O.P. SHARMA & ORS.

v.

HIGH COURT OF PUNJAB & HARYANA

(Criminal Appeal Nos. 1108-1115 of 2004)

MAY 9, 2011

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

Contempt of Courts Act, 1971:

ss. 2(c) and 12(1) proviso, Explanation – Criminal contempt of Court – Advocates abusing the Judicial Magistrate in filthy language and threatening him with dire consequences – Matter referred to High Court – Newspaper publishing the incident – Suo motu contempt proceedings initiated by High Court against the advocates and the owner, publisher and Editor of newspaper – Unconditional apology tendered by contemnors before High Court – On High Court's directions contemnors appearing before Judicial Magistrate concerned and tendering unconditional apology – Conviction by High Court of all the contemnors and sentence of six months/three months with fine – HELD: The material on record shows that the advocates hurled abuses in filthy language and threatened the Judicial Magistrate with dire consequences – The contemnors have tendered unconditional apology before the Judicial Magistrate, the High Court and this Court as well – They have given undertaking that they would maintain good behaviour in future – In this view of the matter, the unconditional apology tendered in the form of affidavits in terms of s.12(1) is accepted and all contemnors are discharged – However, acceptance of an apology from a contemnor should only be a matter of exception and not that of a rule – Bar Council of India Rules, 1975 – Advocates – Professional ethics.

Bar Council of India Rules, 1975:

Section I, Chapter II, Part IV – Standards of Professional Conduct and Etiquette – Advocates – Duty to the court – Advocates hurling abuses in filthy language and threatening Judicial Magistrate with dire consequences – HELD: Advocacy touches and asserts the primary value of freedom of expression – But the advocates and the party appearing in person equally owe countervailing duty to maintain dignity, decorum and order in court proceedings – Liberty of free expression is not to be confounded or confused with license to make unfounded allegations against any institution much less the judiciary – A deliberate attempt to scandalize the court which would shake the confidence of the litigating public in the system, would cause a very serious damage to the name of the judiciary –Advocates – Professional ethics – Advocates' Role and Ethical Standards.

Administration of Justice:

Professional conduct – Integrity and sanctity of an institution which bestowed upon itself the responsibility of dispensing justice has to be maintained – All the functionaries, be it advocates, judges and rest of the staff ought to act in accordance with morals and ethics.

On 11.9.1999, when the Judicial Magistrate made an order remanding the accused, represented by one of the appellants-advocates, the advocate became enraged and started hurling abuses and derogatory remarks against the Judicial Magistrate concerned and threatened him with dire consequences. He also called other 15-20 advocates and all of them joined together and shouted slogans and abuses in filthy language against the Judicial Magistrate and also threatened him. The Judicial Magistrate wrote a letter to the District and Sessions Judge on 14.9.1999. This was followed by another letter dated 24.9.1999 stating therein that two of the appellants-advocates had criminal record and had been indulging

in pressure tactics since long. The incident was published in a local newspaper which necessitated action under the Act against the owner, publisher, printer and Editor of the newspaper. Based on the letters of the District and Sessions Judge, the High Court, *suo motu*, initiated contempt proceedings against the appellants-contemnors. The contemnors filed separate affidavits stating the circumstances in which the incident occurred and regretted for the same and tendered unconditional apology. On the direction of the High Court, all the contemnors also appeared before the Judicial Magistrate concerned, expressed their regret and also tendered unconditional apology. However, the High Court, taking note of seriousness of the issue, and finding that the reference made by the Magistrate was based upon correct facts; and considering the overall conduct of the contemnors found all of them guilty of criminal contempt within the meaning of s.2(c) of the Act and sentenced them to imprisonment for six months/three months with a fine of Rs.1000-2000/- each. Aggrieved, the contemnors filed the appeals.

Disposing of the appeals, the Court

HELD: 1.1. The material on record shows the behaviour of the appellants-contemnors and the manner in which they hurled abuses in filthy language and threatened the Judicial Magistrate with dire consequences. [para 6-10] [311-G-H; 312-A-H; 313-A-C]

1.2. Section 1 of Chapter-II, Part VI titled *"Standards of Professional Conduct and Etiquette"* **of the Bar Council of India Rules specifies the duties of an advocate towards the Court. [para 13] [313-H; 314-A]**

Daroga Singh and Others vs. B.K. Pandey, **2004 (1) Suppl. SCR 113 = (2004) 5 SCC 26;** *R.D. Saxena* vs.

Balram Prasad Sharma **2000 (2) Suppl. SCR 598 = (2000) 7 SCC 264;** *Mahabir Prasad Singh* vs. *Jacks Aviation Pvt. Ltd.,* **1998 (2) Suppl. SCR 675 = (1999) 1 SCC 37** *Ajay Kumar Pandey, Advocate, In Re: ,* **1998 (2) Suppl. SCR 87 = (1998) 7 SCC 248,** *Chetak Construction Ltd.* vs. *Om Prakash & Ors.,* **1998 (2) SCR 1016 = (1998) 4 SCC 577** *Radha Mohan Lal* vs. *Rajasthan High Court*, **2003 (1) SCR 1011 = (2003) 3 SCC 427 – referred to.**

1.3. An advocate's duty is as important as that of a Judge. Advocates have a large responsibility towards the society. A client's relationship with his/her advocate is underlined by utmost trust. An advocate is expected to act with utmost sincerity and respect. In all professional functions, an advocate should be diligent and his conduct should also be diligent and should conform to the requirements of the law. Any violation of the principles of professional ethics by an advocate is unfortunate and unacceptable. Ignoring even a minor violation/ misconduct militates against the fundamental foundation of the public justice system. An ideal advocate should believe that the legal profession has an element of service also and associates with legal service activities. Most importantly, he should faithfully abide by the standards of professional conduct and etiquette prescribed by the Bar Council of India in Chapter II, Part VI of the Bar Council of India Rules. [para 31] [328-C-H]

1.4. Advocacy touches and asserts the primary value of freedom of expression, which is essential to the rule of law and liberty of the citizens. The advocate or the party appearing in person, therefore, is given liberty of expression. But they equally owe countervailing duty to maintain dignity, decorum and order in the court proceedings or judicial processes. Any adverse opinion about the judiciary should only be expressed in a

detached manner and respectful language. The liberty of free expression is not to be confounded or confused with licence to make unfounded allegations against any institution, much less the judiciary. [para 19] [318-D-H]

D.C. Saxena vs. *The Hon'ble Chief Justice of India*, **1996 (3) Suppl. SCR 677 = (1996) 5 SCC 216;** *M.B. & Sanghi, Advocate vs. High Court of Punjab & Haryana*, **1991 (3) SCR 312 =(1991) 3 SCC 600;** *L.D. Jaiswal v. State of Uttar Pradesh*, **1984 (3) SCR 833 =(1984) 3 SCC 405;** *R.K. Garg Advocate v. State of Himachal Pradesh*, **1981 (3) SCR 536 = (1981) 3 SCC 166; and** *Lalit Mohan Das vs. Advocate General, Orissa & Another*, **1957 SCR 167 = AIR 1957 SC 250 – relied on.**

In re: Vinay Chandra Mishra (the alleged contemner), **(1995) 2 SCC 534;** *Supreme Court Bar Association vs. Union of India & Anr.,* **(1998) 4 SCC 409 – referred to.**

1.5. A lawyer cannot be a mere mouthpiece of his client and cannot associate himself with his client in maligning the reputation of judicial officer merely because his client failed to secure the desired order from the said officer. A deliberate attempt to scandalize the court which would shake the confidence of the litigating public in the system would cause a very serious damage to the name of the judiciary. [para 26] [325-C]

M.Y. Shareef & Anr. Vs. Hon'ble Judges of Nagpur High Court & Ors., **(1955) 1 SCR 757;** *Shamsher Singh Bedi vs. High Court of Punjab & Haryana*, **(1996) 7 SCC 99 – relied on.**

2.1. Affidavits have been filed by the appellants reiterating what they had stated before the High Court and the Magistrate concerned tendering unconditional apology for the incident which took place in the court of

the Judicial Magistrate. They also assured this Court that they would maintain good behaviour in future. Though sub-s. (1) of s.12 of the Act enables the court to award simple imprisonment for a term which may extend to six months, proviso empowers the court that accused may be discharged or punishment awarded may be remitted on apology being made to the satisfaction of the court. In fact, Explanation to this Section makes it clear that an apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it *bona fide.* [para 27] [327-B-D]

2.2. Considering the plea made for the appellants, their tendering unconditional apology, recorded even at the initial stage before the High Court and before the Judicial Magistrate concerned, and the affidavits filed before this Court once again expressing unconditional apology and regret with an undertaking that they would maintain good behaviour in future and in view of the language used in 'proviso' and 'explanation' appended to s. 12(1) of the Act the unconditional apology tendered in the form of affidavits in terms of proviso to s.12(1), filed by all the appellants are accepted and they are discharged. [para 28 and 34] [327-E-F; 329-C]

2.3. The owner, publisher, printer and Editor of the newspaper concerned has also filed a similar affidavit before this Court. Considering the fact that the newspaper has merely published what had happened in the court, it would be just and fair to apply the same relief to him also. It is reiterated that acceptance of an apology from a contemnor should only be a matter of exception and not that of a rule. [para 29] [327-G-H; 328-A]

3. A court, be that of a Magistrate or the Supreme Court is sacrosanct. The integrity and sanctity of an institution which has bestowed upon itself the

responsibility of dispensing justice is ought to be maintained. All the functionaries, be it advocates, judges and the rest of the staff ought to act in accordance with morals and ethics. The Court hopes and trusts that the entire legal fraternity would set an example for other professionals by adhering to all the above-mentioned principles. [para 30 and 33] [328-B; 329-B]

Case Law Reference:

2004 (1) Suppl. SCR 113	**referred to**	**Para 14**
2000 (2) Suppl. SCR 598	**referred to**	**Para 15**
1998 (2) Suppl. SCR 675	**referred to**	**Para 16**
1998 (2) Suppl. SCR 87	**referred to**	**Para 17**
1998 (2) SCR 1016	**referred to**	**Para 18**
2003 (1) SCR 1011	**referred to**	**Para 18**
1996 (3) Suppl. SCR 677	**relied on**	**para 19**
(1995) 2 SCC 534	**referred to**	**Para 20**
(1998) 4 SCC 409	**referred to**	**Para 21**
1991 (3) SCR 312	**relied on**	**Para 22**
1984 (3) SCR 833	**relied on**	**Para 23**
1981 (3) SCR 536	**relied on**	**Para 24**
1957 SCR 167	**relied on**	**Para 25**
(1955) 1 SCR 757	**relied on**	**Para 26**
(1996) 7 SCC 99	**relied on**	**Para 26**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1108-1115 of 2004.

From the Judgment & Order dated 25.8.2004 of the High Court of Punjab and Haryana at Chandigarh at Criminal O.C.P.Nos. 18 & 25 of 1999 and 3, 4, 5, 19, 19 & 20 of 2001.

WITH

Criminal Appeal No. 1206 of 2004

V. Giri and Ram Jethmalani, Sapam Biswajit Meitei, Mohammed Sadique T.A., Ashok Kr. Singh, Anil K. Sharma, Dr. Ramesh K. Haritash, Anil Karnwal, Balraj Malik, R.C. Kaushik, Dayan Krishnan Sharma and S. Chandra Shekhar for the appearing parties.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Criminal Appeal Nos. 1108-1115 of 2004 are directed against the common judgment and final order dated 25.08.2004 passed by the Division Bench of the High Court of Punjab and Haryana at Chandigarh in Crl. O.C.P. Nos. 18 and 25 of 1999, Crl. O.C.P. Nos. 3,4,5,18,19 and 20 of 2001 whereby the Division Bench after rejecting the claim of the appellants herein found all of them guilty of criminal contempt and convicted them under Section 12 read with Sections 15 and 2(c) of the Contempt of Courts Act, 1971 (hereinafter referred to as "the Act")and sentenced them to various terms of simple imprisonment and fine. Feeling aggrieved by the order of conviction and sentence, one Surinder Sharma has filed Crl. A. No. 1206 of 2004. Since the issue in all these appeals is common and relate to one incident, they are being disposed of by the following judgment.

2. **Brief facts:**

(a) The District and Sessions Judge, Faridabad, by his letter dated 16.09.1999, addressed to the Registrar, High Court of Punjab & Haryana, forwarded Letter No. 376 dated 14.09.1999 written by Shri Rakesh Singh, Civil Judge (Junior

Division-cum-Judicial Magistrate, Ist Class) Faridabad which was addressed to him. In the said letter, the Judicial Magistrate has stated that on 11.09.1999 at about 3 p.m., when he was dealing with the remand of accused Soran in FIR No. 136 dated 13.06.1999, under Sections 393/452/506/34 of the Indian Penal Code (hereinafter referred to as "the IPC") pertaining to Police Station Chhainsa, the Assistant Public Prosecutor requested him for remanding the accused to police custody. By that time, Mr. L.N. Prashar, Advocate, one of the contemnors/appellants herein, who represented the accused, opposed the request of police remand. After hearing the arguments, the Magistrate remanded the accused to police custody. When the order of police remand was not found favourable, Mr. L.N. Prashar, advocate became enraged and started hurling abuses and derogatory remarks against him. Upon hearing the remarks, he tried to pacify him and requested him to behave properly but he did not relent and again uttered unparliamentary words and also threatened him with dire consequences.

(b) It was further stated that the accused Soran was being produced in four criminal cases on that very day and was being represented by Mr. Prashar in all the matters. When he took another remand paper of the same accused, Mr. Prashar became furious and again uttered unparliamentary words and also threatened him. When he kept on sitting on the dias, Mr. Prashar called his fellow colleagues including Mr. O.P. Sharma, Rajinder Sharma, Surinder Sharma, Advocates, in total about 15-20 advocates, who all belonged to the same group. Then, he requested Mr. O.P. Sharma, who is a senior member of the Bar, to request Mr. Prashar to behave properly in the Court. However, Mr. O.P. Sharma sided with Mr. Prashar and along with other advocates shouted slogans and abused in filthy language and also threatened him.

(c) It was further stated that advocates were very aggressive and wanted to assault him physically. To avoid any further deterioration in the situation, he retired to his Chamber.

One of his staff members, namely, Shri Raj Kumar, Ahlmad, had informed the Chief Judicial Magistrate, Faridabad and the Judicial Magistrate, Ist Class, Faridabad about the incident and they came to his Chamber and they also overheard Mr. Prashar shouting in the Court. After sometime, Mr. O.P. Goyal, Addl. District & Sessions Judge, Faridabad came there and pacified the advocates.

(d) In continuation of his letter dated 14.09.1999, the Magistrate addressed another letter dated 24.09.1999 to the District Judge, Faridabad. In the said letter, it was stated that Mr. Prashar and Mr. O.P. Sharma, Advocates had criminal record and these persons have indulged in pressure tactics since long and highlighted all the details about them.

(e) The entire incident was published in a local newspaper 'Mazdoor Morcha' which necessitated action under the Act against Shri Satish Kumar, owner, publisher, printer and Editor of the said newspaper.

(f) Based on the letter of the District & Sessions Judge as well as letter of the Judicial Magistrate, Faridabad, the High Court took the matter by *suo motu* and initiated contempt proceedings against the contemnors under Section 2(c) of the Act relating to the incident which took place on 11.09.1999 in the Court of Shri Rakesh Singh, Civil Judge, Faridabad for taking appropriate action.

3. Before the High Court, the respective contemnors/advocates filed affidavits highlighting the circumstances under which the unfortunate incident occurred and by filing separate affidavits they tendered unconditional apology and also regretted for the same. On direction by the High Court, all of them appeared before the Magistrate concerned and expressed their regret and also tendered unconditional apology. The Division Bench, taking note of seriousness of the issue and finding that the reference made by the Magistrate is based upon correct facts and overall conduct of the contemnors

found all of them guilty of criminal contempt within the meaning of Section 2(c) of the Act and imposed simple imprisonment of six months/three months with a fine of Rs.1,000-2,000/- each. As stated earlier, challenging the said conviction and sentence, the above appeals have been filed.

4. Heard Mr. Ram Jethmalani and Mr. V. Giri, learned senior counsel for the appellants and Mr. S. Chandra Shekhar, learned counsel for the respondent.

Submission of Mr. Ram Jethmalani

5. At the outset, Mr. Ram Jethmalani, learned senior counsel for the appellants submitted that in view of the fact that the appellants herein, after realizing their mistake immediately, offered unconditional apology by filing affidavits before the High Court and also appeared before the Magistrate before whom the unfortunate incident had occurred, tendered apology and regret for their action, prayed for leniency and setting aside the order of the High Court sentencing the contemnors to jail. He also submitted that inasmuch as the alleged incident had occurred in September, 1999, considering the passage of time and by realizing the mistake tendered unconditional apology before the High Court as well as before the concerned Magistrate, their sentence of imprisonment may be set aside. He further submitted that all the appellants/contemnors prepared to file fresh affidavits conveying their unconditional apology and regret for the incident and also assured that they would not indulge in such activities in future.

Controversial behaviour of the Contemnors

6. Before considering the acceptability of the affidavits filed by the appellants, in order to visualize seriousness of the matter, it is useful to refer the exchange of words and behaviour of the appellants (in English version) while the Magistrate remanded the accused Soran to police custody. They are:

"You have taken bribe. You do all works only after taking bribe. You are indulging in gangism."

"What can you do to me. You may make contempt against me. I will suck your blood. I will not leave you till High Court. Bahanchod, you are considering this Court as inn. Come out, we will just now teach you a taste of Judgeship. My name is L.N. Prashar. You will come to know today as to how you pass orders against me. Even earlier, criminal cases are pending against me. If one more case proceeds against me, it would make no difference. It would cause you very clearly to have an enmity with me and now I will see to it that I suck your blood. If you have any courage, you come out."

7. When the Magistrate took up another remand paper of the same accused, Mr. Prashar, again became furious and uttered that:

"You dismiss this bail application. I have no faith in your Court. I am not going to furnish any bail bonds. There is no need for us to have any bail from your Court."

8. At that stage, the Magistrate asked his Reader to call the Chief Judicial Magistrate, Faridabad so that the situation could be brought under control. On this, Mr. Prashar remarked:

"What can your CJM do. You may call him as well. We will see your CJM also. You are indulging in big gangism."

9. Thereafter, the Magistrate requested Mr. O.P. Sharma, Advocate, who is a senior member of the Bar, to request Mr. Prashar to behave properly in the Court. However, Mr. O.P. Sharma, Advocate, sided with Mr. Prashar and shouted.

"We will do like this only. Lock his Court and raise slogans against him.... On the asking of Shri O.P. Sharma, Advocate, other Advocates accompanying him raised slogans, "RAKESH SINGH MURDABAD, RAKESH

SINGH MURDABAD…..

….. He was also threatened by saying you come out. We will see your gangism."

10. When all the officers were sitting in the chamber of the Magistrate, they over-heard Mr. Prashar shouting in the Court in loud voice saying,

"You are indulging in gangism. You are passing orders of your choice. The contempt can not harm me. I will see to it as to how you remain in service."

Professional Conduct and Etiquette – Rules and decisions of this Court

11. In the light of the above scenario, before considering the fresh affidavits filed before this Court by the appellants-Advocates, let us recapitulate various earlier orders of this Court as to the duties of lawyer towards the Court and the Society being a member of the legal profession.

12. The role and status of lawyers at the beginning of Sovereign and Democratic India is accounted as extremely vital in deciding that the Nation's administration was to be governed by the Rule of Law. They were considered intellectuals amongst the elites of the country and social activists amongst the downtrodden. These include the names of galaxy of lawyers like Mahatma Gandhi, Motilal Nehru, Jawaharlal Nehru, Bhulabhai Desai, C. Rajagopalachari, Dr. Rajendra Prasad and Dr. B.R. Ambedkar, to name a few. The role of lawyers in the framing of the Constitution needs no special mention. In a profession with such a vivid history it is regretful, to say the least, to witness instances of the nature of the present kind. Lawyers are the officers of the Court in the administration of justice.

13. Section I of Chapter-II, Part VI titled *"Standards of Professional Conduct and Etiquette"* of the Bar Council of India

Rules specifies the duties of an advocate towards the Court which reads as under:

"Section I - Duty to the Court

1. An advocate shall, during the presentation of his case and while otherwise acting before a court, conduct himself with dignity and self-respect. He shall not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty to submit his grievance to proper authorities.

2. An advocate shall maintain towards the courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.

3. An advocate shall not influence the decision of a court by any illegal or improper means. Private communications with a judge relating to a pending case are forbidden.

4. An advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the court, opposing counsel or parties which the advocates himself ought not to do. An advocate shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouth-piece of the client, and shall exercise his own judgement in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in court.

5. An advocate shall appear in court at all times only in the prescribed dress, and his appearance shall always be presentable.

6. An advocate shall not enter appearance, act, plead or practise in any way before a court, Tribunal or Authority

mentioned in Section 30 of the Act, if the sole or any member thereof is related to the advocate as father, grandfather, son, grand-son, uncle, brother, nephew, first cousin, husband, wife, mother, daughter, sister, aunt, niece, father-in-law, mother-in-law, son-in-law, brother-in-law daughter-in-law or sister-in-law.

For the purposes of this rule, Court shall mean a Court, Bench or Tribunal in which above mentioned relation of the Advocate is a Judge, Member or the Presiding Officer.

7. An advocate shall not wear bands or gown in public places other than in courts except on such ceremonial occasions and at such places as the Bar Council of India or the court may prescribe.

8. An advocate shall not appear in or before any court or tribunal or any other authority for or against an organisation or an institution, society or corporation, if he is a member of the Executive Committee of such organisation or institution or society or corporation. "Executive Committee ", by whatever name it may be called, shall include any Committee or body of persons which, for the time being, is vested with the general management of the affairs of the organisation or institution, society or corporation.

Provided that this rule shall not apply to such a member appearing as "amicus curiae" or without a fee on behalf of a Bar Council, Incorporated Law Society or a Bar Association.

9. An Advocate should not act or plead in any matter in which he is himself peculiarly interested.

Illustration

I. He should not act in a bankruptcy petition when he himself is also a creditor of the bankrupt.

II. He should not accept a brief from a company of which he is Director.

10. An advocate shall not stand as a surety, or certify the soundness of a surety for his client required for the purpose of any legal proceedings."

14. In the case of *Daroga Singh and Others vs. B.K. Pandey,* (2004) 5 SCC 26, one Additional District and Sessions Judge was attacked in a pre-planned and calculated manner in his courtroom and chamber by police officials for not passing an order they sought. This Court held that,

"The Courts cannot be compelled to give "command orders". The act committed amounts to deliberate interference with the discharge of duty of a judicial officer by intimidation apart from scandalizing and lowering the dignity of the Court and interference with the administration of justice. The effect of such an act is not confined to a particular court or a district, or the State, it has the tendency to effect the entire judiciary in the country. It is a dangerous trend. Such a trend has to be curbed. If for passing judicial orders to the annoyance of the police the presiding officers of the Courts are to be assaulted and humiliated the judicial system in the country would collapse."

15. In *R.D. Saxena* vs. *Balram Prasad Sharma*, (2000) 7 SCC 264, this Court held as under:

"In our country, admittedly, a social duty is cast upon the legal profession to show the people beckon (*sic* beacon) light by their conduct and actions. The poor, uneducated and exploited mass of the people need a helping hand from the legal profession, admittedly, acknowledged as a most respectable profession. No effort should be made or allowed to be made by which a litigant could be deprived of his rights, statutory as well as constitutional, by an advocate only on account of the exalted position conferred

upon him under the judicial system prevalent in the country……..”

16. In *Mahabir Prasad Singh* vs. *Jacks Aviation Pvt. Ltd.,* (1999) 1 SCC 37, this Court held that it is the solemn duty of every Court to proceed with judicial function during Court hours and no Court should yield to pressure tactics or boycott calls or any kind of browbeating. The Bench as well as the Bar has to avoid unwarranted situations or trivial issues that hamper the cause of justice and are in the interest of none.

17. In the case of *Ajay Kumar Pandey, Advocate, In Re: ,* (1998) 7 SCC 248, the advocate was charged of criminal contempt of Court for the use of intemperate language and casting unwarranted aspersions on various judicial officers and attributing motives to them while discharging their judicial functions. This Court held as under:

> “The subordinate judiciary forms the very backbone of administration of justice. This Court would come down a heavy hand for preventing the judges of the subordinate judiciary or the High Court from being subjected to scurrilous and indecent attacks, which scandalise or have the tendency to scandalise, or lower or have the tendency to lower the authority of any court as also all such actions which interfere or tend to interfere with the due course of any judicial proceedings or obstruct or tend to obstruct the administration of justice in any other manner. No affront to the majesty of law can be permitted. The fountain of justice cannot be allowed to be polluted by disgruntled litigants. The protection is necessary for the courts to enable them to discharge their judicial functions without fear.”

18. In *Chetak Construction Ltd.* vs. *Om Prakash & Ors.,* (1998) 4 SCC 577, this Court deprecated the practice of making allegations against the Judges and observed as under:

> “Indeed, no lawyer or litigant can be permitted to browbeat the court or malign the presiding officer with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and rule of law would receive a setback. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot be allowed to “terrorize” or “intimidate” Judges with a view to “secure” orders which they want. This is basic and fundamental and no civilised system of administration of justice can permit it……..”

Similar view has been reiterated in *Radha Mohan Lal* vs. *Rajasthan High Court*, (2003) 3 SCC 427.

19. Advocacy touches and asserts the primary value of freedom of expression. It is a practical manifestation of the principle of freedom of speech. Freedom of expression in arguments encourages the development of judicial dignity, forensic skills of advocacy and enables protection of fraternity, equality and justice. It plays its part in helping to secure the protection or other fundamental human rights, freedom of expression, therefore, is one of the basic conditions for the progress of advocacy and for the development of every man including legal fraternity practising the profession of law. Freedom of expression, therefore, is vital to the maintenance of free society. It is essential to the rule of law and liberty of the citizens. The advocate or the party appearing in person, therefore, is given liberty of expression. But they equally owe countervailing duty to maintain dignity, decorum and order in the court proceedings or judicial processes. Any adverse opinion about the judiciary should only be expressed in a detached manner and respectful language. The liberty of free expression is not to be confounded or confused with licence to make unfounded allegations against any institution, much less the judiciary [vide *D.C. Saxena* vs. *The Hon’ble Chief Justice of India*, (1996) 5 SCC 216].

20. In the matter of *In re: Vinay Chandra Mishra (the alleged contemner)*, (1995) 2 SCC 534, the contemner who was a senior advocate, President of the Bar and Chairman of the Bar Council of India, on being questioned by the Judge started to shout and said that no question could have been put to him and that he will get the High Court Judge transferred or see that impeachment motion is brought against him in Parliament. This Court while sentencing him to simple imprisonment for six weeks suspended him from practising as an advocate for a period of three years and laid down as follows:

> "The contemner has obviously misunderstood his function both as a lawyer representing the interests of his client and as an officer of the court. Indeed, he has not tried to defend the said acts in either of his capacities. On the other hand, he has tried to deny them. Hence, much need not be said on this subject to remind him of his duties in both the capacities. It is, however, necessary to observe that by indulging in the said acts, he has positively abused his position both as a lawyer and as an officer of the Court, and has done distinct disservice to the litigants in general and to the profession of law and the administration of justice in particular."

21. In the case of *Supreme Court Bar Association vs. Union of India & Anr.,* (1998) 4 SCC 409, a Constitution Bench of this Court overruled *In re: Vinay Chandra Mishra (the alleged contemner)* and held as under:

> "The power of the Supreme Court to punish for contempt of court, though quite wide, is yet limited and cannot be expanded to include the power to determine whether an advocate is also guilty of "Professional misconduct" in a summary manner which can only be done under the procedure prescribed in the Advocates Act. The power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law

> but *it cannot be used to deprive a professional lawyer of the due process contained in the Advocates Act 1961 by suspending his licence to practice in a summary manner, while dealing with a case of contempt of court."*

It also opined that:-

> "An Advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that Advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case. The learned Solicitor General informed us that there have been cases where the Bar Council of India taking note of the contumacious and objectionable conduct of an advocate, had initiated disciplinary proceedings against him and even punished him for "professional misconduct", on the basis of his having been found guilty of committing contempt of court. We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the occasion, and taken appropriate action against such an advocate. Under Article 144 of the Constitution "all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court. The Bar Council which performs a public duty and is charged with the obligation to protect the dignity of the profession and maintain professional standards and etiquette is also obliged to act "in aid of the Supreme Court ". It must, whenever, facts warrant rise to the occasion and discharge its duties uninfluenced by the position of the contemner advocate. It must act in accordance with the prescribed procedure, whenever its attention is drawn by this Court to the contumacious and unbecoming conduct of an advocate

which has the tendency to interfere with due administration of justice....."

The Bench went on to say :-

"……There is no justification to assume that the Bar Council is would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of law and prevent any interference in the administration of justice. Learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record, records its findings about the conduct of an Advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the concerned Bar Council, appropriate action should be initiated by the concerned Bar Council in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette."

22. In *M.B. & Sanghi, Advocate vs. High Court of Punjab & Haryana*, (1991) 3 SCC 600, this Court took notice of the growing tendency amongst some of the Advocates of adopting a defiant attitude and casting aspersions having failed to persuade the Court to grant an order in the terms they expect. Holding the Advocates guilty of contempt, this Court observed as under:

"The tendency of maligning the reputation of Judicial Officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped fat the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the Judge into submission, it is all the more painful. When there is a deliberate attempt to scandalise which would shake the confidence of the litigating public in the system the damage caused is not only to the reputation of the concerned Judge but also to the fair name

of the judiciary, Veiled threats, abrasive behavior, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly employed with a view to taming a judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the concerned Judge but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the Presiding Judicial Officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system."

23. In the case of *L.D. Jaikwal v. State of Uttar Pradesh*, (1984) 3 SCC 405, it was held by this Court that acceptance of an apology from a contemnor should only be a matter of exception and not that of a rule and expressed its opinion as under:

"6. We do not think that merely because the appellant has tendered his apology we should set aside the sentence and allow him to go unpunished. Otherwise, all that a person wanting to intimidate a Judge by making the grossest imputations against him to do, is to go ahead and scandalize him, and later on tender a formal empty apology which costs him practically nothing. If such an apology were to be accepted, as a rule, and not as an exception, we would in fact be virtually issuing a 'licence' to scandalize courts and commit contempt of court with impunity. It will be rather difficult to persuade members of the Bar, who care for their self-respect, to join the judiciary if they are expected to pay such a price for it. And no sitting Judge will feel free to decide any matter as per the of his conscience on account of the fear of being

scandalized and prosecuted by an advocate who does not mind making reckless allegations if the Judge goes against his wishes. If this situation were to be countenanced, advocates who can cow down the Judges, and make them fall in line with their wishes, by threats of character assassination and persecution, will be preferred by the litigants to the advocates who are mindful of professional ethics and believe in maintaining the decorum of courts.

7. We have yet to come across a Judge who can take a decision which does not displease one side or the other. By the very nature of his work he has to decide matters against one or other of the parties. If the fact that he renders a decision which is resented to by a litigant or his lawyer were to expose him to such risk, it will sound the death knell of the institution. A line has therefore to be drawn somewhere, some day, by someone. That is why the Court is impelled to act (rather than merely sermonize), much as the Court dislikes imposing punishment whilst exercising the contempt jurisdiction, which no doubt has to be exercised very sparingly and with circumspection. We do not think that we can adopt an attitude of unmerited leniency at the cost of principle and at the expense of the Judge who has been scandalized. We are fully aware that it is not very difficult to show magnanimity when someone else is the victim rather than when oneself is the victim. To pursue a populist line of showing indulgence is not very difficult — in fact it is more difficult to resist the temptation to do so rather than to adhere to the nail-studded path of duty. Institutional perspective demands that considerations of populism are not allowed to obstruct the path of duty. We, therefore, cannot take a lenient or indulgent view of this matter. We dread the day when a Judge cannot work with independence by reason of the fear that a disgruntled member of the Bar can publicly humiliate him and heap disgrace on him with impunity, if any of his orders, or the

decision rendered by him, displeases any of the advocates, appearing in the matter.

24. In the case of *R.K. Garg Advocate v. State of Himachal Pradesh*, (1981) 3 SCC 166, where a lawyer hurled a shoe on the judicial officer which hit him on the shoulder, this Court opined that there is no doubt that the Bar and the Bench are an integral part of the same mechanism which administers justice to the people. Many members of the Bench are drawn from the Bar and their past association is a source of inspiration and pride to them. It ought to be a matter of equal pride to the Bar. It is unquestionably true that courtesy breeds courtesy and just as charity has to begin at home, courtesy must begin with the Judge. A discourteous Judge is like an ill-tuned instrument in the setting of a courtroom. But members of the Bar will do well to remember that such flagrant violations of professional ethics and cultured conduct will only result in the ultimate destruction of a system without which no democracy can survive.

25. In *Lalit Mohan Das vs. Advocate General, Orissa & Another*, AIR 1957 SC 250, this Court observed as under:

> "A member of the Bar undoubtedly owes a duty to his client and must place before the Court all that can fairly and reasonably be submitted on behalf of his client. He may even submit that a particular order is not correct and may ask for a review of that order. At the same time, a member of the Bar is an officer of the Court and owes a duty to the Court in which he is appearing. He must uphold the dignity and decorum of the Court and must not do anything to bring the Court itself into disrepute. The appellant before us grossly overstepped the limits of propriety when he made imputations of partiality and unfairness against the Munsif in open Court. In suggesting that the Munsif followed no principle in his orders, the appellant was adding insult to injury, because the Munsif had merely upheld an order of his predecessor on the preliminary point of jurisdiction and

Court fees, which order had been upheld by the High Court in revision. Scandalizing the Court in such manner is really polluting the very fount of justice; such conduct as the appellant indulged in was not a matter between an individual member of the Bar and a member of the judicial service; if brought into disrepute the whole administration of justice."

26. A lawyer cannot be a mere mouthpiece of his client and cannot associate himself with his client in maligning the reputation of judicial officer merely because his client failed to secure the desired order from the said officer. A deliberate attempt to scandalize the Court which would shake the confidence of the litigating public in the system and would cause a very serious damage to the name of the judiciary. [vide *M.Y. Shareef & Anr. Vs. Hon'ble Judges of Nagpur High Court & Ors.,* (1955) 1 SCR 757; *Shamsher Singh Bedi vs. High Court of Punjab & Haryana,* (1996) 7 SCC 99 and *M.B. Sanghi, Advocate vs. High Court of Punjab & Haryana & Ors.* (supra)].

27. Mr. Ram Jethmalani, learned senior counsel, strenuously pleaded to accept the solemn statements made by all the appellants-Advocates in the form of affidavits dated 28.04.2011. Now, we are reproducing the affidavit filed before us by Mr. O.P. Sharma (appellant No.1 herein):

"IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

IN

CRIMINAL APPEAL NOS. 1108-1115 OF 2004

In the matter of

O.P. Sharma & Ors.
……..Petitioners

Versus

High Court of Punjab & Haryana
……..Respondent

AFFIDAVIT

I, O.P. Sharma, S/o Late Shri M.R. Sharma aged about 61 years R/o 252 Sector-9, Faridabad, Haryana presently at New Delhi do hereby solemnly affirm and state as under:-

1. That the Deponent is one of the appellants in the abovementioned Appeals.

2. That the deponent has the highest and abiding faith in the institution of Judiciary and can not imagine saying or doing any thing which would undermine the dignity and prestige of the institution.

3. That the deponent hereby tenders unconditional apology before this Hon'ble Court for the incident which took place in the Courts at Faridabad out of which this contempt proceedings arise and further undertake to maintain a good behaviour in future.

4. That at the first available opportunity the unconditional apology and undertaking for maintaining good behaviour was filed before the Ld. Magistrate.

Sd/-

Deponent

VERIFICATION

I the abovenamed deponent do hereby verify that the contents of the above affidavit are true to the best of my knowledge.

Verified at New Delhi on this 28th Day of April, 2011.

Sd/-

Deponent"

Similar affidavits have been filed by other appellants reiterating what they had stated before the High Court and the Magistrate concerned tendering unconditional apology for the incident which took place in the Court at Faridabad. They also assured this Court that they would maintain good behaviour in future. Though sub-Section 1 of Section 12 of the Act enables the court to award simple imprisonment for a term which may extend to six months, proviso empowers the court that accused may be discharged or punishment awarded may be remitted on apology being made to the satisfaction of the court. In fact, Explanation to this Section makes it clear that an apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it *bona fide.*

28. Considering the plea made by Mr. Ram Jethmalani, learned senior counsel and President of the Supreme Court Bar Association, in tendering unconditional apology, recorded even at the initial stage before the High Court and before the Magistrate, Faridabad before whom the unwanted incident had occurred and the present affidavits filed before us once again expressing unconditional apology and regret with an undertaking that they would maintain good behaviour in future and in view of the language used in 'proviso' and 'explanation' appended to Section 12(1) of the Act, we accept the affidavits filed by all the Appellants.

29. Shri Satish Kumar, owner, publisher, printer and Editor of 'Majdur Morcha' newspaper has also filed affidavit before this Court similar to one by the other appellants. Considering the fact that the newspaper has merely published what had happened in the Court, we are of the view that it would be just and fair to apply the same relief to him also. We reiterate that

acceptance of an apology from a contemnor should only be a matter of exception and not that of a rule.

30. A Court, be that of a Magistrate or the Supreme Court is sacrosanct. The integrity and sanctity of an institution which has bestowed upon itself the responsibility of dispensing justice is ought to be maintained. All the functionaries, be it advocates, judges and the rest of the staff ought to act in accordance with morals and ethics.

Advocates Role and Ethical Standards:

31. An advocate's duty is as important as that of a Judge. Advocates have a large responsibility towards the society. A client's relationship with his/her advocate is underlined by utmost trust. An advocate is expected to act with utmost sincerity and respect. In all professional functions, an advocate should be diligent and his conduct should also be diligent and should conform to the requirements of the law by which an advocate plays a vital role in the preservation of society and justice system. An advocate is under an obligation to uphold the rule of law and ensure that the public justice system is enabled to function at its full potential. Any violation of the principles of professional ethics by an advocate is unfortunate and unacceptable. Ignoring even a minor violation/misconduct militates against the fundamental foundation of the public justice system. An advocate should be dignified in his dealings to the Court, to his fellow lawyers and to the litigants. He should have integrity in abundance and should never do anything that erodes his credibility. An advocate has a duty to enlighten and encourage the juniors in the profession. An ideal advocate should believe that the legal profession has an element of service also and associates with legal service activities. Most importantly, he should faithfully abide by the standards of professional conduct and etiquette prescribed by the Bar Council of India in Chapter II, Part VI of the Bar Council of India Rules.

32. As a rule, an Advocate being a member of the legal profession has a social duty to show the people a beacon of light by his conduct and actions rather than being adamant on an unwarranted and uncalled for issue.

33. We hope and trust that the entire legal fraternity would set an example for other professionals by adhering to all the above-mentioned principles.

34. In the light of the above discussion and reasons which we have noted in the earlier paras and as an exception to the general rule, we accept the unconditional apology tendered in the form of affidavits in terms of proviso to Section 12(1) of the Act and discharge all the appellants.

35. All the appeals are disposed of on the above terms.

R.P. Appeals disposed of.

BHAGWAN DASS

v.

STATE(NCT) OF DELHI

(Criminal Appeal No.1117 of 2011)

MAY 09, 2011

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Penal Code, 1860*: s.302 – Honour killing of daughter – Girl having incestuous relationship with her father's cousin – Appellant-father annoyed with such conduct of his daughter – Daughter found dead in appellant's house where she had come to stay – Death caused by strangulation – Courts below convicted the appellant on the basis of circumstantial evidence – On appeal, held: All circumstances pointed guilt towards the appellant – Prosecution was able to prove its case beyond reasonable doubt by establishing all links in the chain of circumstances – Appellant had motive and opportunity to kill his daughter since he was unhappy with conduct of his daughter and felt that she had dishonoured the family reputation – Police was not informed about the unnatural death of appellant's daughter – Statement of appellant's mother that appellant confessed before her that he murdered his daughter, but said statement denied before court – The statement of the appellant's mother to the police can be taken into consideration in view of the proviso to s.162(1), Cr.PC, and her subsequent denial in court is not believable because she obviously had afterthoughts and wanted to save her son (the accused) from punishment – Moreso, Statement of appellant to SDM led to recovery of crime weapon – Conviction upheld.*

Evidence*: Circumstantial evidence – Held: A person can be convicted on circumstantial evidence provided the links in the chain of circumstances connects the accused with the crime beyond reasonable doubt – Penal Code, 1860 – s.302.*

***Honour killings**: Sentence/punishment for honour killing – Held: Honour killings come within the category of rarest of rare cases deserving death punishment – Such barbaric, feudal practices are a slur on our nation and should be stamped out – This is necessary as a deterrent for such outrageous, uncivilized behaviour – Copy of the judgment directed to be sent to the Registrar Generals/Registrars of all the High Courts and to all the Chief Secretaries/Home Secretaries/Director Generals of Police of all States/Union Territories in the country.*

The prosecution case was that the appellant was very annoyed with his daughter, who had left her husband and started living in an incestuous relationship with the appellant's cousin. This infuriated the appellant as he thought this conduct of his daughter had dishonoured his family. He killed her by strangulating her with an electric wire. The trial court convicted the appellant. The High Court affirmed the order of conviction. The instant appeal was filed challenging the order of the conviction.

Dismissing the appeal, the Court

HELD: 1.1. It is settled law that a person can be convicted on circumstantial evidence provided the links in the chain of circumstances connects the accused with the crime beyond reasonable doubt. In this case, the prosecution has been able to prove its case beyond reasonable doubt by establishing all the links in the chain of circumstances. In cases of circumstantial evidence motive is very important, unlike cases of direct evidence where it is not so important. In the present case, the prosecution case was that the motive of the appellant in murdering his daughter was that she was living in adultery with his cousin. The appellant felt humiliated by this, and to avenge the family honour he murdered his own daughter. Thus one of the circumstances which

connected the appellant to the crime was the motive of the crime. In our country unfortunately 'honour killing' has become common place. Many people feel that they are dishonoured by the behaviour of the young man/ woman, who is related to them or belonging to their caste because he/she is marrying against their wish or having an affair with someone, and hence they take the law into their own hands and kill or physically assault such person or commit some other atrocities on them. If someone is not happy with the behaviour of his daughter or other person, who is his relation or of his caste, the maximum he can do is to cut off social relations with her/ him, but he cannot take the law into his own hands by committing violence or giving threats of violence. [Paras 5, 6, 8] [338-D-G; 339-B-E]

Vijay Kumar Arora vs. State (NCT of Delhi) **(2010) 2 SCC 353: 2010 (1) SCR 1069;** *Aftab Ahmad Ansari vs. State of Uttaranchal* **(2010) 2 SCC 583: 2010 (1) SCR 1027;** *Wakkar and Anr. vs. State of Uttar Pradesh* **(2011) 3 SCC 306;** *Arumugam Servai vs. State of Tamil Nadu* **2011 AIR 1859;** *Lata Singh vs. State of U.P. & Anr.* **(2006) 5 SCC 475: 2006 (3) Suppl. SCR 350 – relied on.**

1.2. As per the post mortem report which was conducted at 11.45 am on 16.5.2006 the likely time of death of the deceased was 32 hours prior to the post mortem. Giving a margin of two hours, plus or minus, it would be safe to conclude that the deceased died sometime between 2.00 am to 6.00 am on 15.5.2006. However, the appellant, in whose house the deceased was staying, did not inform the police or anybody else for a long time. It was only some unknown person who telephonically informed the police at 2.00 pm on 15.5.2006 that the appellant had murdered his own daughter. This omission by the appellant in not informing the police about the death of his daughter for about 10 hours was

a totally unnatural conduct on his part. The appellant had admitted that the deceased had stayed in his house on the night of 14.5.2006/15.5.2006. The appellant's mother was too old to commit the crime, and there was not even a suggestion by the defence that his brother may have committed it. Hence the possibility that someone else, other than the appellant, committed the crime was ruled out. The deceased had left her husband sometime back and was said to be living in an adulterous and incestuous relationship with her uncle (her father's cousin), and this obviously made the appellant very hostile to her. On receiving the telephonic information at about 2.00 pm from some unknown person, the police reached the house of the accused and found the dead body of The deceased on the floor in the back side room of the house. The accused and his family members and some neighbours were there at that time. The accused admitted that although the deceased had been married about three years ago, she had left her husband and was living in her father's house for about one month. Thus there was both motive and opportunity for the appellant to commit the murder. It came in evidence that the accused appellant with his family members were making preparation for her last rites when the police arrived. Had the police not arrived they would probably have gone ahead and cremated the deceased even without a post mortem so as to destroy the evidence of strangulation. [para 8] [339-E-H; 340-A-E]

1.3. The mother of the appellant stated before the police that her son (the accused) had told her that he had killed the deceased. No doubt, a statement to the police is ordinarily not admissible in evidence in view of Section 162(1) Cr.PC, but as mentioned in the proviso to Section 162(1) Cr.PC it can be used to contradict the testimony of a witness. The appellant's mother also appeared as a witness before the trial court, and in her cross

examination, she was confronted with her statement to the police to whom she had stated that her son (the accused) had told her that he had killed the deceased. On being so confronted with her statement to the police she denied that she had made such statement. The statement of the appellant's mother to the police can be taken into consideration in view of the proviso to Section 162(1) Cr.PC, and her subsequent denial in court is not believable because she obviously had afterthoughts and wanted to save her son (the accused) from punishment. The statement of the appellant to his mother was an extra judicial confession. No doubt this witness was declared hostile by the prosecution as she resiled from her earlier statement to the police. However, the evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but can be subjected to close scrutiny and the portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. Thus it is the duty of the Court to separate the grain from the chaff, and the maxim "falsus in uno falsus in omnibus" has no application in India. In the instant case, the appellant's mother denied her earlier statement from the police because she wanted to save her son. Hence her statement to the police is accepted and her statement in court is rejected. The defence has not shown that the police had any enmity with the appellant, or had some other reason to falsely implicate him. This was a clear case of murder and the entire circumstances point to the guilt of the accused. [Para 8] [340-F-H; 341-A-H; 342-A-H; 343-A-C]

Kulvinder Singh & Anr. vs. State of Haryana **2011 AIR 1777;** *State of Rajasthan vs. Raja Ram* **(2003) 8 SCC 180;** *B.A. Umesh vs. Registrar General, High Court of Karnataka* **(2011) 3 SCC 85: 2011 (2) SCR 367;** *Sheikh Zakir vs. State of Bihar* **AIR 1983 SC 911: 1983 (2) SCR 312;** *Himanshu*

alias Chintu vs. State (NCT of Delhi) **(2011) 2 SCC 36: 2011 (1) SCR 48;** *Nisar Alli vs. The State of Uttar Pradesh* **AIR 1957 SC 366: 1957 SCR 657 – relied on.**

1.4. The cause of death was opined by PW1 in his post mortem report as death "due to asphyxia as a result of ante-mortem strangulation by ligature." It was, therefore, evident that this is a case of murder, and not suicide. The body was not found hanging but lying on the ground. [Para 8] [343-D-F]

1.5. The appellant made a statement to the SDM-PW8, immediately after the incident and signed the same. No doubt he claimed in his statement under Section 313 Cr.PC that nothing was asked by the SDM but he did not clarify how his signature appeared on the statement, nor did he say that he was forced to sign his statement nor was the statement challenged in the cross-examination of the SDM. The SDM appeared as a witness before the trial court and he proved the statement in his evidence. There was no cross examination by the appellant although opportunity was given. There was no reason to disbelieve the SDM as there was nothing to show that he had any enmity against the accused or had any other reason for making a false statement in Court. The appellant had given a statement (Ex. PW7/A) to the SDM in the presence of PW11 Inspector which led to discovery of the electric wire by which the crime was committed. This disclosure was admissible as evidence under Section 27 of the Evidence Act. In his evidence the police Inspector stated that at the pointing out of the appellant the electric wire with which the accused was alleged to have strangulated his daughter was recovered from under a bed in a room. Both the trial court and High Court gave very cogent reasons for convicting the appellant, and there was no reason to disagree with their verdicts. There was overwhelming circumstantial evidence to show that the appellant committed the crime

as he felt that he was dishonoured by his daughter. [Paras 12 and 13] [343-E-G; 344-C-F; 345-G-H; 346-A]

Aftab Ahmad Ansari vs. State **(2010) 2 SCC 583: 2010 (1) SCR 1027;** *Manu Sharma vs. State* **(2010) 6 SCC 1: 2010 (4) SCR 103;** *State of Rajasthan vs. Teja Ram and Ors.* **AIR 1999 SC 1776: 1999 (2) SCR 29;** *Trimukh Maroti Kirkan vs. State of Maharashtra* **(2006)1 SCC 681 – relied on.**

2. 'Honour' killings have become commonplace in many parts of the country, particularly in Haryana, western U.P., and Rajasthan. Often young couples who fall in love have to seek shelter in the police lines or protection homes, to avoid the wrath of kangaroo courts. Honour killings, for whatever reason, come within the category of rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilized behaviour. All persons who are planning to perpetrate 'honour' killings should know that the gallows await them. The copy of the judgment is directed to be sent to the Registrar Generals/Registrars of all the High Courts and to all the Chief Secretaries/Home Secretaries/Director Generals of Police of all States/Union Territories in the country. [Para 13, 14] [346-C-H]

Case Law Reference:

2010 (1) SCR 1069	**relied on**	**Para 5**
2010 (1) SCR 1027	**relied on**	**Para 5**
(2011) 3 SCC 306	**relied on**	**Para 6**
2011 AIR 1859	**relied on**	**Para 8(i)**
2006 (3) Suppl. SCR 350	**relied on**	**Para 8(i)**
2011 AIR 1777	**relied on**	**Para 8(v)**

2003 (2) Suppl. SCR 445	**relied on**	**Para 8(v)**
2011 (2) SCR 367	**relied on**	**Para 8(v)**
1983 (2) SCR 312	**relied on**	**Para 8(v)**
2011 (1) SCR 48	**relied on**	**Para 8(v)**
1957 SCR 657	**relied on**	**Para 8(v)**
2010 (1) SCR 1027	**relied on**	**Para 8(viii)**
2010 (4) SCR 103	**relied on**	**Para 8(viii)**
1999 (2) SCR 29	**relied on**	**Para 8(viii)**
(2006)1 SCC 681	**relied on**	**Para 8(viii)**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1117 of 2011.

From the Judgment & Order dated 2.6.2010 of the High Court of Delhi at New Delhi in Criminal Appeal No. 551 of 2010.

Gaurav Agrawal for the Appellant

J.S. Attri, Saurabh Ajay Gupta (Anil Katiyar) for the Respondent.

The Judgment of the Court was delivered by

MARKANDEY KATJU, J.

"Hai maujazan ek kulzum-e-khoon kaash yahi ho

Aataa hai abhi dekhiye kya kya mere aage"

— Mirza Ghalib

1. This is yet another case of gruesome honour killing, this time by the accused-appellant of his own daughter.

2. Leave granted.

3. Heard learned counsels for the parties and perused the record.

4. The prosecution case is that the appellant was very annoyed with his daughter, who had left her husband Raju and was living in an incestuous relationship with her uncle, Sriniwas. This infuriated the appellant as he thought this conduct of his daughter Seema had dishonoured his family, and hence he strangulated her with an electric wire. The trial court convicted the appellant and this judgment was upheld by the High Court. Hence this appeal.

5. This is a case of circumstantial evidence, but it is settled law that a person can be convicted on circumstantial evidence provided the links in the chain of circumstances connects the accused with the crime beyond reasonable doubt vide *Vijay Kumar Arora vs. State (NCT of Delhi),* (2010) 2 SCC 353 (para 16.5), *Aftab Ahmad Ansari vs. State of Uttaranchal,* (2010) 2 SCC 583 (vide paragraphs 13 and 14), etc. In this case, we are satisfied that the prosecution has been able to prove its case beyond reasonable doubt by establishing all the links in the chain of circumstances.

6. In cases of circumstantial evidence motive is very important, unlike cases of direct evidence where it is not so important vide *Wakkar and Anr. vs. State of Uttar Pradesh* (2011) 3 SCC 306 (para 14). In the present case, the prosecution case was that the motive of the appellant in murdering his daughter was that she was living in adultery with one Sriniwas, who was the son of the maternal aunt of the appellant. The appellant felt humiliated by this, and to avenge the family honour he murdered his own daughter.

7. We have carefully gone through the judgment of the trial court as well as the High Court and we are of the opinion that the said judgments are correct.

8. The circumstances which connect the accused to the crime are:

(i) The motive of the crime which has already been mentioned above. In our country unfortunately 'honour killing' has become common place, as has been referred to in our judgment in *Arumugam Servai vs. State of Tamil Nadu* Criminal Appeal No.958 of 2011 (@SLP(Crl) No.8084 of 2009) pronounced on 19.4.2011.

