

Article 226 – Writ petition challenging the order determining the stamp duty dismissed by High Court on the ground of alternative remedy of revision u/s 65 of Rajasthan Stamp Act – Held: Single Judge of the High Court should

have examined the facts of the case to find out whether the determination of the value of the property purchased by the appellant and the demand of additional stamp duty made by the Additional Collector were exorbitant so as to make the remedy by way of revision requiring deposit of 50% of the demand before the revision is entertained, ineffective and call for interference under Article 226 – The orders passed by Single Judge in writ petition and by the Division Bench of the High Court in writ appeal are set aside and the writ petition is remanded to the High Court for consideration afresh in accordance with law – Rajasthan Stamp act, 1998 – s. 65.

The appellant purchased a residential plot in a Housing Scheme for a consideration of Rs.18 lacs under a registered sale deed dated 16.05.2007 executed on a stamp duty of Rs.1,17,000/-. The Sub-Registrar did not accept the valuation made in the sale deed and after getting the plot inspected, determined the value of the land at Rs.2,58,44,260/-. The Additional Collector (Stamps), upholding the determination made by the Sub-Registrar held the appellant liable to pay deficit stamp duty of Rs.15,62,880/-, deficit registration charges of Rs.7,000/- and penalty of Rs.120/- totaling to a sum of Rs.15,70,000/- and accordingly made the demand on the appellant and directed recovery of the same. The appellant filed SB Civil Writ Petition No.12422 of 2009 before the High Court, which was dismissed by the Single Judge holding that the appellant had an alternative and efficacious remedy against the demand by way of a revision before the Board of Revenue. The appeal filed by the appellant was dismissed by the Division Bench of the High Court by order dated 22.03.2010. Aggrieved, the appellant filed C. A. No. 8326 of 2011.

In the meanwhile, the appellant filed D.B. Civil Writ Petition No.14220 of 2009 in the High Court challenging the constitutional validity of the proviso to s. 65(1) of the

Rajasthan Stamp Act, 1998, which provided that no revision application would be entertained unless it was accompanied by a satisfactory proof of the payment of fifty percent of the recoverable amount. The writ petition was dismissed by the Division Bench of the High Court by its order dated 16.11.2009. The appellant challenged the order in C.A. No. 8325 of 2011.

Dismissing C.A. No. 8325 of 2011 and allowing C.A. No. 8326 of 2011, the Court

HELD: 1.1 This Court has taken a consistent view that the right of appeal or right of revision is not an absolute right and it is a statutory right which can be circumscribed by the conditions in the grant made by the statute. The proviso to s. 65(1) of the Rajasthan Stamp Act, 1998, requiring deposit of 50% of the demand before a revision is entertained against the demand is only a condition for the grant of the right of revision and the proviso does not render the right of revision illusory and is within the legislative power of the State legislature. [Para 10]

1.2 In the considered opinion of the Court, therefore, the proviso to s. 65(1) of the Act is constitutionally valid and this Court is not inclined to interfere with the order dated *16.11.2009* in *D.B.CWP No.14220 of 2009*. [para 11]

Government of Andhra Pradesh and Others vs. *P. Laxmi Devi* **2008 (3) SCR 330 = (2008) 4 SCC 720 ;** *The Anant Mills Co. Ltd.* vs. *State of Gujarat and others* **1975 (3) SCR 220 = (1975) 2 SCC 175;** *Vijay Prakash D. Mehta and Another* vs. *Collector of Customs (Preventive), Bombay* **1975 (3) SCR 220 = (1988) 4 SCC 402 and** *Gujarat Agro Industries Co. Ltd.* Vs. *Municipal Corporation of the City of Ahmedabad and Others* **(1999) 4 SCC 468 – relied on.**

M/s Choksi Heraeus Pvt. Ltd., Udaipur v. State & Ors. **AIR 2008 Rajasthan 61 – approved.**

Mardia Chemical Ltd. And Others vs. *Union of India and Others* **(2004) 4 SCC 311 – held inapplicable.**

Seth Nand Lal and Another vs. *State of Haryana and Others* **1980 (supp) SCC 575 – cited.**

2. However, the Single Judge of the High Court in SB Civil Writ Petition No.12422 of 2009 as well as the Division Bench of the High Court in D.B. Civil Appeal (Writ) No.1261 of 2009 have not considered whether the determination of market value and the demand of deficit stamp duty were exorbitant so as to make the remedy by way of revision requiring deposit of 50% of the demand before the revision is entertained ineffective. The Single Judge should have examined the facts of the case to find out whether the determination of the value of the property purchased by the appellant and the demand of additional stamp duty made by the Additional Collector were exorbitant so as to call for interference under Article 226 of the Constitution. Therefore, the orders passed by the Single Judge in SB Civil Writ Petition No.12422 of 2009 and by the Division Bench of the High Court in D.B. Civil Appeal (Writ) No.1261 of 2009 are set aside and the writ petition is remanded back to the High Court for consideration afresh in accordance with law. [para 12-14]

Case Law Reference:

AIR 2008 Rajasthan 61	**approved**	**para 4**
2004 (3) SCR 982	**held inapplicable**	**para 6**
2008 (3) SCR 330	**relied on**	**para 7**
1975 (3) SCR 220	**relied on**	**para 8**
(1999) 4 SCC 468	**cited**	**para 8**

1980 (supp) SCC 575 relied on para 8

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8325 of 2011.

WITH

CA No. 8326 of 2011.

Ajay Choudhary for the Appellant.

Abhishek Gupta, Kanku Gupta and R. Gopalakrishnan for the Respondents.

The Judgment of the Court was delivered by

A. K. PATNAIK, J. 1. Leave granted.

2. The appellant purchased Plot No. A-7 situated in the Housing Scheme No.12, Ajmer Road, Jaipur, of Krishna Grah Nirman Sahakari Samiti Limited by a registered Sale Deed dated 16.05.2007 for a consideration of Rs.18 lacs. The Sale Deed was executed on a stamp duty of Rs.1,17,000/-. The Sub-Registrar, SR IV, Jaipur, did not accept the valuation made in the Sale Deed and appointed an Inspection Officer to inspect the plot purchased by the appellant and determined the value of the land at Rs.2,58,44,260/-. The Additional Collector (Stamps), Jaipur, served a notice under the Rajasthan Stamp Act, 1998 (for short 'the Act') to the appellant on 07.07.2008 to appear before him on 19.09.2008 and to show-cause why prosecution against the appellant should not be initiated for concealing or misrepresenting facts relating to the valuation mentioned in the Sale Deed resulting in evasion of stamp duty. The appellant filed a reply stating therein that the plot of land purchased by her under the Sale Deed was allotted to her for residential purposes and was not meant for commercial use and that the sale price was paid entirely by a cheque. The appellant also stated in her reply that adjacent to the plot purchased by her, Plot Nos.A-3 near Scheme No.12, Roop Sagar, had been sold by a registered Sale Deed on 16.12.2006 and another Plot No.A-38, near Scheme No.12, Roop Sagar, at a price less than the price in the Sale Deed dated 16.05.2007 under which she had purchased Plot No.A-7 in Housing Scheme No.12. Along with the reply, the appellant had also furnished copies of the two Sale Deeds of the adjacent Plot Nos.A-3 and A-38 in Scheme No.12. In the reply, the appellant requested the Additional Collector (Stamps) to drop the recovery proceedings. The Additional Collector (Stamps) heard the appellant and in his order dated 20.07.2009 held after considering the Site Inspection Report that the determination made by the Sub-Registrar at Rs. 2,58,44,260/- was correct and that the appellant was liable to pay deficit stamp duty of Rs.15,62,880/-, deficit registration charges of Rs.7,000/- and penalty of Rs.120/- totalling to a sum of Rs.15,70,000/- and accordingly made the demand on the appellant and directed recovery of the same.

3. Aggrieved, the appellant filed SB Civil Writ Petition No.12422 of 2009 before the Rajasthan High Court challenging the order dated 20.07.2009 of the Additional Collector (Stamps), Jaipur. A learned Single Judge of the High Court, however, dismissed the Writ Petition by order dated 21.10.2009 holding that the appellant had a remedy against the order of the Additional Director by way of a revision before the Board of Revenue and as there was an alternative and efficacious remedy available to the appellant, there was no just reason for the appellant to invoke the extra-ordinary jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India. The appellant then filed D.B. Civil Appeal (Writ) No.1261 of 2009 before the Division Bench of the High Court, but by order dated 22.03.2010 the Division Bench of the High Court held that there was no error or illegality apparent on the face of the record in the order dated 21.10.2009 passed by the learned Single Judge and that the appeal was devoid of any merit and accordingly dismissed the appeal. Aggrieved, the appellant has filed Civil Appeal arising out of S.L.P. (C)

No.17233 of 2010.

4. In the meanwhile, the appellant filed a separate Writ Petition D.B. Civil Writ Petition No.14220 of 2009 in the Rajasthan High Court challenging the constitutional validity of the proviso to Section 65(1) of the Rajasthan Stamp Act, 1998 (for short 'the Act'), which provided that no revision application shall be entertained unless it is accompanied by a satisfactory proof of the payment of fifty percent of the recoverable amount. The ground taken by the appellant in the writ petition before the High Court was that unless the appellant deposited fifty percent of the total amount of Rs.15,70,000/- towards deficit stamp duty, registration charges and penalty, the revision petition of the appellant would not be entertained and the appellant was not in a position to deposit such a huge amount as a condition for filing the revision. The appellant accordingly contended before the High Court that the pre-condition of payment of fifty percent of the recoverable amount for entertaining a revision petition was arbitrary, unreasonable and unconstitutional. The Division Bench of the High Court, however, held in its order dated 16.11.2009 that the constitutional validity of the proviso to Section 65 (1) of the Act had been examined by another Division Bench of the High Court in *M/s Choksi Heraeus Pvt. Ltd., Udaipur v. State & Ors.* [AIR 2008 Rajasthan 61] and the proviso to Section 65 (1) of the Act had been held to be constitutionally valid. The Division Bench relying on the aforesaid decision in *M/s Choksi Heraeus Pvt. Ltd., Udaipur v. State & Ors.* (supra) dismissed the Writ Petition by order dated 16.11.2009. The appellant has filed the Civil Appeal arising out of S.L.P. (C) No.20964 of 2010 against the order dated 16.11.2009 of the Division Bench in D.B. Civil Writ Petition No.14220 of 2009.

5. For appreciating the contentions of the learned counsel for the parties, we must refer to Section 65 of the Act. Section 65 of the Act is quoted hereinbelow:

"65. Revision by the Chief Controlling Revenue Authority

(1) Any person aggrieved by an order made by the Collector under Chapter IV and V and under clause (a) of the first proviso to section 29 and under section 35 of the Act, may within 90 days from the date of order, apply to the Chief Controlling Revenue Authority for revision of such order:

Provided that no revision application shall be entertained unless it is accompanied by a satisfactory proof of the payment of fifty percent of the recoverable amount.

(2) The Chief Controlling Revenue Authority may suo moto or on information received from the registering officer or otherwise call for and examine the record of any case decided in proceeding held by the Collector for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of the proceedings and pass such order with respect

thereto as it may think fit:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter."

6. Learned counsel for the appellant submitted that although sub-section (1) of Section 65 of the Act confers a right on a person to file a revision against the order of the Collector, the proviso to Section 65(1) of the Act renders this right illusory by insisting that the revision application shall not be entertained unless it is accompanied by a satisfactory proof of the payment of fifty percent of the recoverable amount. He submitted that the proviso to Section 65(1) of the Act is therefore unreasonable and arbitrary and violative of Article 14 of the Constitution and should be declared constitutionally invalid. He cited the decision of this Court in *Mardia Chemical Ltd. and Others vs. Union of*

India and Others [(2004) 4 SCC 311] in which the provision requiring pre-deposit of 75% of the demand made by the bank or the financial institution in Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has been held to be onerous and oppressive rendering the remedy illusory and nugatory and constitutionally invalid.

7. Learned counsel for the appellant submitted that assuming that the proviso to Section 65(1) of the Act is constitutionally valid where the valuation adopted by the Additional Collector or Collector and the consequent demand of additional stamp duty are unreasonable and exorbitant, the alternative remedy of revision after deposit of 50% of the exorbitant demand is not efficacious, and affected party should be able to move the High Court under Article 226 of the Constitution. In support of this submission, he cited the decision of this Court in *Government of Andhra Pradesh and Others vs. P. Laxmi Devi* [(2008) 4 SCC 720]

8. Learned counsel for the respondents, on the other hand, submitted that a revision or an appeal is a right conferred by the statute and the legislature while conferring this statutory right can lay down conditions subject to which the appeal or revision can be entertained and that there is nothing unreasonable or arbitrary in the proviso to Section 65(1) of the Act requiring deposit of 50% of the recoverable amount before the revision application is entertained. He argued that the proviso to Section 65(1) of the Act is in no way illusory and is only a provision to ensure that the stamp duty demanded is recovered in time and is not held up because of the pendency of the revision. In support of his submission, learned counsel for the respondent relied on the decisions of this Court in *The Anant Mills Co. Ltd. vs. State of Gujarat and others* [(1975) 2 SCC 175]; *Seth Nand Lal and Another vs. State of Haryana and Others* [1980 (supp) SCC 575]; *Vijay Prakash D. Mehta and Another vs. Collector of Customs (Preventive), Bombay* [(1988) 4 SCC 402] and *Gujarat Agro Industries Co. Ltd. vs. Municipal Corporation of the City of Ahmedabad and Others* [(1999) 4 SCC 468].

9. Learned counsel for the respondents submitted that the decision of this Court in *Mardia Chemical Ltd. and Others vs. Union of India and Others* (supra) declaring the provision of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, requiring deposit of 75% of the demand as constitutionally invalid does not apply to the facts of the present case. He submitted that in *Mardia Chemical Ltd. and Others* (supra) this Court clearly held that the amount of deposit of 75% of the demand is at the initial proceedings itself when the bank or the financial institution makes its demand on the borrower and the requirement of deposit of such a heavy amount on the basis of one-sided claim of the bank or the financial institution at this stage, before the start of the adjudication of the dispute, cannot be said to be a reasonable condition. He submitted that in the instant case, the first adjudicatory authority is the Collector and only after the Collector determines the amount of stamp duty payable on the documents, the affected party has a right of revision under Section 65(1) of the Act. He further submitted that the requirement of 50% of the amount determined by the Collector at the stage of filing of the revision is therefore not a requirement at the initial stage but a requirement at the revisional stage and the decision of this Court in *Mardia Chemical Ltd. and Others vs. Union of India and Others* (supra) is distinguishable from the facts of the present case.

10. We need not refer to all the decisions cited by the learned counsel for the parties because we find that in Government of *Andhra Pradesh and Others vs. P. Laxmi Devi* (supra) this Court has examined a similar provision of Section 47-A of the Stamp Act, 1899, introduced by the Indian Stamp Act (A.P. Amendment Act 8 of 1998). Sub-section (1) of Section 47-A, introduced by Andhra Pradesh Act 8 of 1998 in the Indian

Stamp Act, is extracted hereinbelow:

> "47-A. Instruments of conveyance, etc. how to be dealt with- (1) Where the registering officer appointed under the Registration Act, 1908, while registering any instrument of conveyance, exchange, gift, partition, settlement, release, agreement relating to construction, development or sale of any immovable property or power of attorney given for sale, development of immovable property, has reason to believe that the market value of the property which is the subject-matter of such instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties, he may keep pending such instrument and refer the matter to the Collector for determination of the market value of the property and the proper duty payable thereon.
>
> Provided that no reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned."

Under sub-section (1) of Section 47-A quoted above, a reference can be made to the Collector for determination of the market value of property and the proper duty payable thereon where the registering officer has reason to believe that the market value of the property which is the subject-matter of the instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties. The proviso of sub-section (1) of Section 47-A, however, states that no such reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned. This proviso of sub-section (1) of Section 47-A was challenged before the Andhra Pradesh High Court by P. Laxmi Devi and the Andhra Pradesh High Court held that this proviso was arbitrary and violative of Article 14 of the Constitution and was unconstitutional. The Government of Andhra Pradesh, however, filed an appeal by special leave before this Court against the judgment of the Andhra Pradesh High Court and this Court held in para 18 at page 735 of [(2008) 4 SCC 720] that there was no violation of Articles 14, 19 or any other provision of the Constitution by the enactment of Section 47-A as amended by the Andhra Pradesh Amendment Act 8 of 1998 and that the amendment was only for plugging the loopholes and for quick realisation of the stamp duty and was within the power of the State Legislature vide Entry 63 of List-II read with Entry 44 of List-III of the Seventh Schedule to the Constitution. While coming to the aforesaid conclusions, this Court has relied on *The Anant Mills Co. Ltd. vs. State of Gujarat and others* (supra), *Vijay Prakash D. Mehta and Another vs. Collector of Customs (Preventive), Bombay* (supra) and *Gujarat Agro Industries Co. Ltd. vs. Municipal Corporation of the City of Ahmedabad and Others* (supra) in which this Court has taken a consistent view that the right of appeal or right of revision is not an absolute right and it is a statutory right which can be circumscribed by the conditions in the grant made by the statute. Following this consistent view of this Court, we hold that the proviso to Section 65(1) of the Act, requiring deposit of 50% of the demand before a revision is entertained against the demand is only a condition for the grant of the right of revision and the proviso does not render the right of revision illusory and is within the legislative power of the State legislature.

11. We also find that in the impugned order the High Court has relied on an earlier Division Bench judgment of the High Court in *M/s Choksi Heraeus Pvt. Ltd., Udaipur v. State & Ors.* (supra) for rejecting the challenge to the proviso to Section 65(1) of the Act. We have perused the decision of the Division Bench of the High Court in *M/s Choksi Heraeus Pvt. Ltd., Udaipur v. State & Ors.* (supra) and we find that the Division

Bench has rightly taken the view that the decision of this Court in the case of *Mardia Chemical Ltd. and Others vs. Union of India and Others* (supra) is not applicable to the challenge to the proviso to Section 65(1) of the Act inasmuch as the provision of sub-section (2) of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, requiring deposit of 75% of the demand related to deposit at the stage of first adjudication of the demand and was therefore held to be onerous and oppressive, whereas the proviso to Section 65(1) of the Act in the present case requiring deposit of 50% of the demand is at the stage of revision against the order of first adjudication made by the Collector and cannot by the same reasoning held to be onerous and oppressive. In our considered opinion, therefore, the proviso to Section 65(1) of the Act is constitutionally valid and we are therefore not inclined to interfere with the order dated 16.11.2009 in D.B.CWP No.14220 of 2009. The Civil Appeal arising out of S.L.P. (C) No.20964 of 2010 is therefore dismissed.

12. We are, however, inclined to interfere with the order dated 21.10.2009 of the learned Single Judge of the High Court in SB Civil Writ Petition No.12422 of 2009 as well as the order dated 22.03.2010 of the Division Bench of the High Court in D.B. Civil Appeal (Writ) No.1261 of 2009. The learned Single Judge of the High Court and the Division Bench of the High Court have taken a view that as the appellant has a right of revision under Section 65(1) of the Act, the writ petition of the appellant challenging the determination of the value of the land at Rs.2,58,44,260/- and the demand of additional stamp duty and registration charges and penalty totaling to Rs.15,70,000/- could not be entertained under Article 226 of the Constitution. The learned Single Judge of the High Court and the Division Bench of the High Court have not considered whether the determination of market value and the demand of deficit stamp duty were exorbitant so as to make the remedy by way of revision requiring deposit of 50% of the demand before the revision is entertained ineffective. In Government of *Andhra Pradesh and Others vs. P. Laxmi Devi* (supra) this Court, while upholding the proviso to sub-section (1) of Section 47-A of the Indian Stamp Act introduced by Andhra Pradesh Amendment Act 8 of 1998, observed:

> "29. In our opinion in this situation it is always open to a party to file a writ petition challenging the exorbitant demand made by the registering officer under the proviso to Section 47-A alleging that the determination made is arbitrary and/or based on extraneous considerations, and in that case it is always open to the High Court, if it is satisfied that the allegation is correct, to set aside such exorbitant demand under the proviso to Section 47-A of the Stamp Act by declaring the demand arbitrary. It is well settled that arbitrariness violates Articles 14 of the Constitution vide *Maneka Gandhi vs. Union of India* [(1978) 1 SCC 248]. Hence, the party is not remediless in this situation."

13. In our view, therefore, the learned Single Judge should have examined the facts of the present case to find out whether the determination of the value of the property purchased by the appellant and the demand of additional stamp duty made by the appellant by the Additional Collector were exorbitant so as to call for interference under Article 226 of the Constitution.

14. We, therefore, allow the appeal arising out of S.L.P. (C) No.17233 of 2010, set aside the order passed by the learned Single Judge of the High Court in SB Civil Writ Petition No.12422 of 2009 and the order passed by the Division Bench of the High Court in D.B. Civil Appeal (Writ) No.1261 of 2009 and remand the writ petition back to the High Court for fresh consideration in accordance with law. No costs.

R.P. CA 8325 of 2011 dismissed and CA 8326 of 2011 allowed.

ULTRA TECH CEMENT LTD.
(EARLIER ULTRATECH CEMCO LTD.)
v.
STATE OF MAHARASHTRA & ANR.
(Civil Appeal No. 864 of 2005)

SEPTEMBER 27, 2011

[R.V. RAVEENDRAN, A. K. PATNAIK AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

MINERAL CONCESSION RULES, 1961:

r. 27 (1) (d) – Mining lease – Lessee from the State Government – Demand for Zilla Parishad Cess (ZP cess) and Gram Panchayat Cess (GP cess) – Held: Where a particular cess is leviable under an enactment, and the contract says that the lessee is liable to pay such cess leviable under that enactment, but the enactment exempted a specified class of persons (to which the lessee belongs) from paying the said cess, the State Government cannot make the lessee liable to pay the said cess on the ground that under the contract entered under a different eneactment, the lessee is liable to pay such cess – In the instant case, since the assessee being a lessee from the Government is by virtue of s.151 of Zila Parishads and Panchayat Samitis Act, 1961 is exempt from paying GP cess under the Act, cess cannot be levied in terms of a contract – Similarly, as the lessee is, under clause VII(1) of the lease deed, exempt from land revenue, it is not liable to pay GP cess – Thus, the lessee is not liable to pay ZP cess or GP cess to the State Government under the lease deed – However, it is made clear that if ZP cess and GP cess become payable by the assessee by virtue of any amendment to the provisions of the respective enactments under which such cesses are leviable, then the lessee may have to pay the same – Maharashtra Zila Parishads and Panchayat Samitis Act, 1961 – s. 151(1) – Bombay Gram Panchayats Act, 1958 – s. 127 (1) – Maharashtra Land Revenue Code, 1966 – s. 64.

WORDS AND PHRASES:

Expression 'assessable' and 'cess assessable on land' – Explained.

The appellant, under the lease deed dated 12.2.1980, was granted a lease by the State Government for mining limestone. It approached the High Court challenging the demand for payment of Zila Parishad Cess (ZP cess) and Gram Panchayat Cess (GP cess) on the ground that s. 151(1) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 exempted the lessees from the State Government from payment of ZP cess and as per s. 64 of the Maharashtra Land Revenue Code, 1966, read with Clause VII(1) of the lease deed, it was not liable to pay the GP cess also. The High Court declined to interfere.