Many people feel that they are dishonoured by the behaviour of the young man/woman, who is related to them or belonging to their caste because he/she is marrying against their wish or having an affair with someone, and hence they take the law into their own hands and kill or physically assault such person or commit some other atrocities on them. We have held in *Lata Singh vs. State of U.P. & Anr.* (2006) 5 SCC 475, that this is wholly illegal. If someone is not happy with the behaviour of his daughter or other person, who is his relation or of his caste, the maximum he can do is to cut off social relations with her/him, but he cannot take the law into his own hands by committing violence or giving threats of violence.

(ii) As per the post mortem report which was conducted at 11.45 am on 16.5.2006 the likely time of death of Seema was 32 hours prior to the post mortem. Giving a margin of two hours, plus or minus, it would be safe to conclude that Seema died sometime between 2.00 am to 6.00 am on 15.5.2006. However, the appellant, in whose house Seema was staying, did not inform the police or anybody else for a long time. It was only some unknown person who telephonically informed the police at 2.00 pm on 15.5.2006 that the appellant had murdered his own daughter. This omission by the appellant in not informing the police about the death of his daughter for about 10 hours was a totally unnatural conduct on his part.

(iii) The appellant had admitted that the deceased Seema had stayed in his house on the night of 14.5.2006/15.5.2006.

The appellant's mother was too old to commit the crime, and there is not even a suggestion by the defence that his brother may have committed it. Hence we can safely rule out the possibility that someone else, other than the appellant, committed the crime.

Seema had left her husband sometime back and was said to be living in an adulterous and incestuous relationship with her uncle (her father's cousin), and this obviously made the appellant very hostile to her.

On receiving the telephonic information at about 2.00 pm from some unknown person, the police reached the house of the accused and found the dead body of Seema on the floor in the back side room of the house. The accused and his family members and some neighbours were there at that time. The accused admitted that although Seema had been married about three years ago, she had left her husband and was living in her father's house for about one month. Thus there was both motive and opportunity for the appellant to commit the murder.

(iv) It has come in evidence that the accused appellant with his family members were making preparation for her last rites when the police arrived. Had the police not arrived they would probably have gone ahead and cremated Seema even without a post mortem so as to destroy the evidence of strangulation.

(v) The mother of the accused, Smt. Dhillo Devi stated before the police that her son (the accused) had told her that he had killed Seema. No doubt a statement to the police is ordinarily not admissible in evidence in view of Section 162(1) Cr.PC, but as mentioned in the proviso to Section 162(1) Cr.PC it can be used to contradict the testimony of a witness. Smt. Dhillo Devi also appeared as a witness before the trial court, and in her cross examination, she was confronted with her statement to the police to whom she had stated that her son (the accused) had told her that he had killed Seema. On being so confronted with her statement to the police she denied that

she had made such statement.

9. We are of the opinion that the statement of Smt. Dhillo Devi to the police can be taken into consideration in view of the proviso to Section 162(1) Cr.PC, and her subsequent denial in court is not believable because she obviously had afterthoughts and wanted to save her son (the accused) from punishment. In fact in her statement to the police she had stated that the dead body of Seema was removed from the bed and placed on the floor. When she was confronted with this statement in the court she denied that she had made such statement before the police. We are of the opinion that her statement to the police can be taken into consideration in view of the proviso of Section 162(1) Cr.PC.

10. In our opinion the statement of the accused to his mother Smt. Dhillo Devi is an extra judicial confession. In a very recent case this Court in *Kulvinder Singh & Anr. vs. State of Haryana* Criminal Appeal No.916 of 2005 decided on 11.4.2011 referred to the earlier decision of this Court in *State of Rajasthan vs. Raja Ram* (2003) 8 SCC 180, where it was held (vide para 10) :

> "An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra-judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who

> appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, the extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility."

In the above decision it was also held that a conviction can be based on circumstantial evidence.

11. Similarly, in *B.A. Umesh vs. Registrar General, High Court of Karnataka,* (2011) 3 SCC 85 the Court relied on the extra judicial confession of the accused.

No doubt Smt. Dhillo Devi was declared hostile by the prosecution as she resiled from her earlier statement to the police. However, as observed in *State vs. Ram Prasad Mishra & Anr. :*

> "The evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but can be subjected to close scrutiny and the portion of the evidence which is consistent with the case of the prosecution or defence may be accepted."

Similarly in *Sheikh Zakir vs. State of Bihar* AIR 1983 SC 911 this Court held :

> "It is not quite strange that some witnesses do turn hostile but that by itself would not prevent a court from finding an accused guilty if there is otherwise acceptable evidence in support of the conviction."

In *Himanshu alias Chintu vs. State (NCT of Delhi),* (2011)

2 SCC 36 this Court held that the dependable part of the evidence of a hostile witness can be relied on.

Thus it is the duty of the Court to separate the grain from the chaff, and the maxim "falsus in uno falsus in omnibus" has no application in India vide *Nisar Alli vs. The State of Uttar Pradesh* AIR 1957 SC 366. In the present case we are of the opinion that Smt. Dhillo Devi denied her earlier statement from the police because she wanted to save her son. Hence we accept her statement to the police and reject her statement in court. The defence has not shown that the police had any enmity with the accused, or had some other reason to falsely implicate him.

12. We are of the opinion that this was a clear case of murder and the entire circumstances point to the guilt of the accused.

(vi) The cause of death was opined by Dr. Pravindra Singh-PW1 in his post mortem report as death "due to asphyxia as a result of ante-mortem strangulation by ligature." It is evident that this is a case of murder, and not suicide. The body was not found hanging but lying on the ground.

(vii) The accused made a statement to the SDM, Shri S.S. Parihar-PW8, immediately after the incident and has signed the same. No doubt he claimed in his statement under Section 313 Cr.PC that nothing was asked by the SDM but he did not clarify how his signature appeared on the statement, nor did he say that he was forced to sign his statement nor was the statement challenged in the cross examination of the SDM. The SDM appeared as a witness before the trial court and he has proved the statement in his evidence. There was no cross examination by the accused although opportunity was given.

In his statement under Section 313 Cr.PC the accused was asked :

"Q.8 It is in evidence against you that you were interrogated

and arrested vide memo Ex PW11/C and your personal search was conducted vide memo Ex PW11/D and you made disclosure statement EXPW7/A and in pursuance thereto you pointed out the site plan of incident and got recovered an electric wire Ex P1 which was seized by IO after sealing the same vide memo ExPW7/B. What do you have to say?

The reply he gave was as follows :

"Ans. I was wrongly arrested and falsely implicated in this case. I never made any disclosure statement. I did not get any wire recovered nor I was ever taken again to my house."

13. We see no reason to disbelieve the SDM as there is nothing to show that he had any enmity against the accused or had any other reason for making a false statement in Court.

(viii) The accused had given a statement (Ex. PW7/A) to the SDM in the presence of PW11 Inspector Nand Kumar which led to discovery of the electric wire by which the crime was committed. We are of the opinion that this disclosure was admissible as evidence under Section 27 of the Evidence Act vide *Aftab Ahmad Ansari vs. State,* (2010) 2 SCC 583 (para 40), *Manu Sharma vs. State,* (2010) 6 SCC 1 (paragraphs 234 to 238). In his evidence the police Inspector Nand Kumar stated that at the pointing out of the accused the electric wire with which the accused is alleged to have strangulated his daughter ws recovered from under a bed in a room.

It has been contended by the learned counsel for the appellant that there was no independent witness in the case. However, as held by this Court in *State of Rajasthan vs. Teja Ram and Ors.* AIR 1999 SC 1776 :

"The over-insistence on witnesses having no relation with the victims often results in criminal justice going awry. When any incident happens in a dwelling house, the most natural witnesses would be the inmates of that house. It is

unpragmatic to ignore such natural witnesses and insist on outsiders who would not have even seen anything. If the court has discerned from the evidence or even from the investigation records that some other independent person has witnessed any event connecting the incident in question, then there is a justification for making adverse comments against non-examination of such a person as a prosecution witness. Otherwise, merely on surmises the court should not castigate the prosecution for not examining other persons of the locality as prosecution witnesses. The prosecution can be expected to examine only those who have witnessed the events and not those who have not seen it though the neighbourhood may be replete with other residents also."

Similarly, in *Trimukh Maroti Kirkan vs. State of Maharashtra* (2006)1 SCC 681 this Court observed:

"These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. *No member of the family, even if he is a witness of the crime, would come forward to depose against another family member.* The neighbours, whose evidence may be of some assistance, are generally reluctant to depose in court as they want to keep aloof and do not want to antagonize a neighbourhood family. The parents or other family members of the bride being away from the scene of commission of crime are not in a position to give direct evidence which may inculpate the real accused except regarding the demand of money or dowry and harassment caused to the bride. But, it does not mean that a crime committed in secrecy or inside the house should go unpunished."

(emphasis supplied)

In our opinion both the trial court and High Court have given very cogent reasons for convicting the appellant, and we see

no reason to disagree with their verdicts. There is overwhelming circumstantial evidence to show that the accused committed the crime as he felt that he was dishonoured by his daughter.

For the reason given above we find no force in this appeal and it is dismissed.

Before parting with this case we would like to state that 'honour' killings have become commonplace in many parts of the country, particularly in Haryana, western U.P., and Rajasthan. Often young couples who fall in love have to seek shelter in the police lines or protection homes, to avoid the wrath of kangaroo courts. We have held in **Lata Singh's** case (supra) that there is nothing 'honourable' in 'honour' killings, and they are nothing but barbaric and brutal murders by bigoted, persons with feudal minds.

14. In our opinion honour killings, for whatever reason, come within the category of rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilized behaviour. All persons who are planning to perpetrate 'honour' killings should know that the gallows await them.

Let a copy of this judgment be sent to the Registrar Generals/Registrars of all the High Courts who shall circulate the same to all Judges of the Courts. The Registrar General/ Registrars of the High Courts will also circulate copies of the same to all the Sessions Judges/Additional Sessions Judges in the State/Union Territories. Copies of the judgment shall also be sent to all the Chief Secretaries/Home Secretaries/Director Generals of Police of all States/Union Territories in the country. The Home Secretaries and Director Generals of Police will circulate the same to all S.S.Ps/S.Ps in the States/Union Territories for information.

D.G. Appeal dismissed.

JAWAHAR SINGH
v.
BALA JAIN & ORS.
(SLP (C) No. 8660 of 2009)

MAY 09, 2011

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

Motor Vehicles Act, 1988 – Contributory negligence – Liability of the owner of the vehicle, when minor involved in an accident – Motorcycle driven by minor in a very rash and negligent manner struck against the scooter driven by the deceased, as a result deceased and his son thrown on the road and deceased succumbed to fatal injuries sustained by him – Claim petition – Tribunal awarded Rs. 8 lakhs in favour of claimants with interest @ 7%, holding insurer liable to satisfy the award and to recover the amount from the owner of the motorcycle – Order upheld by High Court – Interference with – Held: Not called for – Minor came on a motor cycle and hit the scooter of the deceased from behind – Thus, responsibility in causing the accident was found to be solely of a minor – However, since the driver was a minor, it was the responsibility of the owner to ensure that his motorcycle was not misused and that too by a minor who did not have a licence to drive the same – Thus, Tribunal rightly held the owner of the motorcycle liable to pay compensation.

An accident took place when a motor cycle driven by 'J'- a minor, in a very rash and negligent manner struck against a scooter driven by 'M'. As a result 'M' and his son were thrown on to the road and 'M' succumbed to the fatal injuries sustained by him. The legal heirs of the deceased filed claim petitions. The Tribunal awarded a sum of Rs. 8,35,067/- in favour of the claimants together with interest @7% from the date of institution of the

petition till the date of realisation. The insurer was held liable to satisfy the Award and to recover the amount from the petitioner-owner of the motorcycle. The High Court upheld the award passed by the Tribunal. The Review Application was also dismissed. Therefore, the petitioner filed the instant Special Leave Petitions.

Dismissing the Special Leave Petitions, the Court

HELD: 1.1. This is not a case for interference in view of the fact that admittedly the motorcycle belonging to the petitioner was being driven by 'J', who had no licence to drive the same and was, in fact, a minor on the date of the accident. While issuing notice the same was limited to the question regarding liability to pay compensation on account of contributory negligence by the deceased who was riding a scooter, in causing the accident to happen. It was 'J' who came from behind on the motorcycle and hit the scooter of the deceased from behind. Therefore, the responsibility in causing the accident was found to be solely that of 'J'. However, since 'J' was a minor and it was the responsibility of the petitioner to ensure that his motorcycle was not misused and that too by a minor who had no licence to drive the same, the Motor Accident Claims Tribunal quite rightly saddled the liability for payment of compensation on the petitioner and, accordingly, directed the Insurance Company to pay the awarded amount to the awardees and, thereafter, to recover the same from the petitioner. The said question was duly considered by the Tribunal and was correctly decided. The High Court rightly chose not to interfere with the same. [Paras 10 and 11] [353-G-H; 354-A-D]

1.2. The story of 'J' who was a minor, walking into the house of the Petitioner and taking the keys of the motorcycle without any intimation to the petitioner, appears to be highly improbable and far-fetched. It is

difficult to accept the defence of the petitioner that the keys of the motorcycle were taken by 'J' without his knowledge. Having regard to the said facts, the case of contributory negligence on the part of the deceased, attempted to be made out on behalf of the petitioner cannot be accepted. Since the notice on the Special Leave Petition was confined to the question of contributory negligence, if any, on the part of the deceased, there is no reason to interfere with the Award of the Motor Accident Claims Tribunal, as upheld by the High Court. [Para 12] [354-E-G]

Ishwar Chandra vs. Oriental Insurance Co. Ltd. **(2007) 3 AD (SC) 753;** *National Insurance Co. Ltd. vs. G. Mohd. Vani and Ors.* **2004 ACJ 1424;** *National Insurance Co. Ltd. vs. Candingeddawa and Ors.* **2005 ACJ 40 – referred to.**

Case Law Reference:

(2007) 3 AD (SC) 753	**Referred to.**	**Para 9**
2004 ACJ 1424	**Referred to.**	**Para 9**
2005 ACJ 40	**Referred to.**	**Para 9**

CIVIL APPELLATE JURISDICTION : SLP (Civil) No. 8660 of 2011.

From the Judgment & Order dated 26.9.2008 of the High Court of Delhi at New Delhi in R.A. No. 333 of 2008.

WITH

SLP (C) No. 864-865 of 2010.

Rajesh Tyagi and Atishi Dipankar for the Petitioner.

Nikun Dayal, Pramod Dayal and Manjeet Chawla for the Respondents.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Notice was issued in the Special Leave Petition (Civil) No.8660 of 2009 on 2nd April, 2009, confined to the question regarding the Petitioner's liability by way of contributory negligence in the accident which occurred on 18th July, 2004. Special Leave Petition (Civil) Nos.864-865 of 2010 were also filed by the Petitioner against National Insurance Company Ltd., Jatin and the heirs of Mukesh Jain, deceased. A brief background of the facts will help us to understand and appreciate the case of the Petitioner better. For the sake of convenience, the facts have been taken from Special Leave Petition (Civil) No.8660 of 2009.

2. On 18th July, 2004, at about 1.20 p.m. the deceased, Mukesh Jain, was riding his two-wheeler scooter No.DAI 1835, with his son, Shashank Jain, as pillion rider. According to the prosecution story, when they had reached the SDM's Office, Geeta Colony, Delhi, a motorcycle, bearing registration No. DL-7S-G-3282, being driven in a very rash and negligent manner, tried to overtake the scooter and in that process struck against the scooter with great force, as a result whereof the deceased and his son were thrown on to the road and the deceased succumbed to the fatal injuries sustained by him.

3. A claim was filed by the widow, two daughters and one son of the deceased before the Motor Accident Claims Tribunal, Karkardooma Courts, Delhi, on 17th August, 2004, being Suit No.209 of 2004. Suit No.210 of 2005, was separately filed on behalf of Master Shashank Jain, son of the deceased, making a separate claim to compensation on account of the death of his late father Mukesh Jain. Both the matters were taken up together by the learned Tribunal which disposed of the same by a common Award dated 12th September, 2007. By the said Award, the Tribunal awarded a sum of Rs. 8,35,067/- in favour of the claimants together with interest @7% from the date of institution of the petition, namely, 17th August, 2004, till the date of realisation. Certain directions were also given in the Award for disbursement of the said amount. The claim of the Petitioner No.3 was settled at Rs. 24,900/-. The insurer was held liable

to satisfy the Award and to recover the amount from the owner of the motorcycle.

4. The said Award was challenged before the Delhi High Court in MAC APP No.697 of 2007, which disposed of the same on 10th December, 2007, by upholding the judgment of the Motor Accident Claims Tribunal.

5. The Delhi High Court held that Jatin was a minor on the date of the accident and was riding the motorcycle in violation of the provisions of the Motor Vehicles Act, 1988, and the Rules framed thereunder. The High Court also relied on the evidence of PW.8, who has deposed in clear and in no uncertain terms that the accident had occurred due to the rash and negligent driving of the motorcycle by Jatin. No suggestion was given to the said witness (PW.8) that the accident did not take place on account of rash and negligent driving on the part of Jatin. Such deposition went unchallenged and became final. It is against the said order of the learned Single Judge of the Delhi High Court and the order dated 26th September, 2008 dismissing Review Application No.333 of 2008, that the present Special Leave Petition has been filed.

6. The main thrust of the submissions made on behalf of the Petitioner was that the deceased, Mukesh Jain, who was riding the two-wheeler scooter, was, in fact, solely responsible for the accident. Mr. Rajesh Tyagi, learned counsel for the Petitioner, contended that the manner in which the accident had taken place would indicate that the deceased had contributed to a large extent to the accident and such fact had not been properly appreciated either by the Motor Accident Claims Tribunal or the High Court. It was submitted that too much of importance had been given to the evidence of PW.8, Head Constable Devender Singh. On the other hand, the Tribunal wrongly discarded the testimony of R1W1 and R1W2 as they were minors. Mr. Tyagi submitted that the High Court had proceeded on the basis that it had not been denied on behalf of the Petitioner herein that Jatin was driving the motorcycle in

a rash and negligent manner and, hence, there was no reason to interfere with the Award of the Tribunal.

7. Mr. Tyagi submitted that the Petitioner, Jawahar Singh, had no liability in regard to the incident, as would be evident from his deposition as R1W4, in which he admitted that he was the owner of the motorcycle in question and that on 18th July, 2004 at 1.00 p.m., while he was at his residence, he received a telephonic message indicating that his nephew, Jatin, had met with an accident. In his deposition, he stated that the key of the motorcycle was on the dining table of his house and without his knowledge and consent, Jatin took the keys of the motorcycle and was, thereafter, involved in the accident. It was submitted that despite the same, the Motor Accident Claims Tribunal also held him to be responsible for the death of the victim in the accident and while a sum of 8,35,067/- with interest @7% from the date of institution of the petition till the date of realisation was awarded in favour of the Claimants, the Insurance Company, which was directed to pay the said amount in the first instance, was given the right to recover the same from the Petitioner. He submitted that it was in view of such wrong approach to the problem that the judgment and order of the High Court impugned in the Special Leave Petition was liable to be set aside.

8. On the other hand, it was urged by learned counsel for the Respondents, that the orders of the Tribunal and the High Court did not call for any interference, since the factum of rash and negligent driving by Jatin had been duly proved from the evidence of PW.8 and there was nothing at all to show that the deceased had in any way contributed to the accident by his negligence or that the petitioner had taken sufficient precaution to see that his motorcycle was not misused by any third party.

9. On behalf of Respondent No.6, National Insurance Company Ltd., it was sought to be urged that at the time of the accident, the motorcycle was being driven in breach of the terms and conditions of the Insurance Policy and, accordingly, the

Insurance Company could not be held liable for making payment of the compensation awarded by the Motor Accident Claims Tribunal. Apart from the fact that Jatin, who was riding the motorcycle, did not have a valid driving licence, it had also been established that he was a minor at the time of the accident and consequently the Insurance Company had been rightly relieved of the liability of payment of compensation to the Claimants and such liability had been correctly fixed on the owner of the motorcycle, Jawahar Singh. It has been well settled that if it is not possible for an awardee to recover the compensation awarded against the driver of the vehicle, the liability to make payment of the compensation awarded fell on the owner of the vehicle. It was submitted that in this case since the person riding the motorcycle at the time of accident was a minor, the responsibility for paying the compensation awarded fell on the owner of the motorcycle. In fact, in the case of *Ishwar Chandra Vs. Oriental Insurance Co. Ltd.* [(2007) 3 AD (SC) 753], it was held by this Court that in case the driver of the vehicle did not have a licence at all, the liability to make payment of compensation fell on the owner since it was his obligation to take adequate care to see that the driver had an appropriate licence to drive the vehicle. Before the Tribunal reliance was also placed on the decision in the case of *National Insurance Co. Ltd. Vs. G. Mohd. Vani & Ors.* [2004 ACJ 1424] and *National Insurance Co. Ltd. Vs. Candingeddawa & Ors.* [2005 ACJ 40], wherein it was held that if the driver of the offending vehicle did not have a valid driving licence, then the Insurance Company after paying the compensation amount would be entitled to recover the same from the owner of the vehicle. It was submitted that no interference was called for with the judgment and order of the High Court impugned in the Special Leave Petition.

10. Having heard learned counsel for the respective parties, we are inclined to agree with the Respondents that this is not a case for interference in view of the fact that admittedly the motorcycle belonging to the Petitioner was being driven by Jatin, who had no licence to drive the same and was, in fact, a

minor on the date of the accident. While issuing notice on 2nd April, 2009, we had limited the same to the question regarding liability to pay compensation on account of contributory negligence by the deceased who was riding a scooter, in causing the accident to happen.

11. We cannot shut our eyes to the fact that it was Jatin, who came from behind on the motorcycle and hit the scooter of the deceased from behind. The responsibility in causing the accident was, therefore, found to be solely that of Jatin. However, since Jatin was a minor and it was the responsibility of the Petitioner to ensure that his motorcycle was not misused and that too by a minor who had no licence to drive the same, the Motor Accident Claims Tribunal quite rightly saddled the liability for payment of compensation on the Petitioner and, accordingly, directed the Insurance Company to pay the awarded amount to the awardees and, thereafter, to recover the same from the Petitioner. The said question has been duly considered by the Tribunal and was correctly decided. The High Court rightly chose not to interfere with the same.

12. Without going into the merits of the case, we are of the view that the story of Jatin, who was a minor, walking into the house of the Petitioner and taking the keys of the motorcycle without any intimation to the Petitioner, appears to be highly improbable and far-fetched. It is difficult to accept the defence of the Petitioner that the keys of the motorcycle were taken by Jatin without his knowledge. Having regard to the aforesaid facts, we are not inclined to accept the case of contributory negligence on the part of the deceased, attempted to be made out on behalf of the Petitioner. Accordingly, since the notice on the Special Leave Petition was confined to the question of contributory negligence, if any, on the part of the deceased, we see no reason to interfere with the Award of the Motor Accident Claims Tribunal, as confirmed by the High Court. The Special Leave Petitions are, accordingly, dismissed, but without any order as to costs.

N.J. Special Leave Petition dismissed.

DHARMATMA SINGH

v.

HARMINDER SINGH & ORS.

(Criminal Appeal No. 1126 of 2011)

MAY 10, 2011

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

Code of Criminal Procedure, 1973 – ss. 173(2), (8) and 482 – Report of police officer on completion of investigation – Cognizance of offence by the Magistrate – Scope of – After investigation, police filed two challans before the Judicial Magistrate, one against the appellant and others for commission of offences u/ss. 452, 323, 326, 506 rw s. 34 IPC and other challan against respondent Nos.1 and 2 and others for commission of offences u/ss. 342, 323, 324, 148 IPC – After further investigation, further report made by Superintendent of Police stating that respondent No.1 caused injuries to the appellant and others in self-defence, thus, the cross-case against the respondent No.1 to be cancelled – Said report submitted to Additional Director General of Police who opined that the decision of the case should be left to the Court – However, respondents No. 1 and 2 filed an application u/s. 482 in the High Court praying for quashing of the criminal proceedings initiated against them – Application allowed by the High Court – On appeal, held: The said further report made by Superintendent of Police has to be forwarded to the Magistrate and it was for the Magistrate to apply judicial mind to the facts stated in the reports submitted under sub-sections (2) and (8) of s.173, and to form an opinion whether to take or not to take cognizance against respondent No.1 after considering the objections, if any, of the appellant – The Magistrate did not apply his mind to the merits of the reports filed u/s. 173 – Exercise of power by the High Court u/s. 482 was at an interlocutory stage and was not warranted, thus, order passed by the High Court is set aside.

An F.I.R. was registered against the appellant under Sections 452, 324, 323, 506, 326 read with Section 34 IPC on information furnished by respondent No.1. The appellant gave a different version of the incident to the police. After investigation, the police filed two challans before the Judicial Magistrate, one against the appellant, his father 'MS' and 'BS' that they had committed offences under Sections 452, 323, 326, 506 read with Section 34 IPC and other against respondent Nos.1 and 2 and others that they had committed offences under Sections 342, 323, 324, 148 IPC. On an application by the prosecution before the Judicial Magistrate, the prosecution was granted permission for further investigation. The further investigation was carried out. The Superintendent of Police submitted the report that respondent No.1 gave some injuries to the appellant and others for his self-defence and thus, no proceedings could be initiated against respondent No.1 and the cross case registered against respondent No.1 should be cancelled. The said report was submitted to the Additional Director General of Police who opined that as the challans had already been filed against the respondents in the cross-case, the decision of the case should be left to the Court. However, before the Court of the Judicial Magistrate could apply its mind and take a decision on the original challan against respondents No. 1 and 2 and on the report of further investigation recommending dropping of the criminal proceedings against them, respondent Nos. 1 and 2 filed an application under Section 482 Cr.P.C. in the High Court praying for quashing of DDR and the challan filed against them by the police in the Court of Judicial Magistrate. The High Court quashed the criminal proceedings initiated pursuant to the DDR. Therefore, the appellant filed the instant appeal.

Allowing the appeal, the Court

HELD: 1.1. A reading of provisions of sub-section (2) of Section 173, Cr.P.C. would show that as soon as the investigation is completed, the officer in charge of the police station is required to forward the police report to the Magistrate empowered to take cognizance of the offence stating *inter alia* whether an offence appears to have been committed and if so, by whom. Sub-section (8) of Section 173 further provides that where upon further investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall also forward to the Magistrate a further report regarding such evidence and the provisions of sub-section (2) of Section 173, Cr.P.C., 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). Thus, the report under sub-section (2) of Section 173 after the initial investigation as well as the further report under sub-section (8) of Section 173 after further investigation constitute "police report" and have to be forwarded to the Magistrate empowered to take cognizance of the offence. It is clear from Section 190 (b) of the Cr.P.C. that it is the Magistrate, who has the power to take cognizance of any offence upon a "police report" of such facts which constitute an offence. Thus, when a police report is forwarded to the Magistrate either under sub-section (2) or under sub-section (8) of Section 173, Cr.P.C., it is for the Magistrate to apply his mind to the police report and take a view whether to take cognizance of an offence or not to take cognizance of offence against an accused person. Where the police report forwarded to the Magistrate under Section 173 (2) Cr.P.C. states that a person has committed an offence, but after investigation the further report under Section 173 (8) Cr.P.C. states that the person has not committed the offence, it is for the Magistrate to form an opinion whether the facts, set out in the two reports, make out an offence committed by the person. [Paras 9 and 10] [367-G-H; 368-A-G]

1.2. Section 482 Cr.P.C. saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. [Para 13] [370-C]

R. P. Kapur v. State of Punjab **AIR 1960 SC 866, referred to.**

2. In the facts of the instant case, the police in its report submitted to the Judicial Magistrate that on 02.02.2006 he had filed two challans, one against the appellant, his father 'MS' and 'BS' stating that they had committed offences under Sections 452, 323, 326, 506 read with Section 34 IPC and the other challan against the respondent Nos.1 and 2 and some others stating that they had committed offences under Sections 342, 323, 324, 148 IPC. Pursuant to permission granted by the Magistrate on 27.07.2006 for further investigation, a further report has been made by the Superintendent of Police stating that respondent No.1 for his self-defence had caused injuries to the appellant and others and thus, the cross-case against the respondent No.1 is required to be cancelled. This further report has to be forwarded to the Magistrate and it was for the Magistrate to apply judicial mind to the facts stated in the reports submitted under sub-sections (2) and (8) respectively of Section 173, Cr.P.C., and to form an opinion whether to take cognizance or not to take cognizance against the respondent No.1 after considering the objections, if any, of the complainant, namely, the appellant. As the Magistrate did not apply his mind to the merits of the reports filed under Section 173, Cr.P.C., the exercise of power by the High Court under Section 482, Cr.P.C., was at an interlocutory stage and was not warranted in the facts of the instant case. Thus, the impugned order is set aside. The police would forward the further report of the

Superintendent of Police, to the Magistrate concerned and the Magistrate would apply his mind to the police report already forwarded to him and the further report of further investigation forwarded to him and take a final decision in accordance with law after considering the objections, if any, of the appellant against the further report of further investigation. [Para 12 to 14] [369-F-H; 370-A-B; 371-E-G]

Abhinandan Jha and Ors. v. Dinesh Mishra **AIR 1968 SC 117;** *Mrs. Rupan Deol Bajaj and Anr. v. Kanwar Pal Singh Gill and Anr.* **AIR 1996 SC 309 – relied on.**

Case Law Reference:

AIR 1968 SC 117	**Relied on.**	**Para 12**
AIR 1996 SC 309	**Relied on.**	**Para 12**
AIR 1960 SC 866	**Referred to.**	**Para 13**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1126 of 2011.

From the Judgment & Order dated 25.3.2008 of the High Court of Punjab and Haryana at Chandigarh in Criminal Misc. No. 10664 of 2007.

D.P. Singh and Sanjay Jain for the Appellant.

Sunil Bhatt, S.S. Ray, Rakhi Ray, Anil Grover, Noopur Singhal and Kuldip Singh for the Respondents.

The Judgment of the Court was delivered by

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

2. This is an appeal by way of Special Leave against the order dated 25.03.2008 of the High Court of Punjab and Haryana in Criminal Misc. No.10664-M of 2007 quashing a criminal proceeding against respondents Nos. 1 and 2.

3. The relevant facts briefly are that on 12.12.2004, F.I.R. No.276 was registered at Police Station Sadar, District Ludhiana, against the appellant under Sections 452, 324, 323, 506, 326 read with Section 34 of the Indian Penal Code (for short 'the IPC') on information furnished by respondent No.1. The allegations in the F.I.R. were that on 12.12.2004, at about 8.00 a.m., the respondent No.1 and his mother were on their plot of land and they had engaged mason and labours for erecting walls on the plot when the appellant with others came armed with weapons and started beating the respondent No.1 and his mother and as a result the respondent No.1 and his mother suffered injuries and were admitted in the hospital. On 13.12.2004, the appellant gave a different version of the incident on 12.12.2004 to the police alleging that when he along with his father Mohan Singh reached the plot, they saw the respondent Nos. 1 and 2 along with others erecting walls on the plot and when Mohan Singh stopped the mason saying that the plot was a disputed one, respondent no.2 gave a *lalkara* and all others attacked Mohan Singh and the appellant caused injuries on them and as a result they have been admitted to the hospital. After investigation, the police filed two challans on 02.02.2006 before the Judicial Magistrate, First Class, Ludhiana. Under one challan, the appellant, his father Mohan Singh and Bhupinder Singh were charge-sheeted for offences under Sections 452, 323, 326, 506 read with Section 34 of the IPC and under the other challan, respondent Nos.1 and 2 and some others were charge-sheeted for offences under Sections 342, 323, 324, 148 of the IPC. On 22.03.2006, the respondent No.1 submitted an application to the Additional Director General of Police, Crime Branch, Punjab, pursuant to which the prosecution moved an application before the Judicial Magistrate, First Class on 19.07.2006 for permission to investigate further in the case and on 27.07.2006 the Judicial Magistrate, First Class, Ludhiana, granted such permission to the prosecution.

4. After further investigation, the Superintendent of Police,

City-II, Ludhiana, submitted his report to the Deputy Inspector General of Police, Ludhiana Range. The relevant portion of the report of the Superintendent of Police, City-II, Ludhiana, which contains his conclusions after further investigation, is extracted hereinbelow:

> "I found during my investigation that Mohan Singh, son of Shri Sher Singh , Dharmatma Singh, Harpal Singh, Jagdev Singh and Bhupinder Singh, sons of Mohan Singh, residents of Pullanwal, sold one plot of 1 kanal 13 marlas on 09.03.2004 to Bharpur Sigh, Harnek Singh, sons of Balbir Singh, Jagjit Singh, son of Amarjit Singh, Gurcharan Singh, son of Hari Dass and Jagdev Singh, son of Harpal Singh, resident of Phulanawal through registered sale deed vasikha No.23895 and the mutation No.10940 duly entered in the name of purchasing party. The purchasing party Harminder Singh @ Hindri, son of Shri Harnek Singh on 12.12.2004 was constructing 4 walls on this plot by employing labours and mason and while so in the meantime Dharmatma Sigh, Bhupinder Singh, sons of Mohan Singh and Mohan Singh came present on this plot and they stopped forcibly Harminder Singh not to erect 4 walls and when Harminder Singh @ Hindri did not stop, they started beating Harminder Singh @ Hindri with their weapons and he ultimately for his self defence ran towards his house and all these three persons while following Harminder Singh entered his house. Smt. Kamaljit Kaur, mother of Harminder Singh was also present in the house and in this incident, she got also various injuries. During this incident, Mann Singh, Bharpur Singh, son of Balbir Singh also come present at the place of occurrence, after hearing the raula of Harminder Singh @ Hindri and his mother Kamaljit kaur and none was other present at the place of seen and Dharmatma Singh party have wrongly mentioned the name of other persons in the cross case. In this incident, Dharmatma Singh also got some injuries and as a result of that and as per M.L.R., a case under

> Sections 323, 324 IPC alleged to have been made out and the injuries, which got by Harminder Singh @ Hindri etc., a case under Sections 323, 324, 326 IPC is made out. Since Dharmatama Singh, Bhupinder Singh and Mohan Singh while entering into the house of Harminder Singh @ Hindri gave injury to Harminder Singh @ Hindri and the aforesaid Harminder Singh for his self defence gave some injuries to Dharmatma Singh etc. and the same shall come under the definition of self defence and, therefore, no proceeding/case can be initiated against Harminder Singh @ Hindri party and therefore, the cross case as registered against Harminder Singh @ Hindri party is required to be cancelled. And if your goodself agree with the report, please necessary orders be issued in this regard to S.H.O. Police Station Sadar, Ludhiana.
>
> Sd/-
> (D. P. Singh)
> S. P. City-II, Ludhiana"

It will be clear from the aforesaid extract from the report of further investigation that Superintendent of Police, City II, Ludhiana, was of the opinion that respondent No.1 gave some injuries to the appellant and others for his self-defence and such injuries come under the definition of right of private defence and, therefore, no proceedings could be initiated against respondent No.1 and the case registered against respondent No.1 should be cancelled.

5. The Deputy Inspector General of Police, Ludhiana Range, to whom the aforesaid report was submitted, referred the matter to the Additional Director General of Police, Crime Branch, Punjab, Chandigarh, and the Additional Director General of Police was of the opinion that as the challans had already been filed against the respondents in the cross-case, the decision of the case should be left to the Court. The opinion of the Additional Director General of Police as stated in his communication to the Deputy Inspector General of Police, Ludhiana Range, Ludhiana, is quoted herein below:

"After thoroughly investigating this case, finding has already been recorded at ADGP/Crime level that Man Singh, Harminder Singh party did not cause injuries to other party in self defence. In the main case and cross case, challan has already been presented in the court. During further investigation, no new evidence came on record. In other words, report of S.P. City I, Ludhiana is not based on any such evidence which was not available at the time of inquiry conducted by the Crime Wing. So, the cross case does not deserve to be cancelled. By ignoring the above report, decision of the case should be left to the court.

Sd/-

For Addl. Director General of Police,

Crime, Punjab, Chandigarh"

6. However, before the Court of the Judicial Magistrate, First Class, Ludhiana, could apply its mind and take a decision on the original challan against respondents No. 1 and 2 and on the report of further investigation recommending dropping of the criminal proceedings against them, respondent Nos. 1 and 2 filed Criminal Misc. Application No.10664-M of 2007 under Section 482 Cr.P.C. on 17.02.2007 in the High Court of Punjab and Haryana praying for quashing of DDR No.15 dated 13.12.2004 and the challan filed against them by the police in the Court of Judicial Magistrate, First Class. After considering the report of further investigation recommending dropping of the criminal proceedings against respondent No.1 and others, the High Court passed the impugned order dated 25.03.2008 quashing the criminal proceedings initiated pursuant to the DDR No.15 dated 13.12.2004 and further directing that the criminal proceedings against the appellant at the behest of the respondent No.1 initiated pursuant to the F.I.R. No. 276 dated 12.12.2004 shall not be affected.

7. Learned counsel for the appellant submitted that the power under Section 482 of the Cr.P.C. is to be exercised only in the exceptional circumstances and that the High Court should not have exercised this power and quashed the criminal proceedings against the respondents No.1 and 2 when the Magistrate was yet to exercise his judicial mind under Section 190 of the Cr.P.C. to the police reports filed under Section 173 of the Cr.P.C. He submitted that the Magistrate before whom the entire records were placed including the evidence collected during the investigation was in a better position to appreciate the facts and circumstances of the case and pass orders whether to take cognizance of the offences against the respondents No.1 and 2 registered pursuant to the DDR No.15 dated 13.12.2004 on the basis of information furnished by the appellant. Learned counsel for the respondent Nos. 1 and 2, on the other hand, relied on the report of the Superintendent of Police, City-II, Ludhiana, recommending dropping of the criminal proceedings against them and supported the impugned order passed by the High Court quashing the criminal proceedings against them.

8. For deciding the issue, we must first refer to the provisions of Section 173 of the Cr.P.C. under which the police submits reports after investigation and after further investigation, Section 190 of the Cr. P.C. under which the Magistrate takes cognizance of an offence upon a police report and Section 482 of the Cr.P.C. under which the High Court exercises its powers to quash the criminal proceedings. These three provisions of the Cr.P.C. are extracted below:

"173. Report of police officer on completion of investigation. (1) Every investigation under this Chapter shall be completed without unnecessary delay.

[(1A) The Investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.]

(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, weather 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 (45 of 1860)]

(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.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may,

pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order- for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate alongwith the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements-recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under subsection (2) has been forwarded to the Magistrate and, where upon such 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).

190. **Cognizance of offences by Magistrate**. – (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

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."

9. A reading of provisions of sub-section (2) of Section 173, Cr.P.C. would show that as soon as the investigation is completed, the officer in charge of the police station is required to forward the police report to the Magistrate empowered to

take cognizance of the offence stating *inter alia* whether an offence appears to have been committed and if so, by whom. Sub-section (8) of Section 173 further provides that where upon further investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall also forward to the Magistrate a further report regarding such evidence and the provisions of sub-section (2) of Section 173, Cr.P.C., 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). Thus, the report under sub-section (2) of Section 173 after the initial investigation as well as the further report under sub-section (8) of Section 173 after further investigation constitute "police report" and have to be forwarded to the Magistrate empowered to take cognizance of the offence. It will also be clear from Section 190 (b) of the Cr.P.C. that it is the Magistrate, who has the power to take cognizance of any offence upon a "police report" of such facts which constitute an offence. Thus, when a police report is forwarded to the Magistrate either under sub-section (2) or under sub-section (8) of Section 173, Cr.P.C., it is for the Magistrate to apply his mind to the police report and take a view whether to take cognizance of an offence or not to take cognizance of offence against an accused person.

10. It follows that where the police report forwarded to the Magistrate under Section 173 (2) of the Cr.P.C. states that a person has committed an offence, but after investigation the further report under Section 173 (8) of the Cr.P.C. states that the person has not committed the offence, it is for the Magistrate to form an opinion whether the facts, set out in the two reports, make out an offence committed by the person. This interpretation has given by this Court in *Abhinandan Jha & Ors*. v. *Dinesh Mishra* [AIR 1968 SC 117] to the provisions of Section 173 and Section 190 of the Criminal Procedure Code, 1898, which were the same as in the Criminal Procedure Code, 1973. In *Abhinandan Jha* (supra), para 15 at page 122 of the AIR this Court observed:

"... The police, after such investigation, may submit a charge-sheet, or, again submit a final report, depending upon the further investigation made by them. If ultimately, the Magistrate forms the opinion that the facts, set out in the final report, constitute an offence, he can take cognizance of the offence, under Section 190(1)(b), notwithstanding the contrary opinion of the police, expressed in the final report."

11. After referring to the law laid down in *Abhinandan Jha* (supra) this Court has further held in *Mrs. Rupan Deol Bajaj & Anr*. v. *Kanwar Pal Singh Gill & Anr*. [AIR 1996 SC 309] that where the police in its report of investigation or further investigation recommends discharge of the accused, but the complainant seeks to satisfy the Court that a case for taking cognizance was made out, the Court must consider the objections of the complainant and if it overrules such objections, it is just and desirable that the reasons for overruling the objections of the complainant be recorded by the Court and this was necessary because the Court while exercising power under Section 190, Cr.P.C. whether to take cognizance or not to take cognizance exercises judicial discretion.

12. In the facts of the present case, the police in its report submitted to the Judicial Magistrate, First Class, Ludhiana, on 02.02.2006 had filed two challans, one against the appellant, his father Mohan Singh and Bhupinder Singh stating that they had committed offences under Sections 452, 323, 326, 506 read with Section 34 of the IPC and the other challan against the respondent Nos.1 and 2 and some others stating that they had committed offences under Sections 342, 323, 324, 148 of the IPC. Pursuant to permission granted by the learned Magistrate on 27.07.2006 for further investigation, a further report has been made by the Superintendent of Police, City-II, Ludhiana, stating that respondent no.1 for his self-defence had caused injuries to the appellant and others and hence the cross-case against the respondent no.1 is required to be cancelled.

This further report has to be forwarded to the learned Magistrate and as has been held by this Court in *Abhinandan Jha* (supra) and *Mrs. Rupan Deol Bajaj* (supra) it was for the learned Magistrate to apply judicial mind to the facts stated in the reports submitted under sub-sections (2) and (8) respectively of Section 173, Cr.P.C., and to form an opinion whether to take cognizance or not to take cognizance against the respondent no.1 after considering the objections, if any, of the complainant, namely, the appellant.

13. Section 482 of the Cr.P.C. saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. It has been held by this Court in *R. P. Kapur* v. *State of Punjab* [AIR 1960 SC 866] that Section 561-A of the Criminal Procedure Code, 1898 (which corresponds to Section 482 of the Criminal Procedure Code, 1973) saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice and such inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code and therefore where the Magistrate has not applied his mind under Section 190 of the Cr.P.C. to the merits of the reports and passed order, the High Court ought not to consider a request for quashing the proceedings. In the case of *R. P. Kapur* (supra) on 10.12.1958, M.L. Sethi lodged a First Information Report against R.P. Kapur and alleged that he and his mother-in-law had committed offences under Sections 420-109, 114 and 120B of the Indian Penal Code. R.P. Kapur moved the Punjab High Court under Section 561-A of the Code of Criminal Procedure for quashing the proceedings initiated by the First Information Report. When the petition of R.P. Kapur was pending in the High Court, the police report was submitted under Section 173, Cr.P.C. and the High Court held that no case had been made out for quashing the proceedings under Section

561-A of the Criminal Procedure Code, 1898 and dismissed the petition. R. P. Kapur carried an appeal by way of Special Leave to this Court and this Court dismissed the appeal for *inter alia* the following reasons:

> " … In the present case the magistrate before whom the police report has been filed under S. 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily, criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage..."

As we have found in the present case that learned Magistrate had not applied his mind to the merits of the reports filed under Section 173, Cr.P.C., we are of the considered opinion that the exercise of power by the High Court under Section 482, Cr.P.C., was at an interlocutory stage and was not warranted in the facts of this case.

14. In the result, the appeal is allowed and the impugned order dated 25.03.2008 is set aside. The police will forward the further report of the Superintendent of Police, City-II, Ludhiana, to the Magistrate concerned and the learned Magistrate will apply his mind to the police report already forwarded to him and the further report of further investigation forwarded to him and take a final decision in accordance with law after considering the objections, if any, of the appellant against the further report of further investigation.

N.J. Appeal allowed.

FLG. OFFICER RAJIV GAKHAR
v.
MS. BHAVANA @ SAHAR WASIF
(Civil Appeal No. 4278 of 2011)

MAY 11, 2011

[P. SATHASIVAM AND H.L. GOKHALE, JJ.]

Hindu Marriage Act, 1955: ss.5, 12 – Divorce petition filed by appellant-husband u/s.5 for declaring his marriage nullity on the ground of cheating and misrepresentation by the respondent-wife – Allegation in the petition against wife was that she did not disclose to the appellant prior to their marriage the fact of her conversion to Islam and previous marriage with a muslim, about the birth of two children out of said wedlock and her divorce from him – Trial court granted divorce – High Court set aside the divorce decree – On appeal, held: The analysis of the assertion of the wife and witnesses clearly showed that before marriage, the respondent had become a full-fledged Hindu by performing Shudhikaran ceremonies in the manner followed by Hindu custom and all the material facts were known to the appellant at the time of the marriage – As the respondent-wife established her claim that on the date of marriage with the appellant, she was a Hindu and the same is permissible u/s.5 of the Act, the order of High Court is upheld.

The appellant was a pilot with the Indian Air Force. In April, 1997, while he was traveling in a train, he met the respondent who introduced herself as "Bhavana". The case of the appellant was that during the conversation, the respondent claimed to be a spinster. Subsequently, both of them met in Delhi and the respondent tricked the appellant into marrying her on 28.11.1999 at Arya Samaj Mandir as per Hindu rites and ceremonies. The

respondent gave a written affidavit to the Arya Samaj Mandir that she was a Hindu, a spinster and was never married before.

In January 2000, the appellant met the father of the respondent and during conversation, the appellant found that the respondent was a muslim and her actual name was "Sahar Wasif" and her previous marriage had taken place according to Muslim Law with a Muslim 'WK' after her conversion to Islam and she had two children out of the said wedlock. On 22.7.2000, an FIR was registered against the respondent and her brother under Sections 406, 419 and 420, IPC. The appellant filed a suit under Sections 5 and 12 of the Hindu Marriage Act, 1955 seeking dissolution of marriage. Before the trial Court, the appellant narrated as to how he was deceived and cheated by the respondent and also claimed that the parties to the petition had been living separately from the date of marriage itself and have had no cohabitation and nor was there any consummation for which reason no issue was born out of the wedlock.

The trial court declared the marriage between the parties to the petition a nullity and also ordered the appellant to pay ?2000/- per month as permanent alimony to the respondent towards her maintenance. On appeal, the High Court set aside the judgment of the trial court. The instant appeal was filed challenging the order of the High Court.

Dismissing the appeal, the Court

HELD: 1. Chapter IV of the Hindu Marriage Act, 1955 deals with nullity of marriage and divorce. Section 11 says that any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, or against the other party be so declared by a decree of nullity if it

contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5 of the Act. Section 12 speaks about voidable marriages. According to this Section, any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely, a) that the marriage has not been consummated owing to the impotence of the respondent, or b) that the marriage is in contravention of the condition specified in clause (ii) of Section 5; or c) that the consent of the petitioner/guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent; or d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner. Chapter II deals with Hindu marriages and Section 5 prescribes conditions for a Hindu marriage. The section begins with saying that a marriage may be solemnized between any 'two Hindus' subject to fulfilling the conditions prescribed therein. It is clear that Hindu marriage if is to be solemnized under Section 5 then both the parties of such marriage must be Hindus. [Para 7] [379-H; 380-A-E]

2. Though the trial court granted decree holding that the marriage between the appellant and the respondent is a nullity, the materials placed by the respondent-wife in the form of oral and documentary evidence clearly showed that there was no contravention of any of the provisions, more particularly, Section 5 of the Act. The respondent was examined before the trial Court as RW1. In her lengthy statement, she explained all the details including the fact how she converted to Islam to marry a muslim and after divorce, by performing Shudhikaran ceremonies, she became a full fledged Hindu and there was no bar in marrying Hindu as per Hindu rites and ceremonies. In her evidence, she explained in detail that

her previous marriage with 'WK' was a love marriage wherein her parents had also consented. She further deposed that she converted to Muslim religion only at the time of marriage with WK' which was solemnized in Mayur Vihar, Delhi in a Masjid. She also explained that at the time when she had obtained divorce from WK' by his saying Talaq three times in March, 1995, her younger brother was present. She also admitted that she was not having any documentary evidence for the same. She further explained that after divorce with her Muslim husband, she had changed her name from "Sahar Wasif" to "Bhavana" which was her original name. Immediately after the said divorce, according to her, she had started using her original name "Bhavana" and she had undergone Shudhikaran ceremonies for conversion to Hinduism just after her divorce from her previous muslim husband. She also explained that the appellant was aware of all these details and with full knowledge and consent, marriage of the appellant and the respondent was performed as per Hindu rites and ceremonies. [Para 8] [380-F-H; 381-A-D]

3. The analysis of the assertion of the respondent as RW1 and the evidence of RW2, RW4 and RW6 clearly showed that the respondent-wife established that before the marriage with the appellant she became a full-fledged Hindu by performing Shudhikaran ceremonies in the manner and being followed by Hindu custom and all these material facts were known to the appellant at the time of the marriage. Inasmuch as the respondent-wife established her claim that on the date of marriage with the appellant she was a Hindu and the same is permissible under Section 5 of the Act, the conclusion arrived at by the High Court was correct. [Paras 12, 14] [382-H; 383-A-B-E]

Yamunabai Anantrao Adhav vs. Anantrao Shivram

Adhav and Another **1988 (2) SCR 809 = 1988 (1) SCC 530;** *M. M. Malhotra vs. Union of India & Ors.* **2005 (3) Suppl. SCR 1026 = 2005 (8) SCC 351;** *Gullipilli Sowria Raj vs. Bandaru Pavani @ Gullipili Pavani* **2008 (17) SCR 35 = 2009 (1) SCC 714 – held inapplicable.**

Case Law Reference:

(1988) 2 SCR 809	**held inapplicable**	**Para 6**
(2005) 3 Suppl SCR 1026	**held inapplicable**	**Para 6**
(2008) 17 SCR 35	**held inapplicable**	**Para 6**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4278 of 2011.

From the Judgment & Order dated 1.9.2009 of the High Court of Punjab and Haryana at Chandigarh in FAO No. 72 of 2006.

Sanjay Parikh, Mamta Saxena, Soumya Ray, A.N. Singh, Anitha Shenoy for the Appellant.

P.N. Misra Rupansh Prohit and Kamal Mohan Gupta for the Respondent.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. This appeal is directed against the final judgment and order dated 01.09.2009 passed by the High Court of Punjab & Haryana at Chandigarh in FAO No. 72-M of 2006 (O & M) whereby the High Court allowed the appeal filed by the respondent herein and set aside the judgment and decree passed by the Additional District Judge-I, Faridabad in favour of the appellant herein.

3. **Brief facts**:

(a) The appellant is a pilot with the Indian Air Force and was posted as Pilot Officer at Hakimpet (Hyderabad) in April, 1997. In the last week of April, 1997, the appellant was traveling by train from Delhi to Hyderabad wherein the respondent also happened to be traveling and at which time she introduced herself as Bhavana and claimed to be the Vice Principal of St. Peters Convent, Vikas Puri, New Delhi and a journalist. During the conversation, respondent claimed to be a spinster, aged 27 years and disclosed that she was traveling to Hyderabad in connection with a book she was writing on Anglo Indians. Much later the appellant learnt that she had visited Hyderabad for appearing in her B.A. examination from Osmania University.

(b) Subsequently, both of them met at Delhi in the first week of July, 1997 and March, 1998 and ultimately the respondent tricked the appellant into marrying her on 28.11.1999 at Arya Samaj Mandir, Rathkhana, Bikaner, Rajasthan as per Hindu rites and ceremonies. The respondent also gave a written affidavit to the Arya Samaj Mandir that she was a Hindu, a spinster and was never married before.

(c) In January, 2000, the respondent's father met the appellant at Sona Rupa Restaurant in Nehru Place, New Delhi and it emerged during the conversation that the respondent was a Muslim and her actual name was Sahar Wasif and her previous marriage had taken place according to Muslim Law with a Muslim-Wasif Khalil after her conversion to Islam and had two children out of the said wedlock, namely, daughter Heena (13 years) and son Shaz (11 years). The appellant was totally shocked and devastated to hear all this. On 22.07.2000, an FIR being 690/2000 was registered against the respondent and her brother under Sections 406, 419 and 420 of the Indian Penal Code (in short 'the IPC') at the Kalkaji Police Station, New Delhi.

(d) The appellant, thereafter, filed Suit No. 87 of 2000 in the Court of Addl. District Judge-I, Faridabad, under Sections

5 and 12 of the Hindu Marriage Act, 1955 (in short 'the Act') seeking dissolution of marriage solemnized on 28.11.1999 with the respondent at Arya Samaj Mandir, Bikaner. Before the trial Court, the appellant narrated as to how he was deceived and cheated by the respondent and also claimed that the parties to the petition have been living separately from the date of marriage itself and have had no cohabitation and nor was there any consummation for which reason no issue was born out of the wedlock.

(e) The trial Court, by order dated 07.03.2006, declared the marriage between the parties to the petition a nullity and also ordered the appellant to pay Rs. 2,000/- per month as permanent alimony to the respondent towards her maintenance.

(f) Aggrieved by the said order, the respondent preferred an appeal before the High Court of Punjab & Haryana whereby the learned Single Judge vide his order dated 01.09.2009 allowed the appeal of the respondent and set aside the judgment and decree passed by the Trial Court. Aggrieved by the said order, the appellant has preferred this appeal by way of special leave before this Court.

4. Heard Mr. Sanjay Parikh, learned counsel for the appellant-husband and Mr. P. N. Misra, learned senior counsel for the respondent-wife.

5. It is the grievance of the appellant that the respondent by using emotional coercion, impersonation, misrepresentations, fraud and cheating tricked the appellant to marry her on 28.11.1999 at Arya Samaj Mandi, Rathkhana, Bikaner. It is also his claim that both of them married as per Hindu rites and ceremonies. The respondent also gave a written affidavit to the Arya Samaj for the performance of the marriage and in that affidavit she claimed that she was a Hindu, a spinster and was not married before. It is also his claim that after marriage, during interaction with her father and relatives, he came to know that the respondent's actual name was Sahar

Wasif and that she had converted to Islam and was married to a muslim, she had 2 children out of her previous wedlock, namely, Heena (13 years) and Shaz (11 years). Though the respondent has denied the claim of the appellant, the Court of the first instance, namely, Additional Sessions Judge accepted the case of the appellant and declared the marriage between the appellant and the respondent a nullity and directed the appellant to pay a sum of Rs. 2,000/- per month as permanent alimony to the respondent towards her maintenance. When the said order was challenged by the respondent-wife, the High Court, by impugned judgment, allowed her appeal and dismissed the petition filed by the appellant-husband.

6. Learned counsel for the appellant by drawing our attention to various factual details and the findings arrived at by the trial Court submitted that the High Court committed an error in dismissing the husband's petition to declare the marriage as nullity. He also relied on decisions of this Court in *Yamunabai Anantrao Adhav* vs. *Anantrao Shivram Adhav and Another* (1988) 1 SCC 530, *M. M. Malhotra* vs. *Union of India & Ors.* (2005) 8 SCC 351 and *Gullipilli Sowria Raj* vs. *Bandaru Pavani @ Gullipili Pavani* (2009) 1 SCC 714 in support of his claim. On the other hand, learned senior counsel for the respondent-wife by taking us through oral and documentary evidence led in before the courts below submitted that there was no misrepresentation or cheating on the part of the respondent and in fact the appellant was aware of all the details and before marriage with the appellant, the respondent-wife had undergone Shudhikaran Ceremonies and she was deemed to have become a Hindu after such ceremonies. In other words, according to him, the respondent was not barred from contracting marriage with a Hindu after performing Shudhikaran.

7. Chapter IV of the Hindu Marriage Act, 1955 (in short 'the Act') deals with nullity of marriage and divorce. Section 11 says that any marriage solemnized after the commencement of this

Act shall be null and void and may, on a petition presented by either party thereto, or against the other party be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5 of the Act. Section 12 speaks about voidable marriages. According to this Section, any marriage solemnized, whether before or after the commencement of this Act, shall be viodable and may be annulled by a decree of nullity on any of the following grounds, namely, a) that the marriage has not been consummated owing to the impotence of the respondent, or b) that the marriage is in contravention of the condition specified in clause (ii) of Section 5; or c) that the consent of the petitioner/guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent; or d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner. Chapter II deals with Hindu marriages and Section 5 prescribes conditions for a Hindu marriage. The section begins with saying that a marriage may be solemnized between any 'two Hindus' subject to fulfilling the conditions prescribed therein. It is clear that Hindu marriage if is to be solemnized under Section 5 then both the parties of such marriage must be Hindus.

8. Though the trial Court granted decree holding that the marriage between the appellant and the respondent is a nullity, the materials placed by the respondent-wife in the form of oral and documentary evidence clearly show that there was no contravention of any of the provisions, more particularly, Section 5 of the Act. The respondent was examined before the trial Court as RW1. In her lengthy statement, she explained all the details including the fact that how she converted to Islam to marry a muslim and after divorce, by performing Shudhikaran ceremonies, she became a full fledged Hindu and there is no bar in marrying Hindu as per Hindu rites and ceremonies. She also explained that the appellant was aware of all these details and with full knowledge and consent, marriage of the appellant

and the respondent was performed as per Hindu rites and ceremonies. Mr. P. N. Misra, took us through the entire evidence of RW1 in order to substantiate the above statement. In her evidence, she explained in detail that her marriage with Wasif Khalil was a love marriage wherein her parents had also consented. She further deposed that she converted to Muslim religion only at the time of marriage with Wasif Khalil which was solemnized in Mayur Vihar, Delhi in a Masjid. At the time of marriage, parents of both the parties to marriage were present. She also explained that at the time when she had obtained divorce from Wasif by his saying Talaq three times in March, 1995, her younger brother was present. She also admitted that she was not having any documentary evidence for the same. She further explained that after divorce with her Muslim husband, she had changed her name from Sahar Wasif to Bhavana which was her original name. Immediately after the said divorce, according to her, she had stated using her original name Bhavana and she had undergone Shudhikaran ceremonies for conversion to Hinduism just after her divorce from her previous muslim husband.

9. In support of the stand taken by Respondent-wife as RW1, one K.V. Krishnayya, aged about 60 years, resident of Ram Nagar, Market Lane, Hyderabad was examined as RW2 by way of an affidavit. He explained that the respondent-Bhavana came to his house in the company of his daughter K. Aparna in the month of April 1997. On one occasion, he explained that both Rajiv Gakhar and Bhavana came to his house and on making enquiries Bhavana disclosed that she is a born Hindu but she married to a Muslim and now she is a divorcee as she was divorced by her Muslim husband by saying Talaq three times in March, 1995 and since then she again returned to her previous religion (Hindu) after obtaining the Shudhikaran ceremonies by calling a Pandit and by chanting Mantras. She also disclosed that she is having two children from her Muslim husband. RW2 also enquired and verified the details about the appellant-Rajiv Gakhar. In other words,

according to RW2, the appellant was also aware of all the details about RW1 including her religion even before their marriage.

10. One Babu Lal, aged about 65 years, an Astrologer/ Karamkandi, resident of Sector 8, Faridabad was examined as RW4. He explained the details about the Shudhikaran ceremonies that were performed to the respondent. According to him, it was done about 7 years ago. He explained that Shudhikaran ceremonies were performed by him on the eve of Puranmasi preceding Holi. After recollection he mentioned that it was around March, 1997. He asserted that after performance of ceremonies, she is deemed to have become a Hindu. He also denied the suggestion that pursuant to marriage of Bhavana who was earlier a Hindu with a Muslim and having two children, she could not have returned to a Hindu fold. He also asserted that Shudhikaran of Bhavana and her two children were carried out simultaneously on the same date and time and her parents were also present on this occasion.

11. Another important witness examined on the side of the respondent is her brother Vibhu Ranjan as RW6. He explained that Bhavna Gakhar is his real elder sister and they are Brahmins/Hindu by religion and the birth name of his sister was Bhavana Sharma. He also explained that his sister first married with a Muslim boy and subsequently after Talaq, thereby her marriage with Muslim came to an end permanently forever. He also elaborated and explained that in the month of March, 1997 on the eve of Holi festival the Shudhikaran ceremonies were performed in their house through Pandit Babu Lal (RW4). He further explained that Abhishek by gangajal was done apart from chanting of Mantras necessary for Shudhikaran. Thus, according to him, Bhavana returned to her original religion, i.e, Hindu and became eligible to enter into marriage with any Hindu male.

12. The analysis of the assertion of the respondent as RW1 and the evidence of RW2, RW4 and RW6 clearly show that the

respondent-wife established that before the marriage with the appellant she became a full-fledged Hindu by performing Shudhikaran ceremonies in the manner and being followed by Hindu custom and all these material facts were known to the appellant at the time of the marriage. In view of these factual details, the decisions relied on by the learned counsel for the appellant are not applicable to the case on hand.

13. Mr. Parikh heavily relied on *Gullipilli Sowria Raj (supra).* The question in that decision was whether a marriage entered into by a Hindu with a Christian is valid under the provisions of the Hindu Marriage Act, 1955. After finding that the appellant-husband therein was a Roman Catholic Christian, the marriage solemnized in accordance with Hindu customs was a nullity and its registration under Section 8 of the Act could not and/or did not validate the same. In view of the said factual scenario, as rightly observed by the High Court, the ratio in *Gullipilli (supra)* is not applicable to the case on hand.

14. Inasmuch as the respondent-wife established her claim that on the date of marriage with the appellant she was a Hindu and the same is permissible under Section 5 of the Act, we agree with the conclusion arrived at by the High Court and reject the argument of the counsel for the appellant.

15. In view of the above discussion and conclusion, we find no merit in the appeal. Consequently, the same is dismissed.

D.G. Appeal dismissed.

C.B.I. AND ORS.

v.

KESHUB MAHINDRA ETC. ETC.

Curative Petition (Crl.) Nos.39-42 of 2010

IN

(Criminal Appeal Nos.1672-75 of 1996)

MAY 11, 2011

[S.H. KAPADIA, CJI, ALTAMAS KABIR, R.V. RAVEENDRAN, B. SUDERSHAN REDDY AND AFTAB ALAM, JJ.]

Code of Criminal Procedure, 1973: ss.323 216, 386, 397, 399, 401 – Jurisdiction of court to exercise power conferred under the Code – Scope of – The Supreme Court passed judgment on 13.9.1996 quashing the charges framed by the Sessions Court and directing that on the material led by prosecution the charge u/s.304A, IPC be made out against accused – Curative petitions filed after 14 years of 1996 judgment on the ground that the said judgment barred the Magistrate from exercising his judicial power u/s.323 – Held: No decision by any court can be read in a manner as to nullify the express provisions of an Act or the Code – In the 1996 judgment, the Supreme Court clearly held that its findings were based on materials gathered in investigation and brought before the court till that stage – At every place in the judgment, the Court recorded the finding in regard to the appropriate charges against the accused, it qualified the finding or observation by saying "on the materials produced by the prosecution for framing charge" – The 1996 judgment was rendered at the stage of ss.209/228/240 and the judgment cannot be read to say that it denuded a competent court of the powers under ss.323, 216, 386, 397, 399, 401 etc. – The 1996 judgment cannot be said to be a fetter against the proper exercise of powers by a court of competent jurisdiction under

*the relevant provisions of the Code – No grounds falling within the parameters of *Rupa Ashok Hurra case made out in the instant curative petitions – Moreover, no satisfactory explanation is given to file such curative petitions after about 14 years from 1996 judgment of the Supreme Court – Curative petitions dismissed – Curative Petition.*

Rupa Ashok Hurra v. Ashok Hurra* **(2002) 4 SCC 388 – relied on.

Keshub Mahindra v. State of M.P. **(1996) 6 SCC 129 – referred to.**

Case Law Reference:

(1996) 6 SCC 129	**referred to**	**Paras 1, 3**
(2002) 4 SCC 388	**relied on**	**Para 4**

CRIMINAL APPELLATE JURISDICTION : Curative Petition (Criminal) Nos. 39-42 of 2010.

In

Criminal Appeal Nos. 1672-1675 of 1996.

Goolam E. Vahanvati, AG, Indira Jaising, H.P. Rayal and Vivek K. Tankha, ASG, H.N. Salve, Amit Desai, Sidharth Luthra, C.U. Singh and Ram Jethmalani, Devadatt Kamat, Anoopam N. Prasad, Naila Jung, Nishanth Patil, Rohit Sharma, Sreekant N. Terdal, T.A. Khan, Arvind Kumar Sharma, Pianka Telang, Nitin Lonkar Parmeshwar, Samridhi Sinha, Chinmoy Sharma, Anriudh Sharma, Ananda Mukherjee, Harsh N. Parekh, Avi Singh, Karuna Nandy, Aparna Bhat, Gopal Krishna Shenoy, Mahesh Agarwal, Neeha Nagpal, E.C. Agrawala, Radhika Gautam, Rishi Agrawala, O.P. Khaitan, Ramesh Singh, A.T. Patra, Ajay Gupta, Aradhana Patra (for O.P. Khaiatan & Co.), Ramesh Singh, A.T. Patra, S.U.K. Sagar, Bina Madhavan, Vaibhav Gaggar, Anurag Ahluwalia, Krishna Kumar Singh, Karan Kanwal, Mohinder Charak, Vinita Sasidharan, Praseena

E. Joseph (for Lawyers' Knit & Co.), Pratul Shandilya, Rishabh Sancheti, Sameer Sodhi Vaibhav Shrivastav, Kumanan D., Varun Chopra, C.D. Singh, Sanjay Parikh, Aagney Sail, Mamta Saxena, Anitha Shenoy, Prashanto Chandra Sen, Yug Mohit Choudhary, Lata Krishnamurty, Nitin Dahiya, Pallav Kumar, Rishi Maheshwari and P.S. Sudheer for the appearing parties.

The Order of the Court was delivered by

ORDER

S.H. KAPADIA, CJI. 1. These curative petitions are filed by Central Bureau of Investigation for recalling the judgment and order dated 13.9.1996 of this Court in *Keshub Mahindra vs. State of M.P.* (Criminal Appeal Nos. 1672-1675 of 1996 decided on 13.9.1996 reported in 1996 (6) SCC 129), on the following premises :

(i) When this Court, by the said judgment dated 13.9.1996 quashed the charges framed against accused Nos. 2 to 5, 7 to 9 and 12 under Sections 304 (Part II), 324, 326 and 429 IPC and directed the trial court to frame charges under Section 304A IPC, this Court had before it adequate material to make out prima facie, an offence chargeable under Section 304 (Part II) IPC. Therefore, this Court committed a serious error in ignoring such material and quashing the charge under Section 304 (Part II) IPC.

(ii) The evidence placed in support of the charge under Section 304A IPC during the trial of the said accused before the learned Chief Judicial Magistrate, Bhopal showed prima facie that the said accused had committed offences punishable under Section 304 (Part II) IPC. But for the said judgment of this Court dated 13.9.1996, the learned Magistrate would have, by taking note of the said

material, committed the case to the Court of Sessions under Section 323 of the Code of Criminal Procedure (for short 'the Code'). However, in view of categorical finding recorded by this Court, in its binding judgment dated 13.9.1996 that there was no material for a charge under Section 304 (Part II) IPC and consequential quashing of the said charge, with a direction to frame the charge under Section 304A IPC, the learned Magistrate was barred from exercising his judicial power under Section 323 of the Code, even though the Code vested the jurisdiction in him to alter the charge or commit the case to the Court of Sessions as the case may be, on the basis of evidence that came on record during the trial.

(iii) The judgment dated 13.9.1996 therefore resulted in perpetuation of irremediable injustice necessitating filing of the curative petitions seeking recall of the judgment dated 13.9.1996.

2. On the night of December 02, 1984 there was a massive escape of lethal gas from the MIC storage tank at Bhopal plant of the Union Carbide (I) Ltd. (UCIL) into the atmosphere causing the death of 5,295 people leaving 5,68,292 people suffering from different kinds of injuries ranging from permanent total disablement to less serious injuries. On the day following the incident, the SHO, Hanuman Ganj Police Station, suo moto, registered a Crime Case No. 1104 of 1984 under Section 304A IPC. On December 06, 1984 investigation was handed over to the CBI, which investigation stood completed, resulting in filing of charge sheets by the CBI in the Court of C.J.M., Bhopal on December 01, 1987. Since the charge sheets inter alia alleged commission of offence under Sections 304, 324, 326, 429 read with Section 35 of IPC, the case was committed by the C.J.M. to the Sessions Court as Sessions Case No. 237 of 1992 (See : Order dated 30th April, 1992). On 8th April,

1993, the 9th Additional Sessions Judge, Bhopal passed an order framing charges against the accused Nos. 5 to 9 under Sections 304 (Part II), 324, 326 and 429 of IPC and against accused Nos. 2, 3, 4 and 12 under the very same Sections but with the aid of Section 35 of IPC. It may be mentioned that at the time of framing of charge, the Court had before it, accused Nos. 2 to 9 and accused No. 12 (UCIL) whereas accused No. 1 (Warren Anderson) was absconding and the Court was also unable to bring before it the other two companies, UCC and Union Carbide Eastern Inc., accused Nos. 10 and 11.

3. The accused after having unsuccessfully challenged the order framing charge by the Court of Sessions before the Madhya Pradesh High Court, brought the matter to this Court in four separate appeals in which the leading case was Appeal (Cri.) No. 1672 of 1996 filed at the instance of accused No. 2 which stood ultimately disposed of by the judgment of the Division Bench of this Court dated September 13, 1996 in the case of *Keshub Mahindra* (supra). This Court held that on the material produced by the prosecution before the Trial Court *at the stage of framing of charges,* no charges could have been framed against the accused under Section 304 (Part II) or under Sections 324, 326, 429 with or without the aid of Section 35 IPC and it accordingly quashed the charges framed by the Sessions Court and directed that on the material led by the prosecution the charge under Section 304A IPC could be made out against accused Nos. 5, 6, 7, 8 and 9 and under the same sections with the aid of Section 35 against accused Nos. 2, 3, 4 and 12. Applications seeking leave to file a review petition being Criminal Misc. Petition Nos. 1713-16 of 1997 in a proposed review petition stood dismissed on March 10, 1997. These applications were filed jointly by Bhopal Gas Peedith Sangharsh Sahyog Samiti (BGPSSS), Bhopal Gas Peedith Mahila Udyog Sangathan (BGPMUS) and Bhopal Group for Information and Action (BGIA). The CBI/State of M.P. did not question the said 1996 judgment or filed any review petition under Article 137 of the Constitution and instead proceeded

for the next 14 years to prosecute the accused under Sections 304A, 336, 337, 338 read with Section 35 IPC. It is only on 26th April, 2010, after the defence evidence stood concluded and after conclusion of the oral arguments by the Senior Public Prosecutor, that, a petition was filed jointly by BGPSSS and BGPMUS under Section 216 Cr.P.C. for enhancement of the charge to Section 304 (Part II) IPC. This application was not supported by CBI. The said application was rejected by the C.J.M. on the same day. However, this order of the C.J.M. was also never challenged under Section 397/399 or under Section 482 Cr.P.C. Ultimately on June 7, 2010 Criminal Case No. 1104 of 1984 stood disposed of by the C.J.M. vide his judgment convicting accused Nos. 2 to 5, 7 to 9 and 12 under Sections 304A, 336, 337, 338 read with Section 35 IPC and sentencing them to two years' imprisonment. On June 29, 2010 Criminal Appeal No. 369 of 2010 was filed by State of M.P. before the Court of Sessions with a prayer for enhancement of sentences under the existing charges. On the same day the State of M.P. also filed Criminal Revision Application No. 330 of 2010 before the Court of Sessions under Section 397 Cr.P.C., challenging the alleged failure of the C.J.M. to enhance the charges to Section 304 (Part II) in exercise of his jurisdiction under Section 216 Cr.P.C., and to commit the trial of the case to Sessions under Section 323 Cr.P.C. and inter alia praying for a direction to enhance charges and commit. On July 29, 2010 Criminal Appeal No. 487 of 2010 was filed by the CBI before the Court of Sessions for enhancement of sentences under the existing charges. On 23rd August, 2010, CBI fil d the criminal revision only after the present curative petitions were filed before this Court on August 2, 2010. All the appeals and revisions remain pending before the Court of Sessions.

4. It is clear to us that in the criminal revisions filed by the CBI and the State of M.P. *the legal position is correctly stated*. But the curative petitions are based on a plea that is wrong and fallacious. As noted above, one of the main planks of the curative petitions is that even though in course of trial before

the Magistrate, additional evidences have come on record that fully warrant the framing of the higher charge (s) and the trial of the accused on those higher charges, as long as the 1996 judgment stands the Sessions Court would feel helpless in framing any higher charges against the accused in the same way as the trial court observed that in view of the judgment of the Supreme Court no court had the power to try the accused for an offence higher than the one under Section 304A of IPC. *The assumption is wrong and without any basis*. It stems from a complete misapprehension in regard to the binding nature of the 1996 judgment. *No decision by any court, this Court not excluded, can be read in a manner as to nullify the express provisions of an Act or the Code* and the 1996 judgment never intended to do so. In the 1996 judgment, this Court was at pains to make it absolutely clear that its findings were based on materials gathered in investigation and brought before the Court *till that stage*. At every place in the judgment where the Court records the finding or makes an observation in regard to the appropriate charge against the accused, it qualifies the finding or the observation by saying "on the materials produced by the prosecution *for framing charge".* "At this stage", is a kind of a constant refrain in that judgment. The 1996 judgment was rendered at the stage of sections 209/228/240 of the Code and we are completely unable to see how the judgment can be read to say that it removed from the Code sections 323, 216, 386, 397, 399, 401 etc. or denuded a competent court of the powers under those provisions. In our view, on the basis of the material on record, it is wrong to assume that the 1996 judgment is a fetter against the proper exercise of powers by a court of competent jurisdiction under the relevant provisions of the Code. If according to the curative petitioner, the learned Magistrate failed to appreciate the correct legal position and misread the decision dated 13.9.1996 as tying his hands from exercising the power under Section 323 or under Section 216 of the Code, it can certainly be corrected by the appellate/ revisional court. In fact, the revision petitions though belatedly filed by the State of M.P. and the CBI (which are still pending)

have asserted this position in the grounds of revision. Moreover, no ground falling within the parameters of *Rupa Ashok Hurra vs. Ashok Hurra* 2002 (4) SCC 388 is made out in the curative petitions. Also, no satisfactory explanation is given to file such curative petitions after about 14 years from 1996 judgment of the Supreme Court. The curative petitions are therefore dismissed.

5. Nothing stated above shall be construed as expression of any view or opinion on the merits of the matters pending before the learned Sessions Judge, Bhopal.

D.G. Curative Petitions dismissed.

VIMALESHWAR NAGAPPA SHET
v.
NOOR AHMED SHERIFF & ORS.
(Civil Appeal Nos. 4279-80 of 2011)

MAY 11, 2011

[P. SATHASIVAM AND H.L. GOKHALE, JJ.]

Code of Civil Procedure, 1908 – s. 96(3) – Pursuant to death of the original owner of the property in question, his sons, daughters as also minor grandson succeeding to their respective share in the property – Co-sharers-sons and daughters entering into an agreement to sell the entire property with appellant-buyer – Non-execution of sale deed by co-sharers despite having received certain amount – Suit for specific performance – Decreed by trial court – Appeal before High Court – High Court fixing the market value of the property – Defendant No. 3-minor grandson, who was not party to the agreement, proposing to purchase the share of the co-sharers by paying the value to the appellant – Counsel for the appellant on instructions from the appellant agreeing to the said proposal – High Court directing co-sharers to execute the sale deed to the extent of their share in the suit property – On appeal, held: Order of the High Court shows that it is a consent order – No appeal lies from a decree passed by the court with the consent of the parties – Defendant No. 3 has right to purchase, to exclude the outsider who holds an equitable right of purchase of the shares of other defendants – He was not bound by the agreement executed by other defendants to the extent of his share – Since defendant No. 3 did not join the other co-sharers, no agreement of sale could be entered with the appellant for the entire property including the minor's share – Thus, the agreement of sale covering the entire property was void and ineffective – Also, before the High Court, both parties

including the appellant agreed for a reasonable market valuation – Statement made by the counsel before the High Court, cannot be challenged before Supreme Court – Partition Act, 1893 – s. 4.

Concession – Concession made by counsel, on a question of fact – Effect of – Held: Is binding on the client – However, concession on a question of law, is not binding.

After the death of 'M', his surviving sons-Defendant Nos. 1, 2 and 4 succeeded to the extent of 2/11th share and his surviving daughters- Defendant Nos. 5 to 7 succeeded to 1/11th share in the property. Defendant No. 3, grandson of 'M' is a minor and he succeeded to 2/11th shar . The division in the scheduled property was not practica and as such Defendant No. 1, 2 and 4 to 5 desired to sell he property and distribute the sale proceeds between them. Defendant No. 1, 2 and 4 to 5 executed agreement of sale in favour of appellant and received an advance amount. Subsequently, wife of 'M' died. The defendants did not execute the sale deeds and as a result the appellant filed a suit for specific performance. The trial court decreed the suit and directed the defendant to execute the sale deed in terms of the agreement of sale. The defendant Nos. 2, 3 and 7 filed an appeal. The defendant No. 3 was not a party to the agreement and he proposed to purchase the 9/11th share by paying the value to the appellant. The High Court fixed the market value of the property. The counsel for the appellant on instructions from the appellant agreed to the said proposal on the condition that defendant No. 3 would pay the said amount within three months, in default, the appellant would be entitled to the relief of specific performance. The High Court directed defendant No. 1, 2, 4 to 7 to execute the sale deed of their share to the extent of 9/11 area in the suit property by making a convenient division of the property. Thereafter, an application was filed for deleting some

words from the judgment and the same was dismissed. Therefore, the appellant filed the instant appeals.

Dismissing the appeals, the Court

HELD: 1.1. Since defendant No. 3 was not a party to the agreement of sale, he is not bound by the agreement executed by other defendants to the extent of his share. From the evidence and the materials, it is clear that the suit property is dwelling house. In view of s. 4 of the Partition Act, 1893, defendant No. 3 has right to purchase to exclude the outsider who holds an equitable right of purchase of the shares of other defendants. [Paras 5 and 6] [399-A-C; G-H]

1.2. The appellant was aware that defendant No. 3 who was a minor had a share in the property and the application made by the other defendants before the civil court for appointment of defendant No. 2 as guardian of the said minor was not pursued and was dismissed, consequently, his share remained unsold to the appellant. As a matter of fact, agreement of sale did not refer to defendant No. 3 at all or his share in the property. However, in the plaint, the appellant clearly admitted the share of defendant No. 3 who was a minor and the fact that no guardian was appointed for the minor and Defendant No. 2 was not his natural guardian. Without defendant No. 3 joining the other co-sharers, no agreement of sale could be entered with the appellant for the entire property including the minor's share. Consequently, the agreement of sale covering the entire property was void and ineffective. [Paras 7 and 8] [399-H; 400-A-D]

1.3. Section 20 of the Specific Relief Act, 1963 confers discretionary powers. The value of property escalates in urban areas very fast and it would not be equitable to grant specific performance after a lapse of long period of

time. Apart from all the material aspects before the High Court, both parties including the appellant agreed for a reasonable market valuation. [Paras 9, 10] [400-E-G]

M. Meenakshi and Ors. vs. *Metadin Agarwal* **(2006) 7 SCC 470;** *Nirmala Anand* vs. *Advent Corporation (P) Ltd. and Ors.* **(2002) 5 SCC 481;** *Parakunnan Veetill Joseph's Son Mathrew* vs. *Nedumbar Karuvila's Son and Ors.* **(1987) Supp. SCC 340 – relied on**

1.4. A concession made by a counsel on a question of fact is binding on the client, but if it is on a question of law, it is not binding. The High Court has recorded in the impugned judgment that the counsel agreed with instructions from the plaintiff and reiterated this fact in its order passed in the application while rejecting the plea of the counsel for the appellant that he did not give consent that he had no instructions from his clients. The statement made by the counsel before the High Court, as recorded in the impugned judgment and order, cannot be challenged before this Court. [Paras 11 and 12] [401-C-F]

State of Maharashtra vs. Ramdas Shrinivas Nayak and Anr. **(1982) 2 SCC 463;** *Shankar K. Mandal and Ors. vs. State of Bihar and Ors.* **(2003) 9 SCC 519;** *Roop Kumar vs. Mohan Thedani* **(2003) 6 SCC 595;** *Guruvayoor Devaswom Managing Committee and Anr. vs. C.K. Rajan and Ors.* **(2003) 7 SCC 546;** *Nedunuri Kameswaramma vs Sampati Subba Rao and Anr.* **(1963) 2 SCR 208, 225;** *B.S. Bajwa and Anr. vs. State of Punjab and Ors.* **(1998) 2 SCC 523 – relied on.**

1.5. As per Section 96 (3) of the Civil Procedure Code, no appeal lies from a decree passed by the court with the consent of the parties. The reading of the impugned judgment and order of the High Court, more particularly, the concluding paragraph, clearly show that it is a

consent order. Thus, under Article 136, generally this Court would not interfere with the order of the High Court which has done substantial justice. [Paras 13 and 14] [401-G-H; 402-A-B]

1.6. Since the impugned order of the High Court was stayed, while ordering of notice, defendant No. 3 is granted 3 months' time from today to pay Rs. 11,42,590/- and in the event of default, the directions of the High Court are to be applied and implemented. Defendant Nos. 1, 2, 4 to 7 are directed to return the sum of Rs.1,53,000/- which they have received towards sale consideration with interest at the rate of 9 per cent from the date of payment within a period of eight weeks from today to the plaintiff. [Para 15] [402-C]

Case Law Reference:

(2006) 7 SCC 470	**Relied on.**	**Para 9**
(2002) 5 SCC 481	**Relied on.**	**Para 9**
(1987) Supp. SCC 340	**Relied on.**	**Para 9**
(1982) 2 SCC 463	**Relied on.**	**Para 11**
(2003) 9 SCC 519	**Relied on.**	**Para 11**
(2003) 6 SCC 595	**Relied on.**	**Para 11**
(2003) 7 SCC 546	**Relied on.**	**Para 11**
(1963) 2 SCR 208	**Relied on.**	**Para 12**
(1998) 2 SCC 523	**Relied on.**	**Para 12**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4279-4280 of 2011.

From the Judgment & Order dated 3.3.2009 of the High Court of Karnataka at Bangalore in RFA No. 52 of 2000 & 28.8.2009 in MCVL No. 13474 of 2009.

S.N. Bhat for the Appellant.

P.P. Rao, Mahalakshmi Pavani, Utav Sidhu, Filza Moonis, G. Balaji, Apeksha Sharan for the Respondents.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. These appeals are directed against the final judgment and orders dated 03.03.2009 and 28.08.2009 of the Division Bench of the High Court of Karnataka at Bangalore in R.F.A. No. 52 of 2000 and Misc. Civil No. 13474 of 2009 in R.F.A. No. 52 of 2000 respectively whereby the High Court disposed of the appeal and dismissed the application.

3. Brief facts:

(a) The property in question originally belonged to one C.S. Abdul Momin Sheriff and he died leaving behind his wife Hajiba Tabsasum and Defendant Nos. 1, 2 and 4 (sons), Defendant Nos. 5 to 7 (daughters) and Defendant No. 3, who is the son of Late Ismail Sheriff, son of Abdul Momin Shariff. After his demise, each of the surviving sons succeeded to an extent of 2/11th share and each of the daughters succeeded to 1/11th share in the property. As the division in the scheduled property was impractical, Defendant Nos. 1, 2 and 4 to 7 desired to sell the schedule property and to distribute sale proceeds between them. On 02.05.1988, they agreed to sell the property to one Vimaleshwar Nagappa Shet-plaintiff (appellant herein) for a consideration of Rs.3,10,000/-, executed agreement of sale and received advance consideration of Rs.10,000/-. Subsequently, on 06.05.1988, the wife of C.S Abdul Momin Sheriff died.

(b) Till 15.06.1989, the plaintiff paid a sum of Rs.1,53,000/-, in all, on various dates. As the defendants did not execute the sale deed, the plaintiff filed a suit for specific performance being O.S. No. 91 of 1991 in the Court of the Civil Judge at

Chikmangalur. By order dated 01.10.1999, the trial Court decreed the suit in favour of the plaintiff and directed the defendants to execute the sale deed in terms of agreement of sale dated 02.05.1988. Aggrieved by the said judgment and decree of the trial Court, Defendant Nos. 2, 3 and 7 filed appeal being R.F.A. No. 52 of 2000 before the High Court of Karnataka at Bangalore.

(c) The High Court taking into account the submission of the counsel for the appellants and respondents, fixed the market value of property at Rs.300/- per sq. ft. The total area of property is 4,655 sq. ft. (48' x 90'), therefore, the total market value of property would be Rs.13,96,500/-. The High Court, by its judgment dated 03.03.2009, while holding that as Defendant No.3 was not a party to the agreement and he proposes to purchase the 9/11th share by paying value to the plaintiff and the value of 9/11th share would be Rs. 11,42,590/- and the counsel for the plaintiff on the instruction from the plaintiff agreed to the said proposal on the condition that Defendant No.3 would pay the said amount within three months, in default, the plaintiff would be entitled to the relief of specific performance disposed of the appeal directing defendant Nos. 1,2 and 4 to 7 to execute the sale deed of their share to the extent of 9/11 area in the suit property by making convenient division of the property.

(d) Thereafter, an application being Misc. Civil No 13474 of 2009 in R.F.A. No. 52 of 2000 was filed for deleting some words from the judgment and the same was dismissed. Challenging the judgment of the High Court in appeal and the order made in the application, the appellant-plaintiff has filed these appeals by way of special leave petitions before this Court.

4. Heard Mr. S.N. Bhat, learned counsel for the appellant and Mr. P.P. Rao, learned senior counsel for the respondents.

5. It is not in dispute that the property in question belonged to Abdul Momin Sheriff. After his death, each of the surviving sons succeeded to an extent of 2/11th share and each of the daughters succeeded to 1/11th share. It is also not in dispute that the agreement of sale was executed only by Defendant Nos. 1, 2 and 4 to 7. The total share of Defendant Nos. 1, 2 and 4 to 7 is 9/11 and the share of the Defendant No. 3 who did not join the execution of agreement of sale would be 2/11. Inasmuch as the Defendant No. 3 was not a party to the agreement, he is not bound by the agreement executed by other defendants to the extent of his share.

6. From the evidence and the materials, it is clear that the suit property is dwelling house. In that event, Section 4 of the Partition Act, 1893 is relevant which reads as under:-

> "4. Partition suit by transferee of share in dwelling-house.—
>
> (1) Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.
>
> (2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the court shall follow the procedure prescribed by sub-section (2) of the last foregoing section."

In view of the above provision, Defendant No. 3 has right to purchase to exclude the outsider who holds an equitable right of purchase of the shares of other defendants.

7. It is pertinent to point out that plaintiff was aware that

Defendant No. 3 who was a minor had a share in the property and the application made by the other defendants before the Civil Court for appointment of Defendant No. 2 as guardian of the said minor was not pursued and in fact it was dismissed, consequently, his share remained unsold to the plaintiff.

8. As a matter of fact, agreement of sale dated 02.05.1988 does not refer to Defendant No. 3 at all or his share in the property. However, in the plaint, the plaintiff clearly admitted the share of Defendant No. 3 who was a minor and the fact that no guardian was appointed for the minor and Defendant No. 2 was not his natural guardian. Without Defendant No. 3 joining the other co-sharers, no agreement of sale could be entered with the plaintiff for the entire property including the minor's share. Consequently, the agreement of sale covering the entire property was void and ineffective.

9. It is settled law that Section 20 of the Specific Relief Act, 1963 confers discretionary powers. [vide: *M. Meenakshi & Ors.* vs. *Metadin Agarwal* (2006) 7 SCC 470, *Nirmala Anand* vs. *Advent Corporation (P) Ltd. & Ors.* (2002) 5 SCC 481, *Parakunnan Veetill Joseph's Son Mathrew* vs. *Nedumbara Karuvila's Son & Ors.* (1987) Supp. SCC 340]. It is also well settled that the value of property escalates in urban areas very fast and it would not be equitable to grant specific performance after a lapse of long period of time.

10. Apart from all these material aspects before the High Court, both parties including the plaintiff/present appellant agreed for a reasonable market valuation. This factual position is clear from paragraph 7 of the High Court judgment which reads as under:-

> "7. The counsel for appellants and respondents submitted that the market value of property is Rs. 300/- per sq. ft. The total area of property is 4,655 sq. ft. (48' x 90'). The total market value of property would be Rs. 13,96,500/-. The value of 9/11th share would be Rs. 11,42,590/-. Defendant No. 3 proposes to

purchase the 9/11th share by paying value to the plaintiff. The counsel for the plaintiffs with the instructions from the plaintiff agreed to the said proposal on the condition that the Defendant No. 3 should pay the said amount within three months. In the event of default, the plaintiff would be entitled to the relief of specific performance. The Defendant Nos. 1, 2 and 4 to 7 shall execute sale deed of their share to the extent of 9/11 area in the suit property by making convenient division of the property. Accordingly, the appeal is disposed of."

11. The statement made by the counsel before the High Court, as recorded in the impugned judgment and order, cannot be challenged before this Court.[vide: *State of Maharashtra* vs. *Ramdas Shrinivas Nayak & Anr.* (1982) 2 SCC 463, *Shankar K. Mandal & Ors.* vs. *State of Bihar & Ors.* (2003) 9 SCC 519, *Roop Kumar* vs. *Mohan Thedani* (2003) 6 SCC 595, *Guruvayoor Devaswom Managing Committee & Anr.* vs. *C.K. Rajan & Ors.* (2003) 7 SCC 546]

12. It is also clear that the High Court has recorded in the impugned judgment dated 03.03.2009 that the counsel agreed with instructions from the plaintiff and reiterated this fact in its order dated 28.08.2009 in Misc. Civil No. 13474 of 2009 in the above-mentioned RFA while rejecting the plea of the counsel for the appellant herein that he did not give consent that he had no instructions from his clients A concession made by a counsel on a question of fact is binding on the client, but if it is on a question of law, it is not binding. [vide: *Nedunuri Kameswaramma* vs *Sampati Subba Rao & Anr.* (1963) 2 SCR 208, 225, *B.S. Bajwa & Anr. vs. State of Punjab & Ors.* (1998) 2 SCC 523, 525-526]

13. As stated earlier and the reading of the impugned judgment and order of the High Court, more particularly, para 7, which is concluding paragraph, clearly show that it is a consent order. As per Section 96 (3) of the Civil Procedure Code, no appeal lies from a decree passed by the court with the consent of the parties.

14. For all these reasons, more particularly, the statement of fact as noted in para 7 of the impugned judgment and order of the High Court, under Article 136, generally this Court will not interfere with the order of the High Court which has done substantial justice.

15. Since this Court has stayed the impugned order of the High Court while ordering of notice on 08.07.2010, Defendant No. 3 is granted 3 months' time from today to pay the amount as noted in para 7 of the impugned judgment and in the event of default, the directions of the High Court in the same para are to be applied and implemented. Defendant Nos. 1, 2, 4 to 7 are directed to return the sum of Rs.1,53,000/- which they have received towards sale consideration with interest at the rate of 9 per cent from the date of payment within a period of eight weeks from today to the plaintiff.

16. Accordingly, the appeals fail and the same are dismissed with the above direction. No order as to costs.

N.J. Appeals dismissed.

AMAR SINGH
v.
UNION OF INDIA & ORS.
(Writ petition (Civil) No. 39 of 2006)

MAY 11, 2011

[G. S. SINGHVI AND ASHOK KUMAR GANGULY, JJ.]

CODE OF CIVIL PROCEDURE, 1908:

O. 19, r. 3 CPC and O. 11 of Supreme Court Rules – Affidavits in support of petitions – Affirming of contents of the petition in the affidavits – Disclosure of source of information in an affidavit – Significance of – Explained – HELD: In the instant writ petition, the petitioner approached the Court in a casual manner – The affidavit filed by him in support of the petition, relying on which the Court issued notice, was not at all modelled either on O. 19 r. 3 CPC or O. 11 of Supreme Court Rules – If the rules of affirming the affidavits were followed, it would have been difficult for the petitioner to file the petition and so much of judicial time would have been saved – Perfunctory and slipshod affidavits which are not consistent either with O.19, r. 3 CPC or with O. 11, rr. 5 and 13 of Supreme Court Rules, should not be entertained by the Court — Registry of the Court directed to scrutinize affidavits in all petitions/applications strictly – Supreme Court Rules, 1966 – O. 11 – Constitution of India, 1950 – Article 32.

PLEADINGS:

Inconsistent stands by writ petitioner – HELD: A litigant who comes to Court and invokes its writ jurisdiction must come with clean hands – He cannot prevaricate and take inconsistent positions – It is one of the fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings and especially when it contains a

prayer for injunction, which is an equitable remedy and must be governed by principles of 'uberrima fide' – Equity – Constitution of India, 1950 – Article 32.

CONSTITUTION OF INDIA, 1950:

Articles 32and 21 – Writ petition alleging infringement of right of privacy of the petitioner stating that his telephone conversations were being intercepted at the behest of the Government – HELD: The petitioner invoked the extraordinary writ jurisdiction of the Court without filing a proper affidavit – The nature of challenge in the petition is very serious as he is alleging an attempt by the government of intercepting his phone for extraneous considerations – It is, therefore, imperative that before making such an allegation the petitioner should be careful, circumspect and should file a proper affidavit in support of the averments in the petition – This is the primary duty of a petitioner, who invokes the extra-ordinary jurisdiction of the Court under Article 32 – Code of Civil Procedure, 1908 – Supreme Court Rules, 1966.

Article 32 – Writ petition – Conduct of petitioner – Writ petition filed alleging interception of his telephone conversations by the Government agencies at the behest of the political party in power – Allegations directly and indirectly made in the writ petition against the said political party impleading it as one of the respondents –Interim injunction passed by Court – Later, it was brought before the Court that the order intercepting the phone calls were fabricated and a criminal case had already been registered against accused persons – Affidavit filed by the petitioner seeking to withdraw the allegations against the said political party – HELD: The main case of the petitioner is based on his allegations against the said political party – Petitioner has been shifting his stand to suit his convenience – The instant writ petition is an attempt by the petitioner to mislead the Court on the basis of frivolous allegations and by suppressing material facts – The so-called legal questions on tapping of telephone cannot be gone into

on the basis of a petition which is so weak in its foundation – No case of tapping of telephone has been made out against the statutory authorities in view of the criminal case, which is going on, and the petitioner's stand that he is satisfied with the investigation in that case – Besides, the petitioner in filing the writ petition largely relied upon the information received from an accused in the criminal case.

Article 32 – Writ petition – Suppression of material fact – Effect of – Writ petition alleging tapping of telephone of writ petitioner—The communications on the basis of which the interception was alleged and which were received from the accused and were made annexures in the writ petition, found to be forged and criminal case initiated in which petitioner's statement u/s 161 CrPC was recorded – This fact not stated in the writ petition – HELD: A statement u/s 161 is certainly material fact in a police investigation in connection with an FIR – The investigation is to find out the genuineness of those very documents on the basis of which the writ petition was moved – In that factual context, total suppression in the writ petition of the fact that the petitioner gave a s. 161 statement in that investigation is suppression of a very material fact –A litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final – The instant writ petition is an attempt by the petitioner to mislead the Court on the basis of frivolous allegations and by suppression of material facts – Administration of justice – Conduct of litigant – Relief.

TELEGRAPH ACT, 1885:

s.5 – Interception of telephone conversations – Duty of service provider – HELD: Though the service provider is to give assistance, as per request, to the law enforcement agencies and has to act on an urgent basis and in public interest, at the same time, he is equally duty bound to immediately verify the authenticity of such communication if on a reasonable reading of the same, it appears to any

person, acting bona fide, that such communication, with innumerable mistakes, falls clearly short of the tenor of a genuine official communication – In the instant case, the service provider has failed in discharging the said duty – Central Government must, therefore, frame certain statutory guidelines in this regard to prevent interception of telephone conversations on unauthorised communications – Constitution of India, 1950 – Article 32.

The instant writ petition was filed by the petitioner alleging that on a request made on 22.10.2005 from the office of the Joint Commissioner of Police (Crime), New Delhi to Nodal Officer, Reliance Infocom Ltd (respondent no. 8), the conversations of the petitioner on phone were intercepted; that the said request was subsequently authorised by an order dated 9.11.2005 from the Principal Secretary (Home), Government of National Capital Territory of Delhi; that the petitioner had learnt that the government of India and the Government of NCT of Delhi were pressurised by respondent no.7, namely, Indian National Congress for intercepting, monitoring and recording his telephone conversations; that there were similar cases of interception of phone conversations of other people, including some of country's leading political figures who were using the services provided by respondent no. 8; that the action of the respondents amounted to infringing to his fundamental right of privacy. He, therefore, prayed that the order for interceptions be declared as unconstitutional and, therefore, void; and that damages be awarded to him. It was further prayed that all the service providers including respondent no. 8 along with others impleaded in the petition be directed to disclose all relevant details with respect to the directions of interception issued to them by the authorities and the Court may lay down guidelines on interception of phone conversations in addition to those laid down in the case of *People's Union for Civil*

Liberties. **The Union of India and the Government of NCT of Delhi denied the allegations. Their case was that the orders dated 22.10.2005 and 9.11.2005 purporting to have been issued by the authorities concerned were fabricated with forged signatures and were not genuine; that a criminal case in that respect had already been initiated and pursuant to the inquiry an FIR under various sections of the Penal Code and the Telegraph Act had been registered on 30.12.2005 and in its investigation the petitioner's statement u/s 161 Cr.P.C. was also recorded; that pursuant to the investigation charges were framed by the competent court against four accused including one 'AS'.**

Dismissing the writ petition, the Court

HELD: 1.1. The petitioner approached the Court in a casual manner. The affidavit filed by the petitioner in support of his petition, and relying on which this Court issued notice on 24.1.2006, is not at all modelled either on O.19, r.3 of the Code of Civil Procedure,1908 or O.11 of the Supreme Court Rules, 1966. [Para 11] [421-G-H; 422-A]

State of Bombay v. Purushottam Jog Naik, **1952 SCR 674 = AIR 1952 SC 317;** *Barium Chemicals Limited and another v. Company Law Board and others*, **1966 SCR 311 = AIR 1967 SC 295; and** *A. K. K. Nambiar v. Union of India and another*, **1970 (3) SCR 121 = AIR 1970 SC 652 - relied on**

Padmabati Dasi v. Rasik Lal Dhar **[(1910) Indian Law Reporter 37 Calcutta 259 -referred to.**

1.2. In the case of *Virendra Kumar Saklecha, this Court held that non-disclosure of source of information in an affidavit will indicate that the petitioner did not come forward with the source of information at the first**

opportunity. The purpose of disclosing such source is to give the other side notice of the same and also to give it an opportunity to test the veracity and genuineness of the source of information. The absence of such disclosure in the instant case, in the affidavit, which was filed along with the petition, raises a prima facie impression that the writ petition was based on unreliable facts. In case of *M/s Sukhwinder Pal Bipan Kumar*****, a three Judge Bench of this Court in dealing with petitions under Article 32 of the Constitution held that under O.19, r.3 of the Code it was incumbent upon the deponent to disclose the nature and source of his knowledge with sufficient particulars. In a case where allegations in the petition are not affirmed, it cannot be treated as supported by an affidavit as required by law. [Para 19-20] [425-G-H; 426-A-E]**

Virendra Kumar Saklecha v. Jagjiwan and others,* **1972 (3) SCR 955 = (1972) 1 SCC 826; and ***M/s Sukhwinder Pal Bipan Kumar and others v. State of Punjab and others*, **1982 (2) SCR 31 = (1982) 1 SCC 31**; and *Smt. Savitramma v. Cicil Naronha and another*, **1988 Suppl. SCR 561 = AIR 1988 SCC 1987 - relied on.**

1.3. In the instant case, the petitioner invoked the extraordinary writ jurisdiction of this Court under Article 32, without filing a proper affidavit as required in terms of O.19, r.3 CPC. Besides, the nature of the challenge in his petition is very serious in the sense that he is alleging an attempt by the government of intercepting his phone and he is further alleging that in making this attempt the government is acting on extraneous considerations, and is virtually acting in furtherance of the design of the ruling party. It is, therefore, imperative that before making such an allegation the petitioner should be careful, circumspect and file a proper affidavit in support of his averments in the petition. This is the primary duty of a petitioner who invokes the extraordinary jurisdiction of

this Court under Article 32. It is very disturbing to find that on the basis of such improper and slipshod affidavit, notice was issued on the petition, and subsequently a detailed interim order was passed on 22.1.2006, which continued for about four years and is continuing on date. [Para 24-27] [427-E-H; 428-A-F]

1.4. It is made clear that, perfunctory and slipshod affidavits which are not consistent either with O. 19, r.3 CPC or with O.11, rr. 5 and 13 of the Supreme Court Rules should not be entertained by this Court. [Para 65] [441-D]

1.5. In fact three Constitution Bench judgments of this Court in Purushottam Jog Naik, Barium Chemicals Ltd. and A.K.K. Nambiar and judgments in several other cases point out the importance of filing affidavits following the discipline of the provision in the Code and the said rules. These rules, reiterated by this Court time and again, are aimed at protecting the Court against frivolous litigation and must not be diluted or ignored. However, in practice they are frequently flouted by the litigants and often ignored by the Registry of this Court. The instant petition is an illustration of the same. If the rules for affirming the affidavit were followed, it would have been difficult for the petitioner to file this petition and so much of judicial time would have been saved. This case is not isolated instance. [Para 66-67] [441-D-G]

1.6. This Court, therefore, directs that the Registry must strictly scrutinize all the affidavits, all petitions and applications and will reject or note as defective all those which are not consistent with the mandate of O. 19, r.3 CPC and O.11, r.5 and 13 of the Supreme Court Rules. [Para 68] [441-H; 442-A]

2. When in the course of hearing, it was pointed out by this Court on 2.2.2011 that the affidavit filed by the

petitioner is perfunctory, defective and not in accordance with the mandate of law, the petitioner filed a detailed affidavit. It appears from the said affidavit that the main documents on which the writ petition is based, are Annexures A and B, the orders dated 22.10.2005 and 9.11.2005 respectively, which were obtained by the petitioner from one 'AS', who was arrested in the criminal case. It also appears that petitioner's averments in paragraphs 2(v), 2(vii), 2(viii) and 2(ix) are based on information derived from the same accused and that a part of the information relating to the averments in para 5 of the writ petition was also obtained from the same accused. The petitioner, therefore, in filing the writ petition under Article 32, largely relied on information received from an accused in a criminal case. [Para 29] [428-H; 429-A-C]

3.1. It is true that License Condition No. 42 which provides that service provider is to give assistance, as per request, to the Law Enforcement Agencies and any violation of the said condition may lead to imposition of a heavy penalty on the service provider; and further that the service provider has to act on an urgent basis and has to act in public interest, at the same time, he is equally duty bound to immediately verify the authenticity of such communication if on a reasonable reading of the same, it appears to any person, acting bona fide, that such communication, with innumerable mistakes, falls clearly short of the tenor of a genuine official communication. In the instant case, any reasonable person or a reasonable body of persons or an institution which is discharging public duty as a service provider, before acting on communications dated 22.10.2005 and 9.11.2005, particularly, the order like the one dated 9.11.2005, would at least carefully read its contents. Even from a casual reading of the purported communication dated 9.11.2005, containing so many gross mistakes, one would

reasonably be suspicious of the authenticity of its text. Therefore, the explanation of the service provider is not acceptable. If the service provider could have shown, which it has not done in the present case, that it had tried to ascertain from the author of the communication, its genuineness, but had not received any response or that the authority had accepted the communication as genuine, the service provider's duty would have been over. But the mere stand that there is no provision under the rule to do so is a lame excuse, especially having regard to the public element involved in the working of the service provider and the consequential effect it has on the fundamental right of the person concerned. In view of the public nature of the function of a service provider, it is inherent in its duty to act carefully and with a sense of responsibility. This Court is thus constrained to observe that in discharging the said duty, respondent No. 8, the service provider, has failed. [Para 33, 37 to 40] [431-G-H; 432-A; F-H; 433-C-G]

3.2. The Central Government must, therefore, frame certain statutory guidelines in this regard to prevent interception of telephone conversation on unauthorised communication, as has been done in this case. [Para 41] [434-B]

4.1. A litigant who comes to Court and invokes its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions. It is one of the fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings and especially when it contains a prayer for injunction. A prayer for injunction, which is an equitable remedy, must be governed by principles of 'uberrima fides'. At the time of filing the writ petition, the petitioner impleaded the Indian National Congress as respondent No.7 and also made direct allegations against it in paras 2(1), 2(10), 2(11)

and 2(12). In paras 2(12) and 5 of the writ petition, there are indirect references to the said respondent. In the various grounds taken in support of the petition, allegations have been specifically made against respondent no. 7. Even though in the order of this Court dated 27.2.2006, there is an observation that respondent No. 7 has been impleaded unnecessarily, the said respondent has not been deleted and in the amended cause title also, respondent No. 7 remains impleaded. The averments against the said respondent were not withdrawn by the petitioner. [Para 42, 43, 50 and 58] [434-C-E; 436-G-H;439-B]

Hari Narain v. Badri Das **– 1964 SCR 203 = AIR 1963 SC 1558,** *Welcome Hotel and others v. State of A.P. and others* **– 1983 (3) SCR 674 = (1983) 4 SCC 575, G.** *Narayanaswamy Reddy (Dead) by LRs. and another v. Government of Karnatka and another* **– 1991 (2) SCR 563 = JT 1991(3) SC 12: (1991) 3 SCC 261, S.P.** *Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. and others* **– 1993 (3) Suppl. SCR 422 = JT 1993 (6) SC 331: (1994) 1 SCC 1,** *A.V. Papayya Sastry and others v. Government of A.P. and others* **– 2007 (3) SCR 603 = JT 2007 (4) SC 186: (2007) 4 SCC 221,** *Prestige Lights Limited v. SBI* **– 2007 (9) SCR 112 = JT 2007(10) SC 218: (2007) 8 SCC 449,** *Sunil Poddar and others v. Union Bank of India* **– 2008 (1) SCR 261 = JT 2008(1) SC 308: (2008) 2 SCC 326,** *K.D.Sharma v. SAIL and others* **– 2008 (10) SCR 454 = JT 2008 (8) SC 57: (2008) 12 SCC 481,** *G. Jayashree and others v. Bhagwandas S. Patel and others* **– 2008 (17) SCR 1454 = JT 2009(2) SC 71 : (2009) 3 SCC 141,** *Dalip Singh v. State of U.P. and others* **- 2009 (16) SCR 111 = JT 2009 (15) SC 201: (2010) 2 SCC 114 - Relied on**

*Dalglish v. Jarvie 2 Mac. & G***. 231, 238;** *Castelli v. Cook* **1849 (7) Hare, 89,94;** *Republic of Peru v. Dreyfus Brothers & Company* **55 L.T. 802,803; and** *R. v. Kensington Income Tax Commissioner* **1917 (1) K.B. 486 - referred to.**

4.2. However, the affidavit of the petitioner filed in February, 2011, completely knocks the bottom out of the petitioner's case, inasmuch as by the said affidavit the petitioner seeks to withdraw all averments, allegations and contentions against respondent no. 7. The main case of the petitioner is based on his allegations against respondent no.7. The burden of the song in the writ petition is that respondent no. 7, acting out of a political vendetta and exercising its influence on Delhi Police administration caused interception of the telephone lines of various political leaders of the opposition including that of the petitioner. The subsequent affidavit also acknowledges that the petitioner is satisfied with the investigation by the Delhi Police in connection with the forgery alleged to have been committed, namely, the fabrication of orders on the basis of which the phone lines of the petitioner were tapped. The petitioner also makes a statement that the accused 'AS' edited and tampered some of the conversations of the petitioner. Further, when the writ petitioner filed the petition on 21.1.2006, he was aware that an investigation that was going on by the Delhi Police in connection of the forgery of Annexures A and B. Even then he filed the petition with those annexures and without a proper affidavit. When the petitioner filed a detailed affidavit in support of his writ petition, pursuant to the order of this Court, the petitioner admitted that he relied on the information from the same 'AS', and the main annexures to the petition, namely, Annexures A and B were received by him from the same accused 'AS'. Paragraphs 2 (2), 2 (3), 2 (4) and 2 (6) are based on the information received from 'AS'. But he did not say all these in his affidavit when he filed the writ petition on 21.1.2006.In 2006, the gravamen of the petitioner's grievances was against respondent no. 7, and the basis of his petition was the information that he derived from the accused 'AS'. On the basis of such a

petition, he invoked the jurisdiction of this Court and an interim order was issued in his favour, which is still continuing. Now when the matter has come up for contested hearing, he suddenly withdraws his allegations against respondent no. 7 and feels satisfied with the investigation of the Police in connection with the case of forgery and also states that the same 'AS' "edited and tampered certain conversations of the petitioner". Thus, the petitioner has been shifting his stand to suit his convenience. [Para 46-49] [435-E-H; 436-A-C-E]

4.3. Besides, in the writ petition which was filed on 21.1.2006, there is no mention of the fact that the petitioner gave a statement u/s. 161, Code of Criminal Procedure, 1973 in connection with the investigation arising out of FIR lodged on 30.12.2005. From the records of the case it appears that the petitioner gave s.161 statements on 13.1.2006. In the writ petition there is a complete suppression of the fact. A statement u/s. 161 is certainly a material fact in a police investigation in connection with an FIR. The investigation is to find out the genuineness of those very documents on the basis of which the writ petition was moved. In that factual context, total suppression in the writ petition of the fact that the petitioner gave a s.161 statement in that investigation is, suppression of a very material fact. [Para 51] [437-A-C; 435-E-H; 436-A-F]

4.4. It is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. The instant writ petition is an attempt by the petitioner to mislead the Court on the basis of frivolous allegations and by suppression of material facts. In view of such incorrect presentation of facts, this Court had issued notice and

also subsequently passed the injunction order which is still continuing. [Para 60, 61 to 63] [440-D-G]

Dalip Singh v. State of U.P. and others **- 2009 (16) SCR 111 = JT 2009 (15) SC 201: (2010) 2 SCC 114 - relied on**

4.5. It is, therefore, clear that writ petition is frivolous and is speculative in character. This Court is of the opinion that the so called legal questions on tapping of telephone cannot be gone into on the basis of a petition which is so weak in its foundation. No case of tapping of telephone has been made out against the statutory authorities in view of the criminal case which is going on and especially in view of the petitioner's stand that he is satisfied with the investigation in that case. The petitioner has withdrawn its case against the respondent No.7. In that view of the matter, it is made clear that the petitioner, if so advised, may proceed against the service provider, respondent No.8, before the appropriate forum, in accordance with law, and this Court does not make any observation on the merits of the case in the event the petitioner initiates any proceeding against respondent No.8. [Para 52 and 64] [437-D-E; 441-A-C]

People's Union for Civil Liberties (PUCL) v. Union of India and Another **1996 (10) Suppl. SCR 321 = (1997) 1 SCC 301—Cited.**

Case Law Reference:

1996 (10) Suppl. SCR 321	**cited**	**Para 1**
(1910) Indian Law Reporter 37 Calcutta 259	**referred to**	**Para 15**
1952 SCR 674	**Relied on**	**Para 16**
1966 SCR 311	**relied on**	**Para 17**

1970 (3) SCR 121	**relied on**	**Para 18**
1972 (3) SCR 955	**relied on**	**Para 19**
1982 (2) SCR 31	**relied on**	**Para 20**
1988 Suppl. SCR 561	**relied on**	**Para 21**
2 Mac. & G. 231,238	**referred to**	**Para 54**
1849 (7) Hare, 89, 94	**referred to**	**Para 55**
55 L.T. 802,803	**referred to**	**Para 56**
1917 (1) K.B. 486	**referred to**	**Para 57**
1964 SCR 203	**relied on**	**Para 59**
1983 (3) SCR 674	**relied on**	**Para 59**
1991 (2) SCR 563	**relied on**	**Para 59**
1993 (3) Suppl. SCR 422	**relied on**	**Para 59**
2007 (3) SCR 603	**relied on**	**Para 59**
2007 (9) SCR 112	**relied on**	**Para 59**
2008 (1) SCR 261	**relied on**	**Para 59**
2008 (10) SCR 454	**relied on**	**Para 59**
2008 (17) SCR 1454	**relied on**	**Para 59**
2009 (16) SCR 111	**relied on**	**Para 59**

CIVIL ORIGINAL JURISDICTION : Under Article 32 of the Constitution of India.