Allowing the appeal, the Court

HELD: 1.1 Where a particular cess is leviable under an enactment, and the contract says that the lessee is liable to pay such cess leviable under that enactment, but the enactment exempted a specified class of persons (to which the lessee belongs) from paying the said cess, the State Government cannot make the lessee liable to pay the said cess on the ground that under the contract entered under a different enactment, the lessee is liable to pay such cess. [para 7]

1.2 It is evident from the provision of s.151(1) of the Maharashtra Zilla Parishads Act that a 'lessee from the state government' is not liable to pay ZP cess under the said provision. The ZP cess can be levied only in terms of and under the Zilla Parishads Act and cannot be levied by the State Government, under the terms of a contract. [para 7]

1.3 It is significant to note that the State Government

has stipulated in the lease that the mining lessee shall pay *ZP cess assessable on the land*. It has not used the words 'an amount equivalent to ZP cess that could be or may be assessed on the land.' The word 'assessable' means liable to be assessed. The effect of clause V(4) of the lease deed providing that the mining lessee shall pay 'ZP cess assessable on the land' is this: if it is liable to be paid under the Zilla Parishads Act, that should be paid by the lessee and payment thereof is a term of the lease; and if the lessee is not liable to pay ZP cess in view of the exemption under the ZP Act, it is not payable. [para 6 and 8]

1.4 There is yet another indication that what is required to be paid is ZP cess, only if it is leviable under Zilla Parishads Act. Clause V(4) provides that the mining lessee shall pay "*cesses assessable on the land (ZP and GP cesses) subject to the revision of rates prescribed by Government from time to time.*" This refers to revision by the State Government in exercise of the power u/s151(1) of Zilla Parishads Act and not in exercise of any power under the lease deed, as a lessor. This also shows that ZP cess as revised under the Zilla Parishads Act is payable only if it is payable under the Zilla Parishads Act and not otherwise. [para 10]

2. Section 127(1) of the Bombay Gram Panchayats Act, 1958 casts a liability to pay one hundred paise as cess on every rupee of *every sum payable to the state government as ordinary land revenue.* This cess is described as Gram Panchayat cess or GP cess. The effection of s. 127(1) is that only a person who is liable to pay land revenue will be liable to pay GP cess. Section 64 of the Land Revenue Code provides that all lands are liable to payment of land revenue to the State Government *except such as may be wholly exempted under the provisions of the special contract with the state government.* Clause VII(1) of the lease deed dated 12.2.1980 between State Government and the appellant provides such exemption as it says the lessee shall not be liable to pay land revenue. Thus, there is a special contract between the State and the appellant whereby the appellant is exempted from paying land revenue and, as such, it will not be liable to pay any GP cess, as s.127(1) makes it clear that the said cess is payable only on the amount payable **as land revenue. Therefore, the appellant is not liable to pay GP cess under the Panchayats Act. Clause V(4) of the lease deed requires payment of GP cess only if it is payable under the Panchayats Act. For the reasons stated while dealing ZP cess, it is held that the appellant is not liable to pay GP cess also. [para 12 and 13]**

3. The appellant is not liable to pay ZP cess or GP cess to the State Government under the lease deed. It is however made clear that if the said cesses (ZP cess and GP cess) become payable by the appellant by virtue of any amendment to the provisions of the respective enactments under which such cesses are leviable, then the appellant may have to pay the same. The judgment of the High Court is set aside. The writ petition filed before the High Court stands allowed and the demand notices dated (nil) July 1991 as amended on 28.10.1994 in regard to the period 1987 to 1992 are quashed in so far as the demand for payment of ZP cess and CP cess is concerned. [para 15 and 16]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 864 of 2005.

From the Judgment and Order dated 03.06.2003 of the High Court of Judicature at Bombay, Nagpur Bench in Writ Petition No. 2922 of 1999.

Bharat Sangal, R.R. Kumar and Srijana Lama for the Appellant.

Madhavi Divan and Asha Gopalan Nair for the Respondents.

The Judgment of the Court was delivered by

R. V. RAVEENDRAN J. 1. The appellant (the term 'appellant' refers to M/s Larsen & Toubro Ltd. till date of its demerger in 2004 and thereafter to M/s. Ultra Tech Cement Ltd.) obtained a mining lease for limestone from the Government of Maharashtra, as per lease deed dated 12.2.1980. Under the terms of the said lease, the appellant as lessee was required to pay dead rent as per clause V(1) and (2), royalty in terms of clause V(3) and surface rent, water rate and cesses in terms of clauses V(4) of the lease deed. In response to a notice served by the Collector on the appellant demanding payment of surface rent (equal to non-agricultural assessment) and the Zilla Parishad Cess (for short 'ZP Cess') and Gram Panchayat Cess (for short 'GP Cess'), the appellant informed the Collector by letter dated 3.1.1991, that it was not liable to pay the ZP cess and GP cess and that those cesses may be deleted from the demand. However by notice of demand dated (nil) July 1991, revised by notice dated 28.1.1994, the Collector, Chandrapur, reiterated the demand for surface rent as also the ZP and GP cesses for the years 1987 to 1992, on the following ground:

> "The Government of Maharashtra vide its letter Industries Energy and Labour Department (IND) No.TQCR-2176/ 45691/1172/IND-9 Bombay dated 13.06.1978 and Director, Geology & Mining, Govt.of Maharashtra, Nagpur vide letter No.STC/295/39/2007 dated 09.06.1989 have issued instructions regarding fixation of surface rent on the lease area used for mining purpose. As per these directives and Rule 27(1)(d) of Mineral Concession Rules, 1960, the lessee is required to pay the surface rent at such rate not exceeding the land revenue and the cesses assessable on the land. Since the mining operation is the use of land other than the Agriculture purpose, *the rate of non-agricultural assessment, together with the cesses assessable on the land, are applicable for levying the surface rent."*
>
> (emphasis supplied)

2. The appellant was aggrieved by the demand in so far as it relates to ZP cess and GP cess. According to appellant section 151(1) of Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 ('Zilla Parishad Act' for short) exempted the lessees from the state government from payment of the ZP cess. The appellant also contended that it was not liable to pay the GP cess, as section 127 (1) of Bombay Gram Panchayats Act, 1958 ('Panchayats Act' for short) provides for levy of GP cess at the rate of one hundred paise on every rupee payable to the state government as ordinary land revenues in the area within the jurisdiction of the Panchayat, and as the appellant was exempted from paying land revenue under section 64 of the Maharashtra Land Revenue Code, 1966 ('Revenue Code' for short) read with clause VII(1) of the lease deed, it was not liable to pay the GP cess also. The appellant admitted the liability to pay surface rent equal to non-agricultural assessment.

3. On the other hand, the respondents contend that the demand for ZP cess and GP cess is authorized by Rule 27(1)(d) of the Mining Concession Rule, 1960 ('MC Rules' for short) read with clause V(4) of the lease deed and the appellant is liable for the same. The submission of the respondents is that they have not made any demand for cess under the Zilla Parishads Act or Panchayats Act and that the demand for ZP cess and GP cess is as a part of the surface rent. According to the respondents, the reference to ZP cess and GP cess assessable on the land, in the lease deed is only for the purpose of arriving at the figure of surface rent. The respondents' submission is that though "cesses per se could not have been levied under the Mineral Concession Rules", cesses assessable on the land has been demanded as a mode of calculating the charges for the surface area used by

the lessee; and so long as the amount charged does not exceed the land revenue plus ZP cess and GP cess assessable on the land, the lessees can have no grievance.

4. On the rival contentions urged, two questions arise for our consideration:

(i) Whether the appellant is liable to pay ZP Cess?

(ii) Whether the appellant is liable to pay GP Cess?

Re: Question No.(i)

5. Rule 27 of the Mining Concession Rules, 1960 prescribes the conditions subject to which a mining lease should be made. Clause (d) of sub-section (1) thereof is relevant and is extracted below :

> "27. Conditions – (1) Every mining lease shall be subject to the following conditions – xxxx xxxx
>
> (d) the lessee shall also pay, for the surface area used by him for the purposes of mining operations, surface rent and water rate at such rate, not exceeding the land revenue, and *cesses assessable on the land,* as may be specified by the State Government in the lease."
>
> (emphasis supplied)
>
> Clause 4 of Part V of the lease deed reads thus:
>
> "The lessee/lessees shall pay rent and water rate to the State Government in respect of all parts of the surface of the said lands which shall from time to time be occupied or used by the lessee/lessees under the authority of those presents at the rate of Rs…and Rs…respectively per annum per hectare of the area so occupied or used and so in proportion for any area less than a hectare during the period from the commencement of such occupation or use until the area shall cease to be so occupied or used and shall as far as possible restore the surface land so used to us in original condition. Surface rent and water rate shall be paid as hereinbefore detailed in clause (2) provided that no such rent/water rate shall be payable in respect of the occupation and use of the area comprised in any roads or ways to which the public have full right of access.
>
> 1. Surface rent equal the non-agricultural assessment.
>
> 2. Water rates not exceeding the land revenue.
>
> 3. *Cesses assessable on the land* (ZP and GP Cesses) subject to the revision of rates prescribed by government from time to time."
>
> (emphasis supplied)

A combined reading of Rule 27(1)(d) of the Rules and Clause V(4) of the lease deed, makes it clear that the lessee under the mining lease deed is liable to pay, in addition to dead rent and royalty, the following amounts : (i) surface rent equivalent to non-agricultural assessment; (ii) water rate not exceeding the land revenue and (iii) cesses assessable on the land specified by the state government in the lease, that is *ZP cess and GP cess assessable on the land subject to revision of rates prescribed by government from time to time.*

6. What is significant to note is that the State Government has stipulated in the lease that the mining lessee shall pay ZP cess assessable on the land. It has not used the words 'an amount equivalent to ZP cess that could be or may be assessed on the land.' The word 'assessable' means liable to be assessed. Therefore when Clause V(4) of the lease deed requires the lessee to pay ZP cess assessable on the land, it would mean that the mining lessee would be liable to pay ZP cess if it is so due under the Maharashtra Zilla Parishads Act.

7. Section 151(1) of the Zilla Parishad Act which is relevant is extracted below:

> "151. (1) – In the Vidarbha area of the State of Maharashtra, every malik-makhuza, raiyat malik and

occupant and every raiyat, *other than a sub-tenant and lessee from the State Government* shall be liable in respect of the land held by him in the district to pay cess for the purpose of this Act at the rate of twenty paise or at such increased rate not exceeding two hundred paise as may be determined by the State Government under section 155 on every rupee of the land revenue or rent assessed or fixed on such land or the lease money payable in respect thereof, whether or not such land revenue or rent or lease money or any portion thereof has been released, compounded for or redeemed.

[Note : the words in italics should be read as 'at the rate of two hundred paise or at such increased rate not exceeding seven hundred paise as may be determined by the concerned Divisional Commissioner" after amendment of section 151(1) by Maharashtra Act 1 of 1993]

(emphasis supplied)

It is evident from the said provision of the Zilla Parishad Act that a 'lessee from the state government' is not liable to pay ZP cess under section 151 (1) of the Zilla Parishads. The ZP cess can be levied only in terms of and under the Zilla Parishads Act and cannot be levied by the state government, under the terms of a contract. Where a particular cess is leviable under an enactment, and the contract says that the lessee is liable to pay such cess leviable under that enactment, but the enactment exempted a specified class of persons (to which the lessee belongs) from paying the said cess, the state government cannot make the lessee liable to pay the said cess on the ground that under the contract entered under a different enactment, the lessee is liable to pay such cess. For example, if a Sales Tax Act exempts the sale of particular goods from tax, the seller of such goods cannot demand Sales Tax on the ground that the contract of sale provides that the buyer is liable to pay all taxes leviable under any enactment. It follows that if a lessee from the State Government is exempted from payment of ZP cess leviable under section 151(1) of the Zilla Parishads Act, by section 151(1) itself, the State Government cannot 'levy' the said ZP cess under a contract entered in terms of the Mineral Concession Rules. For payment of a cess under a particular Act, liability under that Act is condition precedent. Therefore if ZP cess is not due or payable by a lessee under the ZP Act, the State cannot say that the amount is due under the lease deed executed in terms of the Mineral Concession Rules.

8. The effect of clause V(4) of the lease deed providing that the mining lessee shall pay 'ZP cess assessable on the land' is this: if it is liable to be paid under the Zilla Parishads Act, that should be paid by the lessee and payment thereof is a term of the lease; and if the lessee is not liable to pay ZP cess in view of the exemption under the ZP Act, it is not payable. The position would have been different if the lease deed had stipulated that the lessee is liable to pay as consideration, in addition to other sums payable, a sum equivalent to ZP cess under Zilla Parishad Act, irrespective of whether the lessee is liable to pay such cess under the Zilla Parishads Act or not. If the lease deed had contained such a term, the lessee would have been liable to pay a sum equivalent to ZP cess, irrespective of his liability under the Zilla Parishads Act.

9. We may in contrast, refer to the term in the lease regarding payment of surface rent. The clause says what is payable is 'surface rent equal the non-agricultural assessment'. The clause does not say that the lessee is liable to pay 'non-agricultural assessment' assessable on the land. Consequently, irrespective of whether non-agricultural assessment is leviable or not under the Maharashtra Land Revenue Code, 1966, the lessee shall be liable to pay an amount equivalent to non-agricultural assessment, as surface rent. What is payable under the contract is 'surface rent' and non-agricultural assessment is made only the basis for quantification of the surface rent. But the wording relating to payment of ZP cess and GP cess, are

significantly different from the wording relating to payment of surface rent.

10. There is yet another indication that what is required to be paid in ZP cess, only if it is leviable under Zilla Parishads Act. Clause V(4) provides that the mining lessee shall pay *"cesses assessable on the land (ZP and GP cesses) subject to the revision of rates prescribed by Government from time to time."* This refers to revision by the State Government in exercise of the power under section 151(1) of Zilla Parishads Act and not in exercise of any power under the lease deed, as a lessor. This also shows that ZP cess as revised under the Zilla Parishads Act is payable only if it is payable under the Zilla Parishads Act and not otherwise.

Re: Question No.(ii)

11. Section 127 of the Bombay Gram Panchayats Act, 1958 deals with levy and collection of cess. The said section is extracted below :

> "(1) The State Government shall levy cess at the rate of one hundred paise, *on every rupee of every sum payable to the state government as ordinary land revenue in the area within the jurisdiction of a panchayat* and thereupon, the state government shall (in addition to any cess leviable under the Maharshtra Zilla Parishads and Panchayat Samitis Act, 1961) levy and collect such cess in such area.
>
> (2) to (4) deleted by Maharashtra Act 10 of 1992.
>
> (5) For the purpose of levying and collecting the cess referred to in sub-section (1), in the Bombay area athe provisions of section 144 (including the Fourth Schedule), 145, 147 and 149, in the Vidarbha area, the provisions of section 151, and in the Hyderabad area, the provisions of section 152 of the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961, shall apply thereto as they apply to the levy of cess leviable under section 144, section 151, or as the case may be, section 152 of that Act."

(emphasis supplied)

Section 64 of the Maharashtra Land Revenue Code, 1966 ('Code' for short) reads thus:

> "64. All land liable to pay revenue unless specially exempted.
>
> All land, whether applied to agricultural or other purposes, and wherever situate, is liable to the payment of land revenue to the State Government as provided by or under this Code *except such as may be wholly exempted under the provisions of any special contract with the State Government,* or an any law for the time being in force or by special grant of the State Government.
>
> But nothing in this Code shall be deemed to affect the power of the Legislature of the State to direct the levy of revenue on all land under whatever title they may be held whenever and so long as the exigencies of the State may render such levy necessary."

(emphasis supplied)

The term 'land revenue' is defined in section 2(19) of the said Code as under:-

> "(19) "land revenue" means all sums and payments, in money received or legally claimable by or on behalf of the State Government from any person on account of any land or interest in or right exercisable over land by or vested in him, under whatever designation such sum may be payable and any cess or rate authorised by the State Government under the provisions of any law for the time being in force; and includes premium, rent, lease money, quit rent, judi payable by an inamdar or any other payment provided under any Act, rule, contract or deed on account of any land."

12. Section 127(1) of the Panchayats Act casts a liability to pay one hundred paise as cess on every rupee of every *sum*

payable to the state government as ordinary land revenue. This cess is described as Gram Panchayat cess or GP cess. The effection of section 127(1) is that wherever land revenue is payable by a person, such person liable to pay the land revenue, will also have to pay GP cess equal to the amount of the land revenue. Therefore only a person who is liable to pay land revenue will be liable to pay GP cess. Section 64 of the Land Revenue Code provides that all lands are liable to payment of land revenue to the state government except such as may be wholly exempted under the provisions of the special contract with the state government. Clause VII(1) of the lease deed dated 12.2.1980 between State Government and the appellant provides such exemption as it says the lessee shall not be liable to pay land revenue. We extract below clause (1) of Part VII of the lease deed for ready reference:

> "Lessee to pay rents and royalties, taxes, etc.
>
> 1. The lessee/lessees shall pay the rent, water rate and royalties reserved by this lease at such times and in the manner provided in the PARTS V and VI of these presents and shall also pay and discharge all taxes, rates assessment and impositions whatsoever being in the nature of public demands which shall from time to time be charged, assessed or imposed by the authority of the Central and State Governments upon or in respect of the premises and works of the lessee/lessees in common with other premises and works of the like nature *except demands for land revenues*."
>
> (emphasis supplied)

13. Even under Clause V(4) of the lease deed, what is liable to be paid is 'surface rent' which is equivalent to the non-agricultural assessment, and not land revenue, that is non-agricultural assessment itself. Thus there is a special contract between the State and the appellant whereby the appellant is exempted from paying land revenue. If the appellant is not liable to pay the land revenue, it will not be liable to pay any GP cess, as section 127(1) makes it clear that the said cess is payable only on the amount payable as land revenue. If no amount is payable as land revenue, it follows as no amount is payable as GP cess. Therefore appellant is not liable to pay GP cess under the Panchayats Act. Clause V(4) of the lease deed requires payment of GP cess only if it is payable under the Panchayats Act. For the reasons stated while dealing ZP cess, we hold that the appellant is not liable to pay GP cess also.

Conclusion

14. The object of clause V(4) of the lease deed is clear. Normally, all leases will contain a provision as to who will be liable to pay the rates, taxes, cesses on the property leased. If the lease deed is silent, then the lessor would be liable to bear and pay the rates, taxes and cesses. Therefore, where the understanding is that the lessee should be liable to pay the rates, taxes and cesses in addition to the rent or premium, the lease deed will provide specifically that the lessee shall bear and pay all rates, taxes and cesses. But this is always on the assumption that there is a liability under the respective enactments to pay any rates, taxes, cesses in respect of the property. All that clause V(4) of the lease deed provides is that the lessee should bear and pay the ZP cess and GP cess, if it is leviable under the respective enactments.

15. In view of the above, we accept the contention of the appellant that it is not liable to pay ZP cess or CP cess to the State Government under the lease deed. It is however made clear that if the said cesses (ZP cess and CP cess) become payable by the appellant by virtue of any amendment to the provisions of the respective enactments under which such cesses are leviable, then the appellant may have to pay the same. Be that as it may.

16. The appeal is therefore allowed. The judgment of the High Court is set aside. The writ petition filed before the High Court stands allowed and the demand notices dated (nil) July 1991 as amended on 28.10.1994 in regard to the period 1987

to 1992 is quashed in so far as the demand for payment of ZP cess and CP cess.

R.P. Appeal allowed.

NASIB HUSSAIN SIDDI AND ORS.
v.
STATE OF GUJARAT
(Criminal Appeal No. 1879 of 2011)

SEPTEMBER 28, 2011

[CYRIAC JOSEPH AND T.S. THAKUR, JJ.]

Penal Code, 1860:

ss.325, 506(2), 333, 342 and 114 – Conviction under – Quarrel between appellant no.1 and another person – Constable-complainant ordered them to accompany him to police station – Appellant no.1 caught hold of complainant and pushed him – Appellant 2 and 3, the mother and wife of appellant no.1 joined appellant no.1, exchanged hot words with complainant and prevented him from taking appellant no.1 to police station – Conviction of appellants – High Court affirmed the conviction, however, reduced sentence to 1½ years – On appeal, held: Two of the appellants were females and had not physically assaulted the complainant – Even appellant no.1 was not alleged to have used any force against the complainant in the incident – The incident took place nearly ten years back – Keeping in view all the circumstances and the fact that appellant no.1 who was mainly responsible for the grievous injury caused to the complainant has already served the sentence awarded to him, interest of justice would be sufficiently served if the sentence awarded to the appellants is modified and reduced to the sentence already undergone by them.

CRIMINAL APPELLATE JURISDICITION : Criminal Appeal No. 1879 of 2011.

From the Judgment and Order dated 13.04.2011 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 315 of 2007.

D.N. Ray, Lokesh K. Choudhary and Sumita Ray for the Appellants.

Hemantika Wahi and Jesal for the Appellant.

The following order of the Court was delivered by

O R D E R

T.S. THAKUR, J. 1. Leave granted.

2. This appeal arises out of an order passed by the High Court of Gujarat at Ahmedabad whereby conviction of the appellants for offences punishable under Sections 325, 506(2), 333, 342 and 114 IPC has been affirmed and the sentence reduced to imprisonment for a period of 1½ years.

3. When the special leave petition came up for admission, this Court by its order dated 1st August, 2011 issued notice to the respondents only on the question of sentence. We are not, therefore, examining the validity of the order of conviction which both the Courts below have passed on a proper appreciation of the evidence on record. The only question on which we have heard learned counsel for the parties is whether the sentence awarded to the appellants needs to be reduced and, if so, to what extent.

4. The genesis of the case of the appellants lies in an incident that took place on 7th September, 2003 at village Chitrod in the District of Kutch, State of Gujarat. The complainant in the case was, during the relevant period, a Constable posted at Chitrod outpost of Police Station Bhimasar. The prosecution case is that at about 10.30 a.m. on

7th September, 2003 when the complainant was on patrol duty, he found one Babubhai quarrelling in public place with one Hussain Ibrahim Siddi, accused no.1. The constable appears to have accosted the quarrelling duo and asked them as to why they were disturbing peace and ordered them to accompany him to the police station. This appears to have infuriated Hussain Ibrahim Siddi who caught hold of the Constable from his collar and pushed him. In the meantime the son, wife and mother of Hussain Ibrahim Siddi also appear to have joined Hussain Ibrahim Siddi, exchanged hot words with constable and prevented him from taking Hussain Ibrahim Siddi to the Police Station. It was on those allegations that Hussain Ibrahim and the appellants were tried together for the offences mentioned earlier.

5. At the trial the prosecution examined as many as 13 witnesses to support its case. The depositions of these witnesses were found reliable by the Trial Court resulting in the conviction of Hussain Ibrahim for the offence punishable under Section 325 and sentence of five years RI besides a fine of Rs.500/-. In default he was directed to undergo a further sentence of six months. He was also convicted under Section 506(2) of the IPC and sentenced to undergo imprisonment for a period of five years and a fine of Rs.500/- and in default to undergo further imprisonment for a period of six months. Hussain Ibrahim was in addition convicted and sentenced to imprisonment for five years and a fine of Rs.500/- under Section 333 and in default to undergo further imprisonment of six months. Imprisonment for a period of one year and a fine of Rs.100/- was awarded to him under Section 342 of the IPC and in default to undergo further imprisonment for a period of one month.

6. In so far as the appellants Hussain Siddi, Malubai wife of Ibrahim Siddi and Hawabai wife of Hussain Ibrahim are concerned, the Trial Court found them also to be guilty of offences punishable under Sections 333 of the IPC and sentenced them to undergo simple imprisonment for a period of three years and a fine of Rs.200/-. Malubai accused no.3 and appellant before us was also in addition convicted and sentenced to undergo imprisonment for a period of three years under Section 506(2) IPC apart from a fine of Rs.500/-. In default of payment of fine she was sentenced to undergo six months further imprisonment.