Writ Petition (Civil) No.39 of 2006.

Indira Jaising, ASG, Dr. A.M. Singhvi, Pravin Parekh, J.S. Attri, Harish Chander, C.S. Vaidyanathan, Anoop G.

Choudhari, Ram Jethmalani, Ajay Kumar Jha, Pradeep Rai, Shashank Kunwar, Shweta Sharma, (for Parekh & Co.), Sonam Anand, Aditya Sharma, Mukesh Verma, A.K. Sharma, Supriya Jain, Manjul Bajpai, Ankur Saigal, Bina Gupta, Abhay Anand Jena, Rishi Malhotra, Mrinmayee Sahu, Equity Lex Associates, Nikhil Nayyar, TVS Raghavendra Sreyas, Swapnil Verma, Prashant Bhushan, Pranav Sachdeva, Manali Singhal, Santosh Sachin, Abhijat P. Medh, Vivek Kishore, Ruchi Gour Narula, S.R. Setia, Vivek Verma, Sushma Suri, Gyan Shyam Vasisht, Rajiv Mehta, Navin Chawla Gaurav Kaushik, E.C. Agrawala, Sunita Hazarika, Nidhi, Madhu Sikri Saket Sikri for the appearing parties.

The Judgment of the Court was delivered by

GANGULY, J. 1. In this writ petition, filed under Article 32, the petitioner is seeking to protect his fundamental right to privacy under Article 21 of the Constitution of India. The petitioner's case is that on the basis of his information from various sources, he had learnt that the Government of India and the Government of National Capital Region of Delhi, being pressurised by the respondent No.7, had been intercepting the petitioner's conversation on phone, monitoring them and recording them. The petitioner had been availing of the telephone services of M/s Reliance Infocom Ltd., impleaded herein as respondent no.8. He further referred to similar cases of interception of phone conversations of other people, including some of the country's leading political figures, who were using services provided by M/s Reliance Infocom Ltd. and other service providers. Such interception of conversation, according to the petitioner, amounts to intrusion on the privacy of the affected people, and is motivated by political ill will and has been directed only towards those who are not aligned with the political party in power at the Centre. He submitted that this infringement of his fundamental rights was symptomatic of the erosion of the democratic values in the country. He prayed that the Court may declare the orders for interception

unconstitutional and therefore void, and initiate a judicial inquiry into the issuance and execution of these orders, and prayed that damages be awarded to him. It was further prayed that all the telecom service providers including M/s. Reliance Infocom, along with all the others who had been impleaded, be directed to disclose all the relevant details with respect to the directions of interception issued to them by the authorities, and this Court may lay down guidelines on interception of phone conversations in addition to the ones laid down by this Court in its judgment in *People's Union for Civil Liberties (PUCL) v. Union of India and Another* (1997) 1 SCC 301.

2. The petitioner's case is that a request dated 22nd October, 2005 was issued from the office of the Joint Commissioner of Police (Crime), New Delhi to the Nodal Officer, Reliance Infocom Ltd., Delhi, for the interception of all the calls made from or to the telephone numbers of the petitioner. This request was subsequently followed by an order dated 9th November, 2005, from the Principal Secretary (Home), Government of National Capital Territory of Delhi, authorising the said request. The case of respondent no. 8 is that the said orders were acted upon by it, and the petitioner's conversations were intercepted. However, the Union of India, and the National Capital Territory of Delhi denied the allegations. They submitted that said orders annexed to the petition, purporting to be issued by the Joint Commissioner of Police, (Crime), New Delhi, and the Principal Secretary (Home), Government of National Capital Territory of Delhi are fabricated with forged signatures and they are not genuine. Alleging forgery, a criminal case in that respect had already been initiated.

3. In the course of the hearing, by filing an interlocutory application (no.2 of 2006) the petitioner submitted that the recordings of the said conversations had been made available to some journalists/news agencies. In view of these

submissions, this Court directed the electronic and the print media not to publish any part of the said conversations, vide Court's order dated 27th February, 2006.

4. Various applications for intervention were preferred, especially by civil society groups. These applications were allowed. The interveners argued that the conversations by the petitioner were mostly made in his capacity as a public functionary and, therefore, were public in nature, and the citizens of the country have a right to know their contents under Article 19(1)(*a*) of the Constitution. A prayer was therefore made by them to vacate the order of injunction.

5. In this matter pursuant to the direction of this Court, a detailed affidavit has been filed by one R. Chopra, Joint Secretary (Home Department) of the Government of National Capital Territory of Delhi, in which it has been clearly stated that the Principal Secretary (Home) in the Government of National Capital Territory of Delhi, is authorised by the Lieutenant Governor of Delhi to exercise powers to order interception of phone conversation for a period specified in such orders in accordance with the provisions of Section 5 of Indian Telegraph Act, 1885 (the said Act). From the order of authorisation dated 10th December, 1997, it appears that the same was issued pursuant to the judgment of this Court dated 18th December, 1996 in *People's Union for Civil Liberties (supra)* and also Section 5 (2) read with the Government of India, States Ministry Notification No. 104–J, dated 24th October, 1950.

6. In the said affidavit it has been clearly stated by the deponent that no request for interception is examined by the Home Department unless it is accompanied by a confirmation that the same has the prior approval of the Commissioner of Police, Delhi. It was clarified that no Joint Commissioner of Police or police officer of any other rank can directly request for an interception, without first obtaining a prior approval of the Commissioner of Police. It was also clarified that no phone interception order is *suo motu* issued by the Principal Secretary

(Home) without a request from the Government agency. Majority of interception requests, received by the Principal Secretary (Home), are from Delhi Police.

7. In respect of the petitioner's telephone no. (011 39565414), the deponent specifically stated that no order for interception of the said number was ever issued either on 9th November, 2005, or earlier, or for that matter, even later. The categorical denial in this respect in the said affidavit is set out below.

> (v)…This categorical denial is being submitted after careful scrutiny of all the relevant records. Also it is respectfully stated on the basis of careful scrutiny of records, that no request for interception of the petitioner's telephone number 011 39565414 was received by the Principal Secretary (Home)/respondent no. 4 from any Police Officer or for that matter any agency, governmental / police or otherwise.
>
> (vi) In view of this, the order bearing no. F. 5/1462/2004 – HG dated 9.11.2005, a copy of which is appended to the writ petition at page 28 as Annexure B, and having an endorsement No. F. 5/1462/2004 – HG/7162 of the same date, and purportedly issued under the signature of the then Principal Secretary (Home), is forged and fabricated document.

8. An affidavit has also been filed on behalf of Union of India by one Mr. J.P.S. Verma, Deputy Secretary, Ministry of home affairs, North Block, New Delhi, in which reference was made to certain orders passed by this Court in this petition, and thereafter, reference was also made to the judgment of this Court in People's Union for Civil Liberties (supra), and the various provisions of Indian Telegraph Act. The Central Government made it very clear that it was fully aware of the sensitivity relating to the conversations on telephone, and the privacy rights thereon. Reference was also made to

technological measures to avoid unauthorised interceptions and the changed security scenario.

9. In this matter an additional affidavit has been filed by Shri Alok Kumar, Deputy Commissioner of Police, Headquarters. In that affidavit it has been stated, that on inquiry by the Additional Police Commissioner (Crimes), it was discovered that the purported order of Joint Commissioner of Police (Crime) and Principal Secretary (Home) on the basis of which interceptions were alleged by the petitioner were forged documents.

10. Consequent on the same report, an FIR No.152/2005. had been lodged under Sections 419, 420 468, 471 and 120B of I.P.C., read with Sections 20, 21 and 26 of the Indian Telegraph Act, on 30th December, 2005. In the said investigation the statement of the petitioner was also recorded under Section 161 of the Cr.P.C. In a subsequent affidavit filed by Mangesh Kashyap, Deputy Commissioner of Police, Headquarters on 8th February, 2011, it has been stated by the deponent that the Final Report in connection with the said investigation was filed before the competent Court on 15th February, 2006 and the charges were framed on 6th February, 2010. Four accused persons in the said case were charged under Section 120B read with Sections 420 and 471 of I.P.C. and Section 25 of the Indian Telegraph Act. In addition, Bhupender Singh had been charged under Section 201, I.P.C. and Anurag Singh was charged under Section 419, I.P.C. The trial in the said case has commenced and one witness, Shri Ranjit Narain the then Joint Commissioner of Police was examined.

11. Here we may point out the casual manner in which the petitioner approached the Court. The affidavit filed by the petitioner in support of his petition, and relying on which this Court issued notice on 24th January, 2006, is not at all modelled either on order XIX Rule 3 of the Code of Civil

Procedure, or Order XI of the Supreme Court Rules, 1966. The relevant portion of the petitioner's affidavit runs as under:

> "1. That I am the Petitioner in the above Writ Petition and am conversant with the facts and circumstances of the case. As such, I am competent to swear this affidavit.
>
> 2. That I have read the contents of paras 1 to 9 on pages 1 to 24 of the accompanying Writ Petition and have understood the same. I state that what is stated therein is true to my knowledge and belief.
>
> 3. That I have read the accompanying List of Dates and Events from pages B to D and have understood the same. I state that what is stated therein, is true to my knowledge and belief."

12. The provision of Order XIX of Code of Civil Procedure, deals with affidavit. Rule 3 (1) of Order XIX which deals with matters to which the affidavit shall be confined provides as follows:

> *"Matters to which affidavits shall be confined.* – (1) affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted; provided that the grounds thereof are stated."

13. Order XI of the Supreme Court Rules 1966 deals with affidavits. Rule 5 of Order XI is a virtual replica of Order XIX Rule 3 (1). Order XI Rule 5 of the Supreme Court Rules is therefore set out:

> "Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief

may be admitted, provided that the grounds thereof are stated."

14. In this connection Rule 13 of Order XI of the aforesaid Rules are also relevant and is set out below:

"13. In this Order, 'affidavit' includes a petition or other document required to be sworn or verified; and 'sworn' includes affirmed. In the verification of petitions, pleadings or other proceedings, statements based on personal knowledge shall be distinguished from statements based on information and belief. In the case of statements based on information, the deponent shall disclose the source of this information."

15. The importance of affidavits strictly conforming to the requirements of Order XIX Rule 3 of the Code has been laid down by the Calcutta High Court as early as in 1910 in the case of *Padmabati Dasi v. Rasik Lal Dhar* [(1910) Indian Law Reporter 37 Calcutta 259]. An erudite Bench, comprising Chief Justice Lawrence H. Jenkins and Woodroffe, J. laid down:

"We desire to impress on those who propose to rely on affidavits that, in future, the provisions of Order XIX, Rule 3, *must be strictly observed,* and every affidavit should clearly express how much is a statement of the deponent's knowledge and how much is a statement of his belief, and the grounds of belief must be stated with sufficient particularity to enable the Court to judge whether it would be sage to act on the deponent's belief."

16. This position was subsequently affirmed by Constitution Bench of this Court in *State of Bombay v. Purushottam Jog Naik,* AIR 1952 SC 317. Vivian Bose, J. speaking for the Court, held:

"We wish, however, to observe that the verification of the affidavits produced here is defective. The body of the affidavit discloses that certain matters were known to the

Secretary who made the affidavit personally. The verification however states that everything was true to the best of his information and belief. We point this out as slipshod verifications of this type might well in a given case lead to a rejection of the affidavit. Verification should invariably be modelled on the lines of Order 19, Rule 3, of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed. We draw attention to the remarks of Jenkins, C. J. and Woodroffe, J. in Padmabati Dasi vs. Rasik Lal Dhar 37 Cal 259 and endorse the learned Judges' observations."

17. In *Barium Chemicals Limited and another v. Company Law Board and others*, AIR 1967 SC 295, another Constitution Bench of this Court upheld the same principle:

"The question then is: What were the materials placed by the appellants in support of this case which the respondents had to answer? According to Paragraph 27 of the petition, the proximate cause for the issuance of the order was the discussion that the two friends of the 2nd respondent had with him, the petition which they filed at his instance and the direction which the 2nd respondent gave to respondent No. 7. But these allegations are not grounded on any knowledge but only on reasons to believe. Even for their reasons to believe, the appellants do not disclose any information on which they were founded. No particulars as to the alleged discussion with the 2nd respondent, or of the petition which the said two friends were said to have made, such as its contents, its time or to which authority it was made are forthcoming. It is true that in a case of this kind it would be difficult for a petitioner to have personal knowledge in regard to an averment of mala fides, but then were such knowledge is wanting he has to disclose his source of information so that the other side gets a fair

chance to verify it and make an effective answer. In such a situation, this Court had to observe in 1952 SCR 674: AIR 1952 SC 317, that as slipshod verifications of affidavits might lead to their rejection, they should be modelled on the lines of O. XIX, R. 3 of the Civil Procedure Code and that where an averment is not based on personal knowledge, the source of information should be clearly deposed. In making these observations this Court endorse the remarks as regards verification made in the Calcutta decision in *Padmabati Dasi v. Rasik Lal Dhar,* (1910) ILR 37 Cal 259."

18. Another Constitution Bench of this Court in *A. K. K. Nambiar v. Union of India and another*, AIR 1970 SC 652, held as follows:

"The appellant filed an affidavit in support of the petition. Neither the petition nor the affidavit was verified. The affidavits which were filed in answer to the appellant's petition were also not verified. The reasons for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence."

19. In the case of *Virendra Kumar Saklecha v. Jagjiwan and others,* [(1972) 1 SCC 826], this Court while dealing with an election petition dealt with the importance of disclosure of source of information in an affidavit. This Court held that non-

disclosure will indicate that the election petitioner did not come forward with the source of information at the first opportunity. The importance of disclosing such source is to give the other side notice of the same and also to give an opportunity to the other side to test the veracity and genuineness of the source of information. The same principle also applies to the petitioner in this petition under Article 32 which is based on allegations of political motivation against some political parties in causing alleged interception of his telephone. The absence of such disclosure in the affidavit, which was filed along with the petition, raises a prima facie impression that the writ petition was based on unreliable facts.

20. In case of *M/s Sukhwinder Pal Bipan Kumar and others v. State of Punjab and others,* [(1982) 1 SCC 31], a three Judge Bench of this Court in dealing with petitions under Article 32 of the Constitution held that under Order XIX Rule 3 of the Code it was incumbent upon the deponent to disclose the nature and source of his knowledge with sufficient particulars. In a case where allegations in the petition are not affirmed, as aforesaid, it cannot be treated as supported by an affidavit as required by law. (See para 12 page 38)

21. The purpose of Rules 5 and 13 of the Supreme Court Rules, set out above, has been explained by this Court in the case of *Smt. Savitramma v. Cicil Naronha and another,* AIR 1988 SCC 1987. This Court held, in para 2 at page 1988, as follows:

"…In the case of statements based on information the deponent shall disclose the source of his information. Similar provisions are contained in Order 19, Rule 3 of the Code of Civil Procedure. Affidavit is a mode of placing evidence before the Court. A party may prove a fact or facts by means of affidavit before this Court but such affidavit should be in accordance with Order XI, Rules 5 and 13 of the Supreme Court Rules. The purpose underlying Rules 5 and 13 of Order XI of the Supreme Court Rules is to

enable the Court to find out as to whether it would be safe to act on such evidence and to enable the court to know as to what facts are based in the affidavit on the basis of personal knowledge, information and belief as this is relevant for the purpose of appreciating the evidence placed before the Court, in the form of affidavit…."

22. In the same paragraph it has also been stated as follows:

"…If the statement of facts is based on information the source of information must be disclosed in the affidavit. An affidavit which does not comply with the provisions of Order XI of the Supreme Court Rules, has no probative value and it is liable to be rejected…"

23. In laying down the aforesaid principles, this Court in *Smt. Savitramma* (supra) relied on a full Bench judgment in *Purushottam Jog Naik* (supra).

24. In the instant case, the petitioner invoked the extraordinary writ jurisdiction of this Court under Article 32, without filing a proper affidavit as required in terms of Order XIX Rule 3 of the Code. Apart from the fact that the petitioner invoked Article 32, the nature of the challenge in his petition is very serious in the sense that he is alleging an attempt by the government of intercepting his phone and he is further alleging that in making this attempt the government is acting on extraneous considerations, and is virtually acting in furtherance of the design of the ruling party. It is, therefore, imperative that before making such an allegation the petitioner should be careful, circumspect and file a proper affidavit in support of his averment in the petition.

25. In our judgment, this is the primary duty of a petitioner who invokes the extraordinary jurisdiction of this Court under Article 32.

26. It is very disturbing to find that on the basis of such improper and slipshod affidavit, notice was issued on the petition, as stated above, and subsequently a detailed interim order was passed on 27th February, 2006 to the following effect:

"Mr. Mukul Rohtagi, learned senior counsel, on behalf of the petitioner submits that till this Court decides the guidelines in respect of tapping of telephones, a general order of restraint may be passed restraining publication by either electronic or print media of unauthorised tape record versions, We have asked the view points and assistance of Mr. Goolam E. Vahanavati, learned Solicitor General and Mr. Gopal Subramaniam, learned Additional Solicitor General. Both learned counsel submit that they see no prejudice for the order of restrain as sought for by Mr. Rohtagi being made."

Having regard to the facts and circumstances, we direct that electronic and print media would not publish/display the unauthorisedly and illegally recorded telephone tapped versions of any person till the matter is further heard and guidelines issued by this Court.

27. That interim order continued for about four years and is continuing till now.

28. Then when in the course of hearing of this case, it was pointed out by this Court on 2nd February, 2011 that the affidavit filed by the petitioner is perfunctory, defective and not in accordance with the mandate of law, a prayer was made by the learned Senior Counsel of the petitioner to file a proper affidavit as required under the law. Similar prayer was made by the learned Solicitor General for the official respondents, and the case was adjourned. Thereupon a detailed affidavit has been filed by the petitioner.

29. It appears from the detailed affidavit filed by the

petitioner, pursuant to the order of this Court dated 2nd February, 2011, that the main documents on which the writ petition is based, namely Annexures A and B, the orders dated 22nd October, and 9th November, 2005 were obtained by him from Mr. Anurag Singh, who is one of the accused and was arrested in the aforesaid criminal case. It also appears that petitioner's averments in paragraphs 2(v), 2(vii), 2(viii) and 2(ix) are based on information derived from the same Anurag Singh and that part of the information relating to the averments in para 5 of the writ petition was also obtained from the same Mr. Anurag Singh. The petitioner, therefore, largely relied on information received from an accused in a criminal case while he filed his petition under Article 32.

30. The affidavit filed by Mr. R. Chopra on behalf of the Government of National Capital Territory, New Delhi is of some relevance in connection with the part played by respondent No.8.

31. In paragraph I, sub paragraph (IV), while giving para wise reply to the writ petition, it has been reiterated that in the order dated 9th November, 2005 (Annexure 'B' to the writ petition) there are glaring discrepancies. Those discrepancies which have been noted are as follows:

> "...(iv) It is vehemently denied that the interception order dated 9th November,2005 was issued by the Principal Secretary(Home) or any other officer of the Home Department of Government of NCT of Delhi in respect of phone No. 011-39565414 belonging to the petitioner, at any time. The order dated 9th November 2005 is forged and fabricated. That prima facie on close scrutiny of the purported order No. F.5/1462/2004-HG dated 9.11.2005 issued by the Principal Secretary(Home), Govt. of NCT of Delhi and endorsement No. F.5/1462/2004-HG/7162 of the same date purportedly issued by the Deputy Secretary(Home) which has been annexed as Annexure

B to the writ petition following discrepancies can be noted and they are as follows:-

(a) The number of file i.e. No. F.5/1462/2004-HG cited on the left hand top of the order, is on the fact of it, erroneous, as a letter mentioning the year 2004 cannot be issued in the year 2005, as the forged/ fabricated order of 9/11/2005 purports to do.

(b) It is further submitted that the interception file No. F.5/1462/2004-HG in Home Department pertains to interception of some other telephone number, which do not mention the petitioner's number. It is pertinent to mention that the interception order in the above file was issued on 22.12.2004 i.e. nine months earlier than the purported interception with the petitioner's telephone number.

(c) This shows that the aforementioned file number was simply written on the fabricated or forged order of 9th November 2005 referred to above, which has been cited by the petitioner in his writ petition.

(d) It is respectfully submitted that signatures of the then Principal Secretary (Home) and those of then Deputy Secretary(Home) have been forged and fabricated.

(e) It is respectfully submitted that the file endorsement number in the purported interception order dated 9th November, 2005 there is mention of No. F.5/ 1462/2004-HG/7162. This dispatch number 7162 is itself wrong and fake as the dispatch number 7162 was given to a communication issued on 10th November 2005 and this concerned the forwarding of a dismissal order against a Deputy Superintendent of the Central Jail Tihar.

32. Apart from the various discrepancies, the deponent also pointed out in sub paragraph (f) of para I (IV) the following gross spelling mistakes in the purported order dated 9.11.2005:

(i) On the first line the words "satisfied" and "interest" have been mis-spelt as "setisfied" and "intrest"

(ii) On the second line the word "interest" has been mis–spelt as "intrest"

(iii) On the fifth line the word "disclosure" has been mis–spelt as "dicloser".

(iv) On the eighth line the word "the" has been mis–spelt as "te". The word Rules" has been mis–spelt as "Ruls" and word "exercise" has been mis–spelt as "exercies".

(v) In the eleventh line the word "message" has been mis–spelt as "massage", while on the 12th line the word "messages" has been mis–spelt as "massage"

(vi) In the endorsement forwarding the copies the purported order of 9th November, 2005 the word "Additional Commissioner" has been mis–spelt as "Addi commissioner" and on the following line words "Chairman" and "Committee" have been mis–spelt as "Cairman" and "Committe" respectively.

33. In view of such disclosures in the affidavit of the Police authorities as also in the affidavit filed by Mr. Chopra on behalf of Delhi Administration, it appeared strange to this court how the service provider, respondent no. 8 could act on the basis of communications dated 22.10.2005 and 9.11.2005. To this Court, it appeared that any reasonable person or a reasonable body of persons or an institution which is discharging public duty as a service provider, before acting on an order like the

one dated 9.11.2005, would at least carefully read its contents. Even from a casual reading of the purported communication dated 9.11.2005, containing so many gross mistakes, one would reasonably be suspicious of the authenticity of its text.

34. A query in this respect, made by the Court, was answered in a subsequent affidavit, filed on behalf of the respondent No.8, by one Col. A.K. Sachdeva, working as its Nodal Officer.

35. In the said affidavit it has been stated that similar orders containing comparable mistakes were issued by respondent No.4 and that it was impossible for the service provider to devise a practice on the basis of which the service provider could postpone interception on the ground of gross mistakes instead of taking an immediate action which is required for the safety of general public and in public interest.

36. It is further stated that when a request is made to the service provider, it is duty bound to comply with the same and there is no provision in the rule under which the service provider could send back the written request pointing out the mistakes contained therein.

37. Reference has also been made to License Condition No. 42 which provides that service provider is to give assistance, as per request, to the Law Enforcement Agencies and any violation of the said condition may lead to imposition of a heavy penalty on the service provider.

38. Considering the materials on record, this Court is of the opinion that it is no doubt true that the service provider has to act on an urgent basis and has to act in public interest. But in a given case, like the present one, where the impugned communication dated 9.11.2005 is full of gross mistakes, the service provider while immediately acting upon the same, should simultaneously verify the authenticity of the same from the author of the document. This Court is of the opinion that the

service provider has to act as a responsible agency and cannot act on any communication. Sanctity and regularity in official communication in such matters must be maintained especially when the service provider is taking the serious step of intercepting the telephone conversation of a person and by doing so is invading the privacy right of the person concerned and which is a fundamental right protected under the Constitution, as has been held by this Court.

39. Therefore, while there is urgent necessity on the part of the service provider to act on a communication, at the same time, the respondent No.8 is equally duty bound to immediately verify the authenticity of such communication if on a reasonable reading of the same, it appears to any person, acting bona fide, that such communication, with innumerable mistakes, falls clearly short of the tenor of a genuine official communication. Therefore, the explanation of the service provider is not acceptable to this Court. If the service provider could have shown, which it has not done in the present case, that it had tried to ascertain from the author of the communication, its genuineness, but had not received any response or that the authority had accepted the communication as genuine, the service provider's duty would have been over. But the mere stand that there is no provision under the rule to do so is a lame excuse, especially having regard to the public element involved in the working of the service provider and the consequential effect it has on the fundamental right of the person concerned.

40. In view of the public nature of the function of a service provider, it is inherent in its duty to act carefully and with a sense of responsibility. This Court is thus constrained to observe that in discharging the said duty, respondent No. 8, the service provider has failed.

41. Of course, this Court is not suggesting that in the name of verifying the authenticity of any written request for interception, the service provider will sit upon it. The service provider must immediately act upon such written request but

when the communication bristles with gross mistakes, as in the present case, it is the duty of the service provider to simultaneously verify its authenticity while at the same time also act upon it. The Central Government must, therefore, frame certain statutory guidelines in this regard to prevent interception of telephone conversation on unauthorised communication, as has been done in this case.

42. In this case very strange things have happened. At the time of filing the writ petition, the petitioner impleaded the Indian National Congress as respondent No.7 and also made direct allegations against it in paras 2(1), 2(10), 2(11) and 2(12). In para 2(12) and in para 5 of the writ petition, there are indirect references to the said respondent. In various grounds taken in support of the petition, allegations have been specifically made against the 7th respondent.

43. Even though in the order of this Court dated 27th February, 2006, there is an observation that respondent No. 7 has been impleaded unnecessarily, the said respondent has not been deleted and in the amended cause title also, respondent No. 7 remains impleaded. The averments against the said respondent were not withdrawn by the petitioner.

44. In the month of February of 2011, towards the closing of the hearing, an additional affidavit, which makes very interesting reading, was filed by the petitioner. All the three paragraphs of that affidavit are set out:

> "I, Amar Singh, son of late Shri H. G. Singh, aged 54 years residing at 27, Lodhi Estate New Delhi, do hereby solemnly swear on oath as under: -
>
> 1. That I am the petitioner in the above matter and am conversant with the facts and circumstances of the case and as such competent to swear this affidavit. The Petitioner craves leave of this Hon'ble Court to place the

following additional facts on record before this Hon'ble Court which has a bearing on the matter.

2. That the Petitioner was informed by one Mr. Anurag Singh, alias Rahul, who is one of the accused in the FIR No. 152/2005, registered in Delhi that his phone was being tapped at the behest of political opponents. However, later the Delhi Police investigated the mater and the said Anurag Singh alias Rahul, was arrested by the Delhi Police for forging and fabricating the orders on the basis of which the phone line of the petitioner was tapped. Further, the Anurag Singh, alias, Rahul, edited and tampered certain conversations of the Petitioner.

3. It is stated that the Petitioner was the complainant in the instant case. It is stated that the Petitioner is satisfied with the investigation of Delhi Police, and therefore withdraws all averments, contentions and allegations made against Respondent no. 7."

45. All the aforesaid paragraphs were verified by the petitioner as true to his knowledge.

46. The said affidavit of the petitioner filed in February, 2011, completely knocks the bottom out of the petitioner's case, inasmuch as by the said affidavit the petitioner seeks to withdraw all averments, allegations and contentions against the respondent no. 7. The main case of the petitioner is based on his allegations against respondent no.7. The burden of the song in the writ petition is that the respondent no. 7, acting out of a political vendetta and exercising its influence on Delhi Police administration caused interception of the telephone lines of various political leaders of the opposition including that of the petitioner. The subsequent affidavit also acknowledges that the petitioner is satisfied with the investigation by the Delhi Police in connection with the forgery alleged to have been committed, namely the fabrication of orders on the basis of which the phone lines of the petitioner were tapped. Petitioner also makes a

statement that the said Anurag Singh edited and tampered some of the conversations of the petitioner. It is very interesting to note that when the petitioner filed a detailed affidavit in support of his writ petition, pursuant to the order of this Court, the petitioner admitted that he relied on the information from the same Anurag Singh, and the main annexures to the petition, namely A and B were received by him from the same Anurag Singh. Paragraphs 2 (2), 2 (3), 2 (4) and 2 (6) are based on the information received from Mr. Anurag Singh. But he did not say all these in his affidavit when he filed the writ petition on 21st January 2006.

47. It may be noted that when the writ petitioner filed the petition on 21st January, 2006, he was aware of an investigation that was going on by the Delhi Police in connection of the forgery of annexures A and B. Even then he filed the petition with those annexures and without a proper affidavit.

48. It therefore appears that the petitioner has been shifting his stand to suit his convenience. In 2006, the gravamen of the petitioner's grievances was against the respondent no. 7, and the basis of his petition was the information that he derived from the said Anurag Singh. On the basis of such a petition, he invoked the jurisdiction of this Court and an interim order was issued in his favour, which is still continuing.

49. Now when the matter has come up for contested hearing, he suddenly withdraws his allegations against the respondent no. 7 and feels satisfied with the investigation of the Police in connection with the aforesaid case of forgery and also states that the same Anurag Singh "edited and tampered certain conversations of the petitioner".

50. This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to Court and invokes its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions.

51. Apart from the aforesaid, in the writ petition which was filed on 21st January, 2006, there is no mention of the fact that the petitioner gave a statement under section 161, Code of Criminal Procedure in connection with the investigation arising out of FIR lodged on 30th December, 2005. From the records of the case it appears the petitioner gave 161 statement on 13th January, 2006. In the writ petition there is a complete suppression of the aforesaid fact. A statement under Section 161 is certainly a material fact in a police investigation in connection with an FIR. The investigation is to find out the genuineness of those very documents on the basis of which the writ petition was moved. In that factual context, total suppression in the writ petition of the fact that the petitioner gave a 161 statement in that investigation is, in our judgment, suppression of a very material fact.

52. It is, therefore, clear that writ petition is frivolous and is speculative in character. This Court is of the opinion that the so called legal questions on tapping of telephone cannot be gone into on the basis of a petition which is so weak in its foundation.

53. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with "unclean hands" and are not entitled to be heard on the merits of their case.

54. In *Dalglish v. Jarvie* {2 Mac. & G. 231,238}, the Court, speaking through Lord Langdale and Rolfe B., laid down:

> "It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any fact which he has omitted to bring forward."

55. In *Castelli v. Cook* {1849 (7) Hare, 89,94}, Vice Chancellor Wigram, formulated the same principles as follows:

> "A plaintiff applying ex parte comes under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds, when the other party applies to dissolve the injunction, that any material fact has been suppressed or not property brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as has broken faith with the Court, the injunction must go."

56. In the case of *Republic of Peru v. Dreyfus Brothers & Company* {55 L.T. 802,803}, Justice Kay reminded us of the same position by holding:

> "…If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith with the Court when ex parte applications are made."

57. In one of the most celebrated cases upholding this principle, in the Court of Appeal in *R. v. Kensington Income Tax Commissioner* {1917 (1) K.B. 486} Lord Justice Scrutton formulated as under:

> "and it has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- facts, now law. He must not misstate the law if he can help it – the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have been fully and fairly stated

to it, the Court will set aside any action which it has taken on the faith of the imperfect statement."

58. It is one of the fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings and especially when it contains a prayer for injunction. A prayer for injunction, which is an equitable remedy, must be governed by principles of 'uberrima fide'.

59. The aforesaid requirement of coming to Court with clean hands has been repeatedly reiterated by this Court in a large number of cases. Some of which may be noted, they are: *Hari Narain v. Badri Das* – AIR 1963 SC 1558, *Welcome Hotel and others v. State of A.P. and others* – (1983) 4 SCC 575, *G. Narayanaswamy Reddy (Dead) by LRs. and another v. Government of Karnatka and another* – JT 1991(3) SC 12: (1991) 3 SCC 261, *S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. and others* – JT 1993 (6) SC 331: (1994) 1 SCC 1, *A.V. Papayya Sastry and others v. Government of A.P. and others* – JT 2007 (4) SC 186: (2007) 4 SCC 221, *Prestige Lights Limited v. SBI* – JT 2007(10) SC 218: (2007) 8 SCC 449, *Sunil Poddar and others v. Union Bank of India* – JT 2008(1) SC 308: (2008) 2 SCC 326, *K.D.Sharma v. SAIL and others* – JT 2008 (8) SC 57: (2008) 12 SCC 481, *G. Jayashree and others v. Bhagwandas S. Patel and others* – JT 2009(2) SC 71 : (2009) 3 SCC 141, *Dalip Singh v. State of U.P. and others* - JT 2009 (15) SC 201: (2010) 2 SCC 114.

60. In the last noted case of *Dalip Singh* (supra), this Court has given this concept a new dimension which has a far reaching effect. We, therefore, repeat those principles here again:

"For many centuries Indian society cherished two basic values of life i.e. "satya"(truth) and "ahimsa (non-violence), Mahavir, Gautam Budha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth

constituted an integral part of the justice-delivery system which was in vogue in the pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

61. However, this Court is constrained to observe that those principles are honoured more in breach than in their observance.

62. Following these principles, this Court has no hesitation in holding that the instant writ petition is an attempt by the petitioner to mislead the Court on the basis of frivolous allegations and by suppression of material facts as pointed out and discussed above.

63. In view of such incorrect presentation of facts, this court had issued notice and also subsequently passed the injunction order which is still continuing.

64. This Court, therefore, dismisses the writ petition and vacates the interim order and is not called upon to decide the

merits, if any, of the petitioner's case. No case of tapping of telephone has been made out against the statutory authorities in view of the criminal case which is going on and especially in view of the petitioner's stand that he is satisfied with the investigation in that case. The petitioner has withdrawn its case against the respondent No.7. In that view of the matter this Court makes it clear that the petitioner, if so advised, may proceed against the service provider, respondent No.8, before the appropriate forum, in accordance with law. This Court, however, makes it clear that it does not make any observation on the merits of the case in the event the petitioner initiates any proceeding against respondent No.8.

65. This court wants to make one thing clear i.e. perfunctory and slipshod affidavits which are not consistent either with Order XIX Rule 3 of the CPC or with Order XI Rules 5 and 13 of the Supreme Court Rules should not be entertained by this Court.

66. In fact three Constitution Bench judgments of this Court in *Purushottam Jog Naik* (supra), *Barium Chemicals Ltd.* (supra) and *A.K.K. Nambiar* (supra) and in several other judgments pointed out the importance of filing affidavits following the discipline of the provision in the Code and the said rules.

67. These rules, reiterated by this Court time and again, are aimed at protecting the Court against frivolous litigation must not be diluted or ignored. However, in practice they are frequently flouted by the litigants and often ignored by the Registry of this Court. The instant petition is an illustration of the same. If the rules for affirming affidavit according to Supreme Court were followed, it would have been difficult for the petitioner to file this petition and so much of judicial time would have been saved. This case is not isolated instance. There are innumerable cases which have been filed with affidavits affirmed in a slipshod manner.

68. This Court, therefore, directs that the Registry must

henceforth strictly scrutinize all the affidavits, all petitions and applications and will reject or note as defective all those which are not consistent with the mandate of Order XIX Rule 3 of the CPC and Order XI Rules 5 and 13 of the Supreme Court Rules.

69. The writ petition is, therefore, dismissed subject to the aforesaid liberty. All interim orders are vacated.

70. Parties are left to bear their own costs.

R.P. Writ Petition dismissed.

NARMADA BACHAO ANDOLAN
v.
STATE OF MADHYA PRADESH & ANR.
(Civil Appeal Nos. 2082 of 2011)

MAY 11, 2011

[J.M. PANCHAL, DEEPAK VERMA AND DR. B.S. CHAUHAN, JJ.]

PLEADINGS:

Pleadings – Writ petition by Narmada Bachao Andolan, as public interest litigation – Held: A party has to plead its case and produce/adduce sufficient evidence to substantiate the averments made in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas – It cannot be said that the rules of procedural law do not apply in PIL – In the instant case, there were no pleadings before the High Court on the basis of which the writ petition could be entertained/decided – Thus, it was liable to be rejected at the threshold for the reason that the writ petition suffered for want of proper pleadings and material to substantiate the averments/allegations contained therein – Besides, there was no explanation as to under what circumstances the High Court had been approached at such belated stage – In fact for redressal of any grievance regarding implementation of the Rehabilitation & Resettlement Policy, the oustees ought to have approached the Grievance Redressal Authority – High Court ought not to have examined any issue other than relating to rehabilitation i.e. implementation of the R & R Policy – Constitution of India, 1950 – Article 226 – Writ petition – Delay / Laches – Remedy – Alternate remedy – Public Interest Litigation.

CONSTITUTION OF INDIA, 1950:

Articles 21 and 14 – Hydro Electric Projects – Omkareshwar Dam in the basin of river Narmada – Land acquisition and rehabilitation of oustees – Rehabilitation and Resettlement Policy framed by state of Madhya Pradesh – Providing for allotment of land and other benefits to oustees– Policy amended on 30.7.2003 providing that agricultural land would be offered to oustees 'as far as possible' – Expressions 'as far as possible' and 'rehabilitation' – Connotation of – Held: The R & R Policy or amendment thereto in 2003, has not been under challenge. Relief not sought by the party cannot be granted by the Court – However, in terms of the amendment dated 3.7.2003, it is desirable for the authority concerned to ensure that ***as far as practicable*** *persons who had been living and carrying on business or other activity on the land acquired,* ***if they so desire****, and are willing to purchase and comply with the requirements be given a piece of land on the terms settled with due regard to the price at which land has been acquired from them – However, the State Government cannot be compelled to provide alternate accommodation to the oustees and it is for the authority concerned to consider the desirability and feasibility of providing alternative land considering the facts and circumstances of each case – In certain cases, the oustees are entitled to* ***rehabilitation –*** *Rehabilitation is meant only for those persons who have been* ***rendered destitute*** *because of a loss of residence or livelihood as a consequence of land acquisition – The definition of "displaced family" cannot be read in isolation, rather it requires to be considered taking into account the eligibility criteria for allotment of land in Clause (5) of the R & R Policy – To that extent, the judgment of the High Court is liable to be set aside – The direction given by the High Court in paragraph 64 (i) of the judgment, is modified to the extent that the displaced families who have not withdrawn SRG benefits/ compensation voluntarily and submit applications for allotment of land before the Authority concerned, shall be entitled to the allotment of agricultural*

land "as far as possible" in terms of the R & R Policy, and for that purpose, the authorities must make some government or private land available for allotment to such oustees if they opt for such land and agree to ensure compliance with other terms and conditions stipulated therein – ***Maxims –*** *"lex non cogit ad impossibilia" , "impossibilium nulla obligatio est", "impotentia excusat legem" and "nemo tenetur ad impossibilia".*

Articles 300-A and 21 – Compensation for property acquired and rehabilitation –

Concepts of – Explained.

SOCIAL AND ECONOMIC JUSTICE:

Rehabilitation and resettlement – Oustees of Omkarshwar Dam – HELD: As regards the issue of ***land for land****, it has to be decided taking into consideration the totality of the circumstances – These cases are to be decided giving strict adherence to the R & R Policy, as amended on 3.7.2003, further considering that special care is to be taken where persons are oppressed and uprooted so that they are better off – Mere payment of compensation to the oustees may not be enough – In case the oustee is not able to purchase the land just after getting the compensation, he may not be able to have the land at all – In the process of development, the State cannot be permitted to displace tribal people, a vulnerable section of our society, suffering from poverty and ignorance, without taking appropriate remedial measures of rehabilitation – In regard to the amended provisions of the R & R Policy, the phrase "as far as possible" would come into play, in case an attempt is made to acquire/purchase lands and then to make allotment of land to oustees.*

PUBLIC INTEREST LITIGATION:

Rights and obligations, and locus of public interest litigant

– Hydro-electric projects – Omkareshwar Dam in the basin of river Narmada – Writ petition under public interest litigation filed by Narmada Bachao Andolan stating that the tenure holders had already been dispossessed and land vested in the State – Held: The 'rights' of the public interest litigant in a PIL are always subordinate to the 'interests' of those for whose benefit the action is brought – The status of dominus litis could not be conferred unreflectively or for the asking, on a PIL petitioner as that would render the proceedings "vulnerable to and susceptible of a new dimension which might, in conceivable cases be used by persons for personal ends resulting in prejudice to the public weal – The courts expect a public interest litigant to discharge high standards of responsibility – Negligent use or use for oblique motives is extraneous to the PIL process – A person seeking relief in public interest should approach the court of Equity, not only with clean hands but also with a clean mind, clean heart and clean objective – A petition containing misleading and inaccurate statement(s), if filed, to achieve an ulterior purpose, amounts to an abuse of the process of the Court – Further, a false statement made in the court or in the pleadings, intentionally to mislead the Court and obtain a favourable order, amounts to criminal contempt, as it tends to impede the administration of justice – In the instant case, the NBA has not acted with a sense of responsibility and so far succeeded in securing favourable orders by misleading the court – Such conduct cannot be approved – 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 any presentation by the NBA with caution and care, insisting on proper pleadings, disclosure of full facts truly and fairly and in case it has any doubt, refuse to entertain the NBA – However, considering the interests of the oustees, it may be desirable

that the court may appoint Amicus Curiae to present their cause, if such a contingency arises – 'Jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiorem', 'juri ex injuria non oritur' and 'suppressio veri and suggestio falsi'.

PRECEDENT:

Reliance upon a judgment– Rehabilitation and Resettlement Policy for oustees of Omkareshwar Dam – Term 'family'– Connotation of – Held: Court should not place reliance upon a judgment without discussing how the ***factual situation fits*** *in with a fact-situation of the decision on which reliance is placed, as it has to be ascertained by analysing all the* ***material facts*** *and the issues involved in the case and argued on both sides – A judgment may not be followed in a given case if it has some* ***distinguishing features*** *– A little difference in* ***facts or additional facts*** *may make a lot of difference to the precedential value of a decision – The NWDT Award did not provide for allotment of agricultural land to the major sons of such oustees – The* ***Narmada Bachao Andolan-I*** *has been decided with presumption that such a right had been conferred upon major sons by the NWDT Award and* ***Narmada Bachao Andolan-II*** *has been decided following the said judgment and interpreting the definition of "family" contained in the R & R Policy – When the two earlier cases were being considered by the Court, it had not been brought to its notice that the NWDT Award did not provide for such an entitlement – The courts are not to perpetuate an illegality, rather it is the duty of the courts to rectify mistakes – In view of the principles of 'per incuriam', the "quotable in law" is avoided and ignored if it is rendered in ignorance of a Statute or other binding authority – Direction given by the High Court to allot agricultural land to major sons of the oustees in Paragraph 64 (iii) of the impugned judgment is set aside – Principle of 'per inquiriam'– Constitution of India, 1950 – Article 14.*

LAND ACQUISITION ACT, 1894:

Hydroelectric Project – Omkareshwar Dam – Rehabilitation of oustees – Landless labourers – Held: As the landless labourers never had any land, they are not entitled to any compensation under the Act, thus, the question of allotment of land to them would not arise – The R & R Policy itself provides that such persons are entitled to get the specified amount of Rs.49,300/- to buy productive employment creating assets etc., and such money can also be used for acquiring land.

s.48 – Denotification of acquisition – Land in respect of which acquisition proceedings initiated not likely to submerge – Government abandoning the acquisition proceedings – The stand of the NBA was that tenure-holders were not in possession – On the direction of Supreme Court, the District Judge reported that tenure holders were in actual possession of the land – Expression 'taking possession of the land' – Explained – Law on the issue summarised – HELD: The State is entitled to abandon the land acquisition proceedings in exercise of its power u/s 48 of the Act – However, it shall not apply to 167 dwelling units on the said land – Such persons whose dwelling units are acquired shall be entitled for the benefit of R & R Policy to the extent provided therein.

ADMINISTRATIVE LAW:

Government policy – Judicial review of, through public interest litigation– Held: A public policy cannot be challenged through PIL where the State Government is competent to frame the policy – The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power – In the instant case, it was not desirable for the High Court to make any comment on the competence of the State of amend the policy.

INTERPRETATION OF STATUTES:

Interpretation of Rehabilitation and Resettlement policy framed by Government– Held: The Court while interpreting the provisions of a Statute, can neither add nor subtract a word – The Court has to interpret a provision giving it a construction agreeable to reason and justice to all parties concerned, avoiding injustice, irrationality and mischievous consequences – In the instant case, the directions of the High Court regarding land-for-land would lead to grave inequity, and thereby likely to cause undue enrichment of some categories of oustees – The High Court, therefore, fell into an error by proceeding to assume that a major son would be treated to be a separate family for the purpose of allotment of land also – Thus, the policy must be interpreted to the effect that the major sons of oustees will be entitled to all the benefits under the R & R Policy, except allocation of agricultural land – Maxim: "a verbis legis non est recedendum".

On construction of Omkareshwar Dam in the basin of river Narmada, 30 villages in State of Madhya Pradesh were expected to submerge at the full reservoir level of 196.6 meter. The State Government framed a rehabilitation and resettlement policy (R & R Policy) for the oustees of all the Narmada Projects. The policy provided for allotment of a minimum of two hectares of agricultural land; irrigational facilities at government cost; grant-in-aid for small and marginal farmers and SC/ST families, and to meet the entire cost of the allotted land. The policy was amended from time to time and by amendment dated 3.7.2003 it was provided that agricultural land would be offered to the oustees "as far as possible" and not to those who would make application in writing to receive compensation for their acquired land. The displaced persons were allegedly not offered the land under the R & R Policy, as amended on 3.7.2003, rather compensation for their land was

deposited in their accounts. When the decision was taken to raise the height of the dam, Narmada Bachao Andolan (NBA), filed a writ petition before the High Court seeking a number of reliefs. The High Court issued a large number of directions as interim measures including the direction for allotment of land in lieu of the land acquired and to treat the major sons of the family as independent families for the purpose of allotment of agricultural land.

State of Madhya Pradesh and the Narmada Hydro Electric Development Corporation filed CA Nos. 2115 and 2116 of 2011 contending that the High Court ought not to have entertained the writ petition as it did not have material facts/particulars disclosing any cause of action to the writ petitioners even in the PIL; that not a single order passed by any statutory authority had been challenged and the writ petition was filed after inordinate delay without furnishing any explanation for the same; that Grievance Redressal Authority (GRA) had been constituted to consider grievances of the oustees and not a single oustee approached the GRA before filing of the writ petition; that the High Court erred in treating the major son of such an oustee as a separate family for the purpose of allotment of agricultural land, though he did not have any independent right to claim compensation for the land acquired; that land for allotment to such oustees was not available and the State authorities could not be asked to do an impossible task.

The State of Madhya Pradesh and the Narmada Hydro Development Corporation also filed C.A. Nos. 2083-2012 of 2011 challenging the order of the High Court whereby it allowed the applications of the NBA and directed the State to rehabilitate the oustees so far as the land measuring 284.03 hectares in the five villages, namely, Dharadi, Nayapura, Guwadi, Kothmir, Narsinghpura was concerned and not to withdraw the

acquisition proceedings in respect of the said area.