7. Aggrieved by the orders of conviction and sentence the appellants preferred an appeal before the High Court of Gujarat at Ahmedabad who has while upholding the conviction of the appellants reduced the sentence awarded to all of them to 1½ years instead of three years.

8. It is common ground that the appellants, two of whom happen to be females had not physically assaulted the constable. Even appellant no.1 is not alleged to have used any force against the constable in the incident in question. The incident itself is nearly ten years old by now. Keeping in view all these circumstances and the fact that Hussain Ibrahim Siddi accused no.1 who was mainly responsible for the grievous injury caused to the constable has already served the sentence awarded to him, we are of the opinion that interest of justice would be sufficiently served if the sentence awarded to the appellants is modified and reduced to the sentence already undergone by them.

9. We order accordingly. The appellants shall be set at liberty forthwith unless required in any other case. The appeal is allowed to the above extent.

D.G. Appeal allowed.

BALJINDER SINGH @ BITTU

v.

STATE OF PUNJAB

(Criminal Appeal No. 1878 of 2011)

SEPTEMBER 28, 2011

[CYRIAC JOSEPH AND T.S. THAKUR, JJ.]

Penal Code, 1860 – ss. 326 and 324 – Conviction of appellant under – Appellant sentenced to rigorous imprisonment for a period of four years and fine of Rs. 5,000/- for commission of offence punishable u/s. 326 and rigorous imprisonment for two years with fine of Rs. 2000/- for commission of offence punishable u/s. 324 by courts below – On appeal, held: It is evident from the material on record that the incident had resulted in injuries to both the parties and the incident took place because of a sudden fight – Nature of the injuries inflicted, the absence of any criminal antecedents of the accused appellant, and the period that has elapsed since the occurrence, all call for a suitable alteration in the sentence awarded to the appellant – Sentence awarded to the appellant u/s. 326 reduced from four years rigorous imprisonment to two years rigorous imprisonment and the amount of fine increased from Rs.5,000/- to Rs.50,000/- – However, sentence and fine u/s. 324 maintained.

CRIMINAL APPELLATE JURISDICITION : Criminal Appeal No. 1878 of 2011.

From the Judgment & Order dated 5.10.2010 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 375 of 2000.

Mahabir Singh, Vikram Chaudhari, Nikhil Jain and Preeti Singh for the Appellant.

Harendra Singh, Sandeep Kr. Mishra and Kuldeep Singh for the Respondent.

The Order of the Court was delivered

O R D E R

T.S. THAKUR, J. 1. Leave granted.

2. This appeal arises out of an order dated 5th October, 2010 passed by the High Court of Punjab and Haryana at Chandigarh whereby the appellant has been convicted and sentenced to undergo rigorous imprisonment for a period of four years and a fine of Rs.5,000/- for an offence punishable under Section 326 of the Indian Penal Code and rigorous imprisonment for two years with a fine of Rs.2,000/- for an offence punishable under Section 324 IPC.

3. When the special leave petition came up for admission on 11th April, 2011 notice to the respondent was issued by this Court only on the question of sentence awarded to the appellant. We have, accordingly heard learned counsel for the parties on the quantum of sentence awarded to the appellant and perused the record.

4. The incident in question is said to have taken place as early as in July, 1994. The genesis of the occurrence has no element of premeditation or other criminal overtones. It arose out of what was according to the prosecution an unintended and innocuous straying of the complainant's cart into the paddy field of Natha Singh, father of Bhupinder Singh and Baljinder Singh, the appellant. The brothers were enraged by what they thought was a trespass into the field owned by them and their father. ?-

They caught hold of and beat Kulwinder Singh the complainant, owner of the cart who received two knife blows on the front of his right chest and a blow in the scapular region. The co-accused Bhupinder Singh was also alleged to have given a fist blow at the back of Kulwinder Singh. The incident was witnessed by Bachan Singh PW-2 and Sukhchain Singh who intervened to prevent any further injury to any one of them. At the trial the prosecution adduced evidence that comprised among others the depositions of Kulwinder Singh, PW-1, Bachan Singh, PW 2 and Dr. K.K. Sharma, PW-3. Relying upon the deposition of the said witnesses, the trial Court found both

the accused guilty of the offences under Sections 324 and 326 IPC and sentenced the appellant to undergo rigorous imprisonment for a period of four year and two years apart from payment of fine of Rs.5,000/- and Rs.2,000/- respectively for offences punishable under Sections 326 and 324 IPC respectively. In so far as Bhupinder Singh was concerned, the trial Court sentenced him to rigorous imprisonment for a period of three years under Section 326 read with Section 34 IPC and rigorous imprisonment for one year under Section 324 read with Section 34 IPC apart from payment of Rs.2,000/- for the former and Rs.1,000/- for the later offence.

5. The High court on an appeal filed by the accused, acquitted Bhupinder Singh giving him the benefit of doubt but maintained the sentence awarded to the appellant. The High Court found that while Dr. Rattanjit Singh, DW-1 had deposed and certified the appellant having suffered three injuries, one of which sustained on the left side of the forehead was reported to be a grievous injury, in the absence of any x-ray examination and in the absence of any analysis of the cut sustained by the appellant, the injury had to be treated to be a superficial one only. The fact that the incident had resulted in injuries to both the parties is all the same evident from the material on record. Superadded to that is the fact that incident took place because of a sudden fight. The nature of the injuries inflicted, the absence of any criminal antecedents of the accused appellant, and the period that has elapsed since the occurrence, all call for a suitable alteration in the sentence awarded to the appellant. We are further of the opinion that while the sentence could be reduced from four years rigorous imprisonment to two years rigorous imprisonment for the offence under Section 326 IPC, the amount of fine could be increased from Rs.5,000/- to Rs.50,000/-. The sentence and fine under Section 324 IPC will, however, remain unaltered. Having regard to the nature of the injuries sustained by Kulwinder Singh the medical expenses that he would have incurred in connection with the treatment of those injuries, we consider it just and proper to award Rs.50,000/- out of the fine amount as compensation under Section 357 of Cr.P.C. to Kulwinder Singh the victim of the assault. The above modification would in our view serve the ends of justice.

5. In the result, we allow this appeal but only in part and to the extent that the sentence awarded to the appellant under Section 326 IPC shall stand reduced from four years rigorous imprisonment to two years rigorous imprisonment with a fine of Rs.50,000/-. In the event of default in payment of fine, the appellant shall suffer rigorous imprisonment for a further period for one year. The sentence of imprisonment and fine awarded to the appellant under Section 324 is, however, maintained. We further direct that in case the fine amount is recovered from the appellant, a sum of Rs.50,000/- shall be paid to Kulwinder Singh as compensation under Section 357 of the Code of Criminal Procedure.

N.J. Appeal allowed.

STATE OF MADHYA PRADESH
v.
NARMADA BACHAO ANDOLAN & ANR.
I.A. NOS. 256-270 & 271-285 OF 2011
IN
CIVIL APPEAL NOS. 2083-2097 of 2011

SEPTEMBER 29, 2011

[J.M. PANCHAL, DEEPAK VERMA AND DR. B.S. CHAUHAN, JJ.]

Adverse remarks: Expunction of – In a land acquisition case, the State Authorities took a decision to abandon the land acquisition proceedings – Before High Court, applicant-respondent pleaded that order of the Authorities to abandon the proceedings was void ab initio as possession of the land in dispute had already been taken – High Court held that as the possession of land had already been taken, it was not

permissible for the Authorities to resort to withdrawal of the proceedings – Before Supreme Court, applicant took stand that the tenure holders of the land had already been dispossessed and, therefore, the question of abandoning the land acquisition proceedings could not arise – Authorities pleaded that actual physical possession was still with the tenure holders and the stand taken by applicant was not factually correct – The Supreme Court directed appointment of Local Commissioner to find out who was in possession – Local Commissioner recorded the statements of tenure holders in the presence of representative of the applicant and filed the report that the tenure holders were in actual physical possession of the said land – The applicant was given opportunity to file objections – Thereafter, the Court held that since the finding of the Local Commissioner was recorded in the presence of representative of applicant, the same was worth acceptance and in view thereof the claim made by applicant regarding the physical possession of land was not factually correct and passed certain adverse remarks in the judgment – Application seeking expunction of remarks on the ground that the word 'possession' denoted different meaning so far as 1894 Act and Resettlement and Rehabilitation Policy were concerned and, therefore, adverse marks were made under total misconception – Held: In the instant case, the Court had not to decide the issue of justification of the tenure-holders for retaining the possession of the land rather the question was, as to who was in actual physical possession of the land – Had it been the case of justification of retaining the possession of the land by the tenure-holders without being rehabilitated, the question of appointing the Commissioner would not have arisen – The applicant cannot be permitted to make out a new case to justify expunging of adverse remarks – More so, while making certain observation against the applicant, the guidelines laid down by the Supreme Court in ***Mohd. Naim*** *had strictly been observed – Remarks were made as it was necessary to do so while deciding the controversy involved therein – However, submission made by the applicant that it has rendered great service for down trodden and poor farmers and thus applicant should not be deprived of the opportunity to represent poor peasants – In view thereof, para 145 of the earlier judgment modified to the extent that although the applicant had not acted with a sense of responsibility and not taken appropriate pleadings as required in law, however, in a PIL, the court has to strike a balance between the interests of the parties and thus it is desirable that in future the court must view presentation of any matter by the applicant with caution and care, insisting on proper pleadings, disclosure of full facts truly and fairly and should insist for an affidavit of some responsible person in support of facts contained therein – Land Acquisition Act, 1894.*

Administration of Justice: Adverse remarks – Held: Court may not be justified in making adverse remarks/strictures against a person unless it is necessary for the disposal of the case to animadvert to those aspects in regard to the remarks that were made – Adverse remarks should not be made lightly as it may seriously affect the character, competence and integrity of an individual in purported desire to render justice to the other party.

State of U.P. v. Mohammed Naim **AIR 1964 SC 703: 1964 SCR 636;** *Jage Ram, Inspector of Police and Anr. v. Hans Raj Midha* **AIR 1972 SC 1140: 1972 2 SCR 409;** *R.K. Lakshmanan v. A.K. Srinivasan & Anr.* **AIR 1975 SC 1741: 1976 (1) SCR 204;** *Niranjan Patnaik v. Sashibhusan Kar & Anr.* **AIR 1986 SC 819: 1986 (2) SCR 470;** *Major General I.P.S. Dewan v. Union of India & Ors.* **(1995) 3 SCC 383: 1995 (2) SCR 532;** *Dr. Dilip Kumar Deka & Anr. v. State of Assam and Anr.* **(1996) 6 SCC 234: 1996 (5) Suppl. SCR 763;** *State of Maharashtra v. Public Concern for Governance Trust and Ors.* **AIR 2007 SC 777: 2007 (1) SCR 87 – relied on.**

Case Law Reference:

1964 SCR 636	**relied on**	**Para 10, 15**
1972 2 SCR 409	**relied on**	**Para 11**
1976 (1) SCR 204	**relied on**	**Para 11**
1986 (2) SCR 470	**relied on**	**Para 11**
1995 (2) SCR 532	**relied on**	**Para 11**
1996 (5) Suppl. SCR 763	**relied on**	**Para 11**
2007 (1) SCR 87	**relied on**	**Para 11**

CIVIL APPELLATE JURISDICTION : I.A. Nos. 256-270 in Civil Appeal No. 2083-2097 of 2011.

From the Judgment & Order dated 23.9.2009 of the High Court of Madhya Pradesh at Jabalpur in IA Nos. 4679/09, 4804/09, 10476/08, 10973/08, 7009/09, 8103/09, 8890/09, 8955/09, 7010/09, 8079/09, 8211/08, 5249/09, 7599/09 and 6407/09 in W.P. No. 4457 of 2007.

WITH

I.A. NOS. 256-270 & 271-285 OF 2011

Civil Appeal Nos. 2083-2097 of 2011

C.D. Singh, Ram Swarup Sharma for the Appellant.

Nikhil Nayyar for the Respondents.