C.A. No. 2082 of 2011 was filed by the writ petitioner NBA claiming allotment of agricultural land to landless oustees and that the Narmada Water Disputes Tribunal award dated 12.12. 1979 (NWDT award) be made applicable to the project of the Omkareshwar Dam and that the oustees of five villages, which were submerged, were entitled to allotment of land in lieu of land acquired inspite of the fact that the SRG had already been granted to them.

Disposing of the appeals, the Court

HELD:

C.A. Nos. 2015-2016 of 2011

1.1. It is a settled proposition of law that a party has to plead its case and produce/adduce sufficient evidence to substantiate the averments made in the petition and in case the pleadings are not complete, the Court is under no obligation to entertain the pleas. It cannot be said that the rules of procedural law do not apply in PIL. [Para 7 and 10] [481-D; 482-G-H]

Bharat Singh & Ors. v. State of Haryana & Ors., **1988(2) Suppl. SCR 1050=AIR 1988 SC 2181;** *Larsen & Toubro Ltd. & Ors. v. State of Gujarat & Ors.*, **1988 (2) SCR 339=AIR 1998 SC 1608;** *M/s Atul Castings Ltd. v. Bawa Gurvachan Singh,* **2001 (3) SCR 124 =AIR 2001 SC 1684;** *Rajasthan Pradesh V.S. Sardarshahar & Anr. v. Union of India & Ors*., **2010 (7) SCR 252 =AIR 2010 SC 2221;** *Ram Sarup Gupta (dead) by L.Rs. v. Bishun Narain Inter-College & Ors.,* **1987 (2) SCR 805 =AIR 1987 SC 1242;** *Kalyan Singh Chouhan v. C.P. Josh*i, **AIR 2011 SC 1127;** *Rural Litigation and Entitlement Kendera v. State of U.P*., ***1988 Suppl.; SCR 690*** **=AIR 1988 SC 2187*;*** *A. Hamsaveni & Ors. v. State of Tamil Nadu & Anr.,* **1994 (2) Suppl. SCR 404 =(1994) 6 SCC 51;** *Ashok*

Kumar Pandey v. State of West Bengal, **AIR 2004 SC 280;** *Prabir Kumar Das v. State of Orissa & Ors.*, **2003 (5) Suppl. SCR 716 =(2005) 13 SCC 452; and** *A. Abdul Farook v. Municipal Council, Perambalur*, **2009 (11) SCR 727 =(2009) 15 SCC 351 – relied on.**

1.2. In the instant case, in the writ petition, an impression had been given that some drastic steps would be taken by the authorities which would cause great hardship to a large number of persons and urgent measures were required to be taken by the Court in order to mitigate the sufferings of the people. However, the writ petition did not disclose the factum of how many persons had already vacated their houses and handed over the possession of their land. There was no material before the High Court to adjudicate upon the issues involved. There were no pleadings before the High Court on the basis of which the writ petition could be entertained/ decided. Thus, it was liable to be rejected at the threshold for the reason that the writ petition suffered for want of proper pleadings and material to substantiate the averments/allegations contained therein. Even in the case of a PIL, such a course could not be available to the writ petitioners. [Para 12- 13] [483-E-G; 484-F]

1.3. The construction of the dam started in October 2002 and was completed in October 2006. No objection had ever been raised by NBA at any stage. The Narmada Development Authority by order dated 28.3.2007 gave permission to National Hydraulic Development Corporation to raise the water level of the dam to 189 meters upon showing that rehabilitation of oustees of 5 villages adversely affected at 189 meters, had already been completed. The writ petition was filed praying for restraining the appellants from closing the sluice gates of the dam contending that resettlement and rehabilitation was not complete. There was no explanation as to under

what circumstances the High Court had been approached at such belated stage. In fact, for redressal of any grievance regarding implementation of the R & R Policy, the oustees ought to have approached the GRA. There is nothing on record to show how many oustees remained unsatisfied/aggrieved of the orders passed by GRA till the filing of the writ petition. Thus, the High Court ought not to have examined any issue other than relating to rehabilitation i.e. implementation of the R & R Policy. [para 14, 16 and 17] [484-G-H; 485-A-B; 486-D-E]

Narmada Bachao Andolan v. Union of India & Ors., **2000(4) Suppl. SCR 94 = (2000) 10 SCC 664;** *State of Maharashtra v. Digambar,* **1995 (1) Suppl. SCR 492 =(1995) 4 SCC 683; and** *Narmada Bachao Andolan v. Union of India & Ors.*, **2005 (2) SCR 840 =(2005) 4 SCC 32 –referred to.**

1.4. The R & R Policy or amendment thereto in 2003, has not been under challenge. Relief not sought by the party cannot be granted by the Court. It was not desirable for the High Court to make any comment on the competence of the State to amend the policy and the finding so recorded in Para 38 of the judgment cannot be sustained in the eyes of law, and thus is set aside. [Para 86] [524-B-C]

1.5. In view of the fact that neither the writ petitioner asked the High Court to quash the amendment dated 3.7.2003, nor has the High Court suo motu quashed it, nor has the writ petitioner filed Special Leave Petition raising the said point, it is not permissible for this Court to deal with the issue. [Para 23] [488-C]

State of Maharashtra v. Ramdas Shrinivas Nayak & Anr., **1983(1) SCR 8=AIR 1982 SC 1249;** *Transmission Corporation of A.P. Ltd & Ors. v. P. Surya Bhagavan,* **AIR 2003 SC 2182; and** *Mount Carmel School Society v. DDA,* **2007 (13) SCR 876 = (2008) 2 SCC 141 – referred to.**

2.1. In terms of the amendment dated 3.7.2003, it is desirable for the authority concerned to ensure that as far as practicable persons who had been living and carrying on business or other activity on the land acquired, if they so desire, and are willing to purchase and comply with any requirement of the authority or the local body, be given a piece of land on the terms settled with due regard to the price at which land has been acquired from them. However, the State Government cannot be compelled to provide alternate accommodation to the oustees and it is for the authority concerned to consider the desirability and feasibility of providing alternative land considering the facts and circumstances of each case. In certain cases, the oustees are entitled to rehabilitation. Rehabilitation is meant only for those persons who have been rendered destitute because of a loss of residence or livelihood as a consequence of land acquisition. The authorities must explore the avenues of rehabilitation by way of employment, housing, investment opportunities, and identification of alternative lands. For people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic. [Para 23 & 24] [488-C-H; 489-A-B]

State of U.P. v. Smt. Pista Devi & Ors., **AIR 1986 SC 2025;** *Narpat Singh etc. etc. v. Jaipur Development Authority & Anr.,* **2002 (3) SCR 365=AIR 2002 SC 2036;** *Special Land Acquisition Officer, U.K. Project v. Mahaboob & Anr.*, **2009 (2) SCR 881 =(2009) 14 SCC 54;** *Mahanadi Coal Fields Ltd. & Anr. v. Mathias Oram & Ors.*, **2010 (8) SCR 750 =JT (2010) 7 SC 352; and** *Brij Mohan & Ors. v. Haryana Urban Development Authority & Anr.,* **(2011) 2 SCC 29;** *Chameli Singh & Ors. v. State of U.P. & Anr.*, **1995 (6) Suppl. SCR 827 =AIR 1996 SC 1051; and** *Samatha v. State of A.P. & Ors.*, **1997 (2) Suppl. SCR 305 = AIR 1997 SC 3297;** *Lachhman Dass v. Jagat Ram & Ors.,* **2007 (2) SCR 980**

=(2007) 10 SCC 448; and *Amarjit Singh & Ors. v. State of Punjab & Ors*. **2010 (12) SCR 163 = (2010) 10 SC 43 – relied on.**

Jilubhai Nanbhai Khachar & Ors. v. State of Gujarat & Anr., **1994(1) Suppl. SCR 807 = AIR 1995 SC 142 – referred to**

2.2. From the judgments of this Court, it is evident that acquisition of land does not violate any constitutional/fundamental right of the displaced persons. However, they are entitled to resettlement and rehabilitation as per the policy framed for the oustees of the concerned project. [Para 29] [491-G-H]

State of Kerala & Anr. v. Peoples Union for Civil Liberties, Kerala State Unit & Ors., **(2009) 8 SCC 46 – relied on.**

2.3. It is a settled legal proposition that Government has the power and competence to change the policy on the basis of ground realities. A public policy cannot be challenged through PIL where the State Government is competent to frame the policy and there is no need for anyone to raise any grievance even if the policy is changed. The public policy can only be challenged where it offends some constitutional or statutory provisions. The court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. [Para 34-35] [496-D-G]

State of Punjab & Ors. v. Ram Lubhaya Bagga etc. etc. **AIR 1998 SC 1703;** *Ram Singh Vijay Pal Singh & Ors. v. State of U.P. & Ors.,* **2007(5) SCR 1960 =(2007) 6 SCC 44;**

Villianur Iyarkkai Padukappu Maiyam v. Union of India & Ors., **2009 (9) SCR 225 = (2009) 7 SCC 561 – relied on.**

2.4. In the instant case, the phrase 'as far as possible' inserted by the amendment dated 3.7.2003 provides for flexibility, clothing the authority concerned with powers to meet special situations where the normal process of resolution cannot flow smoothly. The phrase can be interpreted as not being prohibitory in nature. The phrase simply means that the principles are to be observed unless it is not possible to follow the same in the particular circumstances of a case. The words rather, connote a discretion vested in the prescribed authority. It is thus discretion and not compulsion. Once the authority exercises its discretion, the court should not interfere with the discretion/decision unless it is found to be palpably arbitrary. The court has to consider and understand the scope of application of the doctrines of "*lex non cogit ad impossibilia*" (the law does not compel a man to do what he cannot possibly perform); "*impossibilium nulla obligatio est*" (the law does not expect a party to do the impossible); and *impotentia excusat legem* in the qualified sense that there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory. These maxims are akin to the maxim of Roman Law *nemo tenetur ad impossibilia* (no one is bound to do an impossibility) which is derived from common sense and natural equity. [Para 36-38] [497-A-G]

Iridium India Telecom Ltd. v. Motorola Inc., **2005 (1) SCR 73 = AIR 2005 SC 514; and** *High Court of Judicature for Rajasthan v. Veena Verma & Anr.*, **2009 (1) SCR 795 = AIR 2009 SC 2938;** *Chandra Kishore Jha v. Mahavir Prasad & Ors*., **1999 (2) Suppl. SCR 754 = AIR 1999 SC 3558;** *Hira Tikkoo v. Union Territory, Chandigarh & Ors*., **2004(1) Suppl. SCR 65 =AIR 2004 SC 3648; and** *Haryana Urban*

Development Authority & Anr. v. Dr. Babeswar Kanhar & Anr., **2004 (6) Suppl. SCR 282 =AIR 2005 SC 1491;** *Gramin Sewa Sanstha v. State of M.P. & Ors*., **1986 Supp SCC 578— referred to.**

2.5. As regards the land for land, the issue has to be decided taking into consideration the totality of the circumstances. These cases are to be decided giving strict adherence to the R & R Policy, as amended on 3.7.2003, further considering that special care is to be taken where persons are oppressed and uprooted so that they are better off. Mere payment of compensation to the oustees may not be enough. In case the oustee is not able to purchase the land just after getting the compensation, he may not be able to have the land at all. [Para 43-44] [499-F-H; 500-A, D]

K. Krishna Reddy & Ors. v. Spl. Dy. Collector, Land Acqn. Unit II, LMD Karimnagar, **1988 (2) Suppl. SCR 853=AIR 1988 SC 2123;** *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde & Anr.* **1995(2) SCR 260 = (1995) Suppl. 2 SCC 549; and** *N.D. Jayal & Anr. v. Union of India & Ors*., **2003 (3) Suppl. SCR 152 =AIR 2004 SC 867;** *Ezra v. Secretary of State for India*, **(1905) 32 Ind App 93; and** *Santosh Kumar v. Central Warehousing Corporation & Anr.*, **1986 (1) SCR 603 =AIR 1986 SC 1164 – referred to.**

2.6. In the process of development, the State cannot be permitted to displace tribal people, a vulnerable section of our society, suffering from poverty and ignorance, without taking appropriate remedial measures of rehabilitation. The record of the case reveals that about 56% of the oustees involved in these cases are members of Scheduled Castes and Scheduled Tribes. Land had never been offered to any of these oustees. The amount of compensation as determined under the Land Acquisition Act 1894 had been deposited in their bank accounts. No attempt had ever been made by the State

to either acquire or purchase land by agreement/ negotiation for resettlement of the oustees. Only 11% of the oustees could purchase the land of their own without any assistance from the State authorities. [Para 47-48] [501-G-H; 502-A-B; 503-B-C]

2.7. In regard to the amended provisions of the R & R Policy, the phrase "as far as possible" would come into play, in case an attempt is made to acquire/purchase lands and then to make allotment of land to oustees. The other added term i.e. giving the option to oustees to make application for acceptance of compensation and not claiming land for land acquired, remained inapplicable, as it is alleged that not a single oustee made such an application. None of the obligations on the part of the authorities as clearly stipulated by the R & R Policy had been fulfilled. The Adhiniyam 1985 had not been made applicable in respect of the Omkareshwar Dam Project taking into account the past experience in other projects. The State authorities, ought to have assisted the oustees in purchasing the land of their choice from other agriculturists and met the difference of cost, if any, over and above the amount of compensation and the cost of land so purchased. While determining such issues, the State authorities could take into consideration the fact that the land should be not less than of the same quality and nature which the oustees were originally having with them. This exercise could have been done "*pari pasu*" which means "equably" or "ratably" to the construction of the Dam and could have been completed much in advance of completion of the Dam to the Full Water Level. [Para 48] [502-C-H; 503-A]

2.8. It has been stated that the State Government devised a scheme whereby the PAF is given substantial additional amount over and above the compensation for his land in order to enable him to purchase arable and

irrigable land at the location of his choice. This scheme has come to be known as SRG or Special Rehabilitation Package (SRP). The offer of SRG is over and above the Rehabilitation Policy. The relief granted by the appellants to the oustees as SRG is much more than the amount of compensation or amount entitled in R & R Policy as amended on 3.7.2003. In fact, to certain extent, it is in consonance with the provisions contained in Clause (5.4) of R & R Policy, wherein the State is under an obligation to meet the gap of amount between the amount of compensation and the value of the land purchased by the oustees. It has also been stated that all the oustees have voluntarily accepted SRG and withdrawn the amount and they stand fully satisfied. However, if an oustee feels aggrieved of what he has received, he may approach the GRA, and against the decision of GRA any aggrieved party may approach the High Court. [para 50-53] [504-C-D, G; 506-A-E]

3.1. The Court should not place reliance upon a judgment without discussing how the factual situation fits in with a fact-situation of the decision on which reliance is placed, as it has to be ascertained by analysing all the material facts and the issues involved in the case and argued on both sides. A judgment may not be followed in a given case if it has some distinguishing features. A little difference in facts or additional facts may make a lot of difference to the precedential value of a decision. [Para 59] [508-H; 509-A-B]

Municipal Corporation of Delhi v. Gurnam Kaur, State of Karnataka & Ors. v. Gowramma & Ors., **1988 (2) Suppl. SCR 929 =AIR 2008 SC 863; and** *State of Haryana & Anr. v. Dharam Singh & Ors*. **2009 (1) SCR 979 - relied on.**

3.2. Admittedly, the NWDT Award did not provide for allotment of agricultural land to the major sons of such oustees. The States of Gujarat and Maharashtra had

given concessions/relief over and above the said Award. Thus, the Narmada Bachao Andolan-I has been decided with presumption that such a right had been conferred upon major sons by the NWDT Award and Narmada Bachao Andolan-II has been decided following the said judgment and interpreting the definition of "family" contained in the R & R Policy. When the two earlier cases were being considered by the Court, it had not been brought to its notice that the NWDT Award did not provide for such an entitlement. The courts are not to perpetuate an illegality, rather it is the duty of the courts to rectify mistakes. In view of the principles of 'per incuriam', the "quotable in law" is avoided and ignored if it is rendered in ignorance of a Statute or other binding authority. [para 60,62 and 63] [510-E-F; 511-A; 509-E-F]

India Cement Ltd. etc. etc. v. State of Tamil Nadu etc. etc., **1989 (1) Suppl. SCR 692 =AIR 1990 SC 85,** *State of West Bengal v. Kesoram Industries Ltd. & Ors.,* **2004(1) SCR 564 = (2004) 10 SCC 201** *Mamleshwar Prasad & Anr. v. Kanhaiya Lal (D) by Lrs*., **1975 (3) SCR 834 = AIR 1975 SC 907;** *A.R. Antulay v. R.S. Nayak*, **1988 (1) Suppl. SCR 1 = AIR 1988 SC 1531;** *State of U.P. & Anr. v. Synthetics and Chemicals Ltd. & Anr.*, **1991 (3) SCR 64 = (1991) 4 SCC 139; and** *Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors.,* **2010 (15) SCR 201 = (2011) 1 SCC 694;** *Hotel Balaji & Ors. etc. etc. v. State of A.P. & Ors. etc. etc.,* **1992(2) Suppl. SCR 182 = AIR 1993 SC 1048;** *Nirmal Jeet Kaur v. State of M.P. & Anr.,* **2004(3) Suppl. SCR 1006 = (2004) 7 SCC 558; and** *Mayuram Subramanian Srinivasan v. CBI,* **2006(3) Suppl. SCR 48 = AIR 2006 SC 2449,** *Sanjiv Datta, Dy. Secy., Ministry of Information & Broadcasting,* **1995 (3) SCR 450 = (1995) 3 SCC 619 – referred to.**

3.3. Discrimination means an unjust, an unfair action in favour of one and against another. It involves an element of intentional and purposeful differentiation and

further an element of unfavourable bias; an unfair classification. Discrimination under Article 14 of the Constitution must be conscious and not accidental discrimination that arises from oversight which the State is ready to rectify. [para 67] [512-C-D]

Madhu Kishwar & Ors.v. State of Bihar & Ors., **1996 (1) Suppl. SCR 442 = AIR 1996 SC 1864;** *Kathi Raning Rawat v. State of Saurashtra*, **1952 SCR 435 = AIR 1952 SC 123; and** M/s. *Video Electronics Pvt. Ltd. & Anr. v. State of Punjab & Anr*., **1989 (2) Suppl. SCR 731 =AIR 1990 SC 820,** *Vishundas Hundumal & Ors. v. State of Madhya Pradesh & Ors.,* **1981 (3) SCR 234 =AIR 1981 SC 1636; and** *Eskayef Ltd. v. Collector of Central Excise*, **1990(1) Suppl. SCR 442 =(1990) 4 SCC 680 – referred to**

3.4. The High Court while passing the order had given a much wider interpretation to the R & R Policy making reference to the terms as "bigger family" and the "large land owning family". The Court while interpreting the provisions of a Statute, can neither add nor subtract a word. The legal maxim "*a verbis legis non est recedendum*" means from the words of law, there must be no departure. [para 69] [512-G; 513-A-B]

S.P. Gupta & Ors. v. Union of India & Ors., **AIR 1982 SC 149;** *P.K. Unni v. Nirmala Industries & Ors*., **AIR 1990 SC 933; and** *Commissioner of Income Tax, Kerala v. Tara Agencies*, **(2007) 6 SCC 429 – relied on**

3.5. The Court has to interpret a provision giving it a construction agreeable to reason and justice to all parties concerned, avoiding injustice, irrationality and mischievous consequences. The interpretation so made must not produce unworkable and impracticable results or cause unnecessary hardship, serious inconvenience or anomaly. The court also has to keep in mind the object of the legislation. [para 79] [516-F-G]

Directorate of Enforcement v. Deepak Mahajan, **AIR 1994 SC 1775;** *Corporation Bank v. Saraswati Abharansala & Anr.* **2008 916) SCR 340 =(2009) 1 SCC 540; and** *Sonic Surgical v. National Insurance Co. Ltd.,* **2009(15) SCR 265 = (2010) 1 SCC 135;** *Bihar State Council of Ayurvedic and Unani Medicine v. State of Bihar,* **2007 (11) SCR 824 = AIR 2008 SC 595; and** *Mahmadhusen Abdulrahim Kalota Shaikh v. Union of India*, **2008 (14) SCR 889 = (2009) 2 SCC 1;** *Union of India v. Ranbaxy Laboratories Ltd.,* **2008 (8) SCR 315 = AIR 2008 SC 2286;** *Narashimaha Murthy v. Susheelabai*, **1996(1) Suppl. SCR 414 = AIR 1996 SC 1826;** *Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate,* **1958 SCR 1156 = AIR 1958 SC 353,** *Sheikh Gulfan v. Sanat Kumar Ganguli,* **1965 SCR 364 = AIR 1965 SC 1839 – referred to.**

3.6. In the instant case, the directions of the High Court regarding land-for-land would lead to grave inequity, and thereby likely to cause undue enrichment of some categories of oustees: a.) Sons of land owning class get better rights than their fathers; b) Sons of land owning class get better rights than those of land less class; c) even though everybody loses same measure of land, some are not entitled to any land while for some it becomes an unimaginable bounty or proves to be bonanza. [para 81] [519-A-C]

3.7. Compensation in the present context has to be understood in relation to right to property. The right of the oustee is protected only to a limited extent as enunciated in Article 300-A of the Constitution. The tenure holder is deprived of the property only to the extent of land actually owned and possessed by him. This is, therefore, limited to the physical area of the property and this area cannot get expanded or reduced by any fictional definition of the word "family" when it comes to awarding compensation. Compensation is Awarded by authority of

law under Article 300-A read with the relevant statutory law of compensation under any law made by the legislature and for the time being in force, only for the area acquired. Rehabilitation on the other hand, is restoration of the status of something lost, displaced or even otherwise a grant to secure a dignified mode of life to a person who has nothing to sustain himself. This concept, as against compensation and property under Article 300-A, brings within its fold the presence of the elements of Article 21 of the Constitution. Those who have been rendered destitute, have to be assured a permanent source of basic livelihood to sustain themselves. This becomes necessary for the State when it relates to the rehabilitation of the already depressed classes like Scheduled Castes, Scheduled Tribes and marginal farmers in order to meet the requirements of social justice. [Para 83] [520-F-H; 521-A-D]

3.8. The benefit given to a major son was not within the terms of the Award. It was rather a concession given by the States who were parties to the NWDT Award after the Award was delivered during the course of subsequent negotiations, and, therefore, could not be a part of the Award. The previous decisions,* therefore, would not be a binding precedent for the purpose of the instant case as it was under some mistaken belief that the Award was understood to have extended the said benefit to major sons also. The High Court therefore, fell into an error by proceeding to assume that a major son would be treated to be a separate family for the purpose of allotment of land also. Thus, the policy must be interpreted to the effect that the major sons of oustees will be entitled to all the benefits under the R & R Policy, except allocation of agricultural land. The major son would, however, be entitled to his share in the area which is to be allotted to the tenure holder on rehabilitation in case he is entitled to such a share in the law applicable to the particular

State. [Para 83-84 & 85] [521-E-G; 522-D-E & F-G]

Narmada Bachao Andolan v. Union of India & Ors., **2000(4) Suppl. SCR 94 = (2000) 10 SCC 664 and** *Narmada Bachao Andolan v. Union of India & Ors.*, **2005 (2) SCR 840 =(2005) 4 SCC 32 held per incuriam as regards benefit given in those cases to major son.**

3.9. Each State has a right to frame the rehabilitation policy considering the extent of its resources and other priorities. One State is not bound if, in a similar situation, the other State has accorded additional facilities even over and above the policy. The definition of "displaced family" cannot be read in isolation, rather it requires to be considered taking into account the eligibility criteria for allotment of land in Clause (5) of the R & R Policy. To that extent, the judgment of the High Court is liable to be set aside. The direction given by the High Court in paragraph 64 (i) of the judgment, is modified to the extent that the displaced families who have not withdrawn SRG benefits/ compensation voluntarily and submit applications for allotment of land before the Authority concerned, shall be entitled to the allotment of agricultural land "as far as possible" in terms of the R & R Policy, and for that purpose, the appellants must make some government or private land available for allotment to such oustees if they opt for such land and agree to ensure compliance with other terms and conditions stipulated therein. [Para 85-86] [523-G-H; 524-A-D]

3.10. Directions given by the High Court to allot agricultural land to major sons of the oustees in Paragraph 64 (iii) of the impugned judgment is set aside. [Para 86] [523-H; 524-A]

C.A. No.2082 of 2011

4.1. The Office Memorandum issued by the Ministry

of Forest and Environment dated 13.10.1993 granting clearance for the Omkareshwar Dam Project with the condition that the Rehabilitation Programme should be extended to landless labourers and the people affected due to canal by identifying and allocating suitable land as permissible. As the said condition imposed by the Ministry of Forest and Environment while granting clearance is as stood qualified, and has been subject to any other law for the time being in force or the government policy etc., the landless labourers are not entitled to allotment of land. More so, the R & R Policy itself provides a particular mode of retaining 50% of the compensation amount and 50% to be recovered in 20 years. As the landless labourers never had any land, they are not entitled to any compensation under the Act 1894, thus, the question of allotment of land to them would not arise. The R & R Policy itself provides that such persons are entitled to get the specified amount of Rs.49,300/- to buy productive employment creating assets etc., and such money can also be used for acquiring land. [para 90 and 91] [525-H; 526-A-B & D-G]

Gurbax Singh v. State of Punjab & Ors., **AIR 1967 SC 502,** *Municipal Committee, Patiala v. Model Town Residents Association & Ors.*, **AIR 2007 SC 2844 and** *Jagjit Cotton Textile Mills v. Chief Commercial Superintendent, N.R. & Ors.,* **(1998) – relied on**

4.2. In the instant case, the Court is concerned with the rights and entitlements of the oustees of the 5 villages which have already been submerged. There are claims and counter claims in regard to voluntary acceptance of compensation amount/SRG by the oustees of those 5 villages. The record does not contain sufficient material to adjudicate upon the factual aspects involved herein. The GRA is the best forum to decide the claims of such persons. However, in view of the settled legal proposition

that no person should suffer from an act of the court and to ensure that the oustees of the 5 villages which have already been submerged, do not face hostile discrimination at the hands of the authorities, they shall be entitled to the relief to which the other oustees are entitled in Civil Appeal Nos. 2115-2116 of 2011. [para 98, 100 and 101] [531-D; 532-B-C-D-F]

CA Nos. 2083-2012 of 2011:

In these appeals the question for consideration before the Court was whether submergence temporarily for a very short period in the exceptional flood situation warrants acquisition of the land in dispute.

5.1. There are claims and counter claims regarding "taking possession of the land". The High Court did not deal with the issue. Law on the issue can be summarized to the effect that no strait-jacket formula can be laid down for taking the possession of the land for the purpose of ss. 16 and 17 of the Land Acquisition Act 1894. It would depend upon the facts of an individual case. In case the land is fallow and barren and does not have any structure or crop on it, symbolic possession may meet the requirement of law. However, this would not be the position in case crop is standing on the land or a kachha or pacca structure has been raised on such land. In that case, actual physical possession is required to be taken. There may be a case where the acquiring authority is in possession of the land, as the same has already been requisitioned under any law or the property is in possession of a tenant, in such a case symbolic possession qua the tenure holder would be sufficient. [para 114, 116 and 124] [539-F-G; 543-C-F]

Balwant Narayan Bhagde v. M.D. Bhagwat & Ors., **AIR 1975 SC 1767** *In State of T.N. & Anr. v. Mahalakshmi Ammal & Ors.,* **(1996) 7 SCC 269,** *Balmokand Khatri Educational &*

Industrial Trust, Amritsar v. State of Punjab & Ors., **(1996) 4 SCC 212,** *P.K.Kalburqui v. State of Karnataka,* **(2005) 12 SCC 489,** *National Thermal Power Corporation v. Mahesh Datta & Ors.,* **(2009) 8 SCC 339,** *Thakur Nirman Singh & Ors. v. Thakur Lal Rudra Pratap Narain Singh,* **AIR 1926 PC 100;** *Smt. Sawarni v. Inder Kaur & Ors.,* **AIR 1996 SC 2823;** *R.V.E. Venkata Chala Gounder v. Arulmign Ciswesaraswamy & V. Temple & Anr.,* **AIR 2003 SC 4548; and** *Suman Verma v. Union of India & Ors.,* **(2004) 12 SCC 57) – referred to.**

5.2. In the instant case, in view of the fact that land in dispute is an agricultural land and has 167 dwelling houses, law in fact requires taking over the actual physical possession. Respondent no. 1 has asserted that the tenure holders are not in possession of the said land. However, on the directions of this Court, the District and Sessions Judge, Indore has submitted a detailed report stating that the tenure holders are in actual physical possession of the acquired lands. This fact is further evident from the D.V.Ds. and C.Ds. of the videos, prepared during the time of inspection by District Judge, Indore. Thus none of the tenure holders, so far the land in dispute is concerned, has been evicted/dispossessed. All the tenure holders are enjoying the land without any interference. [para 125-127 and 129] [543-G; 545-C; 546-G]

5.3. In view of the serious controversy raised in these appeals, on the directions of this Court the CWC submitted its report dated 22.3.2011 to the effect that out of 284.03 hectare of the land in the five villages, 281.75 hectare falls between FRL and BWL, which will come under temporary submergence due to back water effect. The remaining 2.28 hectare area will not come under submergence due to back water levels when water levels are up to BWL. Therefore, the agricultural land of these five villages is not to be acquired as it may only be under

temporary submergence for a very short period, which occurs throughout the country during floods in monsoon. [para 147, 148 and 159] [553-E-F; 561-B-C]

5.4. The State is, therefore, competent to exercise its power u/s 48 of the Land Acquisition Act, 1894 and, as such, is entitled to abandon the land acquisition proceedings. However, it shall not apply to 167 dwelling units on the said land. Such persons whose dwelling units are acquired shall be entitled for the benefit of R & R Policy to the extent provided therein. The State shall establish roads etc. after raising the height of the Bandh as proposed by the Authorities. [para 130 and 160] [547-B; 563-A-B]

6.1. It has been the case of the applicant/respondent NBA that the tenure holders had already been physically dispossessed and land stood vested in the State. The Court has been entertaining this matter under the bona fide belief that NBA was espousing the grievance of inarticulate and illiterate poor farmers, with all sincerity and thus, would not make any misleading statement. However, belief stands fully belied. In such a fact-situation, the NBA not having personal interest in the case, cannot claim to be *dominus litis.* Thus, it ought to have acted at every stage with full sense of responsibility and sincerity. [Para 131-132] [547-D, G-H; 548-B-C]

Narmada Bachao Andolan v. Union of India & Ors., **(1998) 5 SCC 586; R. and** *M. Trust v. Koramangla Residents Vigilance Group & Ors.,* **AIR 2005 SC 894).** *M/s Holicow Pictures Pvt. Ltd. v. Prem Chandra Mishra & Ors.,* **AIR 2008 SC 913; and** *Sheela Barse v. Union of India & Ors.,* **AIR 1988 SC 2211 – referred to.**

6.2. The 'rights' of the public interest litigant in a PIL are always subordinate to the 'interests' of those for whose benefit the action is brought. The status of

***dominus litis* could not be conferred unreflectively or for the asking, on a PIL petitioner as that would render the proceedings "vulnerable to and susceptible of a new dimension which might, in conceivable cases be used by persons for personal ends resulting in prejudice to the public weal". [para 135] [549-B-C]**

6.3. The standard of expectation of civic responsibility required of a petitioner in a PIL is higher than that of an applicant who strives to realise personal ends. The courts expect a public interest litigant to discharge high standards of responsibility. Negligent use or use for oblique motives is extraneous to the PIL process for were the litigant to act for other oblique considerations, the application will be rejected at the threshold. Measuring the 'seriousness' of the PIL petitioner and to see whether she/he is actually a 'champion' of the cause of the individual or the group being represented, is the responsibility of the Court, to ensure that the party's procedural behaviour remains that of an adequate 'champion' of the public cause. [para 136] [549-D-F]

The Janata Dal v. H.S. Chowdhary & Ors., **AIR 1993 SC 892;** *Kapila Hingorani v. State of Bihar,* **(2003) 6 SCC 1; and** *Kusum Lata v. Union of India & Ors.,* **(2006) 6 SCC 180);** *State of Uttaranchal v. Balwant Singh Chaufal and Ors.,* **(2010) 3 SCC 402. – relied on**

6.4. Therefore, while dealing with the PIL, the Court has to be vigilant and it must ensure that the forum of the Court be neither abused nor used to achieve an oblique purpose. A person seeking relief in public interest should approach the Court of Equity, not only with clean hands but also with a clean mind, clean heart and clean objective. Thus, he who seeks equity must do equity. The legal maxim *"Jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiorem"*, means

that it is a law of nature that one should not be enriched by the loss or injury to another. The judicial process should never become an instrument of oppression or abuse or means to subvert justice. A petition containing misleading and inaccurate statement(s), if filed, to achieve an ulterior purpose, amounts to an abuse of the process of the Court and such a litigant is not required to be dealt with lightly. Further, a false statement made in the Court or in the pleadings, intentionally to mislead the Court and obtain a favourable order, amounts to criminal contempt, as it tends to impede the administration of justice. Thus, a litigant is bound to make "full and true disclosure of facts". The Court is not a forum to achieve an oblique purpose. [para 137-139 and 141] [550-B-G; 551-D]

6.5. Whenever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further with the matter. This rule has been evolved out of need of the courts to deter a litigant from abusing the process of the Court by deceiving it. However, the concealed fact must be material one in the sense that had it not been suppressed, it would have an effect on the merit of the case/order. The legal maxim *"juri ex injuria non oritur"* means that a right cannot arise out of wrong doing, and it becomes applicable in a case like this. In such a case the person who suppresses the material facts from the court is guilty of *suppressio veri and suggestio falsi* i.e. suppression or failure to disclose what a party is bound to disclose, which may amount to fraud. [para 140 &144] [550-G-H; 551-A-B; 552-F-G]

The Ramjas Foundation & Ors. v. Union of India & Ors., **AIR 1993 SC 852;** *Noorduddin v. Dr. K.L. Anand,* **(1995) 1 SCC 242;** *Ramniklal N. Bhutta & Anr. v. State of Maharashtra & Ors.,* **AIR 1997 SC 1236;** *Sabia Khan & Ors. v. State of U.P.*

& Ors., **(1999) 1 SCC 271;** *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar & Ors.,* **(2004) 7 SCC 166; and** *Union of India & Ors. v. Shantiranjan Sarkar,* **(2009) 3 SCC 90 - relied on**

Naraindas v. Government of Madhya Pradesh & Ors., **AIR 1974 SC 1252;** *The Advocate General, State of Bihar v. M/s. Madhya Pradesh Khair Industries & Anr.,* **AIR 1980 SC 946; and** *Afzal & Anr. v. State of Haryana & Ors.,* **(1996) 7 SCC 397).** *K.D. Sharma v. Steel Authority of India Limited & Ors.,* **(2008) 12 SCC 481 – referred to.**

6.6. In the instant case , the NBA has not acted with a sense of responsibility and so far succeeded in securing favourable orders by misleading the Court. Such conduct cannot be approved. 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 any presentation by the NBA with caution and care, insisting on proper pleadings, disclosure of full facts truly and fairly and in case it has any doubt, refuse to entertain the NBA. However, considering the interests of the oustees, it may be desirable that the Court may appoint an *Amicus Curiae* to present their cause, if such a contingency arises. [para 145] [552-G-H; 553-A-B]

Case Law Reference:

1988(2) Suppl. SCR 1050	**Para 7**	**Relied on**
1988 (2) SCR 339	**Para 7**	**Relied on**
2001 (3) SCR 124	**Para 7**	**Relied on**
2010 (7) SCR 252	**Para 7**	**Relied on**

1987 (2) SCR 805	**Para 9**	**Relied on**
1988 Suppl.; SCR 690	**para 10**	**Relied on**
1994 (2) Suppl. SCR 404	**Para 11**	**Relied on**
2003 (5) Suppl. SCR 716	**Para 11**	**Relied on**
2009 (11) SCR 727	**Para 11**	**Relied on**
2000(4) Suppl. SCR 94	**Para 14**	**Referred to**
1995 (1) Suppl. SCR 492	**Para 16-17**	**referred to**
2005 (2) SCR 840	**Para 16-17**	**referred to**
1983(1) SCR 8	**Para 22**	**referred to**
2007 (13) SCR 876	**Para 22**	**referred to**
2002 (3) SCR 365	**Para 24**	**relied on**
2009 (2) SCR 881	**Para 24**	**relied on**
2010 (8) SCR 750	**Para 24**	**relied on**
1995 (6) Suppl. SCR 827	**Para 24**	**relied on**
1997 (2) Suppl. SCR 305	**Para 25**	**relied on**
2007 (2) SCR 980	**Para 26**	**relied on**
2010 (12) SCR 163	**Para 26**	**relied on**
1994(1) Suppl. SCR 807	**Para 26**	**relied to**
2007(5) SCR 1060	**Para 34**	**relied on**
2009 (9) SCR 225	**Para 34**	**relied on**
2005 (1) SCR 73	**Para 36**	**relied on**
2009 (1) SCR 795	**Para 34**	**referred to**
1999 (2) Suppl. SCR 754	**Paras 38-39**	**Referred to**

2004(1) Suppl. SCR 65	**Paras 38-39**	**Referred to**
2004 (6) Suppl. SCR 282	**Paras 38-39**	**Referred to**
1995(2) SCR 260	**Para 43**	**referred to**
2003(3) Suppl. SCR 152	**Para 43**	**referred to**
1988 (2) Suppl. SCR 853	**Para 44**	**referred to**
1986 (1) SCR 603	**Para 45**	**referred to**
1988 (2) Suppl. SCR 929	**Para 59**	**relied on**
2009 (1) SCR 979	**Para 59**	**relied on**
1989 (1) Suppl. SCR 692	**Para 60**	**relied on**
2004(1) SCR 564	**Para 60**	**relied on**
1975 (3) SCR 834	**Para 60**	**relied on**
1988 (1) Suppl. SCR 1	**Para 60**	**relied on**
1991 (3) SCR 64	**Para 60**	**relied on**
2010 (15) SCR 201	**Para 60**	**relied on**
1992(2) Suppl. SCR 182	**Para 63**	**referred to**
2006(3) Suppl. SCR 48	**Para 63**	**relied on**
1995(3) SCR 450	**Para 63**	**relied on**
1996 (1) Suppl. SCR 442	**Para 63**	**relied on**
1952 SCR 435	**Para 67**	**relied on**
1989 (2) Suppl. SCR 731	**Para 67**	**relied on**
1981 (3) SCR 234	**Para 67**	**relied on**
1990(1) Suppl. SCR 442	**Para 67**	**relied on**
1952 SCR 435	**Para 67**	**relied on**

1989 (2) Suppl. SCR 731	**Para 67**	**relied on**
1981 (3) SCR 234	**Para 67**	**relied on**
1990(1) Suppl. SCR 442	**Para 67**	**relied on**
1982 SCR 365	**Para 72**	**relied on**
1990 (1) SCR 483	**Para 72**	**relied on**
2007(8) SCR 136	**Para 72**	**relied on**
2008 916) SCR 340	**Para 72**	**relied on**
2009(15) SCR 265	**Para 72**	**relied on**
2007 (11) SCR 824	**Para 73**	**relied on**
2008 (14) SCR 889	**Para 73**	**relied on**
2008 (8) SCR 315	**Para 74**	**relied on**
1996(1) Suppl. SCR 414	**Para 74**	**relied on**
1958 SCR 1156	**Para 74**	**relied on**
1965 SCR 364	**Para 74**	**relied on**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2082 of 2011.

From the Judgment & Order dated 21.2.2008 of the High Court of Judicature of Madhya Pradesh at Jabalpur in W.P. (C) No. 4457 of 2007.

WITH

C.A. Nos. 2083-2097, 2098-2112, 2115 and 2116 of 2011.

Sanjay Parikh, TVS Raghavendra Sreyas, Swapnil Verma, Nikhil Nayyar for the Appellant.

P.S. Patwalia, Ravi Shankar Prasad, Sunny Choudhary, Ajay Chauhan, C.D. Singh, Suparna Srivastava, Ran Swarup

Sharma, Ashok Bhan, D.S. Mehra for the Respondents.

The Judgment of the Court was delivered by

DR. B. S. CHAUHAN, J. 1. All these appeals relate to the establishment of the Omkareshwar Dam on the Narmada river in Madhya Pradesh. As these appeals are inter-connected and have been filed against interim orders passed by the High Court in the same writ petition, they have been heard together and disposed of by a common judgment. However, for convenience Civil Appeal Nos. 2115-2116 of 2011 are dealt with first.

Civil Appeal Nos. 2115-2116 of 2011

2. These appeals have been preferred against the judgment and order dated 21.2.2008 passed by the High Court of Madhya Pradesh at Jabalpur in Writ Petition No. 4457 of 2007, 'Narmada Bachao Andolan v. State of Madhya Pradesh & Anr.', wherein the High Court as an interim measure, has issued directions, *inter-alia,* for allotment of agricultural land to the displaced persons in lieu of the land acquired for construction of the dam in terms of the Rehabilitation and Resettlement Policy (hereinafter called as 'R & R Policy') as amended on 3.7.2003. The High Court direction applied even to those oustees who had already withdrawn the compensation, if such oustees opt for such land and refund 50% of the compensation amount received by them. The balance cost of the allotted land would be deposited by the allottees in 20 equal yearly installments as stipulated in clause (5.3) of the R & R Policy, and to treat a major son of the family whose land has been acquired as a separate family for the purpose of allotment of agricultural land.

3. **FACTUAL MATRIX :**

Facts and circumstances giving rise to these cases are as follows:

(A) The Narmada river starts at Amarkantak. It flows through Madhya Pradesh for 1077 km, then forms a common boundary in Maharashtra for 74 km (35 km with MP and 39 km with Maharashtra) and then passes through Gujarat for 161 km before meeting the Arabian Sea after a total length of 1312 km. The Narmada Water Disputes Tribunal apportioned the water in the Narmada between Madhya Pradesh, Gujarat, Maharashtra and Rajasthan, subject to review after 45 years.

(B) The State of Madhya Pradesh, conducted a survey in 1955 for the establishment of hydro-power projects in the Narmada basin at different sites including Barwaha (Omkareshwar Project). In 1983, Narmada Valley Development (Irrigation) Department (hereinafter called NVD) was set up and further studies were conducted for the establishment of hydro-power projects.

(C) The Omkareshwar Dam - an intra-state project for generating 520 mega watts of power, which also involved the irrigation of 1.47 lakh hectares of agricultural land, was approved by the State Government, with an assessment that on the completion of the project, 30 villages would be submerged at the full reservoir level i.e. 196.60 mtrs.

(D) The Government of Madhya Pradesh framed a rehabilitation and resettlement policy in 1985 (hereinafter called 'R & R Policy') for the oustees of all the Narmada projects in the State. The said policy was amended from time to time as is evident from the R & R Policies dated: 9th June, 1987; 5th September, 1989; 7th June, 1991; and 27th August 1993.

The said policy provided for the allotment of a minimum of 2 hectares of agricultural land; irrigation facilities at government cost; grant-in-aid for small and marginal farmers and SC/ST families; and to meet the entire cost of the allotted land. The policy further provided that the allotment of agricultural land would be carried out much in advance, before dam construction reached crest level. The land required for allotment

would be procured in the common area from the farmers having holdings of more than 4 hectares of land.

The State authorities obtained environmental clearance for the Omkareshwar project from the Ministry of Environment and Forest on 13.10.1993. The Ministry of Welfare granted clearance on 8.10.1993. The Planning Commission also granted clearance on condition of compliance with welfare and environmental clearances vide order dated 25.5.2001.

The Central Electricity Authority accorded techno-economic clearance under the provisions of Electricity (Supply) Act, 1948 on 24.7.2001. The Government of India approved and granted financial concurrence from Public Investment Board of the Planning Commission for this project on 17.5.2002. Forest clearance was granted on 20.8.2004 under the provisions of Section 2 of the Forest (Conservation) Act, 1980 for the diversion of 5829 hectares of forest lands. Therefore, there had been various statutory and non-statutory clearances from the authorities.

(E) The R & R Policy further stood amended on 3.7.2003, to the effect that agricultural land would be offered to the oustees "as far as possible"; and not to those who would make application in writing to receive compensation for their acquired land.

(F) Construction of the Omkareshwar dam began in 2002 and stood completed in October, 2006. A large number of families had been uprooted on construction of the dam upto its 190 mtrs. height. For the dam site, a huge area of land had been acquired under the provisions of the Land Acquisition Act, 1894 (hereinafter called as 'Act 1894'). The displaced persons were allegedly not offered the land under the R & R Policy, as amended on 3.7.2003, rather compensation for their land was deposited in their accounts.

(G) Narmada Bachao Andolan, respondent No.1

(hereinafter referred to as 'NBA'), an action group, had been espousing the grievances of displaced persons by filing Public Interest Litigations (hereinafter called 'PIL') before the High Court/further to this Court from time to time and a large number of orders had been passed by the courts to redress the grievances of the oustees. When the decision was taken to raise the height of the dam, NBA filed writ petition No.4457 of 2007 before the High Court seeking a number of reliefs, *inter-alia,* to stop all eviction; directions for serving of life supplies such as drinking water and electricity; not to take any other coercive measures, to stop closure of the radial gates of the Omkareshwar dam above crest level of EL 179.60 M; and to stop the blocking of the sluice gates below crest level, until all Project Affected Families (hereinafter called 'PAFs') were rehabilitated as per the R & R Policy. Further reliefs sought included the issuance of appropriate directions for an assessment by the Grievance Redressal Authority (hereinafter called 'GRA') for the Omkareshwar Project of the status of relief and rehabilitation of the oustees affected at Full Reservoir Level (hereinafter called 'FRL') and Back Water Level (hereinafter called 'BWL') within a stipulated period.

(H) During the pendency of the writ petition in pursuance of the orders passed by the High Court from time to time, a large number of reports/interim reports were furnished by the authorities concerned. The High Court after considering the said reports and submissions advanced on behalf of the parties passed the impugned judgment and order dated 21.2.2008. The High Court issued a large number of directions as interim measures, including the direction for allotment of land in lieu of land acquired and to treat the major sons of the family, as independent families for the purpose of allotment of agricultural land. Hence, these appeals.

4. S/Shri Ravi Shankar Prasad and P.S. Patwalia, learned senior counsel appearing for the appellants have submitted that the High Court ought not to have entertained the writ petition

as it did not have material facts/particulars disclosing any cause of action to the writ petitioners even in the PIL. Not a single order passed by any statutory authority had been challenged and the writ petition was filed after inordinate delay without furnishing any explanation for the same. The GRA had been constituted to consider individuals' grievances and not a single oustee approached the GRA before filing of the writ petition. The Court ought to have relegated the parties for redressal of their grievances to the GRA. An efficacious alternative remedy was available to the oustees. The High Court further committed an error in issuing directions for allotment of land in lieu of land even in those cases where the oustees have voluntarily accepted the compensation amount; that such oustees would deposit 50% of the said amount and would be entitled to allotment of land. It is further submitted that the High Court erred in treating the major son of such an oustee as a separate family for the purpose of allotment of agricultural land, though he did not have any independent right to claim compensation for the land acquired. Land for allotment to such oustees is not available. The State authorities cannot be asked to do an impossible task. The State authorities have provided a package for their re-settlement and rehabilitation, giving all facilities and financial aid. Making the allotment of land mandatory in lieu of land acquired would force the State to displace other persons to settle such oustees, which is impermissible in law. In case each major son of such oustees is treated as a separate family, acquisition of his family land would prove to be a bonanza for such persons as the tenure holding of such a family would multiply several times and State would suffer irreparable losses. The State Government vide amendments of the Revenue Code, reduced the area of the grazing land, but the land so made available is not enough to meet the needs of such a large number of oustees. Cases decided by this Court, earlier on two occasions, have no bearing on the issue in these cases, as the true and correct facts could not be brought to the notice of this Court. Most of

the oustees had taken benefit of the Special Rehabilitation Grant (hereinafter called as 'SRG') and withdrawn the amount and surrendered the possession of their land. The SRG amount has been more than the compensation amount for acquisition of land. The High Court did not issue any direction in regard to the amount taken by the oustees as SRG, either to refund the same or for adjustment of the same. Therefore, directions issued by the High Court are liable to be set aside. The appeals deserve to be allowed.

5. On the contrary, Dr. Rajeev Dhavan, learned senior counsel and Shri Sanjay Parekh, Advocate representing the oustees, have vehemently opposed the appeals contending that displacement of oustees without proper implementation of the rehabilitation scheme is violative of Article 21 of the Constitution of India. In a matter of this nature where a very large number of illiterate, inarticulate and poor people have suffered at the hands of the statutory authorities, no technical objections e.g. want of proper pleadings or delay etc., can be allowed to be raised. Statutory and non-statutory authorities have granted clearances for the Omkareshwar Dam Project on the clear understanding that the State authorities would carry out and implement, in letter and spirit, all the terms and conditions of the R & R Policy. Therefore, it is not permissible for the State authorities to say that it would not strictly adhere to the terms incorporated therein. The appellant-State and its instrumentalities never made any serious attempt to acquire land for such oustees and the compensation amount has been deposited in respective accounts of the oustees. Not a single oustee had ever opted for compensation for land in lieu of land acquired. Amendment made in the R & R Policy vide order dated 3.7.2003 is ultra vires and illegal and is liable to be ignored for the reason that the R & R Policy had been approved by the State Government, though the amendment had not undergone the same process. If a major son of the family, whose land has been acquired, is not treated as a 'separate family' for the purpose of allotment of land for land acquired, the definition of 'displaced family'

under clause 2(b) of the R & R Policy would be rendered nugatory. Therefore, such an interpretation is not permissible. This Court, while interpreting the other schemes in respect of Narmada Projects itself has given effect to the said policy and directed for allotment of land for land acquired and upheld the entitlement of the major son of an oustee to an independent allotment of agricultural land. Denial of such a right would be discriminatory and thus violative of the equality clause enshrined in Article 14 of the Constitution of India. Thus, the appeals lack merit and are liable to be dismissed.

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

PLEADINGS:

7. It is a settled proposition of law that a party has to plead its case and produce/adduce sufficient evidence to substantiate the averments made in the petition and in case the pleadings are not complete the Court is under no obligation to entertain the pleas.

In *Bharat Singh & Ors. v. State of Haryana & Ors.,* AIR 1988 SC 2181, this Court has observed as under:-

> "In our opinion, when a point, which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or the counter-affidavit, as the case may be, the Court will not entertain the point. There is a distinction between a hearing under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, i.e. a plaint or written statement, the facts and not the evidence are required to be pleaded. In a writ petition or in the counter affidavit, not

> only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it." (Emphasis added)

8. A similar view has been reiterated by this Court in *Larsen & Toubro Ltd. & Ors. v. State of Gujarat & Ors.,* AIR 1998 SC 1608; *M/s Atul Castings Ltd. v. Bawa Gurvachan Singh,* AIR 2001 SC 1684; and *Rajasthan Pradesh V.S. Sardarshahar & Anr. v. Union of India & Ors.,* AIR 2010 SC 2221.

9. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question(s) in issue, so that the parties may adduce appropriate evidence on the said issue. It is settled legal proposition that "as a rule relief not founded on the pleadings should not be granted." Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties.

The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. If any factual or legal issue, despite having merit, has not been raised by the parties, the court should not decide the same as the opposite counsel does not have a fair opportunity to answer the line of reasoning adopted in that regard. Such a judgment may be violative of the principles of natural justice. (Vide: *Ram Sarup Gupta (dead) by L.Rs. v. Bishun Narain Inter-College & Ors.,* AIR 1987 SC 1242; and *Kalyan Singh Chouhan v. C.P. Joshi,* AIR 2011 SC 1127).

10. It cannot be said that the rules of procedural law do not apply in PIL. The caution is always added that every technicality in the procedural law is not available as a defence in such proceedings when a matter of grave public importance is for consideration before the Court. (Vide: *Rural Litigation*

and Entitlement Kendera v. State of U.P., AIR 1988 SC 2187).

11. Strict rules of pleading may not apply in PIL, however, there must be sufficient material in the petition on the basis of which Court may proceed. The PIL litigant has to lay a factual foundation for his averments on the basis of which such a person claims the reliefs. Information furnished by him should not be vague and indefinite. Proper pleadings are necessary to meet the requirements of the principles of natural justice. Even in PIL, the litigant cannot approach the Court to have a fishing or roving enquiry. He cannot claim to have a chance to establish his claim. However, the technicalities of the rules of pleading cannot be made applicable vigorously. Pleadings prepared by a layman must be construed generously as he lacks standard of accuracy and precision particularly when a legal wrong is caused to a determinate class. (Vide: *A. Hamsaveni & Ors. v. State of Tamil Nadu & Anr.,* (1994) 6 SCC 51; *Ashok Kumar Pandey v. State of West Bengal,* AIR 2004 SC 280; *Prabir Kumar Das v. State of Orissa & Ors.,* (2005) 13 SCC 452; and *A. Abdul Farook v. Municipal Council, Perambalur,* (2009) 15 SCC 351).