The Order of the Court was delivered

O R D E R

J.M. PANCHAL, J. 1. The respondent Narmada Bachao Andolan (hereinafter called as NBA) has filed the aforesaid applications for expunging certain adverse remarks made in paragraphs 129-132 and 145 of the judgment and order in the aforesaid civil appeals dated 11.5.2011.

2. These applications have been filed on the grounds that adverse remarks made against the applicants are unwarranted and uncalled nor based on any material/evidence on record. More so, they were not necessary to adjudicate upon the controversy involved in the appeals. Thus, the same may be expunged.

In the said appeals, a large number of factual and legal issues had arisen. However, this court was concerned with acquisition of land to the extent of 284.03 hectares falling in 5 villages named therein for the reason that the State authorities had taken a decision to abandon the land acquisition proceedings and not to conclude the same. Before the High Court the applicants had pleaded that order of the Authorities to abandon the proceedings was void ab-initio as possession of the land in dispute had already been taken. The High Court came to the conclusion that as the possession of the land in dispute had already been taken it was not permissible for the appellants herein to resort to the provisions of Section 48 of the Land Acquisition Act, 1894 (hereinafter called 1894 Act).

3. When the matter came in appeal before this Court, the factual controversy arose as to who was in actual physical possession of the land. The NBA had taken a stand that as the tenure holders of the said land had already been dispossessed the question of abandoning the land acquisition proceedings could not arise. The State authorities submitted that actual physical possession is still with the tenure holders and the stand taken by the NBA was not factually correct. It was in view thereof that this court on 24.2.2011 passed the following order:

> "The learned counsel appearing for the parties would be at liberty to submit their written submissions within 10 days

from today in SLP(C) Nos. 31047-31061/2009 & SLP(C) Nos. 34195-34209/2009. However, during the course of hearing it has been seriously contended by the State of M. P. that actual physical possession of the land ad-measuring 284.03 hect. falling in five villages viz. Dharadi, Kothmir, Narsinghpura, Nayapura and Guwadi has not been taken by the State, in spite of resorting to acquisition proceedings to a certain extent. This fact has been seriously refuted by respondent No.1 i.e. Narmada Bachao Andolan and it has been contented that actual physical possession has been taken, which is projected in various documents including the affidavits sworn by the oustees/ cultivators of the said land. They have also placed reliance on the entries in the revenue records which reflected the position that the Executive Engineer of the Company was in possession of the said land measuring 284.03 hect. also. In the light of serious contentions raised by both the parties it is in fact not possible for us to come to a definite conclusion as to who is in actual possession of the land today. In view of this, we deem it fit and proper to request the learned District Judge, Indore to make a spot inspection and submit his report with regard to the land ad-measuring 284.03 hect. situated in the aforesaid five villages. Before going to the spot, he will inform the parties concerned so that they may, if so desire, remain present at the time of inspection and render proper assistance in identifying the land in question. We clarify that we are not concerned with the total land of those villages, rather the controversy is limited to 284.03 hect., which the State does not want to acquire. It may also be mentioned in the report as to whether there is any crop standing on the said land or part of it and if it is so, who had sown the crop. If the crop has recently been removed or land has been tilled, who has done so. Let the report be submitted by the District Judge within a period of 15 days from the date of communication of this order."

4. Such an order was necessary for the reason that the affidavit filed on behalf of `NBA' dated 1.7.2010 clearly provided that the order passed by the authorities dated 2.4.2009, not to acquire the land of the 5 villages was a nullity and void ab-initio because the possession of the land had already been taken in December 2007.

5. In pursuance of the said order, the District Judge, Indore videographed the entire land in dispute and recorded the statements of the tenure-holders in the presence of the representative of `NBA' and came to the conclusion that the tenure-holders were in actual physical possession of the said land.

6. The copy of the report along with CDs were supplied to the parties. They were given opportunity and they availed the same by filing objections thereto and advanced their arguments. It was after considering the same, the matter was decided, wherein finding has been recorded that as the report was prepared in presence of the representative of `NBA', the same was worth acceptance and it was in view thereof, further a finding was recorded that the claim made by the `NBA' regarding the physical possession of the land was not factually correct. The `NBA' had been afforded full opportunity to make out the case. Their past conduct was also pointed out and dealt with in paragraph 133 of the judgment dated 11.5.2011.

7. In fact the application filed by the State under Section 340 of the Code of Criminal Procedure, 1973 (hereinafter called Cr.P.C.) was at a later stage, i.e. on 31.3.2011 and this court has not decided the same. Therefore, the contents of that application or issuance of notice on the same did not have any bearing so far as the main judgment is concerned.

8. It is in this background the submissions have been advanced by Shri Rajinder Sachar, Shri Rajiv Dhavan, learned senior counsel and Shri Sanjay Parikh that there was no occasion for the court to pass the adverse remarks in the

aforesaid paragraphs of the judgment as it amounts to black listing the NBA. The NBA had taken a consistent stand throughout the proceedings that the word 'possession' denotes different meanings so far as the 1894 Act and R & R Policy are concerned. In law it may be permissible under the 1894 Act that a person may be dispossessed but he may continue in possession because of the R & R Policy. Therefore, adverse remarks have been made by this court under total misconception and the same be expunged.

9. On the contrary, Shri P.S. Patwalia, learned senior counsel has vehemently opposed the applications contending that NBA cannot be permitted to make a totally new case. The only issue involved had been as who was in actual physical possession of the land and had it been the case of NBA that the tenure holders were not in possession of the land, question of appointing the Commissioner i.e. District Judge, Indore would not have arisen. Accepting the submissions made by the applicants would render the order dated 24.2.2011 insignificant/ meaningless as a futile exercise. Thus, the applications are liable to be rejected.

10. In *State of U.P. v. Mohammad Naim,* AIR 1964 SC 703, this Court was asked by the State of U.P. – the appellant, to quash the adverse remarks made by the High Court of Allahabad against the police department as a whole e.g.- "That there is not a single lawless group in the whole of the country whose record of crime comes anywhere near the record of that organised unit which is known as the Indian Police Force."

This Court held that the court in its inherent jurisdiction can expunge the adverse remarks suo moto or even on application of a party. However, there must be a ground for expunging as such remarks were not justified, or were without foundation, or were wholly wrong or improper and expunging thereof is necessary to prevent abuse of the process of the court or otherwise to secure the ends of justice. However, the court must bear in mind that such jurisdiction being of exceptional nature must be exercised only in exceptional cases. The cardinal principle of the administration of justice requires for proper freedom and independence of Judges and such independence must be maintained and Judges must be allowed to perform their functions freely and fairly and without undue interference by anybody, even by this Court. However, it is also equally important that in expressing their opinions the Judges must be guided by consideration of justice, fair play and restraint. It should not be frequent that sweeping generalisations defeat the very purpose for which they are made. Thus, it is relevant to consider:

(a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself;

(b) whether there is evidence on record bearing on that conduct justifying the remarks; and

(c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct.

11. This view has been persistently approved and followed by this Court as is evident from the judgments in *Jage Ram, Inspector of Police & Anr. v. Hans Raj Midha,* AIR 1972 SC 1140; *R.K. Lakshmanan v. A.K. Srinivasan & Anr.,* AIR 1975 SC 1741; *Niranjan Patnaik v. Sashibhusan Kar & Anr.,* AIR 1986 SC 819; *Major General I.P.S. Dewan v. Union of India & Ors.,* (1995) 3 SCC 383; *Dr. Dilip Kumar Deka & Anr. v. State of Assam & Anr.,* (1996) 6 SCC 234; and *State of Maharashtra v. Public Concern for Governance Trust & Ors.,* AIR 2007 SC 777.

12. Thus, the law on the issue emerges to the effect that the court may not be justified in making adverse remarks/ passing strictures against a person unless it is necessary for the disposal of the case to animadvert to those aspects in

regard to the remarks that have been made. The adverse remarks should not be made lightly as it may seriously affect the character, competence and integrity of an individual in purported desire to render justice to the other party.

13. In the case, at hand, the Court had not to decide the issue of justification of the tenure-holders for retaining the possession of the land rather the question was, as who is in actual physical possession of the land. Had it been the case of justification of retaining the possession of the land by the tenure-holders without being rehabilitated, the question of appointing the Commissioner i.e. District Judge, Indore, would not have arisen.

14. Observations/remarks made in the judgment dated 11.5.2011 are based on the pleadings taken into consideration as has been taken note of in paras 114 and 115 which mainly read as under:

> "114. The High Court while dealing with the said applications did not deal with the issue specifically as to whether the possession of the land has actually been taken or even symbolic possession has been taken by the State; as to whether the persons interested have been evicted from the said land; or they have voluntarily abandoned their possession; or they are still in physical possession of the land; or as to whether after being evicted they had illegally encroached upon the land in dispute. A direction has been issued observing as under:
>
> > "The lands in these 5 villages of the oustees were acquired by notifications issued under the Land Acquisition Act, and the NVDA has now passed an order on 2.4.2009 saying that the land/property of these 5 villages shall not be acquired and the action taken till now be dropped as per the provisions of law…….The respondents, therefore, will have to provide all the rehabilitation benefits to the villagers of the 5 villages and for the purpose of rehabilitation, the order dated 2.4.2009 of the NVDA is of no consequence. The two IAs stand disposed of."

115. The appellants herein have raised an objection that the tenure holders of the said land are still in actual physical possession and they had never been evicted. However, on behalf of the respondent i.e. Narmada Bachao Andolan, Shri Alok Agrawal, Chief Activist of the organisation, has filed the counter affidavit dated 1.2.2010 before this Court, wherein it has specifically been mentioned as under:

(a) ……..

(b) The order dated 2.4.2009 as not to acquire the land of the five villages is a nullity and void ab initio because the possession of the lands has already been taken. The land has already vested in the State. This may be seen from the judicial orders of Reference Courts Devas; the land record of the revenue authorities of the State Government, the order of the Land Acquisition Officer and the affidavits of the concerned oustees which were placed on record before the said authorities.

(c) …..

(d) …..

(e) ……

(f) ……

(g) ……

(h) The oustees of the five villages had filed a large number of affidavits before the authorities/courts concerned stating that possession of their lands/properties acquired had been taken in December 2007.

(Emphasis added)

15. Thus, in view of the above, the arguments advanced on behalf of the applicants are not justified. The applicants cannot be permitted to make out a new case to justify expunging of adverse remarks. More so, while making certain observation against the `NBA' the guidelines laid down by this Court in *Mohd. Naim* (Supra) had strictly been observed. Remarks have been made as it was necessary to do so while deciding the controversy involved therein. The submissions so made are not worth acceptance.

However, learned counsel appearing for the applicants have submitted that the NBA has rendered great service for a long number of years to the down trodden and poor farmers and thus NBA should not be deprived of the opportunity to represent poor peasants. Mr. Sanjay Parikh learned counsel has expressed remorse on behalf of the applicants that the applicants ought to have acted with more responsibility.

16. In view of the above, para 145 of the judgment stands modified to the extent as under:

> "In view of the above, we reach the inescapable conclusion that the NBA has not acted with a sense of responsibility and not taken appropriate pleadings as required in law. However, in a PIL, the court has to strike a balance between the interests of the parties. The court has to take into consideration the pitiable condition of oustees, their poverty, inarticulateness, illiteracy, extent of backwardness, unawareness also. It is desirable that in future the court must view presentation of any matter by the NBA with caution and care, insisting on proper pleadings, disclosure of full facts truly and fairly and should insist for an affidavit of some responsible person in support of facts contained therein."

17. With these observations, the applications stand disposed of.

D.G. Applications disposed of.

JAMALUDDIN

v.

STATE OF JAMMU & KASHMIR AND ORS.

(Civil Appeal No. 8093 of 2004)

SEPTEMBER 29, 2011

[J.M. PANCHAL AND H.L. GOKHALE, JJ.]

Social Status certificate – Candidates belonging to Scheduled Castes or Scheduled Tribes – Seeking age relaxation – On facts, appellant's application for the post of Munsif in the Scheduled Tribe Category rejected since the appellant was overage – High Court not relaxing the age of appellant – Held: Order passed by the High Court is justified – If there is no age relaxation in the Rules, the same cannot be brought in by any judicial interpretation – Advertisement of the Public Service Commission issued in the year 2002, required the persons concerned to be of less than thirty five years of age at the relevant time – There was no age relaxation in favour of the candidates belonging to the Scheduled Castes or Scheduled Tribes, though there was a quantum of reservation provided for them – Jammu and Kashmir Civil Services (Judicial) Recruitment Rules, 1967.

Appellant belongs to Scheduled Tribe. He was appointed as an adhoc Munsif in the Jammu & Kashmir Judicial Service. A Notification was issued by the Jammu & Kashmir Public Service Commission on 04.12.2001 for regular appointment whereby person should not be more than thirty five years of age as on the 1st January of the year in which the Notification was issued. The appellant applied for the post of Munsif in the Scheduled Tribe Category. The appellant's application was rejected since

he was overage by eleven months. The appellant filed a writ petition. The Single Judge dismissed the petition since he was overage. The Division Bench also dismissed the appeal. Therefore, the appellant filed the instant appeal.

Dismissing the appeal, the Court

HELD: 1.1 In the instant case the advertisement of the Public Service Commission issued in the year 2002, required the persons concerned to be of less than thirty five years of age at the relevant time. That age limit applied to all the candidates. There was no age relaxation in favour of the candidates belonging to the Scheduled Castes or Scheduled Tribes, though there was a quantum of reservation provided for them. Therefore, the earlier resolution of the Full Court of the High Court passed in February 1982 has to be read as providing only for the quantum and not for any age relaxation. If there is no age relaxation in the Rules, the same cannot be brought in by any judicial interpretation. In the circumstances, there is no error in the judgment of the Single Judge or that of the Division Bench of the High Court. [Para 15]

1.2 There is some kind of anomaly in the sense that there is no age relaxation at the level of Munsifs, though it is so provided at the level of entry into the Higher Judicial Service. Although, there is no inclination to interfere with the order passed by the High Court on the judicial side, it is felt that the High Court on its administrative side should examine the issue as to whether age relaxation should be provided to the candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes appearing for the Judicial Service Examination at the Munsif level as is provided to the candidates appearing for the Higher Judicial Service Examination. [Paras 13 and 16]

State of Bihar vs. Bal Mukund Sah and Ors. **AIR 2000 SC 1296: 2000 (2) SCR 299;** *Umesh Chandra Shukla vs.Union of India and Ors.* **1985 (3) SCC 721: 1985 (2) Suppl. SCR 367 – referred to.**

Riyaz Ahmad Gada vs. State of Jammu and Kashmir JKJ **(HC)(Suppl.) 2009 600;** *Syed Shamim Rizvi and Ors. vs. State of Jammuand Kashmir* **2010 (1) SLJ 281 – cited.**

Case Law Reference:

JKJ (HC) (Suppl.) 2009 600	**Cited**	**Para 9**
2010 (1) SLJ 281	**Cited**	**Para 9**
2000 (2) SCR 299	**Referred to.**	**Para 13**
1985 (2) Suppl. SCR 367	**Referred to.**	**Para 14**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8093 of 2004.

From the Judgment & Order dated 24.2.2004 of the High Court of Jammu & Kashmir in LPA No. 133 of 2003 arising out of S.W.P. No. 994 of 2002.

Ambrish Kumar, Dr. Pooja Jha, M.A. Rahman and Rameshwar Prasad Goyal for the Appellant.

Gaurav Pachnanda, AAG, Sunil Fernandes, Sidhant Goel, Yawar Ali, Bharat Sangal, R.R. Kumar Vernica Tomer, Srijana Larra, G.M. Kawoosa and N. Ganpathy for the Respondent.

The Judgment of the Court was delivered by

H.L. GOKHALE J. 1. This appeal seeks to challenge the order passed by a Division Bench of the High Court of Jammu

and Kashmir dated 24.2.2004 in LPA No. 133/2003, confirming the order dated 8.9.2003 passed by a learned Single Judge dismissing the Writ Petition No. SWP 994/2002 filed by the appellant.

Facts leading to this appeal are this wise –

2. The appellant belongs to a Scheduled Tribe. He is born on 31.1.1965. He was appointed as an adhoc Munsif in the Jammu & Kashmir Judicial Service on 13.8.2001. Subsequently, he applied for the post of Munsif in the Scheduled Tribe category when a notification was issued by the Jammu and Kashmir Public Service Commission on 4.12.2001 for the regular appointments. The notification required the person to be of not more than thirty five years of age as on the 1st January of the year in which the notification was issued. In view thereof, the Commission informed him by communication dated 21.5.2002 that his application was rejected since he was overage by eleven months.

3. Being aggrieved by that order the appellant filed the above referred Writ Petition. A Single Judge who heard the matter, noted that as per rule 7 of Jammu and Kashmir Civil Services (Judicial) Recruitment Rules 1967 (Judicial Services Recruitment Rules for short), the appellant was in fact overage. This rule reads as follows:-

> "7. Age. No person shall be recruited to the service who is more than 35 years of age on the first day of January preceding the year examination is conducted by the Commission for Recruitment to the Service."

While dismissing the petition, the Single Judge noted that by the time that matter was heard, the appellant had crossed the age of 37 years which he claimed as the permissible age for the Scheduled Tribe candidates. The Division Bench which heard the Letters Patent Appeal also accepted the view taken by the learned Single Judge, and therefore dismissed the appeal.

4. Shri Ambrish Kumar, learned counsel appeared for the appellant, and Shri Gaurav Pachnanda, learned Senior Additional Advocate General of Jammu and Kashmir appeared for the respondents. The State of Jammu and Kashmir, the Public Service Commission of Jammu and Kashmir and the High Court of Jammu and Kashmir through its Registrar General are joined as the respondents to this appeal.

5. It is pointed out on behalf of the appellant that earlier there was no appropriate reservation for the Scheduled Castes and Scheduled Tribes in the services of State of Jammu and Kashmir, and also in the services of the High Court. Hence, the then Minister of Law and Justice, Union of India wrote to the Chief Justice of the High Court on 15.5.1979 drawing his attention to this position. The Union Law Minister stated in his letter as follows:-

> "1….
>
> 2. From the information received from the Jammu and Kashmir High Court last year, it transpires that there is no provision for reservation for Schedule Castes and Scheduled Tribes in direct recruitment to the State Judicial and Higher Judicial Services.
>
> 3. ….. You will appreciate that in their present stage of development, it would be difficult for the Scheduled Castes and Scheduled Tribes to be represented adequately in the State Judicial and Higher Judicial Services unless special measures like reservation are undertaken. Since such reservation exists in other services, there does not seem to be sufficient reason why it should not be there in the State Judicial and Higher Judicial Services of the State……."

6. In view of this letter from the Union Law Minister, this

subject was taken up in the Full Court Meeting of the High Court held from 23rd February to 26th February, 1982, wherein following decision was taken:-

PREAMBLE RESOLVED

14. Reservation of Seats for Schedule castes and Scheduled Tribes in the Judicial Service and Minister Services. 14. Considered the report of Registrar and also the relevant record. We are of the opinion that the general rules framed by the Government of J&K in this behalf are also applicable to the Judicial Service as also to the Ministerial services of the Judicial Department; and such reservation are made accordingly. The Government be informed accordingly.

7. Based on this resolution, it is submitted on behalf of the appellant, that whatever are the general rules applicable to the Government employees in Jammu and Kashmir ought to be deemed as applicable to the Judicial Services as also the Ministerial Services of the Judicial Department. The age limit for entering into Government Service was upto thirty eight years of age for Schedule Castes and Schedule Tribes, and therefore the appellant ought to have been allowed to give the examination for recruitment to the post of Munsif since at that time his age was less than thirty eight years. It was submitted that the Public Service Commission was therefore in error in rejecting his application, and so also were the learned Single Judge and the Division Bench of the High Court.

8. As far as this submission is concerned, it was pointed out on behalf of the respondents that firstly at the time when this resolution was passed by the High Court in February 1982, no age relaxation was provided for entering into the services of the State of Jammu and Kashmir also, and therefore it cannot be deemed that by passing of this resolution the High Court also brought in the provision for age relaxation. At that time, the recruitment to the services under the State Government was governed under SRO No. 394/1981. It provided only for a quantum of reservation which was 8% for the Scheduled Castes. On 28.6.1994 the State Government increased the reservation for Schedule Tribes to 10%, for Schedule Castes to 8%, and for Other Backward Classes to 25%. The appellant had appeared for the selection held in the year 2002, and at that time the same percentage with respect to the quantum of reservation was applied. Under the Judicial Services Recruitment Rules the age limit for Schedule Castes or Schedule Tribes candidates was thirty five years, but there was no further age relaxation for them, and that is how the rejection of the candidature of the appellant was justified by the Public Service Commission.

9. The learned counsel for the appellant pointed out that if we look to the letter of the Union Law Minister, the intention therein was to request the High Court to see to it that the rules in the State Judiciary are brought on par with the rules which exist in rest of India. The resolution passed by the Full Court ought to be looked at from that perspective. In view of this submission on behalf of the appellant, the respondent pointed out that the Union Law Minister's letter dated 15.5.1979 led the High Court to move in the matter. On 24.5.1979, the High Court directed the Registrar to examine the relevant rules and put up the proposal. The Registrar reported on 2.6.1979 that according to Rule 13 of the Jammu and Kashmir Schedule Castes and Backward Classes Reservation Rules 1970, the seats required to be reserved for Scheduled Castes were to the extent of 8%. There was however, no such provision in the Judicial Services Recruitment Rules. He therefore suggested that the State Government may be approached to provide for 8% reservation for the Scheduled Castes by incorporating a specific rule therein. The High Court in its subsequent meeting held on 16.6.1979 asked the Registrar to inquire with the State Government as regards the prevailing position regarding reservation, which he did. By way of a reply, the High Court received a copy of the letter dated 18.6.1979 sent by the State Government to the Secretary Government of India, Law

Department, marked for the Registrar of High Court. In this reply it was pointed out that 8% vacancies were reserved for the candidates belonging to the Schedule Castes under the Jammu and Kashmir Schedule Castes and Backward Classes Reservation Rules 1970. It was however, stated that *"these Rules are applicable to all the services under the Government except judicial services as the judiciary has since been separated from the executive."*

10. Shri Pachnanda, learned counsel appearing for the respondents pointed out that the resolution passed by the Full Court in February 1982 will have to be looked at in this background. When some other Writ Petitions were filed in the High Court concerning these rules, the Government took a stand that whatever are the rules applicable for entry into the Government Service will apply for the entry into the High Court Service. However, the High Court administration did place a conscious view before the bench that on principle the judicial services under the High Court were separate from other services under the State Government, and the rules governing recruitment to the Government Service cannot be applied for entry into the High Court Service. The stand taken by the High Court administration has been accepted in two Division Bench judgments of the High Court. First is the judgment in the case of *Riyaz Ahmad Gada Versus State of Jammu & Kashmir,* decided on 29.9.2009 and reported in [JKJ (HC) (Suppl.) 2009 600]. The second judgment is in the case of *Syed Shamim Rizvi & Ors. Versus State of Jammu and Kashmir* reported in 2010 (1) SLJ 281. In the second judgment the High Court has relied upon the judgment of this Court in *State of Bihar Vs. Bal Mukund Sah and Ors.* reported in [AIR 2000 SC 1296]. In that matter this Court has held that rules made by the Government cannot be brought into or forced upon the recruitment of persons in the judicial services. The rules framed under Article 309 by the State Government should be treated as general rules, whereas those under Article 233 to 225 should be treated as special rules applicable for the High Court. The learned counsel for the respondents pressed into service the same submission before us by pointing out that the provision of section 110 of the Jammu and Kashmir Constitution is similar to Article 234 of the Indian Constitution concerning the subordinate judicial service.