12. In the instant case, in the writ petition, an impression had been given, that some drastic steps would be taken by the authorities which would cause great hardship to a large number of persons. However, the writ petition did not disclose the factum of how many persons had already vacated their houses and handed over the possession of their land. It was contended that urgent measures were required to be taken by the Court in order to mitigate the sufferings of the people. In view of the fact that there was no material before the Court to adjudicate upon the issues involved therein, the High Court passed the order dated 30.3.2007 directing the GRA to submit the report on the rehabilitation work already done and still to be done; and to disclose the consequences of the closure of radial gates of the dam and blocking of the sluice gate of the dam on the people residing in the area which would be submerged. In

pursuance of the said order, the GRA submitted the report dated 7.4.2007, explaining that a huge amount of several thousand crores of rupees had already been invested. The SRG had already been disbursed. Out of a total number of 4513 families to be adversely affected by the project, 2787 families had already shifted and 1726 families remained there. An amount of Rs.9924 lacs had already been disbursed among the claimants and only a sum of Rs.589 lacs remained to be disbursed. The report further explained that land in lieu of land acquired would be allotted to oustees "as far as possible" and as most of the oustees had accepted the compensation, it was not required on the part of the State to allot the land for land acquired. The other benefits of the R & R Policy had already been given. In fact, it is in view of this report, the High Court started examining the grievances of the oustees. Several reports were submitted by the GRA before the High Court from time to time and whatever has been disclosed in those reports provided the basis for raising further queries and that, in fact, became part of pleadings of the case. In fact, the present appellants had been asked to lay factual foundation to adjudicate the issues raised by the writ petitioners.

13. In view of the above, it is evident that there were no pleadings before the High Court on the basis of which the writ petition could be entertained/decided. Thus, it was liable to be rejected at the threshold for the reason that the writ petition suffered for want of proper pleadings and material to substantiate the averments/allegations contained therein. Even in the case of a PIL, such a course could not be available to the writ petitioners.

DELAY/LACHES:

14. In the instant cases, the construction of the dam started in October 2002 and was completed in October 2006. No objection had ever been raised by NBA at any stage. The Narmada Development Authority vide order dated 28.3.2007

gave permission to National Hydraulic Development Corporation to raise the water level of the dam to 189 meters upon showing that rehabilitation of oustees of 5 villages adversely affected at 189 meters, had already been completed. The writ petition was filed praying for restraining the appellants from closing the sluice gates of the dam contending that resettlement and rehabilitation was not complete. There was no explanation as to under what circumstances the Court had been approached at such belated stage.

15. In *Narmada Bachao Andolan v. Union of India & Ors.,* (2000) 10 SCC 664, (hereinafter called as 'Narmada Bachao Andolan-I'), this Court dealt with a similar issue of laches and observed that in spite of the fact that the clearance for construction of the dam was given in 1987, the same was challenged in 1994 on the ground that there was a lack of studies available regarding the environmental aspects and also because of seismicity. Thus, the clearance should not have been granted. The rehabilitation package was dissimilar and there had been no independent study or survey done before the decision to undertake the project was taken and construction started. This Court held that clearance and undertaking to construct the dam had been given and hundreds of crores of rupees had already been invested, before the writ petitioner had chosen to file the writ petition in 1994. Thus, the petitioner was guilty of laches in not approaching the court at an earlier point of time. The Court, however, observed as under:

> "When such projects are undertaken and hundreds of crores of public money is spent, any individual or organisations in the garb of PIL cannot be permitted to challenge the policy decision taken after a lapse of time. It is against the national interest and contrary to the established principles of law that decisions to undertake developmental projects are permitted to be challenged after a number of years during which period public money has been spent in the execution of the project…….

> This Court has entertained this petition with a view to satisfy itself that there is proper implementation of the relief and rehabilitation measures ……. In short, it was only the concern of this Court for the protection of the fundamental rights of the oustees under Article 21 of the Constitution of India which led to the entertaining of this petition. It is the relief and rehabilitation measures that this Court is really concerned with and the petition in regard to the other issues raised is highly belated." (Emphasis added)

In *State of Maharashtra v. Digambar,* (1995) 4 SCC 683, this Court had taken a similar view.

16. In fact for redressal of any grievance regarding implementation of the R & R Policy, the oustees ought to have approached the GRA. There is nothing on record to show how many oustees remained unsatisfied/aggrieved of the orders passed by GRA till the filing of the writ petition.

17. Thus, in view of the above, the High Court ought not to have examined any issue other than relating to rehabilitation i.e. implementation of the R & R Policy.

ALTERNATIVE REMEDY:

18. While dealing with a similar issue in *Narmada Bachao Andolan v. Union of India & Ors.,* (2005) 4 SCC 32, (hereinafter called as 'Narmada Bachao Andolan-II'), this Court observed as under:

> "Several contentions involving factual dispute had, we may notice, not been raised before GRA. GRA had been constituted with a purpose, namely, that the matters relating to rehabilitation scheme must be addressed by it at the first instance. This Court cannot entertain applications raising grievances involving factual issues raised by the parties. GRA being headed by a former Chief Justice of

the High Court would indisputably be entitled to adjudicate upon such disputes. It is also expected that the parties should ordinarily abide by such decision. This Court may entertain an application only when extraordinary situation emerges."

19. Thus, in view of the above, the High Court ought to have directed the oustees to approach the GRA for redressal of their grievances and if any person was further aggrieved of the directions issued by the GRA, he could have approached the High Court after full fledged adjudication of the factual issues by the GRA.

AMENDMENT OF R & R POLICY:

20. There are claims and counter-claims on the issue as to whether the validity of the amendment of the R & R Policy was under challenge before the High Court. However, it is evident from the pleadings that the validity of the amendment dated 3.7.2003 had been raised while filing the rejoinder affidavit. The rejoinder affidavit reveals that as the R & R Policy had been approved by the State Government and statutory and non-statutory clearances had been obtained on the basis of the R & R Policy, the amendment dated 3.7.2003 ought to have been brought for the approval of the authorities who had granted approval at initial stage. The amendment cannot be given effect to. The impugned judgment makes it explicit that the issue had been raised and only taken note of by the Court but not decided.

21. The appellants have placed documents on record to show that amendment in issue had been duly approved by the Cabinet of the Madhya Pradesh government and suggestion has been made that amendment did not require approval of the authorities who had granted clearances. It has been opposed by the respondents.

22. In case a plea is raised and not considered properly

by the court the remedy available to the party is to file a review petition. (Vide: *State of Maharashtra v. Ramdas Shrinivas Nayak & Anr.,* AIR 1982 SC 1249; *Transmission Corporation of A.P. Ltd & Ors. v. P. Surya Bhagavan,* AIR 2003 SC 2182; and *Mount Carmel School Society v. DDA,* (2008) 2 SCC 141).

23. Be that as it may, in view of the fact that neither the writ petitioner asked the High Court to quash the said amendment dated 3.7.2003, nor the court has suo motu quashed it, nor the writ petitioner has filed Special Leave Petition raising the said point, it is not permissible for us to deal with the issue.

LAND ACQUISITION AND REHABILITATION: **Article 21**:

24. It is desirable for the authority concerned to ensure that **as far as practicable** persons who had been living and carrying on business or other activity on the land acquired, **if they so desire**, and are willing to purchase and comply with any requirement of the authority or the local body, be given a piece of land on terms settled with due regard to the price at which land has been acquired from them. However, the State Government cannot be compelled to provide alternate accommodation to the oustees and it is for the authority concerned to consider the desirability and feasibility of providing alternative land considering the facts and circumstances of each case. In certain cases, the oustees are entitled to **rehabilitation.** Rehabilitation is meant only for those persons who have been **rendered destitute** because of a loss of residence or livelihood as a consequence of land acquisition. The authorities must explore the avenues of rehabilitation by way of employment, housing, investment opportunities, and **identification of alternative lands**. "A blinkered vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws lead to a situation

where the rights and benefits promised and guaranteed under the Constitution hardly ever reach the most marginalised citizens." For people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic.

(Vide: *State of U.P. v. Smt. Pista Devi & Ors.,* AIR 1986 SC 2025; *Narpat Singh etc. etc. v. Jaipur Development Authority & Anr.,* AIR 2002 SC 2036; *Special Land Acquisition Officer, U.K. Project v. Mahaboob & Anr.,* (2009) 14 SCC 54; *Mahanadi Coal Fields Ltd. & Anr. v. Mathias Oram & Ors.,* JT (2010) 7 SC 352; and *Brij Mohan & Ors. v. Haryana Urban Development Authority & Anr.,* (2011) 2 SCC 29).

25. The Fundamental Right of the farmer to cultivation is a part of right to livelihood. "Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity." India being a predominantly agricultural society, there is a "strong linkage between the land and the person's status in the social system." However, in case of land acquisition, *"the plea of deprivation of right to livelihood under Article 21 is unsustainable."* (Vide: *Chameli Singh & Ors. v. State of U.P. & Anr.,* AIR 1996 SC 1051; and *Samatha v. State of A.P. & Ors.,* AIR 1997 SC 3297).

26. This Court has consistently held that Article 300-A is not only a constitutional right but also a human right. (Vide: *Lachhman Dass v. Jagat Ram & Ors.,* (2007) 10 SCC 448; and *Amarjit Singh & Ors. v. State of Punjab & Ors.* (2010) 10 SC 43).

27. However, in *Jilubhai Nanbhai Khachar & Ors. v. State of Gujarat & Anr.,* AIR 1995 SC 142, this Court held**:**

> "Thus, it is clear that right to property under Article 300-A is not a basic feature or structure of the Constitution. It is only a constitutional right……The principle of unfairness of

> the procedure attracting Article 21 does not apply to the acquisition or deprivation of property under Article 300-A giving effect to the directive principles…."

28. This Court in *Narmada Bachao Andolan – I* held as under:

> "62. The displacement of the tribals and other persons *would not per se result in the violation of their fundamental or other rights.* The effect is to see that on their rehabilitation at new locations they are better off than what they were. At the rehabilitation sites they will have more and better amenities than those they enjoyed in their tribal hamlets. The gradual assimilation in the mainstream of the society will lead to betterment and progress."

29. In *State of Kerala & Anr. v. Peoples Union for Civil Liberties, Kerala State Unit & Ors.,* (2009) 8 SCC 46, this Court held as under:

> "**102.** Article 21 deals with right to life and liberty. Would it bring within its umbrage a right of tribals to be rehabilitated in their own habitat is the question?
>
> *103. If the answer is to be rendered in the affirmative, then, for no reason whatsoever even an inch of land belonging to a member of Scheduled Tribe can ever be acquired.* Furthermore, a distinction must be borne between a right of rehabilitation required to be provided when the land of the members of the Scheduled Tribes are acquired vis-à-vis a prohibition imposed upon the State from doing so at all."

Thus, from the above referred to judgments, it is evident that acquisition of land does not violate any constitutional/ fundamental right of the displaced persons. However, they are entitled to resettlement and rehabilitation as per the policy framed for the oustees of the concerned project.

FINDINGS OF THE HIGH COURT:

30. The High Court after considering the submissions and examining the documents on record, so far as the issue of land in lieu of land acquired is concerned, came to the following conclusions:

(i) An area of 2508.14 hectares of agricultural land was required for allotment to the displaced families as per the R & R Policy for the Omkareshwar Project. Such land was proposed to be acquired from big cultivators having more than 4 hectares of land in the command area of the project under Section 11(4) of the Madhya Pradesh Pariyojana Ke Karan Visthapit Vyakti (Punahsthapan) Adhiniyam, 1985, (herein after called 'Adhiniyam 1985').

(ii) Vide order dated 4th March, 1998, the area of the grazing land (required under the M.P. Land Revenue Code) was reduced from 10 per cent to 5 per cent in every village. Subsequently, vide order dated 19th September, 2002, area of grazing land was further reduced to 2 per cent so that some part of such land could be allotted to the oustees of the project.

(iii) No efforts had been made by the Government for allotment of land in lieu of land acquired to the displaced families under the R & R Policy as amended on 3.7.2003.

(iv) The State instrumentalities had not made any effort to purchase private lands, for allotment to oustees under the R & R Policy. On the contrary, the Government made available a huge area of land required for a Special Economic Zone by acquiring private land under the Act 1894 for setting up of industries in the State of Madhya Pradesh.

(v) The submission of the State authorities that on account of scarcity of cultivable land in the State, it was impossible for the State Government to purchase private land for allotment, was not acceptable.

(vi) Only 11 per cent of the displaced families were able to purchase private agricultural land themselves without any aid or assistance of the State authorities.

(vii) None of the oustees has given option in writing to receive compensation in lieu of land acquired.

(viii) The State deposited the amount of compensation in the accounts of the oustees irrespective of whether they wanted land in lieu of land acquired.

(ix) None of the protections/facilities provided for persons belonging to Scheduled Castes and Scheduled Tribes under the R & R Policy had been accorded. The District Collector did not make any verification in regard to their claim for land in lieu of land acquired as required under the R & R Policy.

(x) The Government had not made any attempt to provide any grant-in-aid to cover up the gap between the amount of compensation and the actual cost of land available for the purpose, particularly to all displaced Scheduled Castes and Scheduled Tribes families.

(xi) The State authorities had hastily proceeded to complete the rehabilitation process and started the power project of the Omkareshwar Dam contrary to the assurances given under the said policy for Scheduled Castes and Scheduled Tribes families, as none of such oustees was interested in receiving compensation for agricultural land.

(xii) Grant-in-aid to cover up the difference of costs of the land purchased and amount of compensation was not paid to marginal farmers having upto 2 hectares of land, as provided in the R & R Policy.

31. We have to examine whether any of the findings recorded by the High Court on the issue of entitlement for land in lieu of land acquired suffers from perversity and thus,

warrants interference by this Court.

32. The relevant part of the R & R Policy, for the purpose of determination of first issue, reads as under:

(I) <u>Principles for rehabilitation of displaced families</u>:

1. The aim of the State Government is that all displaced families as defined hereinafter would after their relocation and resettlement improve, or at least regain, their previous standard of living within a reasonable time.

xx xx xx

4. **Special care would be taken of the families of Scheduled Castes, Scheduled Tribes, marginal farmers and small farmers.**

xx xx xx

1. The displaced families would be encouraged and assisted in purchase of lands from voluntary sellers of the host villages.

II. - **<u>State Government Policy regarding rehabilitation and resettlement of families affected due to submerging in Narmada Projects</u>**:

1. **Definitions**:

(1.1) **Displaced person**:

a. Any person who has been ordinarily residing or carrying on any trade or vocation for his livelihood or has been cultivating land for at least one year before the date of publication of notification under Section 4 of the Land Acquisition Act in the area which is likely to be submerged permanently or temporarily due to project.

xx xx xx

3. **Allotment of Agricultural land**:

xx xx xx

3.2 (a) Every displaced family from whom more than 25 percent of its land holding is acquired in revenue villages or forest villages shall be entitled to and **as far as possible** will be allotted land to the extent of land acquired from it, subject to the provision of para 3.2(b) below.

(b) *As far as possible*, a minimum area of 2 hectares of land would be allotted to all the families whose lands would be acquired irrespective of whether Government land is offered or private land is purchased for allotment. Where more than 2 hec. of land is acquired from a family, it will be allotted equal land **as far as possible, subject to a ceiling of 8 hec**. (Portion in italics was added vide amendment dated 3.7.2003)

xx xx xx

5. Recovery of cost of allotted land:

(5.1) At least fifty per cent amount of compensation for the acquired land shall be retained as initial installment towards the payment of the cost of land to be allotted to the displaced family. *However, if a displaced family does not wish to obtain land in lieu of the submerged land and wishes full payment of the amount of compensation, it can do so by submitting an application to this effect in writing to the concerned Land Acquisition Officer.* In such cases displaced families will have no entitlement over allotment of land and shall be paid full amount of compensation in one installment. As option once exercised under this provision shall be final, no claim for allotment of land in lieu of the acquired land can be made

afterwards. (Portion in italics was added vide amendment dated 3.7.2003).

If any displaced family belonging to the Scheduled Tribes, submits such an application, it will be essential to obtain orders of the Collector who will, after necessary enquiry, certify that this will not adversely affect the interests of the displaced family. Such application of the Scheduled Tribes displaced families will be accepted only after the above said certification by the Collector.

(5.2) ……..

(5.3) There will be no recovery of this loan for the first 2 years. Thereafter, the loan would be recovered in 20 equal yearly installments.

(5.4) *Grant-in-aid would be paid to cover up the gap between the amount of compensation and the cost of allotted land in the cases where the cost of allotted land is more than the amount of compensation.* This grant would be payable to all displaced land owning Scheduled Caste and Scheduled Tribe families and other families losing upto 2 hec. of land. For other families from whom more than 2 hec. and upto 8 hectares of land is acquired, grant-in-aid in addition to amount of compensation will be given by the Narmada Valley Development Authority on the rates prescribed therein.

POLICY DECISIONS:

33. In *State of Punjab & Ors. v. Ram Lubhaya Bagga etc. etc.,* AIR 1998 SC 1703, this Court while examining the State policy fixing the rates for reimbursement of medical expenses to the government servants held :

"……When Government forms its policy, it is based on a number of circumstances on facts, law including

constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints……. For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right finances are an inherent requirement. Harnessing such resources needs top priority……..No State of any country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible."

34. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See: *Ram Singh Vijay Pal Singh & Ors. v. State of U.P. & Ors.,* (2007) 6 SCC 44; *Villianur Iyarkkai Padukappu Maiyam v. Union of India & Ors.,* (2009) 7 SCC 561; and *State of Kerala & Anr. v. Peoples' Union for Civil Liberties, Kerala State Unit & Ors.,* (Supra).

35. Thus, it emerges to be a settled legal proposition that Government has the power and competence to change the policy on the basis of ground realities. A public policy cannot be challenged through PIL where the State Government is competent to frame the policy and there is no need for anyone to raise any grievance even if the policy is changed. The public policy can only be challenged where it offends some constitutional or statutory provisions.

AS FAR AS POSSIBLE :

36. The aforesaid phrase provides for flexibility, clothing the authority concerned with powers to meet special situations where the normal process of resolution cannot flow smoothly. The aforesaid phrase can be interpreted as not being prohibitory in nature. The said words rather, connote a discretion vested in the prescribed authority. It is thus discretion and not compulsion**.** There is no hard and fast rule in this regard as these words give a discretion to the authority concerned. Once the authority exercises its discretion, the Court should not interfere with the said discretion/decision unless it is found to be palpably arbitrary. (Vide: *Iridium India Telecom Ltd. v. Motorola Inc.,* AIR 2005 SC 514; and *High Court of Judicature for Rajasthan v. Veena Verma & Anr.,* AIR 2009 SC 2938).

37. Thus, it is evident that this phrase simply means that the principles are to be observed unless it is not possible to follow the same in the particular circumstances of a case.

DOCTRINE OF IMPOSSIBILITY:

38. The Court has to consider and understand the scope of application of the doctrines of *"lex non cogit ad impossibilia"* (the law does not compel a man to do what he cannot possibly perform); *"impossibilium nulla obligatio est"* (the law does not expect a party to do the impossible); and *impotentia excusat legem* in the qualified sense that there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory. These maxims are akin to the maxim of Roman Law *Nemo Tenetur ad Impossibilia* (no one is bound to do an impossibility) which is derived from common sense and natural equity and has been adopted and applied in law from time immemorial. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. (Vide: *Chandra Kishore Jha*

v. Mahavir Prasad & Ors., AIR 1999 SC 3558; *Hira Tikkoo v. Union Territory, Chandigarh & Ors.,* AIR 2004 SC 3648; and *Haryana Urban Development Authority & Anr. v. Dr. Babeswar Kanhar & Anr.,* AIR 2005 SC 1491).

39. Thus, where the law creates a duty or charge, and the party is disabled to perform it, without any fault on his part, and has no control over it, the law will in general excuse him. Even in such a circumstance, the statutory provision is not denuded of its mandatory character because of the supervening impossibility caused therein.

LAND FOR LAND:

40. In *Gramin Sewa Sanstha v. State of M.P. & Ors.,* 1986 Supp SCC 578, this Court held **:**

> "2. We are also informed that though land has been earmarked by the State Government for re-settlement of the displaced tribals, such land is not available because it is already occupied by other persons who themselves will be uprooted if such land is acquired and made available for the tribals displaced on account of the Hasdeo Bango Dam Project. If this is true, the remedy might be worse than the disease because in order to re-settle one set of displaced persons the State Government would be displacing another set of persons. We would, therefore direct the State Government to consider in the meanwhile as to whether the cultivable land at any other place or places can be made available for the tribals who are displaced on account of the present project." (Emphasis added)

41. This Court in *Narmada Bachao Andolan-I,* held as under:

> 58……. when the removal of the tribal population is necessary as an exceptional measure, they shall be provided with land of quality at least equal to that of the land previously occupied by them and they shall be fully

compensated for any resulting loss or injury. The rehabilitation package contained in the Award of the Tribunal as improved further by the State of Gujarat and the other States prima facie shows that the land required to be allotted to the tribals is likely to be equal, if not better than what they had owned." (Emphasis added)

42. In *State of Kerala v. Peoples' Union for Civil Liberties* (Supra), this Court held as under:

"121. We must also make it clear that while allotting land to the members of the Scheduled Tribes, the State cannot and must not allot them hilly or other types of lands which are not at all fit for agricultural purpose. The lands, which are to be allotted, must be similar in nature to the land possessed by the members of the Scheduled Tribes. If in the past, such allotments have been made, as has been contended before us by the learned counsel for the respondent, the State must allot them other lands which are fit for agricultural purposes. Such a process should be undertaken and completed as expeditiously as possible and preferably within a period of six months from date." (Emphasis added)

43. The issue has to be decided taking into consideration the totality of the circumstances. For deciding this issue, the terms and conditions incorporated in the Narmada Water Disputes Tribunal Award (hereinafter called as 'NWDT Award') cannot be taken into consideration for the simple reason that the Tribunal had been constituted under the provisions of Inter State Water Disputes Act, 1956 (hereinafter called Act 1956), and Award had been given in a case where several States, i.e., the States of Madhya Pradesh, Gujarat and Maharashtra were involved. The said Award has no application in the instant cases *nor can it be a Bench Mark*. More so, in the Sardar Sarovar Project, land for land was mandatory. These cases are to be decided giving strict adherence to the R & R Policy, as amended on 3.7.2003, further considering that special care is

to be taken where persons are oppressed and uprooted so that they are better off. Our Constitution requires removal of economic inequalities and provides for provision of facilities and opportunities for a decent standard of living and protection of economic interests of the weaker segments of the society and in particular Scheduled Castes and Scheduled Tribes. Every human being has a right to improve his standard of living. Ensuing people are better off is the principle of socio-economic justice which every State is under an obligation to fulfill, in view of the provisions contained in Articles 37, 38, 39(a), (b), (e), (f), 41, 43, 46 and 47 of the Constitution of India. (Vide: *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde & Anr.* (1995) Suppl. 2 SCC 549; and *N.D. Jayal & Anr. v. Union of India & Ors.,* AIR 2004 SC 867)**.**

44. Mere payment of compensation to the oustees in such a case may not be enough. In case the oustee is not able to purchase the land just after getting the compensation, he may not be able to have the land at all.

In *K. Krishna Reddy & Ors. v. Spl. Dy. Collector, Land Acqn. Unit II, LMD Karimnagar,* AIR 1988 SC 2123, this Court expressed grave concern on the issue observing as under:

"….After all money is what money buys. What the claimants could have bought with the compensation in 1977 cannot do in 1988. Perhaps, not even half of it. It is a common experience that the purchasing power of rupee is dwindling with rising inflation…..The Indian agriculturists generally have no avocation. They totally depend upon land. If uprooted, they will find themselves nowhere. They are left high and dry. They have no savings to draw. They have nothing to fall back upon. They know no other work. They may even face starvation unless rehabilitated."(Emphasis added)

45. It is a matter of common experience that the "person interested" gets the actual amount of compensation in reference

under Section 18 and appeal under Section 54 of the Act 1894. Award made by the Land Acquisition Collector is merely an offer by the State through its agent. The Collector acts in dual capacity. It is in fact, for this reason that local authority/company for whom the land is acquired cannot question the Award of the Collector except on the ground of fraud, corruption or collusion, as provided under Section 50 of the Act 1894. The Award in the enquiry by the Collector is merely a decision (binding only on the Collector) as to what sum shall be tendered to the owners of the lands, and that, if a judicial ascertainment of value is desired by the owner, he can obtain it by requiring the matter to be referred by the Collector to the Court. (See *Ezra v. Secretary of State for India,* (1905) 32 Ind App 93; and *Santosh Kumar v. Central Warehousing Corporation & Anr.,* AIR 1986 SC 1164).

46. In the instant cases, admittedly, in spite of the fact that there has been a consent Award under Section 11(2) of the Act 1894, the appellants had agreed before the High Court that the oustees would be entitled to have reference under Section 18 of the Act 1894, a large number of references are pending before the courts for consideration. Thus, there is still a possibility of enhancement of compensation, but such a course would take time. By that time there will be such a hike in the price of land that the oustees will not be able to purchase the land. For lack of any experience or skill, such oustees would not be able to engage themselves in any other alternative occupation/vocation. Thus, it would be difficult for them to survive.

47. The record of the case reveals that about 56% of the oustees involved in these cases are members of Scheduled Castes and Scheduled Tribes. Land had never been offered to any of these oustees. The amount of compensation as determined under the Act 1894 had been deposited in their bank accounts. No attempt had ever been made by the appellant-State to either acquire land from other persons having

a larger area of land resorting to the provisions of Act 1894 or purchase the same by agreement/negotiation for resettlement of the oustees. Only 11% of the oustees could purchase the land of their own from other persons without any assistance from the State Authorities. The submission raised on behalf of the State that it had been impossible for authorities to acquire/purchase the land cannot be accepted as this is a pure question of fact and in absence of any material to show that any attempt had ever been made to acquire the land to rehabilitate the oustees, such a submission remains unsubstantiated.

48. Same appears to be the position in regard to the amended provisions of the R & R Policy. The phrase "as far as possible" would come into play, in case an attempt is made to acquire/purchase lands and then to make allotment of land to oustees. The other added term i.e. giving the option to oustees to make application for acceptance of compensation and not claiming land for land acquired, remained inapplicable, as it is alleged that not a single oustee made such an application. If it is so, the question remains merely academic. None of the obligations on the part of the authorities as clearly stipulated by the R & R Policy had been fulfilled. The Adhiniyam 1985 had not been made applicable in respect of the Omkareshwar Dam Project taking into account the past experience in other projects. Undoubtedly, the acquisition of land and displacing other persons for resettling these oustees could have a chain reaction and the remedy/cure might have been worse than the disease itself and could further give rise to the question as to whether such an action was permissible in law. The State authorities ought to have assisted the oustees in purchasing the land of their choice from other agriculturists and met the difference of cost, if any, over and above the amount of compensation and the cost of land so purchased. While determining such issues, the State authorities could take into consideration the fact that the land should be not less than of the same quality and nature which the oustees were originally

having with them. This exercise could have been done "*pari pasu*" which means "equably" or "ratably" to the construction of the Dam and could have been completed much in advance of completion of the Dam to the Full Water Level.

In the process of development, the State cannot be permitted to displace tribal people, a vulnerable section of our society, suffering from poverty and ignorance, without taking appropriate remedial measures of rehabilitation. The Court is not oblivious of the fact that social and economic reasons had caused disaffection, and thus, the tribal areas are today in the grip of extremism, as the tribal youths have become easy prey to the extremists' propaganda.

49. While dealing with I.A. No. 42086/2008 in Writ Petition No. 4457 of 2007 (PIL), the High Court on 16.3.2009 considered the grievance of the oustees that the land available with the State for allotment was not cultivable and had been encroached upon, thus, the oustees were not willing to accept the land offered to them. The Court directed the Indian Council of Agricultural Research (Bhopal) to depute a sufficient number of experts to inspect the land offered to the displaced families and to find out as to whether it was suitable for agricultural purposes and submit its report and further directed the authorities to file an affidavit as to whether the encroachment could be removed expeditiously within a period of two months. The expert committee of Indian Council of Agricultural Research (Bhopal) had submitted the report that the land was cultivable. The matter was directed to be listed on 13.9.2009 and in the meanwhile, the GRA was directed to dispose of all applications/objections of the oustees for allotment of land in lieu of land acquired except those where the dispute related to entitlement of major sons for allotment of land and where the oustees had withdrawn the entire amount of compensation/ SRG amount. Report dated 13.1.2010 submitted by the GRA before the High Court makes it clear that all objections filed before it by the oustees had been decided and directions

issued by the GRA had been complied with by the State authorities.

50. Before the High Court, the State put forward the explanation that the Authorities had Awarded the benefit of SRG to the oustees. In fact, the PAFs had complained that with the amount of compensation for their lands they were not able to buy land elsewhere and that instead of purchasing the land by Government, the additional cost involved may be made available to the PAFs to enable them to purchase land of their choice. The State Government after consultation with all concerned and approval by Hon'ble Chief Minister devised a scheme whereby the PAF is given substantial additional amount over and above the compensation for his land in order to enable him to purchase arable and irrigable land at the location of his choice. This scheme has come to be known as SRG or Special Rehabilitation Package (SRP). The rate of the irrigated land in the nearest command area is worked out on the basis of sale deeds and the cost of land going under submergence is calculated. 30% of this amount is again added to this cost and a sum is worked out which is known as the determined value. Difference between the determined value and compensation already paid is called SRG and is paid to the PAF. The problems inherent in Government purchase are totally eliminated and the PAF is fully empowered and competent to decide things for himself. The additional amount made available to the PAF as SRG is not recoverable from him. The purchase of land made by the PAF is exempt from the stamp duty and registration fee.

51. The offer of SRG is over and above the Rehabilitation Policy. SRG enables the PAF to purchase land suitable to him at a place of his choice as he is neither willing to accept the land offered by the government nor to start the life at the new place by mortgaging the land for the loan. Under the SRG, the extra amount paid over and above the compensation is not recoverable. Due to the advantage of free hand, the SRG is

well accepted by the PAFs. Registration fees and stamp duty are also paid. As the SRG comes into operation after the PAFs showed unwillingness to accept the land from the land bank and the PAFs want complete freedom for getting land of their choice, so land for land option has not been exercised by the PAFs and instead they have preferred and accepted cash compensation. So land for land has not been allotted to PAFs as the policy. It is, however, erroneous to say that not a single PAF of Omkareshwar Project was allotted agricultural land because the PAFs were empowered to purchase land of their choice by paying SRG.

52. SRG is an additional amount paid to an oustee to enable him to purchase land in the command area to the extent of his land acquired. Normally, an oustee who looses land in submergence area gets an amount determined under the Act 1894. When a project is envisaged in an area, the sale and purchase in that area decrease and the prices also get depressed. By the time, the notification under Section 4(1) of the Act 1894, is issued, the sale deeds, if any, executed in that area, do not represent the correct price. Similarly, the prices in the command area also increase as a result of declaration of the project. Hence, it is difficult for an oustee to purchase land in command area from the amount given to him under the Act 1894. SRG is designed to nullify both the above effects and to enable the oustee to get an amount by which he can purchase land to the extent of his land acquired, in command area.

SRG=	Award Amount calculated for equal land in command area as per Act 1894 solatium	**-** **(minus)**	Award Amount calculated for the land acquired from oustee in submergence area as per Act 1894 including
		or	
SRG=	Award with assumption that land is in command area.	**-** **(minus)**	Actual Award for the basis land in submergence area

The aforesaid relief granted by the appellants to the oustees as SRG is much more than the amount of compensation or amount entitled in R & R Policy as amended on 3.7.2003. In fact, to certain extent, it is in consonance with the provisions contained in Clause (5.4) of R & R Policy, wherein the State is under an obligation to meet the gap of amount between the amount of compensation and the value of the land purchased by the oustees.

53. The appellants have submitted that all the oustees have voluntarily accepted SRG and withdrawn the amount and they stand fully satisfied. In absence of appropriate pleadings and evidence on record, it is not possible for this Court to adjudicate upon the individual claims or issue a direction of sweeping nature. Thus, if an oustee feels aggrieved of what he has received, he may approach the GRA. In case the GRA after adjudication of facts, comes to the conclusion that a particular oustee has not been granted the relief, he is entitled for; the GRA itself would grant the appropriate relief taking into account the provisions of R & R Policy. In case, either of the parties is aggrieved, it may approach the High Court for appropriate directions.

ENTITLEMENT OF MAJOR SONS FOR AGRICULTURAL LAND IN THE R & R POLICY 1993:

54. So far as the 2nd issue is concerned, the R & R Policy provides for definition clause:

Displaced Family:

"(i) A family composed of displaced persons as defined above shall mean and include husband, wife and minor children and other persons dependent on the head of the family e.g. widowed mother, widowed sister, unmarried sister, unmarried daughter or old aged father.

(ii) Every son/unmarried daughter who has become major on or before the date of notification under Section 4 of the

Land Acquisition Act, will be **treated as a separate family.**" (Emphasis added)

55. This Court in *Narmada Bachao Andolan-I,* dealt with the issue of entitlement of major sons of oustees of the Sardar Sarovar Project and held that as it had been provided in the NWDT Award, the sons who had become major one year prior to the date of issuance of the notification under Section 4 of the Act 1894, for land acquisition, had become entitled to allotment of land.

56. In *Narmada Bachao Andolan – II,* this Court had taken note of the said observation/finding in the aforesaid case and held**:**

"62. Once major son comes within the purview of the expansive definition of family, it would be idle to contend that the scheme of giving "land for land" would be applicable to only those major sons who were landholders in their own rights. If a person was a landholder, he in his own right would be entitled to the benefit of rehabilitation scheme and, thus, for the said purpose, an expansive definition of family was not necessarily to be rendered. Furthermore, if such a meaning is attributed as has been suggested by Mr Vaidyanathan, the definition of "family" would to an extent become obscure. As a major son constitutes "separate family" within the interpretation clause of "family", no meaning thereto can be given." (Emphasis added)

57. In the instant case, the High Court on this issue held as under :-

There is no separate definition of displaced family given in para 3 of the R&R Policy of 1993. Hence, the same definition as has been given in sub-para 1.1(b) of the R&R policy of 1993 would be applicable to para 3 of the R&R policy and the displaced family in para 3.2 will include

husband, wife, minor children and other persons dependent on the head of the family and every son who has become major on or before the date of notification under Section 4 of the Land Acquisition Act but who was part of the larger land owning family from whom land was acquired will have to be treated as separate displaced family from whom land is acquired under the Land Acquisition Act. While calculating however the extent of landholding of a displaced family for the purposes of determining the area of land to be allotted to the displaced family, the share of the displaced family without the major son may only be taken. Similarly, while calculating the extent of land to be allotted to the separated family of such major son, the share of the major son in the land may be taken into consideration……we hold that every adult son and his family who was part of the bigger family from whom land was acquired would be entitled to allotment of agricultural land in accordance with paras 3 and 5 of the R&R Policy of 1993 for the Omkareshwar Dam project." (Emphasis added)

58. In view of the above, this Court has to consider as to whether the NWDT Award provided for any entitlement of major sons to allotment of agricultural land, and if not, whether the judgment in *Narmada Bachao Andolan –I* could have been considered as a precedent in *Narmada Bachao Andolan –II,* and whether the High Court has rightly interpreted the terms and conditions of the R & R Policy, as the High Court has proceeded with the assumption that the R & R Policy provides that major sons of oustees i.e. the "large land owning families" and those who had been "part of the bigger family" would be entitled for allotment of agricultural land.

PRECEDENCE -Doctrine:

59. The Court should not place reliance upon a judgment without discussing how the *factual situation fits* in with a fact-

situation of the decision on which reliance is placed, as it has to be ascertained by analysing all the *material facts* and the issues involved in the case and argued on both sides. A judgment may not be followed in a given case if it has some *distinguishing features*. A little difference in *facts or additional facts* may make a lot of difference to the precedential value of a decision. A judgment of the Court is not to be read as a statute, as it is to be remembered that judicial utterances have been made in *setting of the facts of a particular case. One additional or different fact may make a world of difference between the conclusions in two cases.* Disposal of cases by blindly placing reliance upon a decision is not proper. (Vide: *Municipal Corporation of Delhi v. Gurnam Kaur,* AIR 1989 SC 38; *Govt. of Karnataka & Ors. v. Gowramma & Ors.,* AIR 2008 SC 863; and *State of Haryana & Anr. v. Dharam Singh & Ors.* (2009) 4 SCC 340).

PER INCURIAM – Doctrine:

60. Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignoratium. The Courts have developed this principle in relaxation of the rule of stare decisis. Thus, the "quotable in law" is avoided and ignored if it is rendered, in ignorance of a Statute or other binding authority. While dealing with observations made by a seven Judges' Bench in *India Cement Ltd. etc. etc. v. State of Tamil Nadu etc. etc.,* AIR 1990 SC 85, the five Judges' Bench in *State of West Bengal v. Kesoram Industries Ltd. & Ors.,* (2004) 10 SCC 201, observed as under:-

> A doubtful expression occurring in a judgment, apparently by mistake or inadvertence, ought to be read by assuming that the Court had intended to say only that which is correct according to the settled position of law, and the apparent error should be ignored, far from making any capital out of it, giving way to the correct expression which ought to be implied or necessarily read in the context, ……. A

> statement caused by an apparent typographical or inadvertent error in a judgment of the Court should not be misunderstood as declaration of such law by the Court." (Emphasis added)

(See also *Mamleshwar Prasad & Anr. v. Kanhaiya Lal (Dead) by Lrs.,* AIR 1975 SC 907; *A.R. Antulay v. R.S. Nayak,* AIR 1988 SC 1531; *State of U.P. & Anr. v. Synthetics and Chemicals Ltd. & Anr.,* (1991) 4 SCC 139; and *Siddharam Satlingappa Mhetre v. State of Maharashtra & Ors.,* (2011) 1 SCC 694).

61. Thus, "per incuriam" are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the Court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.

62. Admittedly, the NWDT Award did not provide for allotment of agricultural land to the major sons of such oustees. The States of Gujarat and Maharashtra had given concessions/ relief over and above the said Award. Thus, the *Narmada Bachao Andolan-I* has been decided with presumption that such a right had been conferred upon major sons by the NWDT Award and *Narmada Bachao Andolan-II* has been decided following the said judgment and interpreting the definition of "family" contained in the R & R Policy. When the two earlier cases were being considered by the Court, it had not been brought to its notice that the NWDT Award did not provide for such an entitlement. In such cases, the issue is further required to be considered as to whether, as we will consider the definition of the word "family" at a later stage, the mistake inadvertently committed by this Court earlier, should be perpetuated.

63. The Courts are not to perpetuate an illegality, rather it is the duty of the courts to rectify mistakes. While dealing with a similar issue, this Court in *Hotel Balaji & Ors. etc. etc. v. State of A.P. & Ors. etc. etc.,* AIR 1993 SC 1048 observed as under:

> "…To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter (A.M.Y. at page 18: 'a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors".

(See also *Nirmal Jeet Kaur v. State of M.P. & Anr.,* (2004) 7 SCC 558; and *Mayuram Subramanian Srinivasan v. CBI,* AIR 2006 SC 2449).

64. *In re: Sanjiv Datta, Dy. Secy., Ministry of Information & Broadcasting,* (1995) 3 SCC 619, this Court observed ***:***

> "…None is free from errors, and the judiciary does not claim infallibility. It is truly said that a judge who has not committed a mistake is yet to be born. Our legal system in fact acknowledges the fallibility of the courts and provides for both internal and external checks to correct the errors. The law, the jurisprudence and the precedents, the open public hearings, reasoned judgments, appeals, revisions, references and reviews constitute the internal checks while objective critiques, debates and discussions of judgments outside the courts, and legislative correctives provide the external checks. Together, they go a long way to ensure judicial accountability. The law thus provides procedure to correct judicial errors."

DISCRIMINATION:

65. We also have to consider the submissions made on behalf of the respondent No.1 that the denial of allotment to major sons of agricultural land would amount to hostile discrimination as in earlier cases, it had been granted.

66. Unequals cannot claim equality. In *Madhu Kishwar & Ors. v. State of Bihar & Ors.,* AIR 1996 SC 1864, it has been held by this Court that every instance of discrimination does not necessarily fall within the ambit of Article 14 of the Constitution.

67. Discrimination means an unjust, an unfair action in favour of one and against another. It involves an element of intentional and purposeful differentiation and further an element of unfavourable bias; an unfair classification. Discrimination under Article 14 of the Constitution must be conscious and not accidental discrimination that arises from oversight which the State is ready to rectify. (Vide: *Kathi Raning Rawat v. State of Saurashtra,* AIR 1952 SC 123; and *M/s Video Electronics Pvt. Ltd. & Anr. v. State of Punjab & Anr.,* AIR 1990 SC 820).

68. However, in *Vishundas Hundumal & Ors. v. State of Madhya Pradesh & Ors.,* AIR 1981 SC 1636; and *Eskayef Ltd. v. Collector of Central Excise,* (1990) 4 SCC 680, this Court held that when discrimination is glaring, the State cannot take recourse to inadvertence in its action resulting in discrimination. In a case where denial of equal protection is complained of and the denial flows from such action and has a direct impact on the fundamental rights of the complainant, a constructive approach to remove the discrimination by putting the complainant in the same position as others enjoying favourable treatment by inadvertence of the State authorities, is required.

69. The High Court while passing the order had given a much wider interpretation to the R & R Policy making reference to the terms as *"bigger family"* and the *"large land owning*

family".

The Court while interpreting the provisions of a Statute, can neither add nor subtract a word. The legal maxim "*a verbis legis non est recedendum*" means from the words of law, there must be no departure. (See: *S.P. Gupta & Ors. v. Union of India & Ors.,* AIR 1982 SC 149; *P.K. Unni v. Nirmala Industries & Ors.,* AIR 1990 SC 933; and *Commissioner of Income Tax, Kerala v. Tara Agencies,* (2007) 6 SCC 429).

INTERPRETATION OF STATUTE:

70. In Principles of Statutory Interpretation by Justice G.P. Singh (12 Edn. 2010), the learned Author has stated as under:

> *"In selecting out of different interpretations 'the court will adopt that which is just, reasonable and sensible rather than that which is none of those things'…….A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results." (pp. 131-132)*

71. In *Directorate of Enforcement v. Deepak Mahajan,* AIR 1994 SC 1775, this Court held as under:

> "Though the function of the courts is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. In such circumstances, it is the duty of the court to mould or creatively interpret the legislation by liberally interpreting the statute.

In Maxwell on Interpretation of Statutes, Tenth Edn. at page 229, the following passage is found:

> 'Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.'
>
> But to winch up the legislative intent, it is permissible for courts to take into account of the ostensible purpose and object and the real legislative intent. Otherwise, a bare mechanical interpretation of the words and application of the legislative intent devoid of concept of purpose and object will render the legislative inane."

72. Therefore, an interpretation having a social justice mandate is required. The statutory provision is to be read in a manner so as to do justice to all the parties. Any construction leading to confusion and absurdity must be avoided. The Court has to find out the legislative intent and eschew the construction which will lead to absurdity and give rise to practical inconvenience or make the provision of the existing law nugatory. The construction that results in hardship, serious inconvenience or anomaly or gives unworkable and impracticable results, should be avoided. (Vide: *Corporation Bank v. Saraswati Abharansala & Anr.* (2009) 1 SCC 540; and *Sonic Surgical v. National Insurance Co. Ltd.,* (2010) 1 SCC 135).

73. A reasonable construction agreeable to justice and reason is to be preferred to an irrational construction. The Court

has to prefer a more reasonable and just interpretation for the reason that there is always a presumption against the law maker intending injustice and unreasonability/irrationality, as opposed to a literal one and which does not fit in with the scheme of the Act. In case the natural meaning leads to mischievous consequences, it must be avoided by accepting the alternative construction. (Vide: *Bihar State Council of Ayurvedic and Unani Medicine v. State of Bihar,* AIR 2008 SC 595; and *Mahmadhusen Abdulrahim Kalota Shaikh v. Union of India* (2009) 2 SCC 1**)**.

74. The Court has not only to take a pragmatic view while interpreting a statutory provision, but must also consider the practical aspect of it. (Vide: *Union of India v. Ranbaxy Laboratories Ltd.,* AIR 2008 SC 2286).

75. In *Narashimaha Murthy v. Susheelabai,* AIR 1996 SC 1826, this Court held :

> "The purpose of the law is to prevent brooding sense of injustice. It is not the words of the law but the spirit and eternal sense of it that makes the law meaningful."

76. In *Workmen of Dimakuchi Tea Estate v. Management of Dimakuchi Tea Estate,* AIR 1958 SC 353, it has been held thus:

> "..the definition clause must be read in the context of the subject matter and scheme of the Act, and consistently with the objects and other provisions of the Act."

77. In *Sheikh Gulfan v. Sanat Kumar Ganguli,* AIR 1965

SC 1839, it has been held as follows:

> "19…Often enough, in interpreting a statutory provision, it becomes necessary to have regard to the subject matter of the statute and the object which it is intended to achieve. That is why in deciding the true scope and effect of the relevant words in any statutory provision, the context in which the words occur, the object of the statute in which the provision is included, and the policy underlying the statute assume relevance and become material…"

78. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. Justice means justice between both the parties. Justice is the virtue, by which the Court gives to a man what is his due. Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. The underlying idea is of balance. It means to give to each his right. Therefore, while tempering the justice with mercy, the Court has to be very conscious that it has to do justice in exact conformity with the statutory requirements.

79. Thus, it is evident from the above referred law, that the Court has to interpret a provision giving it a construction agreeable to reason and justice to all parties concerned, avoiding injustice, irrationality and mischievous consequences. The interpretation so made must not produce unworkable and impracticable results or cause unnecessary hardship, serious inconvenience or anomaly. The court also has to keep in mind the object of the legislation.

INSTANT CASE:

80. **REHABILITATION PROVISIONS AS PER NWDT AWARD AND STATE-WISE COMPARATIVE PROVISIONS**

S. No.	Item	NWDT Award	Madhya Pradesh	Gujarat	Maharashtra
1.(a)	Tenure Holder	xx	xx	xx	xx
(b)	Xx	xx	xx	xx	xx
(c)	Xx	xx	xx	xx	xx
(d)	Major sons of above all categories of oustees	**No provision for land allotment.**	Major son will be treated as separate family. They will be entitled to cash compensation according to the category to which they belong.	2 hec. of land to each major son of all categories.	1 hec. of land to each unmarried daughter and major son of all categories of oustees with – as cut- off date for major sons and unmarried daughters.

81. **IMPLICATIONS IF IMPUGNED JUDGMENT IS UPHELD**

Category of oustees	In case each of the following Categories of oustees lose only one hectare of land					
	Mr. A (land less)	Mr. B (Losing less than 25% of holding)	Mr. C (Single Khatedar)	Mr. D Single (Khatedar)	Mr. E (E1+ E2+E3) Joint Khatedars	Mr. F (F1+F2+F3) Joint Khatedars
No. of major sons/ daughters	3	3	0	3	0	F1: 3 sons F2: 3 sons F3: 4 sons
Entitlement if contention of Respondent is accepted						
For Self	0	0	2 hect.	2 hect.	3@2 hect. = 6 hect.	3@2 hect. = 6 hect.
For Major sons/ daughters	0	0	0	3@2 hect. = 6 hect.	0	10 @ 2 hect.= 20 hect.
Total Entitlement	0	0	2 hect.	8 hect.	6 hect.	26 hect.

It is apparent that the directions of the Hon'ble High Court regarding land-for-land would lead to grave inequity, and thereby likely to cause undue enrichment of some categories of oustees:

a. Sons of land owning class get better rights than their fathers.

b. Sons of land owning class get better rights than those of land less class.

c. Even though everybody loses same measure of land, some are not entitled to any land while for some it becomes an unimaginable bounty or proves to be bonanza.

82. In case, the view taken by the High Court is upheld, it would have very serious repercussions for the reason that no land had been acquired wherein a major son can independently claim compensation as a matter of right. In such an eventuality, the question of retaining 50 per cent of the compensation could not arise. If it were allowed, it would create hostile discrimination against others like landless persons who have been found to be non-suited by the High Court in the impugned judgment. The High Court has added words like *"larger land owning family"* and *"bigger family"* to justify the relief given to major sons even though such terms do not appear in the R & R Policy or either of the judgments given by this Court earlier. The charts hereinabove make it crystal clear that there was no provision for allotment of land to major sons in the NWDT Award. Obviously, it has wrongly been mentioned in the earlier judgments of this Court by inadvertence. This requires correction as such an error cannot be perpetuated. The claims of the respondents, if accepted, and the High Court judgment if upheld, would lead to unwarranted results. For some of the families having a large number of major sons, it would lead to a level of unjust enrichment that could never have been envisaged by the Government of Madhya Pradesh. The view taken by the High Court gives rise to pre-supposition (a fiction)

of partition of agricultural land amongst the tenure-holder and his major sons. Such a concept would defeat the right of minor sons for partition or claiming the share in the agricultural land and also lead to uncertainty as to whether 75% of the total land of the major son, after partition stood acquired. The plea of discrimination is not available to such major sons of the families, whose land has been acquired for this project, as they cannot be put at par with the major sons of the oustees of the Sardar Sarovar Project. Even if the plea is tenable, such discrimination cannot be held to be conscious or intentional as the State is willing to rectify the mistake. The State has filed an application to rectify the mistake in the judgment of 2005, as I.A. No. 37 of 2009 for clarification/modifications of the said judgment which is pending consideration.

The view expressed earlier, inadvertently, on a wrong assumption may result in great public loss and would be against larger public interest. There is no prohibition under the law on this Court to locate the error and adopt a correct approach if the Court is convinced that the error exists and its avoidance is necessary to prevent any baneful effect on the general interest of the public or the State. The mistake is manifestly wrong and has a direct impact on the procedure to be adopted for rehabilitation. The impact of allotment cannot be against public good and has to be balanced with an appropriate grant to the oustees. It is, therefore, essential to rectify the mistake.

83. Compensation in the present context has to be understood in relation to right to property. The right of the oustee is protected only to a limited extent as enunciated in Article 300-A of the Constitution of India. The tenure holder is deprived of the property only to the extent of land actually owned and possessed by him. This is, therefore, limited to the physical area of the property and this area cannot get expanded or reduced by any fictional definition of the word "family" when it comes to awarding compensation. Compensation is Awarded

by authority of law under Article 300-A of the Constitution read with the relevant statutory law of compensation under any law made by the legislature and for the time being in force, only for the area acquired.

Rehabilitation on the other hand, is restoration of the status of something lost, displaced or even otherwise a grant to secure a dignified mode of life to a person who has nothing to sustain himself. This concept, as against compensation and property under Article 300-A, brings within its fold the presence of the elements of Article 21 of the Constitution of India. Those who have been rendered destitute, have to be assured a permanent source of basic livelihood to sustain themselves. This becomes necessary for the State when it relates to the rehabilitation of the already depressed classes like Scheduled Castes, Scheduled Tribes and marginal farmers in order to meet the requirements of social justice.

As noted above, benefit given to a major son was not within the terms of the Award. It was rather a concession given by the States who were parties to the NWDT Award. The said Award, therefore, as understood in the previous decisions was not at all applicable for the purpose of extending any such grant of benefit to a major son. The concession given by the respective States after the Award was delivered during the course of subsequent negotiations therefore, could not be a part of the Award. The aforesaid decisions, therefore, would not be a binding precedent for the purpose of the present case as it was under some mistaken belief that the Award was understood to have extended the said benefit to major sons also. The High Court therefore, fell into an error by proceeding to assume that a major son would be treated to be a separate family for the purpose of allotment of land also.

84. The rehabilitation has to be done to the extent of the displacement. The rehabilitation is compensatory in nature with a view to ensure that the oustee and his family are at least

restored to the status that was existing on the date of the commencement of the proceedings under the Act 1894. There was no intention on behalf of the State to have awarded more land treating a major son to be separate unit. This would otherwise bring about an anomaly, as is evident from the chart that has been gainfully reproduced hereinabove. The idea of rehabilitation was, therefore, not to distribute largesse of the State that may reflect distribution totally disproportionate to the extent of the land acquired. The State has, therefore, rightly resisted this demand of the writ petitioners and, in our opinion, for the High Court to presuppose or assume a separate unit for each major son far above the land acquired, was neither justified nor legally sustainable.

In effect, the major son would not be entitled to anything additional as his separate share in the original holding and it will not get enhanced by the fictional definition as stated in the impugned judgment. The major son would, however, be entitled to his share in the area which is to be allotted to the tenure holder on rehabilitation in case he is entitled to such a share in the law applicable to the particular State.

85. More so, the view taken by the High Court that the land to be allotted to major sons shall be determined on the basis of his share in the land prior to its acquisition, does not appear to be compatible or in consonance with the terms of R & R Policy which provides for a minimum allocation of 2 hectares. Thus, the policy must be interpreted to the effect that the major sons of oustees will be entitled to all the benefits under the R & R Policy, except allocation of agricultural land. Each State has a right to frame the rehabilitation policy considering the extent of its resources and other priorities. One State is not bound if in a similar situation, the other State has accorded additional facilities even over and above the policy. The definition of “displaced family” cannot be read in isolation, rather it requires to be considered taking into account the eligibility criteria for allotment of land in Clause (5) of the R &

R Policy. To that extent, the judgment of the High Court is liable to be set aside.

CONCLUSIONS:

86. In view of the above, the direction given by the High Court in paragraph 64 (i) of the judgment, is modified to the extent that the displaced families who have not withdrawn SRG benefits/ compensation voluntarily and submit applications for allotment of land before the Authority concerned, shall be entitled to the allotment of agricultural land "as far as possible" in terms of the R & R Policy, and for that purpose, the appellants must make some government or private land available for allotment to such oustees if they opt for such land and agree to ensure compliance with other terms and conditions stipulated therein.

In case suitable land is available in the land bank, the same would be offered to such oustees. In case, dispute of suitability of land is raised, it would be adjudicated upon and determined by the GRA. The authorities must render all possible assistance to the oustees to purchase the land by negotiations. In case the land is not available as mentioned hereinabove, the State must ensure compliance of Clause 5.4 of the R & R Policy to the full extent in the cases of the Scheduled Castes/ Scheduled Tribes and to the extent of 2 hectares in case of other marginal farmers. In case the extent of the land acquired is more than 8 hectares, the same shall be paid according to the provisions contained therein.

The Government must continue to search for additional land than what is already available in the land bank and to find out the means of its purchase for allotment to the oustees. The Government should also ensure that the allocated land is not encroached upon by the unscrupulous persons.

Direction given by the High Court to allot agricultural land to major sons of the oustees in Paragraph 64 (iii) of the

impugned judgment is hereby set aside.

In the instant cases, the R & R Policy or amendment thereto in 2003, has not been under challenge. There was no prayer by the respondents to quash the said amendment. Relief not sought by the party cannot be granted by the Court. More so, the direction has been issued by the High Court to grant relief in the impugned judgment and order taking into account the said amendment. The same is not under challenge at the behest of respondents before us. In such an eventuality, it was not desirable for the High Court to make any comment on the competence of the State to amend the policy and the finding so recorded in Para 38 of the judgment cannot be sustained in the eyes of law, and thus is set aside.

Civil Appeal No. 2082 of 2011

87. The present appeal has been preferred by the appellant/writ petitioners mainly on the 3 issues on which no relief has been granted by the High Court. Therefore, the appeal is limited to the extent of: whether landless oustees are entitled to allotment of agricultural land; whether the NWDT Award dated 12.12.1979 is applicable to the present project of the Omkareshwar Dam; and, thirdly, whether the oustees of 5 villages which have already been submerged, are entitled to allotment of land in lieu of land acquired, in spite of the fact that the SRG had already been granted to them.

88. The facts and circumstances giving rise to this appeal have already been elaborately mentioned in connected Civil Appeal Nos.2115-2116 of 2011, thus, the same are not repeated here and we proceed to decide the issues involved herein.

89. Shri Sanjay Parekh, learned counsel appearing for the appellant, has submitted that R & R Policy does not provide for land for agricultural purposes to landless persons. However, the Office Memorandum issued by the Ministry of Forest and

Environment dated 13.10.1993 granting clearance for the Omkareshwar Dam provided for allotment of land to landless labourers also. The NWDT Award is applicable in the case of the Omkareshwar Dam also for providing the resettlement and rehabilitation of all kinds of oustees of the five villages, whose land had already been submerged in view of the orders of the Court passed, from time to time, though paid compensation under the Act 1894/SRG, are also entitled for allotment of agricultural land in terms of R & R Policy. Hence, to that extent, the judgment and order of the High Court impugned herein, is liable to be set aside.

On the contrary, the appeal had been vehemently opposed by S/Shri Ravi Shankar Prasad and P.S. Patwalia, learned Senior counsel appearing for the respondents contending that R & R Policy does not provide for allotment of land to landless persons. More so, the clearance given by the Ministry of Forest and Environment stood qualified by the words "as permissible" meaning thereby, the landless labourer shall be entitled to allotment of land in case it is permissible in law for the time being in force or any other policy framed by the State to that effect. They have further submitted that NWDT Award was meant only for the Sardar Sarovar Dam as a water dispute had arisen among the States sharing the water of the Narmada river under the Award and thus the said Award has no application whatsoever so far as the Omkareshwar Dam was concerned. In view of the fact that 5 villages had already been submerged long back and the oustees thereof, had been paid compensation for their land acquired/SRG, the question of reopening the issue is not permissible. Thus, the appeal is liable to be dismissed.

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

90. The Office Memorandum issued by the Ministry of Forest and Environment dated 13.10.1993 granting clearance for the Omkareshwar Dam Project with a condition, stated as

under:

> '(vii) The Rehabilitation Programme should be extended to landless labourers and the people affected due to canal by identifying and allocating suitable land **as permissible**. A time bound programme should be submitted by December, 1993."

91. The High Court has held that the said condition so added stood qualified by the words 'as permissible' and thus, the landless labourers would get the land even for agricultural purposes to the extent of 2 hectares (about 5 acres), if it is permissible in law or any other government policy. In addition thereto, the High Court had further taken note of the fact that all other reliefs including the transportation charges, plots for residential accommodation and preference for employment etc. etc., shall be available not only to landless labourers, but also to major sons of such oustees including landless labourers. As the said condition imposed by the Ministry of Forest and Environment while granting clearance is as stood qualified, and has been subject to any other law for the time being in force or the government policy etc., we do not feel that landless labourers are entitled to allotment of land. More so, the R & R Policy itself provides a particular mode of retaining 50% of the compensation amount and 50% to be recovered in 20 years. As the landless labourers never had any land, they are not entitled to any compensation under the Act 1894, thus, the question of allotment of land to them would not arise. The R & R Policy itself provides that such persons are entitled to get Rs.49,300/- to buy productive employment creating assets etc., and such money can also be used for acquiring land. Such terms cannot be interpreted to mean that the landless labourers become entitled to allotment of land for agricultural purpose to the extent of 2 hectares. The policy is to be read as a whole, as it is not permissible for a party to pick up one word or phrase or one sentence and claim relief on the basis of the same. In case, the major sons, as we have already held hereinafter, are

not entitled to allotment of agricultural land, the question of landless labourers being entitled to the same does not arise. More so, the words 'as permissible' cannot be given a complete go-bye. In *Gurbax Singh v. State of Punjab & Ors.,* AIR 1967 SC 502, this Court while interpreting the provisions of Punjab Security of Land Tenures Act, 1953, interpreted the words 'permissible area' while determining the surplus area and held that permissible area means that the land owner is entitled to reserve land not exceeding the said area and the balance remains surplus area. Therefore, permissible area was defined as an area which is permissible for a person to retain under the provisions of that Act. Thus, permissible area can legitimately be defined as the area reserved under the Act. Similarly, in *Municipal Committee, Patiala v. Model Town Residents Association & Ors.,* AIR 2007 SC 2844, this Court interpreted the phrase 'permissible classification' to mean what is permissible in law. In *Jagjit Cotton Textile Mills v. Chief Commercial Superintendent, N.R. & Ors.,* (1998) 5 SCC 126, while interpreting Rule 161A of the Indian Railways Conference Association Rules and Section 73 of Railways Act, 1989, construing the term "permissible carrying capacity", this Court held that the normal carrying capacity means, it cannot exceed the upper limits prescribed under the Statute/law.

92. The Government of Madhya Pradesh in Narmada Valley Development Project had issued its Omkareshwar Multipurpose Project, Rehabilitation and Resettlement Plan in August, 1993, according to which landless persons had been defined as:

"1.2(a) Landless Persons:

A person, who, whether individually or jointly with members of his family, does not hold any agricultural land or does not have any land for agriculture….."

Clause 6 thereof further provided for the families of landless agricultural labourers, a rehabilitation grant of

Rs.11,000/-; transport assistance; allotment of plots in rural areas for residential purpose; and various other special financial assistance. The relevant part of Clause 9.1 and 9.2 reads as under:

"9.1 The Narmada Valley Development Authority will ensure appropriate arrangements for discharge these responsibilities within a stipulated time-frame. In the interim period special financial assistance will be given to supplement the income of the landless agricultural labourers and landless scheduled caste and schedule tribe oustee families for three year in descending order which shall be in addition to the grant in aid mentioned in Para 6.1. This period of three years will be calculated from the payment year of the grant in aid under Para 6.1. Thus, a landless oustee family will get a special income support amount of Rs.8,250/-, Rs.5,500/- and Rs.2,750/- in the second, third and fourth year of displacement respectively. In addition, a further sum of Rs.12,500/- shall be kept in reserve for every landless oustee family and shall be made available for executing an independent viable scheme for earning livelihood or for purchase of productive assets. The above support amounts will be 75%, 50% and 25% respectively of the poverty line and the amount to be kept in reserve is also linked with the poverty line. If the scale of the poverty line is revised, the amount of special support amount and the reserve shall also be proportionately increased accordingly. For other landless special financial assistance of Rs.19,500/- will be given for the purpose of productive assets.

9.2 Amount to be paid to the landless displaced families shown in Para 6.1 and 9.1 will be credited to a special fund by the NVDA and can be made available to the oustees for acquisition of a suitable productive asset, including land, in one or more installments as required."

93. It has been submitted by Shri Parekh that the word 'land' mentioned in Clause 9.2 means that the government has

to provide financial assistance for acquisition of suitable land in one or more installments, as required. Such an interpretation is not permissible for the simple reason that the area mentioned in Clause 9.2 is subject to the provisions of paras 6.1 and 9.1. Para 6.1 provides for a claim to the tune of Rs.11,000/- and para 9.1 deals with other grants as mentioned hereinabove. Therefore, such an interpretation is not permissible. Had it been the intention of the Ministry of Forest and Environment to impose such a condition, the word 'permissible' would not have been used. More so, it would have asked the State Government to amend the R & R Policy accordingly. Thus, in view of above, we do not see any force in the contentions made by the appellant. The reliefs sought by the appellant for landless labourers are not permissible.

Applicability of the Award:

94. Shri Sanjay Parekh, learned counsel appearing for the appellant, has submitted that under the provisions of Act 1956, a Tribunal was constituted and it had made the Award on 12.12.1979 and it provides for various reliefs to the oustees and all the benefits granted by the said Award to the oustees are applicable in case of the oustees of the Omkareshwar Dam Project. The High Court has rejected the said contention of the appellant on the ground that the Tribunal had been constituted to resolve the water dispute as defined under Section 2(c) of the Act, 1956, for the reason that a dispute had arisen between various States i.e. the States of Maharashtra, Madhya Pradesh, Gujarat and Rajasthan. The matter was limited to resettlement and rehabilitation of 6147 oustee families spread over in 158 villages in the State of Madhya Pradesh as a consequence of Sardar Sarovar Project. Therefore, the High Court after considering the entire arguments, has come to the conclusion that the Tribunal was considering only the resettlement of the aforesaid oustee families spread over 158 villages in the State of Madhya Pradesh and, therefore, the Tribunal was concerned only with those persons and it did not take in its ambit any other

future plan or project. The findings recorded by the High Court read as under:

"Thus, all the aforesaid directions in the NWDT Award were in relation to the Sardar Sarovar Project and were not applicable to displaced families affected by the acquisition of land for the Omkareshwar Project."

95. Shri Sanjay Parekh could not point out anything from the Award which may be explained or interpreted to suggest that the terms of the Award would be applicable to any project to be taken by the State of Madhya Pradesh in the future. More so, the Award itself provides for distribution of water among the States and to regulate the amount of water distributed by the Tribunal. Clause 11 thereof, dealt with the directions regarding acquisition of submerged land and rehabilitation of persons displaced by the Sardar Sarovar Dam. Sub-clause III(1) thereof, fastened the total liability of compensation for land acquisition and rehabilitation etc. on the State of Gujarat, as it reads as under:

"Gujarat shall pay to Madhya Pradesh and Maharashtra all costs including compensation, charges and expenses incurred by them for or in respect of the compulsory acquisition of lands required to be acquired as aforesaid."

96. Sub-clause IV provides for provisions for rehabilitation and it reads as under:

"IV(1) : According to the present estimates the number of oustee families would be 6147 spread over 158 villages in Madhya Pradesh, 456 families spread over 27 villages in Maharashtra, Gujarat shall establish rehabilitation villages in Gujarat in the irrigation command of the Sardar Sarovar Project on the norms hereinafter mentioned for rehabilitation of the families who are willing to migrate to Gujarat. For oustee families who are unwilling to migrate to Gujarat, Gujarat shall pay to Madhya Pradesh and Maharashtra the cost, charges and

expenses for establishment of such villages in their respective territories on the norms as hereinafter provided."

97. Clause XIV thereof, provides for setting up of machinery to implement the decision of the Tribunal. Clause VIII(3) provides for future dams etc., only to the extent that any further projects in Madhya Pradesh shall not infringe the rights of the States created under the Award.

Thus, we do not find anything in the Award which provides any benefit to the oustees of the Omkareshwar Dam or suggests that the Award is applicable in the present case also. We do not find any reason to take a contrary view than what has been taken by the High Court on the issue.

Entitlement to land in lieu of submerged land:

98. In the instant case, we are concerned with the rights and entitlements of the oustees of the 5 villages which had already been submerged. In fact, the project has affected the residents of 30 villages. Five villages had already been submerged. Before the High Court, the question arose as to whether the oustees of those 5 villages which have already been submerged, were entitled to the benefits of R & R Policy and they had been Awarded only the compensation/ SRG and the area of these 5 villages has been submerged during the pendency of litigation before the High Court and this Court. This Court while disposing of the Civil Appeal Nos. 2115-2116 of 2011 against this very judgment vide order dated 14.5.2008, has issued a large number of directions and also asked the oustees to approach the GRA. However, Clause 4 thereof reads as under:

"The above interim direction will come in the way of the State Government making efforts to provide solution for land wherever required in terms of its R & R Policy."

99. The High Court decided the issue observing that as

submerging of the 5 villages took place in view of the orders by the courts and the oustees had been paid compensation/ SRG and this Court had passed the order not to submerge the remaining 25 villages till the completion of rehabilitation took place, it was not proper for the High Court to direct the respondents to restore the status quo ante for the 5 villages in issue.

100. There are claims and counter claims in regard to voluntary acceptance of compensation amount/SRG by the oustees of those 5 villages. S/Shri R.S. Prasad and P.S. Patwalia, learned senior counsel appearing for the respondents, have relied upon the report of GRA dated 28.4.2007 to show that all those persons have accepted the benefit of SRG and nothing remains to be adjudicated upon.

101. The record does not contain sufficient material to adjudicate upon the factual aspects involved herein. The GRA is the best forum to decide the claims of such persons. However, in view of the settled legal proposition that no person should suffer from an act of the Court and to ensure that the oustees of the 5 villages which have already been submerged under the orders of the Courts, do not face hostile discrimination at the hands of the authorities; they shall be entitled to the relief to which the other oustees are entitled in Civil Appeal Nos. 2115-2116 of 2011.

In case, any of the oustees of these 5 villages is not satisfied with what he has been Awarded by the State Authorities and he approaches the GRA in his personal name and establishes his case, he would be entitled to the relief granted by us in Civil Appeal Nos. 2115-2116 of 2011.

Civil Appeal Nos.2083—2112 of 2011

102. These appeals have arisen out of the impugned order dated 23.9.2009, passed by the High Court of Madhya Pradesh at Jabalpur, in Interlocutory Application Nos. 4679 and 4804

of 2009 in Writ Petition No. 4457 of 2007, by which the High Court has allowed the said applications and directed the appellants to rehabilitate the oustees so far as the land measuring 284.03 hectares in the 5 villages, namely, i.e. Dharadi, Nayapura, Guwadi, Kothmir and Narsinghpura is concerned, and not to withdraw the acquisition proceedings in respect of the said area.

103. S/Shri R.S. Prasad and P.S. Patwalia, learned senior counsel appearing on behalf of the appellants, have submitted that the High Court has committed an error by directing the rehabilitation of the occupants of the land in dispute in the said 5 villages, recording a wrong finding; that as the possession of the land had been taken by the government the acquisition proceedings cannot be reversed. The land stood vested in the State; the land in dispute would stand submerged actually and, therefore, withdrawal of the acquisition proceedings was not permissible, though the land acquisition proceedings had not been completed and the actual physical possession of the land in dispute has not been taken. The persons/tenure holders interested are still in possession of their respective lands. Therefore, the appellants have a right, not to acquire the land. Entries in revenue records after mutation do not confer any title or interest in the property. The land in dispute would not be submerged even temporarily unless the flood situation occurs on back water level. Therefore, the authorities had taken a decision on 2.4.2009 to abandon the land acquisition proceedings. The land in dispute would be water locked unless the height of the road is enhanced. However, considering the cost of rehabilitation as very high, the authorities have taken a decision to raise the level of the road to the extent that no part of the land in dispute would ever be submerged or water locked and people residing there or occupying the land would have access to the said land. Therefore, the appeals deserve to be allowed and the impugned order of the High Court is liable to be set aside.

104. On the contrary, Shri Sanjay Parekh, learned counsel appearing for the respondents, has submitted that land stood vested in the State free from all encumbrances as actual physical possession of the land in dispute had been taken in December, 2007; tenure holders thereof stood evicted; not a single tenure holder is in possession of its holdings today; mutation entries had been made in the revenue records; Award had been made by the Land Acquisition Collector; money had been deposited in the treasury by the appellant, as it was not accepted by the oustees for the reason that they wanted rehabilitation rather than compensation or SRG, some people had got the amount of compensation enhanced by filing references under Section 18 of the Act 1894. Hence, the question of denotifying the said land under Section 48 of the Act 1894, at this stage does not arise. The appeals are devoid of any merit and are liable to be dismissed.

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

106. In the instant case, a huge chunk of land was notified under Section 4 of the Act 1894, in these five villages on 9.11.2007 and 10.11.2007. Section 6 declarations were issued on 20.11.2007, 22.11.2007 and 23.11.2007. Notices under Section 9 were issued on 22.11.2007 and 23.11.2007 and the date of hearing fixed on 7.12.2007 and 8.12.2007. Awards were made on 20.12.2007, 22.12.2007 and 26.12.2007. Subsequent thereto, a letter was written by the NHDC, the company on 3.8.2007 to the Member (Rehabilitation), Narmada Valley Development Authority for approval of land acquisition of these five villages, which reveals that after having surveyed the area, there were certain practical difficulties in raising the level of the roads above BWL in respect of certain areas (land in dispute) because the level of the agricultural lands is lower than the BWL. Therefore, the land would be submerged in the back water submergence and it would require an amount of 11 crores to raise the level of the roads upto BWL. Thus,

acquisition of remaining 284.03 hectares of land of these five villages was requested to be approved for acquisition.

However, it is evident from the letter dated 5.10.2007 of the NVDA that the land in dispute measuring 284.03 hectares in the said five villages would not be submerged, in fact, it would be water locked, as it reads that "some area of a village becoming island or houses surrounded by flood or a village which has become an unviable unit". The acquisition of 284.03 hectares of land of five villages was approved and grant of an amount of Rs.550 lakhs was made.

107. By letter dated 2.4.2009, the previous plan was reconsidered in respect of acquiring the said land for five villages considering that the cost of rehabilitation would be much more than raising the level of the road at the cost of 11 crores, which would prevent this area from being water locked.

108. Therefore, the case of the State had been that the land in dispute measuring 284.03 hectares would not be submerged temporarily or permanently, rather it may at the most become in-accessible at the time of highest flood situation exceptionally and in case the level of the road is raised, it may work as embankment and this land would not be submerged. Thus, on this premise, the authorities thought it proper to abandon the acquisition proceedings.

109. The State authorities have pleaded before the High Court by filing rejoinder affidavit that the standard practice in dam projects involving submergence in India as prescribed by Central Water Commission (CWC) that all lands and properties or the houses are acquired upto full reservoir level (FRL) and only properties or the houses are acquired above FRL upto the Back Water Level (BWL). The lands above FRL will no doubt, be under water upto BWL for a few hours during floods due to back water and the lands will be benefited due to silting during that period. The land which remains temporarily under water above FRL and upto BWL is not acquired as after a few hours

the backwater recedes and the land is available for normal agricultural purposes. The lands about 5 to 10 feet below FRL should also not be acquired as these lands are likely to come out of water by 15th December every year as the water is gradually used from the dam for irrigation and/or power generation. Presently the practice is that the land which remains submerged under water temporarily is generally given on pattas to farmers as it is fit for agricultural purpose.

110. The order of the High Court dated 22.6.2007 in the interim application filed by the respondents reads as under:

"*....The consequence is that the five villages namely Gunjari, Paladi, Sailani, Bakhatgarh and Rampura could be affected by the submergence at 189 M and its back water on account of the closure of the radial and sluice gates of Omkareshwar Dam.*

Regarding the other villages, the case of the petitioner as well as the respondents contesting before us is that rehabilitation measures are yet to be completed in these villages and that these villages were not to be submerged at 189 M on account of the closure of the radial and sluice gates of Omkareshwar dam. We are of the considered opinion that Court takes up the matter and finally decides the grievance of the petitioner with regard to rehabilitation measures. The respondents should not severe electricity and water supply and demolish pubic buildings such as schools etc. in these 25 other villages or take up any coercive step which would force the oustees to leave the villages during the pendency of the writ petition and until the oustees receive all their rehabilitation benefits. We accordingly restrain the respondents from severing electricity and water supplies and demolishing public buildings such as schools etc. in the other 25 villages and from taking any coercive step which will force the oustees to leave these villages during the pendency of the writ petition or until further orders passed by this Court."

111. So far as the acquisition of land in such a situation is concerned, even the rehabilitation schemes under the NWDT Award, provided that the BWL at the highest flood level in the Sardar Sarovar would be worked out by the CWC in consultation with the States of Madhya Pradesh and Gujarat. The other relevant part reads specifically "the lands which are to be compulsorily acquired".

112. A reference Award made in this case on 4.8.2009 also particularly reveals that "the property acquired under the project will not be covered by water, but after filling of water, it will be difficult for the villagers to reach upto that level" and the symbolic possession had been taken on 8.12.2007 as is evident from para 29 of the said Award.

113. In the instant case, the issue to be determined is whether it is necessary to acquire this land compulsorily, likely to be submerged temporarily or permanently and also, whether the acquisition proceedings had reached the stage of no return, i.e. it cannot be abandoned. Undoubtedly, most of the land in these five villages which was likely to be submerged temporarily and permanently below the FRL plus MWL and land affected by back water resulting from MWL plus 141.21 mtrs. (460 ft.) had already been acquired and there is no dispute in respect of the same. The dispute remains only in respect of 284.03 hectares of land in these five villages, wherein BWL in exceptional floods etc., may make the said land water locked though it may not be submerged permanently.

Whether submergence temporarily for a very short period in an exceptional flood situation, warrants acquisition of the land in dispute?

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) The acquired lands/properties of these 5 villages stood already vested in the State. The State is not competent to withdraw the land acquisition proceedings.

(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) The order of the Land Acquisition Officer dated 14.8.2008 to Tahsildar, Bagli district Devas asking for mutation in favour of NVDA, makes it evident that as the land acquisition proceedings in question stood completed and possession of the land had been taken by the State.

(d) The order in mutation proceedings had never been challenged by NVDA and thus, attained finality and it makes it clear that the possession is with the NVDA.

(e) As per Section 117 of the M.P. Land Revenue Code, the record of rights entered in the land records is presumed to be correct, until the contrary is proved.

(f) Information received from the Tahsildar, Bagli under the Right to Information Act reads that the lands and houses of these 5 villages had already been transferred in favour of NVDA.

(g) The Reference Court recorded a judicial finding that the possession of concerned land/houses of these villages was taken on 8.12.2007. On this basis, the Reference Court directed the payment of interest on the compensation amount from the recorded date of possession, i.e. 8.12.2007 upto the date of payment @ 9% p.a. for one year and 15% p.a. after one year.

(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)

116. There are claims and counter claims regarding "taking possession of the land". It is submitted on behalf of the appellants that symbolic possession in the facts and circumstances of the case does not meet the requirement of law and, therefore, the State has a right to withdraw the acquisition proceedings. On the contrary, learned counsel appearing for the respondents would submit that taking of actual physical possession of the land is not necessary and

taking symbolic possession is enough. More so, such a submission has become merely academic, as the oustees are not in actual physical possession of the land in dispute.

117. The question does arise as to what is the meaning of taking possession – whether it is taking of actual physical possession or symbolic/paper possession which would be sufficient to meet the requirement of law.

118. In *Balwant Narayan Bhagde v. M.D. Bhagwat & Ors.,* AIR 1975 SC 1767, this Court while dealing with the issue, referred to various provisions of the Code of Civil Procedure, 1908 particularly Order XI Rules 35, 36, 96 and 97 and came to the conclusion :–

"19……. If the property is land over which does not stand any building or structure, then delivery of possession over the judgment-debtor's property becomes complete and effective against him the moment the delivery is effected by going upon the land, or in case of resistance, by removing the person resisting unauthorisedly. A different mode of delivery is prescribed in the Code in the rules aforesaid in regard to a building, with which we are not concerned in this case."

119. In *State of T.N. & Anr. v. Mahalakshmi Ammal & Ors.,* (1996) 7 SCC 269, this Court held as under:

"Possession of the acquired land would be taken only by way of a memorandum, Panchnama, which is a legally accepted norm".

120. Similarly in *Balmokand Khatri Educational & Industrial Trust, Amritsar v. State of Punjab & Ors.,* (1996) 4 SCC 212, this Court held as under:–

"It is now well settled legal position that it is difficult to take physical possession of the land under compulsory acquisition. *The normal mode of taking possession is*

drafting the panchnama in the presence of panchas and taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land."

(Emphasis added)

121. In *P.K.Kalburqui v. State of Karnataka,* (2005) 12 SCC 489, this Court held that if the land is vacant and unoccupied, taking symbolic possession by the State Government, would amount to taking possession. In the said case, in spite of the fact that symbolic possession of the vacant land had been taken, the Hon'ble Minister directed the issuance of a Notification under Section 48 of the Act 1894 on the basis of his understanding of the law that symbolic possession did not amount to actual possession and that the power to withdraw from acquisition could be exercised at any time before actual possession was taken. This Court has held as under:-

"There can be no hard-and-fast rule laying down what act would be sufficient to constitute taking of possession of land. In the instant case the lands of which possession was sought to be taken were unoccupied, in the sense that there was no crop or structure standing thereon. In such a case only symbolic possession could be taken... such possession would amount to vesting the land in the Government."

122. In *National Thermal Power Corporation v. Mahesh Datta & Ors.,* (2009) 8 SCC 339, after resorting to the urgency clauses under Section 17 of the Act 1894, a possession certificate had been issued on behalf of the Collector, Ghaziabad on 16.11.1984 making it evident that possession of lands in question therein, had been taken. After making of the Award under Section 11 in some cases, references under Section 18 of the Act 1894 had also been decided by the District Judge, Ghaziabad, vide order dated 12.10.1993 and persons aggrieved approached the Allahabad High Court for enhancement of compensation. It was at this stage that the

NTPC Ltd. realized that it would not be possible for certain reasons for it to have the power plant on the land under acquisition and site thereof should be shifted. Thus, *inter-alia* on the premise that possession of the entire land notified under Section 4 of the Act 1894 had not been taken, the State of U.P. issued a Notification dated 11.11.1994 under Section 48 of the Act 1894, denotifying the land. The said notification was challenged by the "persons interested" therein by filing the writ petition before the High Court. The writ petition was allowed by the High Court holding that mere symbolic possession was enough to meet the requirement of taking possession under Section 16 of the Act 1894 and on taking such symbolic possession, the land vested in the State free from all encumbrances could not be divested.

This Court held that taking over of possession in terms of the *provisions of the Act would however, mean actual possession and not symbolic possession.* The Court further observed:

"27. *When possession is to be taken over in respect of the fallow or parti land, a mere intention to do so may not be enough…… If the lands in question are agricultural lands, not only actual physical possession had to be taken but also they were required to be properly demarcated…."*

xx xx xx xx

"44…….*The burden of proof could be discharged only by adducing clear and cogent evidence….."*

(Emphasis added)

123. In this regard, it may also be pertinent to deal with mutation proceedings heavily relied upon by the respondent no. 1. Mutation proceedings are much more in the nature of fiscal inquiries. "Mutation of a property in the revenue record does

not create or extinguish title, nor has it any presumptive value of title. It only enables the person, in whose favour the mutation is entered, to pay the land revenue in question." (Vide: *Thakur Nirman Singh & Ors. v. Thakur Lal Rudra Pratap Narain Singh,* AIR 1926 PC 100; *Smt. Sawarni v. Inder Kaur & Ors.,* AIR 1996 SC 2823; *R.V.E. Venkata Chala Gounder v. Arulmign Ciswesaraswamy & V. Temple & Anr.,* AIR 2003 SC 4548; and *Suman Verma v. Union of India & Ors.,* (2004) 12 SCC 57).

Therefore, entries in the revenue record are of no assistance to determine the present controversy.

124. In view of the above, law on the issue can be summarized to the effect that no strait-jacket formula can be laid down for taking the possession of the land for the purpose of Sections 16 and 17 of the Act 1894. It would depend upon the facts of an individual case. In case the land is fallow and barren and does not have any structure or crop on it, symbolic possession may meet the requirement of law. However, this would not be the position in case crop is standing on the land or a kachha or pacca structure has been raised on such land. In that case, actual physical possession is required to be taken. There may be a case where the acquiring authority is in possession of the land, as the same has already been requisitioned under any law or the property is in possession of a tenant, in such a case symbolic possession qua the tenure holder would be sufficient.

125. In the instant case, in view of the fact that land in dispute is an agricultural land and has 167 dwelling houses, law in fact requires taking over the actual physical possession. The respondent no. 1 has asserted that the tenure holders are not in possession of the said land. We considered it proper to appoint a Commissioner and to have his report. Thus, vide order dated 24.2.2011, this Court requested the District Judge, Indore to have an inspection of the lands in dispute in five

villages and submit the report as who is in actual physical possession of the same.

126. In pursuance of our direction dated 24.2.2011, Shri M.K. Mudgal, learned District and Sessions Judge, Indore (M.P.) has submitted a detailed report after having conducted spot inspections and examining all the tenure holders in respect of the land in dispute in presence of Shri Alok Agrawal, Chief Activist of Narmada Bachao Andolan, (who remained present in this Court throughout the proceedings also and had been instructing the learned counsel for the said party) and recorded the following findings of fact:

(1) So far as the land in dispute in villages Dharadi, Guadi, Kothmir, Nayapura and Narsinghpura, having an area of 284.03 hectares is concerned, the original tenure holders are in actual physical possession;

(2) The Bhumiswamis (tenure holder) had sown the crops on the said land;

(3) They have admitted that they had been sowing the crops even after acquisition proceedings.

(4) The tenure holders are in possession of the acquired land on the ground that they had still not been rehabilitated as per the scheme of the State Government. Therefore, they are compelled to continue growing the crops and also using the other parts of the land for habitation.

(5) They are in possession of their respective lands already acquired as they have not yet been offered the land in lieu of the land so acquired and they would make a shift from the acquired land after compliance of the said obligation by the State.

The report concludes as under:

"Therefore, on the spot inspection and the recorded

evidence, there is no doubt in my mind to conclude that the standing crops have been sown by the former Bhumiswamis and the acquired lands of five villages in questions are actually in possession of the former Bhumiswamis even now. It has also got to be deduced further that N.V.D.A. has never been in possession of the aforesaid lands since the acquisitions of the same." (Emphasis added)

127. We have seen the D.V.Ds. and C.Ds. of the videos, prepared during the time of inspection by District Judge, Indore in the presence of hundreds of tenure holders and officials. It is evident from the same that the tenure holders identified their land in presence of Shri Alok Agrawal, the social activist. The entire land is having wheat, cotton, maize and millet crops. The said tenure holders have admitted that they had been cultivating the land for last several years and they had never been dispossessed from the land in dispute by the State. Shri Agarwal had been shown advancing legal submissions before the District Judge, Indore, justifying why the original tenure holders are still in actual/physical possession of the land.

128. The District Judge, Indore, has recorded the statements of all the tenure holders. For example, we quote the statement of one Shri Devi Singh S/o Pahar Singh r/o Village: Nayapura, Post: Ratanpur, Tehsil: Bagli, District: Devas, Madhya Pradesh. The same reads as under:

01 - My land is in Village Nayapura. The land is in Shamlati, its area is approximately twenty acres. The said land is affected by the Omkareshwar Dam Project. On 8th December, 2007, the then Land Acquisition Officer, Shri Chaturvedi came to Village Nayapura, gathered the farmers together and informed them alongwith me that the land no longer belongs to any of us and it has now become the State Government's land and the possession of the said land was with the State. At that time, the land

was vacant.

02- From that day onward, the Government has not been collecting land revenue for the said land and the concerned society has stopped extending the facilities of providing seeds and fertilizers. I alongwith other farmers have submitted an affidavit in this regard in the High Court at Jabalpur. Under the Resettlement & Rehabilitation Scheme, we were supposed to get land in lieu of land acquired. We had been shown land in village Khorda, Tehsil Harsud, but some other people had already encroached upon some of that land and some of it was grazing land which was unfit for agriculture. That is why we have not taken the land that was offered to us.

03 - We have not yet been given land as under the Rehabilitation Policy, that is why we are cultivating the acquired land. At present our crop is standing on the site. As soon as we get land under the Rehabilitation Policy, we will vacate possession of the acquired land.

04 - Yesterday, my land was inspected by the District Judge, Indore. My crops were found to be standing at the site, which was taken on record and witnessed by me.

The record was read aloud to Signed at my instruction

the deponent and he agreed Sd/-

that it was correct.

(M.K. Mudgal)

129. In view of the above, this becomes crystal clear that none of the tenure holders, so far the land in dispute is concerned, has been evicted/dispossessed. All the tenure holders are enjoying the said land without any interference. The tall claims made by the respondents before the High Court were totally false. The High Court was not justified in entertaining their

applications in this regard, without verifying the factual aspects.

130. In such a fact-situation, as the actual physical possession has not yet been taken by the authorities and the entries in the revenue records etc. are not the conclusive proof, therefore, the State Government is competent to exercise its power under Section 48 of the Act 1894. However, it will be subject to the decision on another relevant issue regarding submergence of the land in dispute permanently or temporarily which is to be considered hereinafter.

131. Before adverting to the next issue, it is desirable to deal with the conduct of the NBA. The question is not of justification of the tenure holders to retain possession of the land, rather it had emphatically been argued by Shri Sanjay Parekh, learned counsel appearing for the said applicant/respondent, that powers under Section 48 of the Act 1894 could not be resorted to because the tenure holders had already been physically dis-possessed and land stood vested in the State. Therefore, the same could not be divested. The matter was argued by Shri Sanjay Parekh at great length to impress upon the Court that the tenure holders had been actually dis-possessed long ago. This fact was denied by the State. It was only after considering the rival submissions on behalf of the parties that this Court thought it fit and appropriate to have a spot inspection report and then the District Judge, Indore, was asked to make a local inspection and submit the report. The report has been made after making an inspection of the area and recording statements of the tenure holders in presence of Shri Alok Agrawal, Chief activist of NBA and thus, we accept the same. It is evident from the said report that statements made by the said applicant/respondent in the Court, in this regard are factually incorrect and false. The Court has been entertaining this petition under the bona fide belief that NBA was espousing the grievance of inarticulate and illiterate poor farmers, with all sincerity and thus, would not make any misleading statement. However, our belief stands fully belied.

Applicant/respondent made pleadings and advanced arguments without any basis only to secure unwarranted benefits to those tenure holders. In the instant case it stands discredited totally in the eyes of this Court. This Court had been a little careful and cautious in this regard, which has exposed the true picture.

132. In such a fact-situation, the NBA not having personal interest in the case, cannot claim to be *dominus litis.* Thus, it ought to have acted at every stage with full sense of responsibility and sincerity. Earlier also, this Court in *Narmada Bachao Andolan v. Union of India & Ors.,* (1998) 5 SCC 586, has disapproved the conduct of the Narmada Bachao Andolan and described it to be most unfortunate that it had celebrated the 4th anniversary of the stoppage of work of the dam under the interim orders of the Court. This Court found it to be an obstruction in the way of implementing the R & R Policy. However, at that time this Court was assured by the said NBA that they "shall not directly or indirectly give any cause for concern by this Court." But, in our opinion, it has not been able to keep its solemn undertaking given to this Court.

PUBLIC INTEREST LITIGATION:

133. It has often been stated that PIL jurisdiction should be exercised cautiously in matters that primarily require the attention of the democratic process, or the State or those issues whose crevices and complexities the court may not easily unravel, and comparatively generously in cases involving public interest of sections of people for whom the administration of justice and its reach are not effective and the rights delivery processes, are shown to be weakened by power and influence. (Vide: *R. and M. Trust v. Koramangla Residents Vigilance Group & Ors.,* AIR 2005 SC 894).

134. Where the cause of action is genuinely in the general public interest, the court will relax the requirement of *bona fides* and appoint an *amicus curiae* to deal with the matter and keep

the matter out of the power of the original applicant. [Vide: *M/s Holicow Pictures Pvt. Ltd. v. Prem Chandra Mishra & Ors.,* AIR 2008 SC 913; and **A.** *Abdul Farook* (supra)].

135. The 'rights' of the public interest litigant in a PIL are always subordinate to the 'interests' of those for whose benefit the action is brought. The status of *dominus litis* could not be conferred unreflectively or for the asking, on a PIL petitioner as that would render the proceedings "vulnerable to and susceptible of a new dimension which might, in conceivable cases be used by persons for personal ends resulting in prejudice to the public weal". (vide: *Sheela Barse v. Union of India & Ors.,* AIR 1988 SC 2211).

136. The standard of expectation of civic responsibility required of a petitioner in a PIL is higher than that of an applicant who strives to realise personal ends. The courts expect a public interest litigant to discharge high standards of responsibility. Negligent use or use for oblique motives is extraneous to the PIL process for were the litigant to act for other oblique considerations, the application will be rejected at the threshold. Measuring the 'seriousness' of the PIL petitioner and to see whether she/he is actually a 'champion' of the cause of the individual or the group being represented, is the responsibility of the Court, to ensure that the party's procedural behaviour remains that of an adequate 'champion' of the public cause. (Vide: *The Janata Dal v. H.S. Chowdhary & Ors.,* AIR 1993 SC 892; *Kapila Hingorani v. State of Bihar, (2003) 6 SCC 1; and Kusum Lata v. Union of India & Ors.,* (2006) 6 SCC 180).

137. The constitutional courts have time and again reiterated that abuse of the noble concept of PIL is increasing day-by-day and to curb this abuse there should be explicit and broad guidelines for entertaining petitions as PILs. This Court in **State of Uttaranchal v. Balwant Singh Chaufal and Ors.**, (2010) 3 SCC 402, has given a set of illustrative guidelines, *inter alia*:

(i) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(ii) The court should also ensure that there is no oblique motive behind filing the public interest litigation etc. etc.

Therefore, while dealing with the PIL, the Court has to be vigilant and it must ensure that the forum of the Court be neither abused nor used to achieve an oblique purpose.

MISLEADING STATEMENT AMOUNTS TO CRIMINAL CONTEMPT

138. A person seeking relief in public interest should approach the Court of Equity, not only with clean hands but also with a clean mind, clean heart and clean objective. Thus, he who seeks equity must do equity. The legal maxim *"Jure Naturae Aequum Est Neminem cum Alterius Detrimento Et Injuria Fieri Locupletiorem"*, means that it is a law of nature that one should not be enriched by the loss or injury to another. The judicial process should never become an instrument of oppression or abuse or means to subvert justice.

139. "The interest of justice and public interest coalesce. They are very often one and the same". Therefore, the Courts have to weigh the public interest vis-à-vis the private interest. A petition containing misleading and inaccurate statement(s), if filed, to achieve an ulterior purpose, amounts to an abuse of the process of the Court and such a litigant is not required to be dealt with lightly. Thus, a litigant is bound to make "full and true disclosure of facts". The Court is not a forum to achieve an oblique purpose.

140. Whenever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further with the matter. This rule has been evolved out of need of the Courts to deter a litigant from abusing the process of the Court by deceiving it. However,

the concealed fact must be material one in the sense that had it not been suppressed, it would have an effect on the merit of the case/order. The legal maxim *"Juri Ex Injuria Non Oritur"* means that a right cannot arise out of wrong doing, and it becomes applicable in a case like this. (Vide: *The Ramjas Foundation & Ors. v. Union of India & Ors., AIR 1993 SC 852; Noorduddin v. Dr. K.L. Anand,* (1995) 1 SCC 242; *Ramniklal N. Bhutta & Anr. v. State of Maharashtra & Ors.,* AIR 1997 SC 1236; *Sabia Khan & Ors. v. State of U.P. & Ors.,* (1999) 1 SCC 271; *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar & Ors.,* (2004) 7 SCC 166; and *Union of India & Ors. v. Shantiranjan Sarkar,* (2009) 3 SCC 90).

141. It is a settled proposition of law that a false statement made in the Court or in the pleadings, intentionally to mislead the Court and obtain a favourable order, amounts to criminal contempt, as it tends to impede the administration of justice. It adversely affects the interest of the public in the administration of justice. Every party is under a legal obligation to make truthful statements before the Court, for the reason that causing an obstruction in the due course of justice "undermines and obstructs the very flow of the unsoiled stream of justice, which has to be kept clear and pure, and no one can be permitted to take liberties with it by soiling its purity". (Vide: *Naraindas v. Government of Madhya Pradesh & Ors.,* AIR 1974 SC 1252; *The Advocate General, State of Bihar v. M/s. Madhya Pradesh Khair Industries & Anr.,* AIR 1980 SC 946; and *Afzal & Anr. v. State of Haryana & Ors.,* (1996) 7 SCC 397).

142. In *K.D. Sharma v. Steel Authority of India Limited & Ors.,* (2008) 12 SCC 481, this Court held that:

> *"Prerogative writs……. are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim."* (Emphasis added)

143. While deciding the said case this Court relied upon the leading case of *R. v. General Commissioners for the purposes of the Income Tax Act for the District of Kensington,* (1917) 1KB 486, wherein it had been observed as under:

> *"…when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement…….If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone ….. The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it."* (Emphasis supplied)

144. In such a case the person who suppresses the material facts from the court is guilty of *Suppressio Veri and Suggestio Falsi* i.e. suppression or failure to disclose what a party is bound to disclose, which may amount to fraud.

145. In view of the above, we reach the inescapable conclusion that the NBA has not acted with a sense of responsibility and so far succeeded in securing favourable orders by misleading the Court. Such conduct cannot be approved. 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 any presentation by the NBA with caution and care, insisting on proper pleadings, disclosure of full facts truly and fairly and in case it has any doubt, refuse to entertain the NBA. However, considering the interests of the oustees, it may be desirable that the Court may appoint an *Amicus Curiae* to present their cause, if such a contingency arises.

146. In view of the above, we are of the considered opinion that no order is required on the IA Nos. 196-210, 211-225 and 241-255 of 2011 filed under Section 340 of the Code of Criminal Procedure, 1973, by both the parties, as dealing with the said applications would not serve any purpose. More so, the IA Nos. 226-240 of 2011 filed for modification of the order dated 5.4.2011. Thus, all the said IAs stand disposed of.

147. In view of the serious controversy raised in these appeals, this Court vide order dated 24.2.2011, requested the CWC to make a local inspection and submit its report as to whether the land measuring 284.03 hectares in these 5 villages, would be submerged temporarily or permanently or merely water locked.

148. In pursuance of the aforesaid order, the CWC after having spot inspection submitted its report dated 22.3.2011. The relevant part thereof reads as under:

(i) *Village Kothmir- .....*

"115.53 hectare area (under reference) of this village falls between FRL and BWL. This will come under temporary submergence when water level exceeds FRL (196.60 m)."

(ii) *Village Narsinghpura-…….*

Out of the total 21.58 hectare area (under reference) of this village, 19.30 hectare falls between FRL and BWL and will come under temporary submergence when water level is between FRL (196.60 m) and BWL."

(iii) *Village Dharadi- …….*

"The 103.09 hectare area of village (under reference) falls between FRL and BWL, which will come under temporary submergence when water level exceeds FRL (196.60m)."

(iv) *Village Nayapura-……..*

"The 33.83 hectare land (under reference) of village falls between FRL and BWL which will come under temporary submergence when water level exceeds FRL (196.60 m)."

(v) Village Guwadi-…….

"The 10.00 hectare land (under reference) of village falls between FRL and BWL, which will come under temporary submergence when water level exceeds FRL (196.60m)."

(vi) **Conclusion of the Committee**: *Out of the total land – subject matter of dispute ad-measuring 284.03 hectare in the aforesaid five villages; 281.75 hectare falls between FRL and BWL, which will come under temporary submergence due to back water effect. The remaining 2.28 hectare area will not come under submergence due to back water levels when water levels are up to BWL.*

149. The parties were given copies of the report and asked to submit their objections, if any. In response to the said order, the parties submitted their comments/objection to the report submitted by the CWC.

The State Government has submitted that the report suggested that 2.28 hectares of the area will never be

submerged even when water levels are upto BWL. However, the remaining area of 281.75 hectares falls between FRL and BWL, would be under temporary submergence due to back water effect. In such a fact-situation, the CWC guidelines of 1997 provide that MWL at the dam site during maximum flood and BWL is the corresponding flood level at maximum flood in the pondage area. Hence, when MWL occurs at the dam site, BWL will occur simultaneously in the vicinity of the reservoir further up stream. In such a case, agricultural land affected by back water is not acquired in a dam project, as that land is submerged only temporarily during floods hardly for 2-3 days which may occur rarely, once in a period of 1000 years. Rather the land is benefited due to silting during floods and is available for cultivation after the temporary flood recedes. The guidelines issued by the CWC had been adopted by the State that agricultural land temporarily coming under submergence between FRL and BWL need not be acquired. However, houses in the temporary submergence area must be acquired. In order to fortify its stand, the State Government had quoted paragraph 6.2.3. of the guidelines for preparation of project estimates for river valley projects of CWC March 1997. Further, State has placed reliance on Clause XI-II (2) of NWDT Award, which also provides for the same.

150. It has further been submitted by Shri Ravi Shankar Prasad, learned senior counsel appearing for the State that all the dwelling structures which are 167 in number would be acquired positively in terms of the R & R Policy and in spite of the fact that the agricultural land would not be acquired, the benefits provided under the R& R Policy shall be granted to all such oustees who fulfill the requirement of the provisions of clause 1.1 which defines the 'displaced person' under the R & R Policy and such a course will be in consonance with the guidelines issued by the CWC.

151. In view thereof, it has been submitted that as per the CWC guidelines, only the land covered by structures must be

acquired and not the entire land. Therefore, the report of the CWC should be accepted with this understanding and clarification.

152. On the other hand, the Narmada Bachao Andolan – the writ petitioner, has submitted that the report does not require any further explanation, there are 167 houses situated on the concerned lands of these five villages which are bound to be acquired. The remaining entire land has to be acquired in view of the decision taken by the NVDA in its 144th meeting dated 5.10.2007, wherein it was resolved that it was necessary to acquire the land in dispute and subsequent decisions taken by the parties, particularly, dated 25.3.2009 and 2.4.2009, are arbitrary, malafide and unconstitutional. Under the R & R Policy, even any land temporary submerged, is bound to be acquired. In support of such a contention, reliance has been placed on the definition of "displaced person" contained in Clause 1.1 of R & R Policy which speaks of the person whose land is likely to come under submergence whether temporarily or permanently. Further reliance has also been placed upon the judgment of this Court in *Narmada Bachao Andolan – II* (Supra) providing for the same and in view thereof, it has been submitted that the land is compulsorily to be acquired.

153. An extract from guidelines for preparation of project estimates for river valley projects of CWC March 1997 is reproduced below:-

"6.2.3. …….

"Generally acquisition may be done upto FRL only. The area between FRL & MWL may be acquired only if the submerged land is fertile and the duration of submergence beyond FRL upto MWL is long enough to cause damage to crops i.e. over 15 days duration. (for acquisition of land the effect of back water need not be taken into consideration).

xxx xxx xxx xxx

All structures coming under submergence between FRL and MWL should be acquired. If the structures coming under submersion are of religious or archeological interest, provision must be made for re-establishing these structures above MWL".

154. The Clause XI – II (2) of the NWDT Award for the Sardar Sarovar Project reads as under:

Madhya Pradesh and Maharashtra shall also acquire for Sardar Sarovar Project under the provision of the Land Acquisition Act 1894, all buildings with their appurtenant land situated between FRL + 138.63 m (455') and MWL + 141.21 m (460') as also those affected by the Back water effect resulting from MWL = 141.21 m (460')."

155. Reason for not acquiring land between FRL and BWL (MWL at dam site):-

(i) *The CWC guideline 1997 and clause XI.II(2) of NWDTA provision mentioned above clearly states that the agricultural land affected by BWL is not acquired in a dam project as a policy matter.*

(ii) It will submerge only temporarily during maximum flood once in 1000 years.

(iii) The land gets benefited due to silting during flood and will be available for cultivation after flood recedes. It becomes more fertile.

(iv) The land gets only submerged temporarily in BWC due to flood (once in 1000 years) and should not be left unused. It will be a national loss.

(v) The land may get encroached if it is acquired and left without use as it is very fertile.

(vi) ……."

156. In *Narmada Bachao Andolan – II* (Supra), the Court has placed reliance upon the report of the Narmada Control Authority (NCA), dealing with the NWDT Award, wherein it has been mentioned as under:

"47. The Award, as noticed hereinbefore, contained two sub-clauses relating to the directions on the State Government for compulsory acquisition of the land by the States of Madhya Pradesh and Maharashtra under the provisions of the Land Acquisition Act. This obligation on the part of the State to acquire land is, thus, neither in doubt nor in dispute. The additional directions are that those persons whose 75 per cent or more land of a continuous holding is required to be compulsorily acquired, will have an option to compel compulsory acquisition of the entire contiguous holding; *and acquisition of buildings with their appurtenant land situated between FRL + 138.68 metres (455') and MWL + 141.21 (460') as also those affected by the backwater effect resulting from MWL + 1451.21* **metres.** The submergence due to maximum water level and backwater would take place only after it reaches full height.

xxx xxx xxx xxx

50. …….

Further it was decided as per decision in the last meeting of the Sub-group all possible arrangements for R&R should be made by the concerned State Govts. For completing the same in all respect both in regard to oustees affected by the permanent as well as temporary submergence six months ahead from submergence. Actual allotment of land, house plot and payment of compensation etc. and not merely offer of such facilities as per the R&R package should be made in respect of all PAFs (both

categories of affected by permanent and temporary submergence) except in the case of hardcore PAFs who refuse to accept the package and unwilling to shift.

Temporary submergence even for a short period can affect the oustees badly and that it is desirable to keep this in mind while rehabilitating the oustees." (emphasis supplied)

157. If we read the above referred to provisions of the R&R Policy, findings in NWDT Award, project report prepared by CWC in March 1997 and observations made in *Narmada Bachao Andolan – II* (Supra) and analyse it properly, the following picture emerges:

(i) In case the land/dwelling unit of the tenure holder is submerged temporarily, he is entitled for the benefit of R&R Policy;

(ii) In case of temporary submergence of the agricultural land between FLR and MWL and those affected by the back water affect resulting from MWL, only the buildings with their appurtenant land would be acquired. But the agricultural land is not to be acquired; and

(iii) In case, the dwelling units are acquired because of temporary submergence, such persons shall be entitled for the benefits under R&R Policy.

158. We have not only considered the rival submissions made by learned counsel for the parties but in view of the fact that the matter is extremely technical, we requested the CWC to depute Mr. U.K. Ghosh, Chief Engineer (NDA – CWC), who had been the Chairman of the Committee, to render assistance as the Court wanted certain explanation/clarification from his team, thus called them in the Chambers on 27.4.2011 and again on 5.5.2011. We discussed various aspects of the report and objections filed by the parties. They have explained the concept of BWL and Dam Overtopping as under:

BWL : BWL in the upstream of a dam is formed by incoming flood while passing through the reservoir created by artificial obstruction in a river channel by construction of an weir or a dam.

Dam Overtopping : Dam overtopping implies water flow over the dam top. Flow of water over the dam top may occur due to:

(a) Increase in water level in the reservoir higher than the top level of the dam due to an inflow volume greater than the project design flood, due to under-estimation of the same at the time of project planning and design.

(b) Mechanical failure in reservoir operation or due to human negligence.

On the main issue as to whether the land in dispute is to be acquired or not, the relevant part of their written opinion dated 6.5.2011 reads as under:

"As per yearwise record of maximum flood discharge at Omkareshwar dam, since 1951 up to 2003 (53 years), the flood discharge never exceeded the design spillway capacity of 69,000 cumecs. The statement of yearwise maximum floor discharge is enclosed at Annexure – I. From the Standard Project Flood (SPF) hydrograph, as adopted for working out the backwater level in the Omkareshwar Reservoir, it is noted that duration of flood magnitude above design spillway capacity at FRL is about two days only. Therefore, during Monsoon season temporary submergence due to backwater effect above FRL will not be more than 4 to 5 days.

In respect of non-Monsoon period it is to mention that there will be daily regulated release from both Indira Sagar Dam in the upstream of Omkareshwar dam as well as from

Omkareshwar dam itself for power generation and other commitments. The reservoir level at Omkareshwar dam are likely to be maintained within FRL by suitable reservoir operation at all times during non-monsoon period.