11. The counsel for the appellant pointed out that Jammu and Kashmir Higher Judicial Service Rules 1983, provided for a relaxation of two years for the candidates belonging to Scheduled Castes and Scheduled Tribes, and therefore, similar relaxation should be made available for the entry to the Subordinate Judicial Service. Shri Pachnanda accepted that there was an anomaly in that since such relaxation of two years was provided only for the Higher Judicial Service. The age group expected for the Higher Judicial Service from the general category was 35 to 45 years, but for the Scheduled Castes and Scheduled Tribes and Other Backward Classes a relaxation in age of two years was permissible. He submitted that, this was because the candidates from these categories were not easily available for the Higher Judicial Services. That difficulty was however, not there at the Munsif level. Therefore, no such relaxation was provided at the level of entry of Munsifs into the judicial service.

12. It was pointed out on behalf of the appellant that the Jammu and Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956, specifically provide in Rule 3 (2) that they apply to all Government employees except to the extent excluded. On this Shri Pachnanda pointed out that Judicial Services Recruitment Rules came in force subsequently in 1967, and under Rule 1(3) thereof, all previous rules stand repealed. Rule 2 thereof, specifically states that these rules will apply to the selection of Munsifs. They are specific rules, and therefore, Civil Services (CC & A) Rules of 1956 will not apply to the entry of the Munsifs in the Judicial Services.

Consideration of the rival submissions -

13. We have noted the submissions of both the counsels. We quite appreciate the submission made on behalf of the appellant, and we quite see that there is some kind of anomaly in the sense that there is no age relaxation at the level of Munsifs, though it is so provided at the level of entry into the Higher Judicial Service. The respondents have already given their explanation as to why this distinction is made and according to them the same stands to reason. That apart, the rules made by the High Court will govern the recruitment at the Munsif level as well as at the level of the Higher Judicial Service, and they have the force of law in view of the provision of Article 234 of the Constitution of India as interpreted by this Court in *Bal Mukund Sah* (supra) which is comparable to section 110 of Constitution of Jammu and Kashmir.

14. Shri Ambrish Kumar, learned counsel for the appellant had contended that the provision for age relaxation available for recruitment to the services in the State Government should be deemed to be included in the Judicial Services Recruitment Rules. Shri Pachnanda on the other hand submitted that such a course of action was not permissible. Our attention has been drawn in this behalf, to a judgment of this Court in *Umesh Chandra Shukla Versus Union of India & Ors.* reported in [1985 (3) SCC 721]. That matter was concerning the candidates who did not qualify for the viva-voce test in the selection to the posts of Subordinate Judges in Delhi Judicial Service, since they fell short in the written examination by one or two marks only. After the finalisation of the list of candidates who had qualified for viva-voice test, a moderation of the marks in the written test was done so that such candidates with less marks become eligible. This Court held that no such ideas outside the Rules can be brought in. The Court held that these rules are to be read strictly. At the end of paragraph 13 the Court held as follows:-

> "…….Exercise of such power of moderation is likely to create a feeling of distrust in the process of selection to public appointments which is intended to be fair and impartial. It may also result in the violation of the principle of equality and may lead to arbitrariness. The cases pointed out by the High Court are no doubt hard cases, but hard cases cannot be allowed to make bad law. In the circumstances, we lean in favour of a strict construction of the Rules and hold that the High Court has no such power under the Rules. We are of the opinion that the list prepared by the High Court after adding the moderation marks is liable to be struck down……"

15. In the present case the advertisement of the Public Service Commission issued in the year 2002, required the persons concerned to be of less than thirty five years of age at the relevant time. That age limit applied to all the candidates. There was no age relaxation in favour of the candidates belonging to the Scheduled Castes or Scheduled Tribes, though there was a quantum of reservation provided for them. The earlier resolution of the Full Court of the High Court passed in February 1982, will therefore, have to be read as providing only for the quantum and not for any age relaxation. If there is no age relaxation in the rules, the same cannot be brought in by any judicial interpretation. In the circumstances we do not find any error in the judgment of the Single Judge or that of the Division Bench.

16. Although, we are not inclined to interfere with the order passed by the High Court on the judicial side, we do feel that the High Court on its administrative side should examine the issue as to whether age relaxation should be provided to the candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes appearing for the Judicial Service Examination at the Munsif level as is provided to the candidates appearing for the Higher Judicial Service Examination. We hope that this will be done without much delay.

17. For the reasons stated above the appeal stands

dismissed, though there will be no order as to the costs.

N.J. Appeal dismissed.

M/S. ROYAL ORCHID HOTELS LIMITED AND ANOTHER
v.
G. JAYARAM REDDY AND ORS.
(Civil Appeal No. 7588 of 2005

SEPTEMBER 29, 2011.

[G.S. SINGHVI AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

CONSTITUTION OF INDIA, 1950:

Article 226 read with Article 136 – Limitation for filing of writ petition – Held: Though no period of limitation has been provided for filing a petition under Article 226, but one of the several rules of self-imposed restraint is that the High Court may not enquire into a belated or stale claim and may deny relief to the petitioner if he is found guilty of laches – Further, during the intervening period, rights of third parties may have crystallized – Interference by Supreme Court in such matters would be warranted only if it is found that the exercise of discretion by High Court was totally arbitrary or was based on irrelevant consideration – In the instant case, the High Court in earlier writ petitions had nullified the acquisition on the ground of fraud and misuse of the provisions of the Act as instead of using the acquired land for the public purpose specified in the notifications u/ss 4 and 6 of Land Acquisition Act, it was transferred to private persons - When the writ petitioner-respondent came to know that his land has also been transferred to a private entity, he made a grievance and finally approached the High Court – During the intervening period, he pursued his claim for higher compensation – Therefore, it cannot be said that he was sleeping over his right and was guilty of laches –Therefore, the discretion exercised by the High Court to entertain and decide the writ petition filed by the respondent on merits and allowing his claim cannot be said to be vitiated by any patent legal infirmity – Land Acquisition Act, 1894 – ss. 4 and 6.

LAND ACQUISITION ACT, 1894:

ss. 4 and 6 – Land acquired for public purpose – Diversified to private persons and entities – Land owners approaching High Court challenging the acquisition proceedings and for restoring the land to them – Held: The power of eminent domain to compulsorily acquire the land of private persons cannot be over-stretched to legitimize a patently illegal and fraudulent exercise undertaken for depriving the land owners of their constitutional right to property with a view to favour private persons – Therefore, the Corporation did not have the jurisdiction to transfer the land acquired for a public purpose to the companies and thereby allow them to bypass the provisions of Part VII of the Act – The diversification of the purpose for which the land was acquired u/s 4(1) read with s. 6, clearly amounted to fraud on the power of eminent domain – High Court, therefore, quashed the notifications u/ss 4(1) and 6 in their entirety and that judgment has become final – In the instant case, the land owner has succeeded in convincing the Division Bench of the High Court that the action taken by the Corporation to transfer his land to the private entity was wholly illegal, arbitrary and unjustified and there is no valid ground to interfere with the impugned judgment – Administrative Law – Power of eminent domain.

The State Government, at the instance of the Karnataka State Tourism Development Corporation (Corporation), issued notification dated 29.12.1981 u/s 4(1) and declaration u/s 6 of the Land Acquisition Act, 1894 acquiring the land admeasuring 37 acres 4 guntas of land comprised in various survey numbers including

Survey No.122, for public purpose, namely, construction of Golf-cum-Hotel Resort near Bangalore Airport, Bangalore to be raised by the Corporation. The Special Land Acquisition Officer passed the award dated 7.4.1986. However, in the meeting of senior officers of the Bangalore Development Authority and the Corporation held on 13.1.1987, the Managing Director of the Corporation gave out that the Corporation did not have necessary finances for deposit of cost of the acquisition and in furtherance of the decision taken in that meeting, agreements were executed by the Corporation conveying the land to private entities. This was challenged by the land owners, namely, *Mrs. Behroze Ramyar Batha, Annaiah and Smt. H.N. Lakshmamma* before the High Court in writ petitions which were dismissed by the Single Judge of the High Court on the ground of delay. However, on appeal, the Division Bench of the High Court, allowed the claim of the land-owners and directed their lands to be returned to them subject to certain conditions.

As regards the land admeasuring 2 acres 30 guntas comprised in Survey No.122, respondent No.1 and his brothers filed applications u/s 18 of the Act for making reference to the court for enhancement of the compensation. During the pendency of reference, the Corporation invited bids for allotment of 5 acres of land including 2 acres 30 guntas belonging to respondent No.1 and his brothers for putting up a tourist resort and executed a registered lease deed dated 9.1.1992 in favour of M/s. 'URL' (predecessor of appellant no.1 in C.A. No. 7588 of 2005) purporting to lease out 5 acres of land for a period of 30 years on an annual rent of Rs.1,11,111/- per acre for the first 10 years. The brothers of respondent No.1 filed Writ Petition Nos.2379 and 2380 of 1993 seeking to quash the acquisition of land measuring 0.29 guntas and 0.38 guntas respectively, which came to their share in the family partition effected in 1968. They relied upon the judgments of the Division Bench in the cases of *Mrs. Behroze Ramyar Batha* and *Smt. H. N. Lakshmamma* and pleaded that once the acquisition had been quashed at the instance of other landowners, the acquisition of their land was also liable to be annulled. The Single Judge distinguished the cited cases and dismissed the writ petitions holding that the petitioners did not question the acquisition for a period of almost two years and approached the High Court after long lapse of time counted from the date of acquisition. The writ appeals filed by the brothers of respondent no. 1 were summarily dismissed by the Division Bench of the High Court and the special leave petitions were also dismissed by Supreme Court.

Respondent no. 1 filed a separate writ petition seeking to quash the notifications dated 29.12.1981 and 16.4.1983 insofar as the same related to the land admeasuring 1 acre 3 guntas comprised in Survey No.122 and for issue of a mandamus to the appellants to redeliver possession of the said land to him. The Single Judge, ultimately, dismissed the writ petition holding that respondent no.1 approached the court after a long lapse of time. The Division Bench of the High Court allowed the writ appeal of respondent no. 1 and quashed the acquisition of land measuring 1 acre 3 guntas comprised in Survey No.122.

In the instant appeals the questions for consideration before the Court were: (i) whether the land acquired by the State Government at the instance of the Karnataka State Tourism Development Corporation (Corporation) for the specified purpose i.e. Golf-cum-Hotel Resort near Bangalore Airport, Bangalore could be transferred by the Corporation to a private individual and corporate entities (ii) whether the Division Bench of the

High Court committed an error by granting relief to respondent No.1 despite the fact that he filed writ petition after long lapse of time and the explanation given by him was found unsatisfactory by the Single Judge, who decided the writ petition after remand by the Division Bench; (iii) whether the discretion exercised by the Division Bench of the High Court to ignore the delay in filing of writ petition is vitiated by any patent error or the reasons assigned for rejecting the appellants' objection of delay are irrelevant and extraneous; and (iv) whether the High Court was justified in directing restoration of land to respondent No.1.

Dismissing the appeals, the Court

HELD: 1.1. Although, framers of the Constitution have not prescribed any period of limitation for filing a petition under Article 226 of the Constitution of India and the power conferred upon the High Court to issue to any person or authority including any Government, directions, orders or writs is not hedged with any condition or constraint, the superior Courts have evolved several rules of self-imposed restraint including the one that the High Court may not enquire into belated or stale claim and may deny relief to the petitioner if he is found guilty of laches. The principle underlying this rule is that the one who is not vigilant and does not seek intervention of the High Court within reasonable time from the date of accrual of cause of action or alleged violation of constitutional, legal or other right is not entitled to relief under Article 226 of the Constitution. Another reason for the High Court's refusal to entertain belated claim is that during the intervening period rights of third parties may have crystallized and it will be inequitable to disturb those rights at the instance of a person who has approached the court after long lapse of time and there is no cogent explanation for the delay.