In the present case, the disputed land ad-measuring 284.03 hectares between FRL and BWL comes under temporary submergence for a duration of less than 15 days when a flood of SPF magnitude, which is 1 in 1000 years return period flood for this project impinges the reservoir at FRL. Therefore, keeping in view all the above points given in Para 2(i) to Para 2(iv), the Committee is of the view that the agricultural lands within FRL and BWL need not be acquired as per the guidelines for preparation of Project, Estimates for River Valley Projects prepared by Central Water Commission in March, 1997."

(Emphasis added)

159. In view of the expert opinions rendered by CWC and other materials on record, we reach the inescapable conclusion that the agricultural land of these five villages is not to be acquired as it may only be under temporary submergence for a very short period, which occurs throughout the country during floods in monsoon. Such a submergence is always beneficial to agricultural produce as the land gets enriched due to silting during the flood and becomes more fertile. More so, such an acquisition is not in the interest of the State as the land cannot be put to any use whatsoever, and there is a possibility that such land would be encroached upon by unscrupulous elements.

160. **CONCLUSIONS/RESULT**:

(i) Civil Appeal Nos. 2115-2116/2011 filed by the State of M.P. and NHDC

These appeals involved two issues namely, (i) allotment

of land in lieu of land acquired; and (ii) entitlement of major son to get the allotment of land as a separate family. So far as the first issue is concerned, in respect of the same, we hold that in view of the provisions contained in R & R Policy, the State Authorities are under an obligation to allot the land to the oustees "as far as possible". In case an oustee has not accepted the compensation/SRG or has any grievance in respect of area/quality/location of land allotted or for any other entitlement, he may approach the GRA and the GRA will adjudicate upon the issue and pass an appropriate order in individual cases after giving an opportunity of hearing to all the parties concerned. Needless to say, the person aggrieved by the order of GRA shall be entitled to approach the High Court for appropriate relief. However, in case of private person, the application/petition would be in the name of that individual person duly supported by his affidavit.

So far as the issue of entitlement of major son for allotment of land as a separate family is concerned, our conclusion is in the negative. In other words, there is no such entitlement.

(ii) Civil Appeal No. 2082/2011 filed by NBA

This appeal involved three issues namely (i) entitlement of land to the landless labourers; (ii) applicability of NWDT Award in the Omkareshwar dam project; and (iii) entitlement of allotment of land to the oustees of five villages already submerged. Our conclusion in respect of Issue Nos. (i) & (ii) is in the negative. However, on Issue No.(iii), the oustees shall be entitled for the relief as given to the oustees on Issue No. (i) in Civil Appeal Nos. 2115-2116/2011.

(iii) Civil Appeal Nos. 2083-2097/2011 and 2098-2112/2011

These appeals have been preferred by the State of M.P. and NHDC in respect of acquisition of land of five villages, wherein the State wants to withdraw the acquisition proceedings. Our conclusion is that in the fact-situation of the

case, the State is entitled to abandon the land acquisition proceedings in exercise of its power under Section 48 of the Act 1894. However, it shall not apply to 167 dwelling units on the said land. Such persons whose dwelling units are acquired shall be entitled for the benefit of R & R Policy to the extent provided therein. The State shall establish the roads etc. after raising the height of the Bandh as proposed by the Authorities.

(iv) The IA. Nos. 196-210, 211-225, 241-255 of 2011 and 226-240 of 2011 filed by both the parties under Section 340 Cr.P.C., do not require to be dealt with in view of our observations made in para 146 of this judgment.

All the appeals and IAs. stand disposed of accordingly. No order as to costs.

161. We have been given to understand that on the Narmada River, in the State of Madhya Pradesh, in all 29 major and minor projects are contemplated. Some of them have already been completed, but on account of stay order by the court/Authority some projects could not be completed. It is unfortunate that in spite of the fact that a huge amount has been spent, yet no one is able to reap the fruits of investment. The State should take immediate steps to get the final verdict in such cases or stay vacated and start the project at the earliest.

162. Before parting with the case, we record our deep appreciation for the assistance rendered to this Court by Shri M.K. Mudgal, learned District Judge, Indore, and officials of the CWC, particularly Shri U.K. Ghosh, Chief Engineer (NBP), CWC, Shri M.P. Singh, Director (FCA), CWC, and Shri D.P. Singh, Director (ND&HW), CWC, New Delhi.

R.P. Appeals disposed of.

PEPSU ROAD TRANSPORT CORPORATION, PATIALA

v.

MANGAL SINGH AND ORS.

(Civil Appeal No. 4111 of 2008)

MAY 12, 2011

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

Pension:

Regulations made under a statute laying down the terms and conditions of service of employees which governed the Pension Scheme – Non-compliance of – Entitlement of employees to claim benefit under the Pension Scheme – Held: Failure on the part of the employees to opt for the Pension Scheme and/or refund the advance taken from the employer's contribution of C.P.F. as envisaged in the Regulations would disentitle them from claiming any benefit under the Pension Scheme – Pepsu Road Transport Corporation Employee Pension/Gratuity and General Provident Fund Regulations, 1992 – Regulations 3, 4 – Service law.

Regulations made under the statute laying down the terms and conditions of service of employees, including the grant of retirement benefits – Binding effect of – Held: Regulations validly made under statutory powers are binding and effective as the enactment of the competent legislature – Any action or order in breach of the terms and conditions of the Regulations shall amount to violation of Regulations which are in the nature of statutory provisions and shall render such action or order illegal and invalid.

Pension and Contributory Provident Fund – Difference between the two concepts – Discussed.

Notice:

Individual notice – Option to choose retirement benefits – Not exercised – Plea of the respondents that option was not exercised for want of knowledge for non-service of individual notices – Pension Scheme not providing for serving individual notices on the employees – Held: In view of absence of such condition in the scheme, it was not necessary for the Corporation to give an individual notice to respondents for exercising of option for pension Scheme and also for asking respondent to refund the employers contribution of C.P.F. at each stage – Even otherwise, when notice or knowledge of the Pension Scheme can be reasonably inferred or gathered from the conduct of the respondents in their ordinary course of business and from surrounding circumstances, then, it will constitute a sufficient notice in the eyes of law.

By virtue of Pepsu Road Transport Corporation Employee Pension/Gratuity and General Provident Fund Regulations, 1992, if an employee of the appellant-Corporation fails to exercise his option for the Pension Scheme within a period of 6 months from the date of issue of the Regulations and secondly, even on exercise of option, if an employee fails to refund the amount of advance taken from employers contribution of the C.P.F. within 6 months from the date of issue of the Regulations, then it shall be deemed that employee had opted to continue for the existing C.P.F. benefit.

In the instant case, the respondents were the employees of the appellant-Corporation. The issue which arose for consideration in these appeals was whether the respondents were eligible to claim pensionary benefits under the Pension Scheme inspite of the non-compliance of the essential conditions stipulated in the Regulations of 1992 which governed the said Pension Scheme.

Allowing the appeals, the Court

HELD: 1.1. The Pepsu Road Transport Corporation was constituted in terms of the provisions of the Road Transport Corporations Act, 1950. By reason of the provisions of Section 4 thereof, each Corporation is a body corporate having perpetual succession and a common seal and can, in its own name, sue and be sued. Section 45 of the 1950 Act authorises the Corporation to frame Regulations for the administration of the affairs of the Corporation. The Regulations provide for the grant of retirement benefits to the employees of the PEPSU Road Transport Corporation with effect from 15.06.1992. [Paras 12, 13, 14] [578-D-E; 579-D]

1.2. It is well settled law that the Regulations made under the statute laying down the terms and conditions of service of employees, including the grant of retirement benefits has the force of law. The Regulations validly made under statutory powers are binding and effective as the enactment of the competent legislature. The statutory bodies as well as general public are bound to comply with the terms and conditions laid down in the Regulations as a legal compulsion. Any action or order in breach of the terms and conditions of the Regulations shall amount to violation of Regulations which are in the nature of statutory provisions and shall render such action or order illegal and invalid. Even in the case of non-statutory Regulations specifically providing for the grant of pensionary benefits to the employee qua his employer shall be governed by the terms and conditions encapsulated in such non-statutory Regulations. [Paras 16, 19] [582-E-G; 586-A-B]

Union of India v. Brig. P. K. Dutta (Retd.) **1994 (6) Suppl SCR 358: 1995 Supp (2) SCC 29 – relied on.**

Union of India v. M.K. Sarkar **(2009) 16 SCR 249: (2010) 2 SCC 59;** *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi* **(1975) 3 SCR 619: (1975) 1 SCC 421;** *Vidya Dhar Pande v. Vidyut Grih Siksha Samiti,* **(1988) 3 Suppl. SCR 442 : (1988) 4 SCC 734;** *Rajasthan SRTC v. Bal Mukund Bairwa* **(2009) 4 SCC 299 – referred to.**

2.1. Pension and Contributory Provident Fund (C.P.F.)

Pension is a retirement benefit partaking of the character of regular payment to a person in consideration of the past services rendered by him. Although pension is not a bounty but is claimable as a matter of right, yet the right is not absolute or unconditional. The person claiming pension must establish his entitlement to such pension in law. The entitlement might be dependent upon various considerations or conditions. In a given case, the retired employee is entitled to pension or not depend on the provisions and interpretation of Rules and Regulations. The C.P.F. appears to be simple mechanism where an employee is paid the total amount which he has contributed along with the equal contribution made by the employer ordinarily at the time of retirement of an employee. In short, "pension is payable periodically as long as the pensioner is alive whereas C.P.F. is paid only once on retirement". Therefore, conceptually, pension and C.P.F. are separate and distinct. [Para 21] [587-E-H; 588-A]

2.2. Essential distinction between C.P.F. and Pension.

The C.P.F. was introduced with the object of providing social security to the employees working in factories and other establishments, after their retirement. The C.P.F. was instituted as a Compulsorily Contributory Provident Fund by the enactment of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

The employee registered under the Provident Fund Act shall be entitled to claim all benefits available under the C.P.F. Scheme framed under the Act. This C.P.F. Scheme requires opening of the account for the employee by the employer. The Government/employer is under the continuous obligation to deposit equal or matching contribution made by the employee in his account till he retires. Once the employee is retired, then his rights qua Government/employer's contribution into his C.P.F. account finally crystallizes. After retirement, this entire C.P.F. amount is paid to the employee as a retiral benefit. On the receipt of C.P.F. amount, the relationship between employee and employer ceases to exist without leaving any further legal right or obligation qua each other. On the other hand, Pension is a periodic payment of an amount to the employee, after his retirement from service by his employer till his death. In some cases, it is also payable to the dependents of the deceased employee as a family pension. The pension is in a nature of right which employee has earned by rendering long service to the employer. It is a deferred payment of compensation for past service. It is dependable on the condition of rendering of service by the employee for a certain fixed period of time with decent behavior. Like C.P.F., the object of providing pensionery benefit under the Pension Scheme is to provide social security to the employee and his family after his retirement from service. The Government's/Employer's obligation under the Pension Scheme begins only when the employee retires and it continues till the death of the employee. Pension is not a charity or bounty nor is it a conditional payment solely dependent on the sweet will of the employer. It is a social security plan consistent with the socio-economic requirements of the Constitution when the employer s a State within the meaning of Article 12 of the C nstitution rendering social justice to a superannuated

government servant. It is a right attached to the office and cannot be arbitrarily denied. [Paras 22, 26, 36] [588-B-E; 590-D-F; 595-B-D]

A.P. Srivastava v. Union of India **(1995) 6 SCC 227;** *Vasant Gangaramsa Chandan v. State of Maharashtra* **(1996) 10 SCC 148;** *Subrata Sen v. Union of India* **(2001) 8 SCC 71;** *Union of India v. P.D. Yadav* **(2002) 1 SCC 405;** *Grid Corpn. of Orissa v. Rasananda Das* **(2003) 10 SCC 297 – relied on.**

Committee for Protection of Rights of ONGC Employees v. O.N.G.C., **(1990) 2 SCC 472;** *Krishena Kumar v. Union of India*, **(1990) 4 SCC 207;** *All India Reserve Bank Retired Officers' Assn. v. Union of India* **1992 Supp (1) SCC 664;** *Deokinandan Prasad v. State of Bihar* **1971 Suppl. SCR 634: (1971) 2 SCC 330;** *D.S. Nakara v. Union of India* **(1983) 1 SCC 305;** *Poonamal v. Union of India,* **(1985) 3 SCC 345;** *Prabhu Narain v. State of U.P* **(2004) 13 SCC 662;** *U.P. Raghavendra Acharya v. State of Karnataka* **(2006) 9 SCC 630 – referred to.**

3. In these appeals, the respondents had failed to comply with the terms and conditions of the Regulations, which governed the Pension Scheme. The statutory Regulations made under a statute are required to be interpreted in the same manner which is adopted while interpreting any other statutory provisions. The Corporation as well as respondents are obliged and bound to comply with its mandatory conditions and requirements. Any action or conduct deviating from these conditions shall render such action illegal and invalid. The respondents had availed the retiral benefits arising out of the C.P.F and gratuity without any protest. The respondents in all these appeals had made a claim for pensionary benefits under the Pension Scheme for the first time only after their retirement with an unreasonable delay of more than 8 years. It is not in dispute that in some

appeals, the respondents never opted for the Pension Scheme for their alleged want of knowledge for non-service of individual notices. In other appeals, although respondents applied for the option of the Pension Scheme but indisputably never fulfilled the quintessential conditions envisaged by the Regulations which are statutory in nature. In view of absence of such condition in the scheme, it was not necessary for the Corporation to give an individual notice to respondents for exercising of option for pension Scheme and also for asking respondent to refund the employers contribution of C.P.F. at each stage. Furthermore, when notice or knowledge of the Pension Scheme can be reasonably inferred or gathered from the conduct of the respondents in their ordinary course of business and from surrounding circumstances, then, it will constitute a sufficient notice in the eyes of law. [Paras 38, 40] [595-G-H; 596-A-D; G-H; 597-A-B]

Dakshin Haryana Bijli Vitran Nigam v. Bachan Singh **(2009) 14 SCC 793 – Distinguished.**

Union of India v. M.K. Sarkar **(2010) 2 SCC 59 – relied on.**

4. The failure on the part of the respondents to opt for the Pension Scheme and refund the advance taken from the employer's contribution of C.P.F. will disentitle them from claiming any benefit under the Pension Scheme. Therefore, the judgment and order passed by the High Court is not sustainable. [Para 41] [598-E-F]

Case Law Reference:

(2009) 16 SCR 249	**referred to**	**Paras 6, 39**
(1975) 3 SCR 619	**referred to**	**Para 17**
(1988) 3 Suppl. SCR 442	**referred to**	**Para 18**

1994 (6) Suppl SCR 358	**relied on**	**Para 19**
(2009) 2 SCR 161	**referred to**	**Para 19**
(1990) 2 SCR 156	**referred to**	**Para 23**
(1990) 3 SCR 352	**referred to**	**Para 24**
1991 (3) Suppl SCR 256	**referred to**	**Para 25**
(1971) Suppl SCR 634	**referred to**	**Para 27**
(1983) 2 SCR 165	**referred to**	**Para 27**
(1985) 3 SCR 1042	**referred to**	**Para 29**
(2004) 13 SCC 662	**referred to**	**Para 31**
(2006) 2 Suppl SCR 582	**referred to**	**Para 32**
(1995) 3 Suppl SCR 826	**relied on**	**Para 36**
(1996) 3 Suppl SCR 595	**relied on**	**Para 36**
(2001) 3 Suupl SCR 140	**relied on**	**Para 36**
(2001) 4 Suppl SCR 209	**relied on**	**Para 36**
(2003) 4 Suppl SCR 45	**relied on**	**Para 36**
(2009) 11 SCR 710	**Distinguished**	**Para 9**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4111 of 2008.

From the Judgment & Order dated 19.1.2007 of the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition No. 4211 of 2005.

WITH

C.A. Nos. 4405, 4404 of 2011 & 3846 of 2010.

K.K. Mohan, K. Sarada Devi, Raj Paul Kansal, Debasis Misra, S. Janani, Vikash Singh, Sunando Raha, Deepak Goel, Suresh Kumari, R.D. Upadhyay, B.K. Pal, P.N. Jha, Geetanjali Mohan for the appearing parties.

The Judgment of the Court was delivered by

H.L. DATTU, J. 1. Leave granted in SLP (C) No. 3349 of 2008 and SLP (C) 330 of 2008.

2. In *Civil Appeal No. 4111 of 2008 - PEPSU Road Transport Corporation and Another v. Mangal Singh & Ors.* (hereinafter referred to as "Mangal's appeal"), respondent joined the services of the Pepsu Road Transport Corporation (hereinafter referred to as "Corporation") as driver on 07.11.1974 and his services were governed by service rules of the Corporation which included the eligibility to receive Contributory Provident Fund (for short, "C.P.F.") and gratuity. Subsequently, on 30.06.1982, the services of the respondent were terminated for his unauthorized absence from the duty. The respondent raised an industrial dispute against his termination order, which was dismissed by the Labour Court vide its order dated 11.02.1994. Aggrieved by the aforesaid order of the Labour Court, respondent filed a writ petition before the High Court of Punjab and Haryana, which was allowed vide order dated 10.04.1996, setting aside the order of termination. The High Court further directed the reinstatement of the respondent with effect from 18.06.1996. In the meantime, on 15.06.1992, the Corporation had introduced the Pension Scheme for its employees and also framed Regulations known as Pepsu Road Transport Corporation Employees Pension/Gratuity and General Provident Fund Regulations 1992 (`Regulations' for short) in order to regulate the said scheme. The Pension Scheme in terms of Regulation 4 of the Regulations envisages the condition of exercise of the option within a period of six months from the date of issue of the Regulations by an employee in order to avail the pensionary benefits under the scheme. This time was further extended till 15.12.1992. The Regulation 4 of the said Regulations entitles the employee re-joining after leave or suspension to exercise his option for Pension Scheme within the period of 6 months from the date

of his re-joining. The respondent had also submitted nomination form of the C.P.F. scheme. However, the respondent did not receive any retiral benefits on his retirement after attaining the age of superannuation due to pendency of litigation in the High Court regarding the payment of his back wages for the period of his absence from the service. It is not in dispute that respondent did not opt for the Pension Scheme till the date of his retirement. On 09.03.2005, the respondent filed a writ petition before the High Court for a direction to the Corporation to sanction pensionary benefits to the respondent under the pension scheme. The High Court has allowed the writ petition vide its order dated 19.01.2007 on the ground that the provisions of Regulation 4 do not cover the case of the persons reinstated into service pursuant to the orders of the Court. The High Court further directed the Corporation to allow the respondent to exercise his option for pension scheme within six months from the date of the order and the formalities for payment of pension be finalized within a particular time frame. Being aggrieved, the Corporation has filed this appeal.

3. In *SLP (Civil) No. 3349 of 2008- PEPSU Road Transport Corporation and Another v. Sharanjit Kaur, widow of Bachittar Singh and Ors.* (hereinafter referred to as Bachittar's appeal): The respondent had joined the services of the Corporation as a Conductor on 07.07.1962. He was subscriber for C.P.F. and gratuity. In the year 1989, respondent took the loan from his C.P.F. account to the tune of Rs. 26,000/-. Subsequently, on 15.06.1992, the Corporation had introduced the Pension Scheme for its employees along with the Regulations to regulate the said scheme. The Pension Scheme in terms of Regulation 3 (h) of the Regulations envisaged the condition of refund of the loan taken from the C.P.F. account by an employee on or before 14.12.1992 in order to avail the pensionary benefits under the said Regulations. The respondent had applied for the pension scheme but failed to return the said loan amount. The respondent retired as Inspector on 28.02.1997. He had received

all the monetary benefits including a sum of Rs. 99,005/- under C.P.F. Scheme. However, the respondent filed a writ petition before the High Court praying for pensionary benefits due to him under the pension scheme. The High Court (Civil Writ Petition No. 10285 of 1998) vide its order dated 09.08.2007 has allowed the appeal following its earlier decision in RSA No. 2173 of 1994, dated 25.05.2004 titled as '*PEPSU Road Transport Corporation v. Sant Ram Fitter*', wherein, the High Court has observed that the rejection of the claim of respondent by the Corporation was illegal and arbitrary as the amount of advance can be adjusted against Death-cum-Retirement Gratuity payable to employee on his retirement as per Regulation 24 (3) of the Regulations and it can even be deducted from the C.P.F. of the respondent. In the light of this, the High Court has further directed the Corporation to release pensionary benefits to the respondent with interest @6% per annum from the date of accrual of pension till the date of payment thereof within two months from the date of the order.

4. In *SLP (Civil) No. 330 of 2008- PEPSU Road Transport Corporation and Another v. Baldev Singh & Ors.* (hereinafter referred to as "Baldev's appeal): The respondent joined the services of the Corporation as a driver on 13.10.1966 and had subscribed to C.P.F. and gratuity. In the year 1986, respondent took loan from his C.P.F. account to the tune of Rs. 12,000. Subsequently, on 15.06.1992, the Corporation had introduced the Pension Scheme for its employees along with the Regulations in order to regulate the said scheme. The Pension Scheme in terms of Regulation 3 (h) of the Regulations envisaged the condition of refund of the loan taken from the C.P.F. account by an employee on or before 14.12.1992 in order to avail the pensionary benefits under the said scheme. The respondent had applied for the pension scheme but failed to return the said loan amount. Eventually, the respondent retired as a driver on 30.09.1994 and has received an amount of Rs. 80,575/- under C.P.F. Scheme as retiral benefits. However, the respondent filed a writ petition before the High Court of Punjab

and Haryana inter-alia praying for pensionary benefits due to him under the pension scheme. The High Court vide its *ex-parte* order dated 11.8.1997, directed the Corporation to pay all retrial benefits to the respondent within 2 months with interest. Aggrieved by this, the Corporation filed a review petition, which was allowed by the High Court vide its order dated 22.05.1998, directing the Corporation to determine whether any amount is due to the respondent by passing a speaking order. In compliance with the above order of the High Court, the Managing Director of the Corporation, after giving the opportunity of hearing, passed a detailed order rejecting the claim of the respondent. Being aggrieved by the said order dated 18.08.1998, the respondent filed a writ petition before the High Court. The High Court has allowed the writ petition vide its order dated 09.08.2007 following its earlier Judgment in Civil Writ Petition No. 10285 of 1998 (*Bachhitar Singh v. PEPSU Road Transport Corporation*).

5. In *Civil Appeal No. 3846 of 2010- PEPSU Road Transport Corporation and Another v. Jagroop Singh* (hereinafter referred to as "Jagroop's appeal"), the respondent had served the Corporation as a driver and was subscriber of C.P.F. and gratuity. Subsequently, on 15.06.1992, the Corporation introduced the Pension Scheme for its employees and also made the Regulations in order to regulate the said scheme. The Pension Scheme in terms of Regulation 4 of the Regulations envisages the condition for exercise of the option on or before 15.12.1992, by an employee in order to avail the pensionary benefits under the scheme. Subsequently, the Corporation had also extended this period by three months. It is not in dispute that the respondent had not exercised any option for availing the benefits under the pension scheme. On 30.11.2000, the respondent took pre-mature voluntary retirement. On 08.06.2001, the respondent received all the retrial benefits under the C.P.F Scheme and gratuity without any objection or protest. However, 01.06.2002, after nearly 10years from his retirement, the respondent filed a suit for

declaration for the entitlement to pension and other benefits in the Court of Civil Judge Senior Division, Bathinda. The learned Civil Judge had passed the judgment and decree dated 01.03.2006 in favor of the respondent on the ground that the respondent was never informed about the option available under the Regulations and he came to know about this Scheme only at the time of his retirement. The learned Civil Judge further directed the Corporation to release pensionary benefit to the respondent along with interest @9% per annum till the date of realization. Being aggrieved by the judgment and decree dated 01.03.2006, the Corporation filed a Regular Second Appeal in the Court of District Judge, Bathinda, the same was allowed vide Judgment and order dated 27.04.2006 on the ground that respondent is estopped from claiming any pensionary benefit by his act of receiving all the retrial benefits under the C.P.F. Scheme at the time of his retirement and failing to exercise the option in terms of Regulation 4 of the Regulations in order to avail the benefits under the pension scheme. Aggrieved by this order of the Additional District Judge dated 27.04.2006, the respondent filed a Regular Second Appeal in the High Court, the same was allowed vide order and judgment dated 23.12.2008. The High Court has followed its earlier Judgment in Civil Writ Petition No. 14562 of 2004 titled as '*Jagjit Singh v. Managing Director, Pepsu Road Transport Corporation and another'* dated 03.12.2008, wherein, the appeal was allowed on the ground that the pension scheme was never circulated nor was informed to the employees of the Corporation and mere non-refund of the loan taken from the C.P.F. account would not disentitle the employee from claiming pension under the scheme.

6. The issue involved in the present appeal for our consideration is: Whether the respondents are eligible to claim pensionary benefits under the Pension Scheme in view of the non-compliance of the essential conditions stipulated in the Regulations which govern the said Pension Scheme?

7. Shri K. K. Mohan, learned counsel has appeared for the

Corporation and the respondents are represented by a battery of learned counsel. We will refer to their submissions while dealing with the issue canvassed before us.

8. Learned counsel for the Corporation submits that the respondents having not exercised their option for the pension scheme within the time specified in the Regulations and those having opted but not having complied with the terms and conditions stipulated in the Regulations which govern the pensionary benefits, the High Court erred in law granting relief in question. In other words, he submits that the respondents are ineligible to claim any pensionary benefits under the Pension Scheme since they have failed to comply with quintessential conditions, namely Regulation 3 and 4 of the said Regulations. He further submits, relying on the decision of this Court in *Union of India v. M.K. Sarkar*, (2010) 2 SCC 59, that the respondents cannot take the plea that they were not given the opportunity to opt for the Pension Scheme in the absence of the service of notice by the Corporation to its individual employees.

9. Learned counsel for respondents submits relying on *Dakshin Hayana Bijli Vitran Nigam v. Bachan Singh*, (2009) 14 SCC 793, that in *Mangal's and Jagroop's appeals*, the respondents were not given the opportunity in order to exercise the option for the Pension Scheme as no individual notice was served to them. Therefore, they were unable to exercise the option for availing the benefits under the Pension Scheme in terms of the Regulation 4 of the Regulations.

10. The learned counsel for respondent in *Mangal's appeal* further submits that the respondent's services were terminated when the Pension Scheme was introduced. Therefore, the re-joining of duty by the respondent after the termination of his services is not covered by Regulation 4 of the Regulations. In other words, the learned counsel submits that Regulation 4 contemplates the exercise of option only by an employee, under suspension and leave, within further period of 6 months from the date of joining of duty after suspension.

11. Learned counsel submits that, in *Baldev's* and *Bachittar's appeals*, the respondents opted for the Pension Scheme and did not refund the amount of advance taken from the C.P.F. including employer's contribution as the nature of the advance was non-refundable, which is not covered by Regulation 3 (h) of the said Regulations. Learned counsel alternatively argues that even if there is failure of the respondents to refund the employer's contribution in terms of Regulation 3(h) of the Regulations, it does not disentitle the respondents from receiving pensionary benefits as the advance due to employer's contribution of C.P.F. could be duly adjusted against the respondents contribution by virtue of Regulation 20(3) and 24 (3) of the Regulations.

12. The Pepsu Road Transport Corporation was constituted in terms of the provisions of the Road Transport Corporations Act, 1950 (hereinafter referred to as "the 1950 Act"). By reason of the provisions of Section 4 thereof, each Corporation is a body corporate having perpetual succession and a common seal and can, in its own name, sue and be sued.

13. Section 45 of the 1950 Act authorises the Corporation to frame Regulations for the administration of the affairs of the Corporation. The Section reads :-

> "45. Power to make Regulations.—(1) A Corporation may, with the previous sanction of the State Government, make Regulations, not inconsistent with this Act and the rules made thereunder, for the administration of the affairs of the Corporation.
>
> (2) In particular, and without prejudice to the generality of the foregoing power, such Regulations may provide for all or any of the following matters, namely—
>
> (a) the manner in which, and the purposes for which, persons may be associated with the Board under Section 10;

(b) the time and place of meetings of the Board and the procedure to be followed in regard to transaction of business at such meetings;

(c) the conditions of appointment and service and the scales of pay of officers and other employees of the Corporation other than the Managing Director, the Chief Accounts Officer and the Financial Adviser or, as the case may be, the Chief Accounts Officer-cum-Financial Adviser;

(d) the issue of passes to the employees of the Corporation and other persons under Section 19;

(e) the grant of refund in respect of unused tickets and concessional passes under Section 19."

14. The Regulations provide for the grant of retirement benefits to the employees of the PEPSU Road Transport Corporation with effect from 15.06.1992.

15. To appreciate the point in issue, it would be necessary to refer to the relevant Regulations :

"***Regulation 3***. *Application: (1) These Regulations shall apply to the employees of the PEPSU Road Transport Corporation who:*

(i) Were/are appointed on or after the date of issue of Regulations on whole-time and

regular basis; and

(ii) Were working immediately before the date of issue of Regulations and opt for these Regulations.

(2) These Regulations shall not apply to the employees, who:

(a) Opt out of these Regulations.

(b) Are on deputation with the Corporation.

(c) Are paid out of contingencies.

(d) Are work charged employees.

(e) Are employed on contract basis, except when the contract provided otherwise.

(f) Are re-employed after superannuation.

(g) Are specifically excluded wholly or partly from the operation of these Regulations; and

h) Opt for the PRTC Employees Pension/Gratuity and Regulations General Provident Fund, 1992, but failed to refund the amount of advance taken out of the Employer's share of the Contributory Provident Fund alongwith interest thereon within the stipulated period."

Regulation 4. Exercise of Option: The option under clause (ii) of the sub-rule (1) of Regulation 3 shall be exercised in duplicate in writing in Form I so as to reach the managing director as forwarded by the general manager in case of depots and administrative officer in the case of headquarters with his counter signatures within a period of six months from the date of issue of these Regulations.

Provided that:

(i) In the case of an employee, who on the date of the issue of these Regulations was abroad or on leave, the option shall be exercised within a period of six months from the date of taking the charge of his post.

(ii) Where an employee is under suspension, on the date of issue of these Regulations, the option shall be exercised within a period of six months from the date of his joining the duty.

(iii) An option once exercised shall be final, provided the concerned employee deposits the Corporation's share of C.P. Fund received by him – taken in advance, if any, within

a period of six months from the date of issue of Regulations and if a person fails to exercise his option under the said Regulations within the specified period referred to above, it shall be deemed he has opted to continue for the existing Contributory Provident Fund benefit.

(iv) An employee who dies on or after the issue of these Regulations and who could not exercise his option the legal heir of such employee, who is entitled to receive retirement benefits under the said Regulations, shall exercise option, subject to the condition that the legal heir shall have to deposit the amount of the Corporation's share of the C.P. Fund received by the deceased employee.

(v) The employee recruited after the introduction of the said pension Regulations will be covered under these Regulations.

Regulation 20. Subscription and Maintenance of General Provident Fund Account: (1) The employees, who were appointed on or after the commencement of these Regulations and also to the existing employees, who opt for those Regulations shall contribute towards the General Provident Fund at the rate prescribed by the Punjab Government for their employees. An employee may, however, subscribe voluntarily at higher rate than that prescribed by the Punjab Government. The Fund shall be regulated in accordance with the rules and procedure to be prescribed by the Punjab Government from time to time.

(2) The date of switchover for the existing employees to General Provident Fund shall be date of issue of these Regulations. The Corporation shall maintain the General Provident Fund Account at head office level.

(3) An employee may be sancationed an advance out of his own share (General Provident Fund) for transfer to Pension and Gratuity to meet with his liability of advance

taken by him out of the employer's share of the Contributory Provident Fund.

Regulation 24. Adjustment and Recovery of dues: (1) The competent authority shall take steps to assess the dues outstanding against the employee two years before the date on which he is due to retire on superannuation.

(2)The assessment of the outstanding dues against the employees shall be completed by the competent authority eight months prior to the date of his retirement.

(3) The dues as assessed including those dues which come to the notice subsequently and which remain outstanding till the date of retirement of the employee, shall be adjusted against the amount of death-cum-retirement gratuity becoming payable to the employee on his retirement.

(4) When an employee retries from service, an office shall be issued to that effect by competent authority.

16. It is well settled law that the Regulations made under the statute laying down the terms and conditions of service of employees, including the grant of retirement benefits, has the force of law. The Regulations validly made under statutory powers are binding and effective as the enactment of the competent legislature. The statutory bodies as well as general public are bound to comply with the terms and conditions laid down in the Regulations as a legal compulsion. Any action or order in breach of the terms and conditions of the Regulations shall amount to violation of Regulations which are in the nature of statutory provisions and shall render such action or order illegal and invalid.

17. In *Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi,* (1975) 1 SCC 421, this Court, while elaborately discussing the nature and effect of the Regulations made under the Statute, has observed:

"23. The noticeable feature is that these statutory bodies have no free hand in framing the conditions and terms of service of their employees. *These statutory bodies are bound to apply the terms and conditions as laid down in the Regulations. The statutory bodies are not free to make such terms as they think fit and proper. Regulations prescribe the terms of appointment, conditions of service and procedure for dismissing employees.* These Regulations in the statutes are described as "status fetters on freedom of contract". The Oil and Natural Gas Commission Act in Section 12 specifically enacts that the terms and conditions of the employees may be such as may be provided by Regulations. *There is a legal compulsion on the Commission to comply with the Regulations. Any breach of such compliance would be a breach of the Regulations which are statutory provisions.* In other statutes under consideration viz. the Life Insurance Corporation Act and the Industrial Finance Corporation Act though there is no specific provision comparable to Section 12 of the 1959 Act the terms and conditions of employment and conditions of service are provided for by Regulations. *These Regulations are not only binding on the authorities but also on the public.*

…

30. In this view a *Regulation is not an agreement or contract but a law binding the corporation, its officers, servants and the members of the public who come within the sphere of its operations.* The doctrine of ultra vires as applied to statutes, rules and orders should equally apply to the Regulations and any other subordinate legislation. *The Regulations made under power conferred by the statute are subordinate legislation and have the force and effect, if validly made, as the Act passed by the competent legislature.*

…

33. There is no substantial difference between a rule and a Regulation inasmuch as both are subordinate legislation under powers conferred by the statute. *A Regulation framed under a statute applies uniform treatment to every one or to all members of some group or class.* The Oil and Natural Gas Commission, the Life Insurance Corporation and Industrial Finance Corporation are all required by the statute to frame Regulations inter alia for the purpose of the duties and conduct and conditions of service of officers and other employees. *These Regulations impose obligation on the statutory authorities. The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by courts to invalidate actions in violation of rules and Regulations. The existence of rules and Regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard. The statutory Regulations in the cases under consideration give the employees a statutory status and impose restriction on the employer and the employee with no option to vary the conditions.* An ordinary individual in a case of master and servant contractual relationship enforces breach of contractual terms. The remedy in such contractual relationship of master and servant is damages because personal service is not capable of enforcement. *In cases of statutory bodies, there is no personal element whatsoever because of the impersonal character of statutory bodies.* In the case of statutory bodies it has been said that the element of public employment or service and the support of statute require observance of rules and Regulations."

18. In *Vidya Dhar Pande v. Vidyut Grih Siksha Samiti, (*1988) 4 SCC 734, the services of the appellant-employee were terminated, in contravention of the service Regulations, by the respondent school. This Court, while reinstating the employee in service, has agreed with the observations made

in Sukhdev Singh's case (Supra). While doing so, this Court has stated :

> 9. The question whether a Regulation framed under power conferred by the provisions of a statute has got statutory power and whether an order made in breach of the said Regulation will be rendered illegal and invalid, came up for consideration before the Constitution Bench in the case of Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi. In this case it was held that: [SCC p. 438 : SCC (L&S) P. 118, para 33]
>
> "There is no substantial difference between a rule and a Regulation inasmuch as both are subordinate legislation under powers conferred by the statute. A Regulation framed under a statute applies uniform treatment to every one or to all members of some group or class. The Oil and Natural Gas Commission, the Life Insurance Corporation and Oil and Industrial Finance Corporation are all required by the statute to frame Regulations inter alia for the purpose of the duties and conduct and conditions of service of officers and other employees. These Regulations impose obligation on the statutory authorities. *The statutory authorities cannot deviate from the conditions of service. Any deviation will be enforced by legal sanction of declaration by courts to invalidate actions in violations of rules and Regulations. The existence of rules and Regulations under statute is to ensure regular conduct with a distinctive attitude to that conduct as a standard.* The statutory Regulations in the cases under consideration give the employee a statutory status and impose restriction on the employer and the employee with no option to vary the conditions."
>
> 10. *There is, therefore, no escape from the conclusion that Regulations have force of law.* The order of the High Court must, therefore, be reversed on this point unhesitatingly.

19. Even in the case of non-statutory Regulations, specifically providing for the grant of pensionary benefits to the employee qua his employer shall be governed by the terms and conditions encapsulated in such non-statutory Regulations. In *Union of India v. Brig. P. K. Dutta (Retd.),* 1995 Supp (2) SCC 29, this Court :

> 7. *It is true that the Pension Regulations are non-statutory in character.* But as held by this Court in Major (Retd.) Hari Chand Pahwa v. Union of India 1995 Supp (1) SCC 221 , *the pensionary benefits are provided for and are payable only under those Regulations and can, therefore, be withheld or forfeited under and as provided by those very Regulations.* The following observations from the said judgment makes the position clear:
>
> "We do not agree even with the second contention advanced by the learned counsel. The provisions of Regulation 16(a) are clear. *Even if it is assumed that the Pension Regulations have no statutory force, we fail to understand how the provisions of the said Regulations are contrary to the statutory provisions under the Act or the Rules. The pension has been provided under these Regulations. It is not disputed by the learned counsel that the pension was granted to the Corporation under the said Regulations. The Regulations which provided for the grant of pension can also provide for taking it away on justifiable grounds."*

20. In *Rajasthan SRTC v. Bal Mukund Bairwa,* (2009) 4 SCC 299, the services of the employee of the appellant were terminated by virtue of service Regulations (Statutory) made under Section 45 of the Road Transport Corporation Act, 1950. This Court, while upholding the jurisdiction of the Civil Court to entertain the suit filed by the employee challenging the order of termination of his services, has held:

> "38. Where the relationship between the parties as employer and employee is contractual, the right to enforce

the contract of service depending on personal volition of an employer is prohibited in terms of Section 14(1)(b) of the Specific Relief Act, 1963. It has, however, four exceptions, namely, (1) when an employee enjoys a status i.e. his conditions of service are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India or a statute and would otherwise be governed by Article 311(2) of the Constitution of India; (2) where the conditions of service are governed by statute or statutory Regulation and in the event mandatory provisions thereof have been breached; (3) when the service of the employee is otherwise protected by a statute; and (4) where a right is claimed under the Industrial Disputes Act or sister laws, termination of service having been effected in breach of the provisions thereof.

39. *The appellant Corporation is bound to comply with the mandatory provisions of the statute or the Regulations framed under it. A subordinate legislation when validly framed becomes a part of the Act…"*

21. Pension is a retirement benefit partaking of the character of regular payment to a person in consideration of the past services rendered by him. We hasten to add that although pension is not a bounty but is claimable as a matter of right, yet the right is not absolute or unconditional. The person claiming pension must establish his entitlement to such pension in law. The entitlement might be dependent upon various considerations or conditions. In a given case, the retired employee is entitled to pension or not depend on the provisions and interpretation of Rules and Regulations. The Contributory Provident Fund appears to be simple mechanism where an employee is paid the total amount which he has contributed along with the equal contribution made by the employer ordinarily at the time of retirement of an employee. In short, we quote what was repeatedly said by this Court that "pension is payable periodically as long as the pensioner is alive whereas C.P.F. is paid only once on retirement". Therefore, conceptually,

pension and C.P.F. are separate and distinct.

22. Now we will try to explain the essential distinction between these two retirement benefits that an employee may derive at the time of his retirement from service. The C.P.F. was introduced with the object of providing social security to the employees working in factories and other establishments, after their retirement. The C.P.F. was instituted as a Compulsorily Contributory Provident Fund by the enactment of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Provident Fund Act"). The employee registered under the Provident Fund Act shall be entitled to claim all benefits available under the C.P.F. Scheme framed under the Act. This CPF Scheme requires opening of the account for the employee by the employer. The Government/employer is under the continuous obligation to deposit equal or matching contribution made by the employee in his account till he retires. Once the employee is retired, then his rights qua Government/employer's contribution into his C.P.F. account finally crystallizes. After retirement, this entire C.P.F. amount is paid to the employee as a retrial benefit. On the receipt of C.P.F. amount, the relationship between employee and employer ceases to exist without leaving any further legal right or obligation qua each other.

23. In *Committee for Protection of Rights of ONGC Employees v. O.N.G.C.,* (1990) 2 SCC 472, this Court has stated :

"12. Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Provident Fund Act') has been enacted with the object of providing social security to the employees in factories and other establishments covered by the said Act, after their retirement. In the Statement of Objects and Reasons for the said enactment it was mentioned as under:

"The question of making some provision for the future of the industrial worker after he retires, or for his dependants

in case of his early death, has been under consideration for some years. The ideal way would have been provisions through old age and survivors' pensions as has been done in the industrially advanced countries. But in the prevailing conditions in India, the institution of a pension scheme cannot be visualised in the near future. Another alternative may be for provision of gratuities after a prescribed period of service. The main defect of a gratuity scheme, however, is that the amount paid to a worker or his dependants would be small, as the worker would not himself be making any contribution to the fund. Taking into account the various difficulties, financial and administrative, the most appropriate course appears to be the institution compulsorily of contributory provident fund in which both the worker and the employer would contribute. Apart from other advantages, there is the obvious one of cultivating among the workers a spirit of saving something regularly."

13. This indicates that the scheme of Contributory Provident Fund, by way of retiral benefit, envisaged by the Provident Fund Act, is in the nature of a substitute for old age pension because it was felt that in the prevailing conditions in India, the institution of a pension scheme could not be visualised in the near future. It was not the intention of Parliament that Provident Fund benefit envisaged by the said Act would be in addition to pensionary benefits."

24. In *Krishena Kumar v. Union of India*, (1990) 4 SCC 207, this Court has held :

"32. The Railway Contributory Provident Fund is by definition a fund. Besides, the government's obligation towards an employee under CPF Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation

continues. Whether there still remained a moral obligation is a different matter."

25. In *All India Reserve Bank Retired Officers' Assn.* v. *Union of India,* 1992 Supp (1) SCC 664**,** this Court, while considering the case of the Pension Scheme and Contributory Provident Fund Scheme, has held:

"10. … *in the case of an employee governed by the Contributory Provident Fund Scheme his relations with the employer come to an end on his retirement and receipt of the contributory provident fund amount but in the case of an employee governed under the Pension Scheme his relations with the employer merely undergo a change but do not snap altogether.*"

26. Pension is a periodic payment of an amount to the employee, after his retirement from service by his employer till his death. In some cases, it is also payable to the dependents of the deceased employee as a family pension. The pension is in a nature of right which employee has earned by rendering long service to the employer. It is a deferred payment of compensation for past service. It is dependable on the condition of rendering of service by the employee for a certain fixed period of time with decent behavior. Like C.P.F., the object of providing pensionery benefit under the Pension Scheme is to provide social security to the employee and his family after his retirement from service. The Government's/ Employer's obligation under the Pension Scheme begins only when the employee retires and it continues till the death of the employee.

27. In *Deokinandan Prasad v. State of Bihar,* (1971) 2 SCC 330, this Court has held:

"31. … pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

28. In *D.S. Nakara v. Union of India,* (1983) 1 SCC 305, this court has observed:

"27. Viewed in the light of the present day notions *pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability; payments usually continue for the rest of the natural life of the recipient.* The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But broadly stated they are (i) as compensation to former members of the Armed Forces or their dependents for old age, disability, or death (usually from service causes), (ii) as old age retirement or disability benefits for civilian employees, and (iii) as social security payments for the aged, disabled, or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head they have been in force in one form or another in some countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude. There are other views about pensions such as charity, paternalism, deferred pay, rewards for service rendered, or as a means of promoting general welfare (see Encyclopaedia Britannica, Vol. 17, p. 575). But these views have become otiose.

28. Pensions to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in Douge v. Board of Education, 302 US 74, *a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living.* This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want.

29. Summing up it can be said with confidence that *pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age.* One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon."

29. In *Poonamal v. Union of India,* (1985) 3 SCC 345, this Court has observed:

"7. … pension is a right not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone entitled to the pension under the rules can claim it as a matter of right. (Deoki Nandan Prasad v. State of Bihar 1971 (2) SCC 330, State of Punjab v. Iqbal Singh 1976 (2) SCC 1 and D.S. Nakara v. Union of India 1983 (1) SCC 305.) Where the Government servant rendered service, to compensate which a family pension scheme is devised, the widow and the dependent minors would equally be entitled to family pension as a matter of right. In fact *we look upon pension not merely*

as a statutory right but as the fulfilment of a constitutional promise inasmuch as it partakes the character of public assistance in cases of unemployment, old-age, disablement or similar other cases of undeserved want. Relevant rules merely make effective the constitutional mandate."

30. In *Krishena Kumar v. Union of India* (supra) this Court has held:

"32. …On the other hand under the Pension Scheme the government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins."

31. In *Prabhu Narain v. State of U.P.,(2004) 13 SCC 662*, this Court has observed:

"5. No doubt pension is not a bounty, it is a valuable right given to an employee, but, in the first place it must be shown that the employee is entitled to pension under a particular rule or the scheme, as the case may be."

32. In *U.P. Raghavendra Acharya v. State of Karnataka, (2006) 9 SCC 630*, this Court has held:

"25. Pension, as is well known, is not a bounty. It is treated to be a deferred salary. It is akin to right of property. It is correlated and has a nexus with the salary payable to the employees as on the date of retirement."

33. The term pension has been defined in American Jurisprudence 2d, Vol. 60, at pg. 879 as thus:

"However, by modern usage, the "pension" is not restricted to pure gratuities. Thus, it has been held that a pension paid a governmental employee for long and efficient service is not an emolument the payment of

which is barred by a state constitutional provision, but is a deferred portion of the compensation earned for services rendered. … A pension is closely akin to wages in that it consists of payments provided by an employer, is paid in consideration of past services, and serves the purpose of helping the recipient meet the expense of living."

34. The concept of pension has been discussed in Halsbury's Laws of England, Fourth Edition (Reissue), Vol. 16, para. 400 as thus:

"Meaning of 'pension'. 'Pension' means a periodical payment or lump sum by way of pension, gratuity or superannuation allowance as respects which the Secretary of State is satisfied that it is to be paid in accordance with any scheme or arrangement having its object or one of its objects to make provision in respect of persons serving in particular employments for providing them with retirement benefits ... 'Pension' does not include:

(i) a payment to an employee which consists solely of a return of his own contributions, with or without interest;

(ii) that part of a payment to an employee which is attributable solely to additional voluntary contributions by that employee made in accordance with the scheme or arrangement;

(iii) a periodical payment or lump sum, in so far as that payment or lump sum represents compensation under the statutory compensation schemes and is payable under a statutory provision, whether made or passed before, on or after 31st July 1978"

35. The concept of pension has also been considered in Corpus Juris Secundum, Vol. 70, at pg. 423 as thus:

"A pension is a periodical allowance of money granted by

the government in consideration or recognition of meritorious past services, or of loss or injury sustained in the public service. A pension is mainly designed to assist the pensioner in providing for his daily wants, and it presupposes the continued life of the recipient."

36. To sum up, we state that the concept of pension has been considered by this court time and again and in catena of cases, it has been observed that the Pension is not a charity or bounty nor is it a conditional payment solely dependent on the sweet will of the employer. It is earned for rendering a long and satisfactory service. It is in the nature of deferred payment for past services. It is a social security plan consistent with the socio-economic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution rendering social justice to a superannuated government servant. It is a right attached to the office and cannot be arbitrarily denied. *[see A.P. Srivastava v. Union of India*, (1995) 6 SCC 227, *Vasant Gangaramsa Chandan v. State of Maharashtra, (*1996) 10 SCC 148, *Subrata Sen v. Union of India,* (2001) 8 SCC 71, *Union of India v. P.D. Yadav***,** (2002) 1 SCC 405, *Grid Corpn. of Orissa v. Rasananda Das*, (2003) 10 SCC 297, *All India Reserve Bank Retired Officers Assn. v. Union of India* (*Supra*)].

37. Having noticed the conceptual difference between the concept of C.P.F. and pension, we will now notice the submissions made by the learned counsel for the parties to the lis.

38. The common thread which runs through all these appeals canvassed before us is that the respondents have failed to comply with the terms and conditions of the Regulations, which govern the Pension Scheme. We have already considered the nature and effect of the Regulations, which are made under a statute. These statutory Regulations require to be interpreted in the same manner which is adopted while interpreting any other statutory provisions. The

Corporation as well as respondents are obliged and bound to comply with its mandatory conditions and requirements. Any action or conduct deviating from these conditions shall render such action illegal and invalid. Moreover, the respondents have availed the retiral benefits arising out of the C.P.F and gratuity without any protest. The respondents in all these appeals, before us, have made a claim for pensionary benefits under the Pension Scheme for the first time only after their retirement with an unreasonable delay of more than 8 years. It is not in dispute, in some appeals, that the respondents never opted for the Pension Scheme for their alleged want of knowledge for non-service of individual notices. In other appeals, although respondents applied for the option of the Pension Scheme but indisputably never fulfilled the quintessential conditions envisaged by the Regulations which are statutory in nature.

39. The learned counsel for the respondents in support of their contention for want of knowledge of the Pension Scheme due to non-service of individual notices relied on the decision of this Court in *Dakshin Haryana Bijli Vitran Nigam v. Bachan Singh*, (2009) 14 SCC 793. The said decision is clearly distinguishable on facts. In that case, the appellant, Haryana State Electricity Board, had issued instructions dated 23.06.1993 and circular dated 09.08.1994 in order to provide an option to the employees for pensionary benefits in lieu of their work charged service with an express condition of noting of instructions from all the employees and acknowledging the receipt of the letter. In these appeals, before us, there is no such condition of noting from the employees or serving individual notices in the Pension Scheme or Regulations. Therefore, in our opinion, Bachan Singh's decision will not assist the respondents.

40. In our view, in the facts and circumstances of the present case and in view of absence of such condition in the scheme, it is not necessary for the Corporation to give an individual notice to respondents for exercising of option for pension Scheme and also for asking respondent to refund the

employers contribution of C.P.F. at each stage. Furthermore, when notice or knowledge of the Pension Scheme can be reasonably inferred or gathered from the conduct of the respondents in their ordinary course of business and from surrounding circumstances, then, it will constitute a sufficient notice in the eyes of law. In *Union of India v. M.K. Sarkar*, (2010) 2 SCC 59, this Court has :

> 21. The Tribunal in this case has assumed that being "aware" of the scheme was not sufficient notice to a retiree to exercise the option and individual written communication was mandatory. The Tribunal was of the view that as the Railways remained unrepresented and failed to prove by positive evidence, that the respondent was informed of the availability of the option, it should be assumed that there was non-compliance with the requirements relating to notice. The High Court has impliedly accepted and affirmed this view. The assumption is not sound.
>
> 22. The Tribunal was examining the issue with reference to a case where there was a delay of 22 years. A person, who is aware of the availability of option, cannot contend that he was not served a written notice of the availability of the option after 22 years. In such a case, even if Railway Administration was represented, it was not reasonable to expect the department to maintain the records of such intimation(s) of individual notice to each employee after 22 years. In fact by the time the matter was considered more than nearly 27 years had elapsed. Further *when notice or knowledge of the availability of the option was clearly inferable, the employee cannot after a long time (in this case 22 years) be heard to contend that in the absence of written intimation of the option, he is still entitled to exercise the option.*
>
> 23. This Court considered the meaning of "notice" in *Nilkantha Sidramappa Ningashetti v. Kashinath*

> *Somanna Ningashetti,* AIR 1962 SC 666. This Court held: (AIR p. 669, para 10)
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> "10. We see no ground to construe the expression 'date of service of notice' in Column 3 of Article 158 of the Limitation Act to mean only a notice in writing served in a formal manner. *When the legislature used the word 'notice' it must be presumed to have borne in mind that it means not only a formal intimation but also an informal one. Similarly, it must be deemed to have in mind the fact that service of a notice would include constructive or informal notice.* If its intention were to exclude the latter sense of the words 'notice' and 'service' it would have said so explicitly."
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> 41. The Regulation 4 (iii) of the Regulations is a deeming provision to the effect: firstly, if an employee fails to exercise his option within a period of 6 months from the date of issue of these Regulations and; secondly, even on exercise of option, if an employee fails to refund the amount of advance taken from employers contribution of the C.P.F. within 6 months from the date of issue of these Regulations, then it shall be deemed that employee has opted to continue for the existing C.P.F. benefit. Therefore, the failure on the part of the respondents to opt for the Pension Scheme and refund the advance taken from the employer's contribution of C.P.F. will disentitle them from claiming any benefit under the Pension Scheme. Therefore, we cannot sustain the Judgment and order passed by the High Court.
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> 42. The appeals are accordingly allowed and the impugned Judgment and orders passed by the High Court are set aside. There will be no order as to costs.

D.G. Appeals allowed.